

152 FERC ¶ 61,139
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.

Essential Power Rock Springs, LLC

Docket No. TS14-3-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued August 20, 2015)

1. In this order, we grant a request by Essential Power Rock Springs, LLC (Essential Power) for waiver of the requirement to comply with the Commission's Standards of Conduct.

I. Background

2. On June 4, 2014, Essential Power, on behalf of itself and its affiliate, Essential Power Operating Company (collectively, Rock Spring Companies),¹ filed a request that the Commission grant waiver of the requirement to comply with the

¹ Essential Power states that the Rock Spring Companies were purchased in 2008 by Essential Power Holdings, LLC, a wholly owned affiliate of Essential Power Investments, LLC.

Commission's Standards of Conduct found in Order Nos. 889,² 717,³ and 2004⁴ and Part 358 of the Commission's regulations.⁵

3. Essential Power states that it owns and operates two natural gas-fired combustion turbines with a capacity of 352 MW at a four-unit electric generation facility located in Rising Sun, Maryland (Essential Power Facility). The remaining two units at the facility are owned by an unaffiliated third party, Old Dominion Electric Cooperative (Old Dominion). Essential Power states that it sells the output of its units to a marketing affiliate, which, in turn, sells the power into the market administered by PJM Interconnection, L.L.C. (PJM). Essential Power also states that it is an Exempt

² *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).

³ *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).

⁴ *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); *See also Standard of Conduct for Transmission for Providers*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

⁵ 18 C.F.R. Part 358 (2014).

Wholesale Generator (EWG)⁶ that has a market-based rate tariff on file with the Commission.⁷

4. Essential Power further states that, in addition to owning the Essential Power Facility, it and Old Dominion each has a 50 percent ownership interest in the facilities that interconnect the Essential Power Facility to the PJM system (Interconnection Facilities) by way of a transmission system owned by PECO Energy Company (PECO). Essential Power states that, beginning in 2013, day-to-day operation and control of the Interconnection Facilities was turned over from PECO to Constellation Energy Control and Dispatch, LLC (Constellation),⁸ and Constellation now is responsible for monitoring and operating the Interconnection Facilities, as directed by PJM. Essential Power also states that the transmission information needed to operate the Interconnection Facilities goes to Constellation and not to Essential Power.⁹

5. Essential Power further states that the Interconnection Facilities are made up of: (1) a 500 kV substation, connected to the Essential Power Facility by radial lines; and (2) two 900-foot, 500 kV transmission lines that connect the substation to PECO's 500 kV transmission system. Essential Power explains that its ownership interest in the Interconnection Facilities allows it to be a transmission-owning member of PJM and it states it has signed the PJM Transmission Owners Agreement, under which operational control over the Essential Power Facility has been given over to PJM in accordance with the PJM Open Access Transmission Tariff (OATT).

6. Essential Power argues that it should be granted a waiver of the Commission's Standards of Conduct requirements because compliance with the Standards of Conduct would be burdensome and because the costs of compliance outweigh the benefits to be gained from requiring compliance.¹⁰ Essential Power argues that it meets the technical definition of a small public utility because it does not dispose of more than 4 million

⁶ EWGs are generators whose activities are limited to the exclusive business of selling electric energy at wholesale. The Commission granted Essential Power's application for EWG status in *CED Rock Springs, Inc.*, 99 FERC ¶ 61,350 (2002).

⁷ Essential Power June 4, 2014 Waiver Request (Waiver Request) at 3.

⁸ Essential Power states that from 2008 to 2013, operational control of the Interconnection Facilities was assigned to PECO. *Id.* at 10.

⁹ *Id.* at 12.

¹⁰ *Id.* at 8, 16.

MWh annually. In fact, it states that its total sales for resale (the only sales it makes¹¹) in the previous six years never exceeded 340,000 MWh annually, well below the 4 million MWh threshold¹² and claims, additionally, that it cannot engage in Prohibited Information Flow or Prohibited Preference¹³ because it lacks access to this information and does not operate or control the facilities.¹⁴ It adds that the only reason it has any transmission facilities is because these facilities were upgrades that were deemed necessary for Essential Power to interconnect to the regional transmission organization that could not be constructed by the interconnected transmission owner in a timely manner.¹⁵ Essential Power adds that the Commission's goals of protecting customers against undue preference to an affiliate are not at risk here, even with a waiver, as it does not engage in transmission transactions with its affiliates.¹⁶

7. Essential Power requests an effective date for its requested waiver of May 8, 2008, the date when Essential Power Holdings, LLC purchased the Rock Spring Companies.¹⁷ Alternatively, it requests that the waiver become effective on the date it filed its request (June 4, 2014).¹⁸ It argues that retroactive waiver is appropriate because it met the criteria for waiver even before it applied for a waiver and waiver is necessary to avoid imposing an undue burden on Essential Power.¹⁹

II. Notice

8. Notice of Essential Power's filing was published in the *Federal Register*, 79 Fed. Reg. 33,546 (2014), with interventions and protests due on or before July 7, 2014. None was filed.

¹¹ *Id.* at 4.

¹² *Id.* at 16 & n.37.

¹³ *Id.* at 16-17.

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 17.

¹⁶ *Id.* at 15.

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ *Id.* at 17-18.

III. Discussion

9. Order Nos. 889, 2004, and 717, and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.²⁰ In prior orders, the Commission has enunciated the standards for waiver of, or exemption from, some or all of these requirements.²¹ The Commission has stated that the criteria for waiver of the requirements of Order No. 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888²² and 889.²³ Order No. 717 did not change those criteria.²⁴

10. The Commission has also determined that waiver of the requirement to 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

²⁰ 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).

²¹ See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 23 (2005).

²² *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).

²³ See *Alcoa Power Generating Inc. (Long Sault Division)*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

²⁴ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

indicate that waiver would not be justified.²⁵ The Commission has held that waiver of Order No. 889 will remain in effect 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.²⁶

11. Based on the statements in Essential Power's filing, we find that it meets the definition of a small public utility. We will grant Essential Power's waiver request effective August 3, 2014, which was 60 days after its filing. We grant waiver from this date because Essential Power did not file the waiver request until June 4, 2014, even though the transfer of ownership occurred on May 8, 2008, and because Essential Power failed to show that an earlier effective date is warranted.²⁷ Essential Power has not articulated good cause sufficient for the Commission to retroactively grant a waiver excusing non-compliance prior to the waiver request being filed. We note that Essential Power's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Essential Power has unfairly used its access to information to unfairly benefit itself or its affiliates.²⁸

²⁵ *Id.* Although the Commission originally precluded waiver of the requirements for 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.

²⁶ *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*).

²⁷ Applicant is reminded that it must submit required filings on a timely basis or face possible sanctions by the Commission.

²⁸ *See supra* n.26. Essential must notify the Commission if there is a material change in facts that affects its waiver, within 30 days of the date of such change. *Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations*, 127 FERC ¶ 61,141 (2009).

The Commission orders:

Essential Power's request for waiver of the Commission's requirement to comply with the Standards of Conduct is hereby granted, effective August 3, 2014, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.