

152 FERC ¶ 61,080  
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.

SPS Atwell Island, LLC

Docket No. ER15-1820-000

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

(Issued July 28, 2015)

1. On May 29, 2015, SPS Atwell Island, LLC (Atwell East) 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 Atwell Island West, LLC (Atwell West)<sup>2</sup> 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 the Common Facilities Agreement effective July 29, 2015, as discussed below. The Commission also grants a request for waiver of section 35.12(b)(1)<sup>3</sup> of the Commission's regulations and dismisses as moot certain other waivers, as discussed further below.

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> CED Atwell Island West, LLC, Tariff Filing, Docket No. ER15-1819-000, at 3 (filed May 29, 2015).

<sup>3</sup> 18 C.F.R. § 35.12(b)(1) (2014).

## **I. Background**

2. Atwell East and Atwell West are both qualifying small power production facilities that are not affiliated.<sup>4</sup> Atwell East owns and operates 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 West has constructed a 20 MW solar generating facility located in Alpaugh, Tulare County, California, which interconnects with PG&E at the same point.

3. Atwell East states that it has used an existing 75-foot, tubular steel pole to connect its facility to the PG&E transmission line and related transmission equipment, and that it will transfer a 50 percent interest in the tubular steel pole to Atwell West.

## **II. Instant Filing**

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

4. The Common Facilities Agreement will set the terms and conditions under which Atwell East and Atwell West each own a 50 percent interest in the tubular steel pole and in subsequent modifications (collectively Common Facilities), and the joint ownership and use of the Common Facilities. Atwell East states that the Common Facilities Agreement provides for the pass-through of actual costs based on each owner's pro-rata ownership interests, and asserts that the terms and conditions are consistent with similar agreements accepted by the Commission.<sup>5</sup> In addition, the Common Facilities Agreement provides that Atwell East may be reimbursed by Atwell West for certain losses suffered by any outages of the facility due to interconnection and construction of the Common Facilities.<sup>6</sup>

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<sup>4</sup> See SPS Atwell Island, LLC, Notice of Self-Certification of Qualifying Facility Status, Docket No. QF12-116-000 (filed December 27, 2011); CED Atwell Island West, LLC, Notice of Self-Certification of Qualifying Facility Status, Docket No. QF15-567-000 (filed March 23, 2015).

<sup>5</sup> Atwell East Transmittal Letter at 3, n.8 (citing *The Detroit Edison Co., et al.*, 136 FERC ¶ 61,210 (2011); *Grand Ridge Energy*, 128 FERC ¶ 61,134 (2009); and *Hardee Power Partners Ltd.*, 125 FERC ¶ 61,036 (2008)).

<sup>6</sup> Atwell East Transmittal Letter at 4; Common Facilities Agreement at section 3.2(c). Atwell East states that Atwell West is required to schedule outages

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5. Atwell East requests a waiver of the Commission's prior notice requirement to permit the Common Facilities Agreement to become effective on April 3, 2015. Atwell East explains that it was required to reduce its output for some hours beginning on April 3, 2015 to facilitate the interconnection of Atwell West and PG&E; therefore, Atwell East requests an April 3, 2015 effective date so that Atwell East may be reimbursed for revenues lost in excess of the first two daytime outages. Atwell East contends that good cause exists to grant waiver of 60-day prior notice because neither party will invoice any charges to the other until the Commission issues an order accepting the Common Facilities Agreement.<sup>7</sup>

**B. Waiver Requests**

6. Atwell East requests that the Commission waive the requirements under Order Nos. 888<sup>8</sup> and 890<sup>9</sup> and section 35.28 of the Commission's regulations<sup>10</sup> to file an

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between 6 PM and 6 AM, and that in the event of more than two daytime outages, Atwell West will reimburse Atwell East for the amount of revenue that Atwell East loses due to such outages.

<sup>7</sup> Atwell East Transmittal Letter at 3. Atwell East states that if the Commission denies the request for waiver of notice or grants a later effective date, no time value refunds will be due to Atwell East because it will not invoice Atwell West for the amounts until after the effective date the Commission establishes.

<sup>8</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 v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>9</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>10</sup> 18 C.F.R. § 35.28 (2014).

OATT, the requirements under Order No. 889<sup>11</sup> and Part 37 of the Commission's regulations<sup>12</sup> to establish an OASIS, and the requirements under Order No. 889 and Part 358 of the Commission's regulations<sup>13</sup> to comply with the Standards of Conduct. Atwell East states that the Common Facilities constitute limited, discrete facilities constructed for the purpose of delivering the output of its and Atwell West's solar generation facilities to the CAISO transmission system and do not form an integrated transmission grid.<sup>14</sup>

7. Atwell East contends it meets the Commission's requirements for the OATT waivers because 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.<sup>15</sup> Atwell East also contends that, since it qualifies for these waivers, it is eligible for the blanket waivers provided by Order No. 807.<sup>16</sup> However, Atwell East explains that Order No. 807 will not be effective until June 30, 2015 and that it is requesting the above waivers in order to cover the period prior to June 30, 2015.<sup>17</sup>

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<sup>11</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>12</sup> 18 C.F.R. pt. 37 (2014).

<sup>13</sup> 18 C.F.R. pt. 358 (2014).

<sup>14</sup> Atwell East Transmittal Letter at 5.

<sup>15</sup> *Id.* (citing *Evergreen Wind Power III, LLC*, 135 FERC ¶ 61,030 (2011); *Grand Ridge Energy*, 128 FERC ¶ 61,134 (2009); *Ashtabula Wind, LLC*, 127 FERC ¶ 61,215 (2009); *Hardee Power Partners Ltd.*, 114 FERC ¶ 61,131, at PP 13 & 16 (2006); and *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 24 (2005)).

<sup>16</sup> *Id.* at 4 (citing *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.

<sup>17</sup> *Id.* at 4-5.

8. Atwell East requests waiver of section 35.12(b)(1)<sup>18</sup> of the Commission's regulations. Section 35.12(b)(1) requires an estimate of transactions and revenues, and Atwell East states the Common Facilities Agreement provides that the parties will share actual costs on the basis of their pro rata ownership in the Common Facilities.

### **III. Notice of Filings**

9. Notice of Atwell East'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. However, as service already commenced, waiver of the Commission's notice requirement pursuant to section 35.11 of the Commission's regulations is denied because Atwell East has not shown good cause for a waiver of prior notice, and therefore the agreement is accepted for filing effective July 29, 2015, after a full 60-days' notice from the date of filing.<sup>19</sup> As the Commission has previously explained, if a utility files an otherwise just and reasonable cost-based rate after new service has commenced, or if waiver is denied and the proposed rate goes into effect after service has commenced, the utility is required to refund to its customers the time value of the revenues collected, calculated pursuant to section 35.19a of the Commission's regulations for the entire period that the rate was collected without Commission authorization.<sup>20</sup> The Commission has since reiterated that this remedy encourages respect for the Commission's filing requirements without unduly burdening the utility, and redresses the injury to the Commission's ability to carry out its statutory duties that violations of Federal Power Act filing and prior notice requirements inevitably cause.<sup>21</sup>

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

<sup>19</sup> *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,979, *clarified*, 65 FERC ¶ 61,081 (1993) (*Prior Notice Order*).

<sup>20</sup> *Id.*

<sup>21</sup> *El Paso Electric Co.*, 101 FERC ¶ 61,276 (2002), *reh'g denied*, 105 FERC ¶ 61,131, at PP 19, 38 (2003).

However, as noted above,<sup>22</sup> Atwell East has not yet collected revenues under the Common Facilities Agreement, and thus, while good cause has not been demonstrated for waiving the prior notice requirement, we conclude that it is not necessary to order refunds.

## **B. Waiver Requests**

11. We note that, as discussed above, Atwell East's Common Facilities Agreement is accepted for filing effective July 29, 2015. Order No. 807<sup>23</sup> became effective 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 Atwell East's 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, Order Nos. 889 and Part 358 with respect to the Standards of Conduct.

12. Instead, the Commission directs Atwell East to review the regulations to determine for itself whether it qualifies as an entity 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>24</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>25</sup> Thus, applicants that qualify for the blanket authorization do not need to request,

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<sup>22</sup> See P 5, *supra*.

<sup>23</sup> Order No. 807, FERC Stats. & Regs. ¶ 31,367 at PP 44, 55.

<sup>24</sup> *Id.* P 55.

<sup>25</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

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nor should they request, a waiver of the OATT, OASIS and Standards of Conduct requirements.

13. Finally, we will grant Atwell East's 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 Atwell East and Atwell West is hereby accepted for filing, effective July 29, 2015, as discussed in the body of this order.

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

(C) Atwell East's request for waivers 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) Atwell East's request for waiver of section 35.12(b)(1) 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.

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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)).