

152 FERC ¶ 61,075  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

CED Corcoran Solar, LLC

Docket Nos. ER15-1806-000

CED Corcoran Solar 2, LLC

ER15-1811-000

ORDER ACCEPTING COMMON FACILITIES AGREEMENT  
AND DISMISSING IN PART AND GRANTING IN PART WAIVERS

(Issued July 27, 2015)

1. On May 28, 2015, CED Corcoran Solar, LLC (Corcoran) submitted, pursuant to section 205 of the Federal Power Act,<sup>1</sup> a Co-Tenancy and Common Facilities Agreement (Common Facilities Agreement) with CED Corcoran Solar 2, LLC (Corcoran 2) and request for certain waivers of Commission regulations to: (1) file an Open Access Transmission Tariff (OATT), (2) comply with the Commission's Standards of Conduct, and (3) establish and maintain an Open Access Same-Time Information System (OASIS) for the common facilities. On May 29, 2015, Corcoran 2 (together with Corcoran, the Corcoran Companies)<sup>2</sup> submitted a related Certificate of Concurrence.<sup>3</sup> In this order, the Commission accepts the Common Facilities Agreement for filing, as well as Corcoran 2's Certificate of Concurrence, effective July 28, 2015, as discussed below. The Commission also grants the Corcoran Companies' request for waiver of section 35.12(b)(1) of the Commission's regulations<sup>4</sup> and dismisses as moot certain other waiver requests as discussed below.

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> The Common Facilities Agreement is designated as FERC Electric Rate Schedule No. 1.

<sup>3</sup> 18 C.F.R. § 35.1(a) (2014).

<sup>4</sup> 18 C.F.R. § 35.12(b)(1) (2014).

## **I. Background**

2. Corcoran and Corcoran 2 are Delaware limited liability companies and qualifying small power production facilities pursuant to Part 292 of the Commission's regulations.<sup>5</sup> Corcoran owns and operates the Corcoran Facility, a 20 MW solar photovoltaic generation facility located in Kings County, California. The Corcoran Facility is interconnected to transmission facilities owned by Pacific Gas and Electric Company (PG&E) and under the operational control of the California Independent System Operator Corporation (CAISO). Corcoran states that it sells all of the electrical output of its Facility to PG&E pursuant to a long-term power purchase agreement (PPA).<sup>6</sup> Corcoran states that it owns limited interconnection facilities that connect its generation facilities to the CAISO-controlled grid.

3. Corcoran 2 owns and operates the Corcoran 2 Facility, a 19.75 MW solar photovoltaic generation facility located near Corcoran, California. The Corcoran 2 Facility is also interconnected to transmission facilities owned by PG&E and under the operational control of CAISO. Corcoran states that Corcoran 2 has entered into a long-term PPA to sell its output to Southern California Edison Company and is expected to own limited interconnection facilities to deliver its output to PG&E's transmission facilities controlled by the CAISO.

4. Corcoran and Corcoran 2 are parties to a Non-Exclusive Easement, which governs the operation and maintenance of certain electrical facilities along and within the premises shared by the parties.<sup>7</sup> Corcoran states that it has constructed certain common facilities that hold the utility generation tie line and disconnect switches for the Corcoran Companies' respective projects (Common Facilities).<sup>8</sup>

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<sup>5</sup> See Form No. 556 for both Corcoran, Docket No. QF13-371 (Mar. 25, 2013) and Corcoran 2, Docket No. QF15-563 (Mar. 19, 2015).

<sup>6</sup> Corcoran Transmittal Letter at 2.

<sup>7</sup> Common Facilities Agreement § 3.3.

<sup>8</sup> Corcoran Transmittal Letter at 2. The Corcoran Companies represent that the Common Facilities were not designed with the intention of installing any additional generation at either Facility. The Common Facilities are described in Exhibit A-1 to the Common Facilities Agreement as follows:

## II. Instant Filing

### A. Common Facilities Agreement

5. The Common Facilities Agreement governs the Corcoran Companies' joint ownership and use of the Common Facilities currently owned by Corcoran. The Corcoran Companies state that Corcoran will acquire an undivided interest in the Common Facilities pursuant to the Common Facilities Agreement. The Corcoran Companies explain that the Common Facilities Agreement provides that the actual cost of operating and maintaining the Common Facilities will be shared on the basis of the respective owners' pro rata ownership interests. The Corcoran Companies assert that the pass through of actual costs based on each owner's pro rata ownership interests is consistent with joint ownership or shared facilities agreements previously accepted by the Commission.<sup>9</sup> The Corcoran Companies also request a waiver of the Commission's prior notice requirements to permit the Common Facilities Agreement to become effective on May 15, 2015, the date the Corcoran 2 Facility was fully energized.

### B. Waiver Requests

6. The Corcoran Companies request waiver of the requirements of Order Nos. 888,<sup>10</sup> 890,<sup>11</sup> and section 35.28 of the Commission's regulations<sup>12</sup> to file an OATT; the

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The deadend structure is a two pole structure, approximately 75 feet tall, with each pole spaced at 40 feet from each other's center. The structure supports two deadend support cross arms each dedicated to a Project. The lower deadend cross arm is mounted 40 feet above the ground and holds the utility gen-tie, disconnect switch, and the customer gen-tie for the [Corcoran 2] Project. The top deadend cross arm is 60 feet from the ground and holds vertical jumper from the utility gen-tie to a second disconnect switch dedicated to [Corcoran] Project.

<sup>9</sup> Corcoran Transmittal Letter at 3.

<sup>10</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group*

requirements under Order No. 889<sup>13</sup> and Part 37 of the Commission's regulations<sup>14</sup> to establish an OASIS; and the requirements under Order No. 889 and Part 358 of the Commission's regulations<sup>15</sup> to comply with the Standards of Conduct. The Corcoran Companies explain that the Common Facilities constitute limited, discrete facilities constructed for the purpose of delivering the output of their solar generation facilities to the CAISO transmission system. The Corcoran Companies explain that pursuant to Order No. 807<sup>16</sup> and revised section 35.28(d)(2) of the Commission's regulations, the Corcoran Companies would qualify for the waiver of the OATT, OASIS, and Standards of Conduct requirements. However, the Corcoran Companies state, the regulation revision providing the automatic waiver will not become effective until June 30, 2015. Therefore, the Corcoran Companies state that they seek the open access waivers because they filed their request before June 30, 2015.

7. Finally, the Corcoran Companies request waiver of the requirement in section 35.12(b)(1) of the Commission's regulations, which requires companies to provide an estimate of transactions and revenues. The Corcoran Companies state that because the Common Facilities Agreement provides for the Corcoran Companies to share

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*v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>11</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>12</sup> 18 C.F.R. § 35.28 (2014).

<sup>13</sup> *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

<sup>14</sup> 18 C.F.R. § 35.28 (2014).

<sup>15</sup> 18 C.F.R. pt. 37 (2014).

<sup>16</sup> *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367 (2015).

actual costs on the basis of their pro rata ownership interests in the common facilities, no estimate of transactions and revenues are necessary.<sup>17</sup>

### **III Notice of Filings**

8. Notice of Corcoran's filing in Docket No. ER15-1806-000 and Corcoran 2's filing in Docket No. ER15-1811-000 was published in the *Federal Register*, 80 Fed. Reg. 32,109 (2015), with motions to intervene, comments, and protests due on or before June 18, 2015 and June 19, 2015, respectively. No interventions or protests were filed.

### **IV. Discussion**

#### **A. Common Facilities Agreement**

9. We find that the Common Facilities Agreement appears to be just and reasonable and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. However, the Corcoran Companies did not submit its filing on a timely basis. The Corcoran Companies filed the Common Facilities Agreement on May 28, 2015 seeking an effective date of May 15, 2015, the date the generator was fully energized. The Commission grants waiver of the prior notice requirement<sup>18</sup> for untimely filings where the applicant can make the necessary showing.<sup>19</sup> The Corcoran Companies have not made such a showing. Accordingly, we deny waiver of the Commission's prior notice requirement,<sup>20</sup> and the Common Facilities Agreement will be accepted for filing, effective July 28, 2015, after a full 60-days' notice from the date of filing. Corcoran 2's Certificate of Concurrence is also accepted effective July 28, 2015.

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<sup>17</sup> Corcoran Transmittal Letter at 4.

<sup>18</sup> 18 C.F.R. § 35.11 (2014).

<sup>19</sup> See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 (1992) (*Central Hudson*), *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*). See also *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,980, *clarified*, 65 FERC ¶ 61,081 (1993).

<sup>20</sup> The Corcoran Companies are reminded that they must submit required filings on a timely basis or face possible sanctions by the Commission.

10. In cases where service commences before filing,<sup>21</sup> and where waiver of the 60-day prior notice requirement is denied, the utility must refund the time value of the monies collected, calculated pursuant to section 35.19(a) of the Commission's regulations<sup>22</sup> for the entire period monies were collected without Commission authorization to the date that the utility ultimately issues refunds. The time value refund is determined by calculating the interest on the full amount of revenues actually collected for the time period the rate was charged without Commission authorization.<sup>23</sup> However, the Commission imposes a floor for time value refunds in cases such as this, involving agreements governing the construction, operation, and maintenance of transmission facilities, so as not to cause the utility to suffer a loss.<sup>24</sup> For purposes of determining the "floor" for time value refunds, costs are not limited to usage-based variable O&M costs, but also include other costs, whether fixed or variable.<sup>25</sup> The Commission has acknowledged that in a scenario where the amount collected represents actual costs, without profit, a utility would fail to recover its costs and would operate at a loss if ordered to refund the time value of amounts collected.<sup>26</sup> Here, the Common Facilities Agreement provides only for the pass through of actual operating and maintenance costs, and it therefore appears that requiring Corcoran to refund the time value of monies it has collected from Corcoran 2 would indeed cause Corcoran to suffer a loss. Accordingly, under these circumstances, no time value refunds are due and no refund report is required.

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<sup>21</sup> The Commission stated in *Central Hudson* that waiver of its prior notice requirement would be granted if good cause is shown and the agreement is filed prior to the commencement of service. *Central Hudson*, 60 FERC ¶ 61,106, at 61,339.

<sup>22</sup> *El Paso Electric Co.*, 101 FERC ¶ 61,276 (2002), *reh'g denied*, 105 FERC ¶ 61,131 (2003) (*El Paso*).

<sup>23</sup> *El Paso*, 105 FERC ¶ 61,131 at P 35.

<sup>24</sup> See *International Transmission Co.*, 152 FERC ¶ 61,043, at PP 34-38 (2015) (*ITC*); *Tucson Electric Power Co.*, 151 FERC ¶ 61,088 (2015); *Carolina Power & Light Co.*, 87 FERC ¶ 61,083 (1999). See also *Southern California Edison Co.*, 98 FERC ¶ 61,304 (2002); *Florida Power & Light Co.*, 98 FERC ¶ 61,276, *reh'g denied*, 99 FERC ¶ 61,320 (2002); *Florida Power & Light Co.*, 133 FERC ¶ 61,120 (2010) (*FP&L II*).

<sup>25</sup> *ITC*, 152 FERC ¶ 61,043 at P 29.

<sup>26</sup> *FP&L II*, 133 FERC ¶ 61,120 at P 5.

**B. Waiver Requests**

11. We note that, as discussed above, the Corcoran Companies' Common Facilities Agreement has been accepted effective July 28, 2015. Order No. 807<sup>27</sup> became effective earlier, on June 30, 2015. The Commission intended for entities to determine for themselves whether they qualify for blanket waivers under Order No. 807. Accordingly, we will dismiss as moot the Corcoran Companies' request for waivers of the requirements set forth in Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to have an OATT on file; the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to OASIS; and Order Nos. 889 and Part 358 with respect to the Standards of Conduct.

12. Instead, the Commission directs the Corcoran Companies to review the regulations to determine for themselves whether they qualify as entities granted the blanket waivers under Order No. 807. As the Commission stated in Order No. 807, "[s]uch a waiver is justified because the usually limited and discrete nature of [Interconnection Customer's Interconnection Facilities (ICIF)] and ICIF's dedicated interconnection purpose means that such facilities do not typically present the concerns about discriminatory conduct that the Commission's OATT, OASIS, and Standards of Conduct requirements were intended to address."<sup>28</sup> In accordance with Order No. 807, the waivers referenced in 18 C.F.R. § 35.28(d)(2) shall be deemed in effect unless revoked as of the date the public utility ceases to satisfy the qualifications of 18 C.F.R. § 35.28(d)(2), and also may be revoked by the Commission if the Commission determines that it is in the public interest to do so.<sup>29</sup> Thus, applicants that qualify for the blanket authorization do not need to request, nor should they request, a waiver of the OATT, OASIS, and Standards of Conduct requirements.

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<sup>27</sup> Order No. 807, FERC Stats. & Regs. ¶ 31,367 at PP 44, 55.

<sup>28</sup> *Id.* P 55.

<sup>29</sup> *Id.* P 101 ("the [blanket] waiver would be deemed to be revoked as of the date the public utility ceases to satisfy the qualifications for such waiver. . . . [I]f the ICIF that are covered by a blanket waiver become integrated into a transmission system such that they can no longer be considered ICIF, the blanket waiver would be deemed to be revoked."). After revocation of its waivers, the public utility must comply with the requirements that had been waived within 60 days of revocation. *Id.* at regulatory text (to be codified at 18 C.F.R. § 35.28(d)(2)(i)).

13. Finally, we will grant the Corcoran Companies' request for waiver of section 35.12(b)(1) of the Commission's regulations because the companies will share actual costs on the basis of their pro rata ownership interests in the Common Facilities.

The Commission orders:

(A) The Common Facilities Agreement between Corcoran and Corcoran 2 and Corcoran 2's Certificate of Concurrence are hereby accepted for filing, effective July 28, 2015, as discussed in the body of this order.

(B) The Corcoran Companies' request for waiver of the Commission's prior notice requirement is hereby denied, as discussed in the body of this order.

(C) The Corcoran Companies' request for waiver of the requirements to file an OATT, maintain an OASIS, and comply with the Standards of Conduct is hereby dismissed as moot, as discussed in the body of this order.

(D) The Corcoran Companies' request for waiver of section 35.12(b) of the Commission's regulations is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.