

152 FERC ¶ 61,079
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 Atwell Island West, LLC

Docket No. ER15-1819-000

ORDER ACCEPTING COMMON FACILITIES AGREEMENT
AND GRANTING WAIVERS

(Issued July 28, 2015)

1. On May 29, 2015, CED Atwell Island West, LLC (Atwell West) submitted, pursuant to section 205 of the Federal Power Act (FPA),¹ a Co-Tenancy and Common Facilities Agreement (Common Facilities Agreement) with SPS Atwell Island, LLC (Atwell East)² together with a request for certain waivers of requirements 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. In this order, the Commission accepts for filing the Common Facilities Agreement, effective May 31, 2015, as requested, and grants Atwell West's requests for waivers.

¹ 16 U.S.C. § 824d (2012).

² Atwell West states that it is not affiliated with Atwell East.

I. Background

2. Atwell West and Atwell East are both qualifying small power production facilities.³ Atwell West has constructed a 20 MW solar generating facility located in Alpaugh, Tulare County, California, which is interconnected to transmission facilities owned by Pacific Gas and Electric Company (PG&E) and operated by the California Independent System Operator Corporation (CAISO). Atwell East owns and operates a 20 MW solar generating facility also located in Alpaugh, Tulare County, California, which interconnects with PG&E at the same point.

3. Atwell West states that it has modified an existing 75-foot, tubular steel pole owned by Atwell East in order to connect its facility to the PG&E transmission system. Atwell West explains that it has modified the pole to accommodate the southern and eastern running wires from the Atwell East and Atwell West facilities to the points where each facility respectively interconnects with the PG&E transmission line (collectively, Common Facilities).⁴ Atwell West states that it acquired an undivided interest in the existing steel pole and now holds an undivided interest in the Common Facilities.⁵

³ See CED Atwell Island West, LLC, Notice of Self-Certification of Qualifying Facility Status, Docket No. QF15-567-000 (filed March 23, 2015); SPS Atwell Island, LLC, Notice of Self-Certification of Qualifying Facility Status, Docket No. QF12-116-000 (filed December 27, 2011).

⁴ *Id.* at 3-4. The Common Facilities are described in Exhibit A-1 to the Common Facilities Agreement as follows:

The Common Facilities will be a tubular steel pole (TSP) that will modify or replace the Existing TSP to accommodate the southern and eastern running wires from both Projects to their respective Point of Change of Ownership pursuant to PG&E's requirements, either (1) by modifying or replacing the Existing TSP to meet the PG&E requirements, the determination of whether to modify or replace the Existing TSP to be made in Atwell West's discretion, or (2) if a modification or replacement of the Existing TSP will not meet PG&E's requirements, by confirming to such other PG&E requirements.

⁵ Atwell West explains that, since the value of the acquired facilities is less than \$10 million, the acquisitions did not require authorization under section 203 of the FPA. Atwell West Transmittal Letter at n.5.

II. Instant Filing

A. Common Facilities Agreement

4. The Common Facilities Agreement will govern the planned joint ownership and use of the Common Facilities by Atwell West and Atwell East, and provides that the actual costs of operating and maintaining the Common Facilities will be shared equally based on each Co-Tenant's fifty percent ownership of such facilities. Atwell West states that the Common Facilities Agreement provides for the pass-through of actual costs based on each owner's pro-rata ownership interests. In addition, Atwell West states, if either company incurs costs in connection with activities of the other, then the company incurring such cost shall be reimbursed.⁶ Atwell West asserts that the terms and conditions of the Common Facilities Agreement are consistent with similar agreements accepted by the Commission.⁷

5. Atwell West requests a waiver of the Commission's prior notice requirement to permit the Common Facilities Agreement to become effective on May 31, 2015, the date Atwell West anticipates commencing operation of its facility. Atwell West contends that Commission jurisdiction should not attach until the Atwell West generating facility becomes operational and energy is transmitted over the modified Common Facilities to PG&E and is commingled with energy flowing in interstate commerce, which is expected to occur on May 31, 2015.⁸ In the alternative, Atwell West requests waiver to allow an earlier effective date in the event the Commission determines that jurisdictional transmission service was provided either: (1) as of April 20, 2015, when the substation at the Atwell West facilities was energized and were used to backfeed power from the grid for use in constructing Atwell West's generating facilities; or (2) as of May 8, 2015, when the process of commissioning or testing the facilities was initiated.

⁶ Atwell West Transmittal Letter at 5; Common Facilities Agreement at section 8.2(c).

⁷ Atwell West Transmittal Letter at 4-5, n.10 (citing *CED White River Solar, LLC*, 148 FERC ¶ 61,155 (2014), and *Alpaugh 50, LLC and Alpaugh North, LLC*, 142 FERC ¶ 61,112 (2013)).

⁸ Atwell West Transmittal Letter at 8-9.

B. Waiver Requests

6. Atwell West requests that the Commission waive the requirements under Order Nos. 888⁹ and 890¹⁰ and section 35.28 of the Commission's regulations¹¹ to file an OATT, the requirements under Order No. 889¹² and Part 37 of the Commission's regulations¹³ to establish an OASIS, and the requirements under Order No. 889 and Part 358 of the Commission's regulations¹⁴ to comply with the Standards of Conduct. Atwell West states that the Common Facilities constitute limited, discrete facilities constructed for the purpose of delivering the output of its solar generation facilities and Atwell East's solar generation facilities to the CAISO transmission system, and the facilities do not form an integrated transmission grid.¹⁵ Atwell West also requests, in the event that the Commission issues an order on the Common Facilities Agreement and its waiver requests

⁹ *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 v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹⁰ *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).

¹¹ 18 C.F.R. § 35.28 (2014).

¹² *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).

¹³ 18 C.F.R. pt. 37 (2014).

¹⁴ 18 C.F.R. pt. 358 (2014).

¹⁵ Atwell West Transmittal Letter at 10.

after the June 30, 2015 effective date of Order No. 807,¹⁶ that the Commission find, pursuant to Order No. 807, that Atwell West is eligible for waivers of the requirements to file an OATT, establish an OASIS, and comply with the Standards of Conduct.¹⁷ Atwell West contends that the Common Facilities are the type of limited and discrete facilities for which the Commission routinely grants waiver of its open access requirements unless and until the owner of such facilities receives a request for transmission service.¹⁸

7. Atwell West also requests waiver of the requirement under section 35.28(d) of the Commission's regulations¹⁹ to submit a request for open access waivers no later than 60 days prior to the time that they would otherwise be required to comply with such requirement. Atwell West explains that good cause for waiver exists as the waiver will enable Atwell West to interconnect its solar generation facility to the CAISO transmission system as quickly as possible.²⁰

8. Finally, Atwell West requests waiver of the requirement in section 35.12(b)(1) of the Commission's regulations,²¹ which requires companies to provide an estimate of transactions and revenues, because the Common Facilities Agreement provides that the

¹⁶ *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367 (2015). In Order No. 807, the Commission amended its regulations to waive the OATT requirements of section 35.28, the OASIS requirements of Part 37, and the Standards of Conduct requirements of Part 358, under certain conditions, for entities that own interconnection facilities, effective June 30, 2015.

¹⁷ Atwell West Transmittal Letter at n.17.

¹⁸ Atwell West Transmittal Letter at 10-11 (citing *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,940-41 (1996) (*Black Creek*); see also *Hardee Power Partners Ltd.*, 114 FERC ¶ 61,131, at PP 13 and 16 (2006); *Hardee Power Partners Ltd.*, 125 FERC ¶ 61,036 (2008); *Wolverine Creek Goshen Interconnection LLC*, Docket No. ER06-267-000, unpublished letter order (Jan. 13, 2006); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 24 (2005)).

¹⁹ 18 C.F.R. § 35.28(d) (2014).

²⁰ Atwell West Transmittal Letter at 11.

²¹ 18 C.F.R. § 35.12(b)(1) (2014).

companies will share actual costs on the basis of their pro-rata ownership interests in the Common Facilities.²²

III. Notice of Filings

9. Notice of Atwell West's filing was published in the *Federal Register*, 80 Fed. Reg. 32,102 (2015), with motions to intervene, comments, and protests due on or before June 19, 2015. None were filed.

IV. Discussion

A. Common Facilities Agreement

10. 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. We will accept the agreement for filing, effective May 31, 2015, as requested.²³

B. Waiver Requests

11. Because Atwell West filed its request and sought an effective date prior to the effective date of Order No. 807, we will address its waiver request for the period prior to June 30, 2015 in this order.

12. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT prior to providing transmission service. Order No. 889 and Part 37 of the Commission's regulations require public

²² Atwell West Transmittal Letter at 6.

²³ See *Central Hudson Gas & Electric Corp., et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992). In the event that Atwell West began providing transmission service prior to May 31, 2015 as a result of sales of its test power, Atwell West is reminded that it must submit required filings on a timely basis or face possible sanctions by the Commission.

utilities to establish an OASIS. Order Nos. 889, 2004,²⁴ and 717,²⁵ and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.²⁶ In prior orders, the Commission has enunciated the standards for waiver of, or exemption from, some or all of the requirements of Order Nos. 888, 889, and 890.²⁷ The Commission has stated that the criteria for waiver of the requirements of Order Nos. 890 and 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.²⁸ Order No. 717 did not change those criteria.²⁹

13. The Commission has granted requests for waiver of the obligation to file an OATT to public utilities that show they own, operate, or control only limited and discrete transmission facilities (i.e., facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service. Should the public utility receive such a request, the Commission has determined that the public

²⁴ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007).

²⁵ *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

²⁶ Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 16; Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 313; 18 C.F.R. pt. 358 (2014).

²⁷ *See, e.g., Black Creek*, 77 FERC at 61,941; *Entergy*, 112 FERC ¶ 61,228 at P 22.

²⁸ *See Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

²⁹ *See* Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

utility must file an OATT with the Commission within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request.³⁰

14. The Commission has also determined that waiver of the requirements to establish an OASIS and abide by the Standards of Conduct would be appropriate for a public utility if the applicant: (1) owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) is a small public utility that owns, operates, or controls an integrated transmission grid, unless other circumstances are present that indicate that waiver would not be justified.³¹ The Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint that an entity evaluating its transmission needs could not get the information to complete its evaluation (for OASIS waivers), or until an entity complains that the public utility has unfairly used its access to transmission information to benefit the utility of its affiliate (for Standards of Conduct waivers).³²

15. Our review indicates that the Common Facilities include a tubular steel pole and related transmission equipment which will be used to connect the solar generating units to PG&E's transmission system. Based on Atwell West's representations, we find the Common Facilities are limited and discrete and do not constitute an integrated transmission system for purposes of the waiver analysis considered in this order. Accordingly, for the period from May 31, 2015 through June 30, 2015, we will grant Atwell West's request for waiver 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 Commission also will grant Atwell West's request for waiver of the requirements of

³⁰ *Black Creek*, 77 FERC at 61,941.

³¹ *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that was a member of a tight power pool, in *Black Hills Power, Inc.* 135 FERC ¶ 61,058, at PP 2-3 (2011), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Moreover, *Black Hills* did not affect waivers based on a public utility disposing of no more than 4 million megawatt hours annually.

³² *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997) (*Central Minnesota*)); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998) (*Easton*).

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.

16. For the period after June 30, 2015, 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. Thus, applicants who determine that they 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. We also note that the Commission stated in Order No. 807 that an entity that has already been issued a waiver of the OATT, OASIS, and Standards of Conduct requirements and that is eligible for the blanket waiver under Order No. 807 will be deemed to be operating under the blanket waiver without further filings necessary with respect to the previously-issued waiver.³³

17. Finally, we will grant Atwell West's request for waiver of section 35.12(b)(1) of the Commission's regulations because Atwell West will not assess charges to Atwell East under the Common Facilities Agreement, and 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 Atwell West and Atwell East is hereby accepted for filing, effective May 31, 2015, as requested, as discussed in the body of this order.

(B) Atwell West's request for waivers of the requirements to file an OATT, maintain an OASIS, and comply with the Standards of Conduct are hereby granted, as discussed in the body of this order.

³³ Order No. 807, FERC Stats. & Regs. ¶ 31,367 at P 89 & 176.

(C) Atwell West's 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.