

154 FERC ¶ 61,282  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

ITC Interconnection LLC

Docket No. ER16-385-001

ORDER ON MOTION FOR CLARIFICATION AND DENYING REQUEST FOR  
WAIVERS

(Issued March 31, 2016)

1. On March 4, 2016, ITC Interconnection LLC (ITC Interconnection) filed a motion for clarification of the January 12, 2016, letter order in the above-referenced proceeding.<sup>1</sup> As explained below, we grant the request for clarification and deny the requested waivers.

**I. Background**

2. On November 24, 2015, ITC Interconnection submitted a Facilities Reimbursement Agreement (Agreement) between ITC Interconnection and New Covert Generating Company, LLC (New Covert) for the Covert to Segreto Line.<sup>2</sup> In that filing, ITC Interconnection also requested waiver of (1) the full reporting requirements of Subparts B and C of Part 35 of the Commission's regulations, except for sections 35.12(a), 35.13(b), 35.15, and 35.16;<sup>3</sup> and (2) Part 141 of the Commission's regulations,

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<sup>1</sup> *ITC Interconnection LLC*, Docket No. ER16-385-000 (Jan. 12, 2016) (delegated letter order) (January 12 Letter Order).

<sup>2</sup> The Covert to Segreto Line consists of a 345 kV transmission line, and related equipment, from the New Covert Plant to the Segreto substation. *See ITC Interconnection November 24, 2015 Transmittal Letter* at 1.

<sup>3</sup> 18 C.F.R. pt. 35 (2015).

except for sections 141.14 and 141.15.<sup>4</sup> In the January 12 Letter Order, the Director, Division of Electric Power Regulation – Central, pursuant to delegated authority, accepted the Agreement but did not refer to ITC Interconnection’s requested waivers.<sup>5</sup>

## II. Motion for Clarification

3. On March 4, 2016, ITC Interconnection filed a motion for clarification to determine whether the January 12 Letter Order granted the requested waivers. ITC Interconnection states that the Covert to Segreto Line is a limited and discrete transmission facility and that, in the past, the Commission has granted similar waiver requests for such transmission facilities.<sup>6</sup>

## III. Discussion

4. The January 12 Letter Order did not address ITC Interconnection’s requested waivers. However, consistent with the Commission’s treatment of other agreements involving cost-based rates, we deny ITC Interconnection’s requested waivers.

5. We deny ITC Interconnection’s request for waiver of the reporting requirements in Subparts B and C of Part 35 of the Commission’s regulations. In Order No. 697, the Commission clarified its policy regarding waivers of Subparts B and C of Part 35, explaining that the Commission will continue to grant waiver of Subparts B and C of Part 35 of the Commission’s regulations requiring the filing of cost-of-service information, except for sections 35.12(a), 35.13(b), 35.15, and 35.16, for entities making market-based sales, but that this waiver would not be granted to an entity that makes sales at cost-based rates.<sup>7</sup> Although ITC Interconnection and New Covert mutually agreed to

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<sup>4</sup> 18 C.F.R. pt. 141 (2015).

<sup>5</sup> January 12 Letter Order at 1.

<sup>6</sup> ITC Interconnection March 4, 2016 Motion for Clarification at 1-2.

<sup>7</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at n.1126, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff’d sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

stated values for certain elements of the rate in the Agreement, the rate is largely a cost-based formula rate. Therefore, we deny ITC Interconnection's request for waiver of the reporting requirements of Subparts B and C of Part 35.

6. We also deny ITC Interconnection's request for waiver of certain provisions in Part 141 of the Commission's regulations, including the requirement to file FERC Form No. 1. As the Commission has explained, the information provided in FERC Form No. 1 "is necessary to carry out our jurisdictional responsibilities and is used, among other things, to evaluate the reasonableness of cost-based rates subject to our jurisdiction and the operation of power markets."<sup>8</sup> Thus, while entities that do not sell at cost-based rates may request waiver from the requirements of Part 141 of the Commission's regulations, including the requirement to file FERC Form No. 1, the Commission typically does not grant such waiver to those selling at cost-based rates.<sup>9</sup> As discussed above, the rate in the Agreement is largely a cost-based formula rate, notwithstanding the fact that certain elements of the rate contain stated values. ITC Interconnection's arguments in support of its request for waiver of Part 141 do not overcome the fact that the Commission requires FERC Form No. 1 data to evaluate the reasonableness of cost-based rates subject to its jurisdiction.<sup>10</sup> We, therefore, deny ITC Interconnection's request for waiver of Part 141.

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<sup>8</sup> *Alcoa Power Generating Inc.*, 147 FERC ¶ 61,136, at P 14 (2014) (quoting *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, at 31,851 (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> *See id.* P 13; *Cent. Hudson Gas and Elec. Corp.*, 148 FERC ¶ 61,130, at P 10 (2014).

<sup>10</sup> We find the orders to which ITC Interconnection cites in support of its waiver request to be inapposite. Those orders involve either (1) waivers for merchant transmission facilities, *see Lake Erie CleanPower Connector*, 144 FERC ¶ 61,203 (2013); *Neptune Regional Transmission System, LLC*, 139 FERC ¶ 61,110 (2012); *Wyo. Colo. Intertie, LLC*, 127 FERC ¶ 61,125 (2009); *Linden VFT, LLC*, 119 FERC ¶ 61,066 (2007); *Mont. Alta. Tie Ltd.*, 116 FERC ¶ 61,071 (2006); or (2) an agreement between a transmission owner and its merchant generation affiliate, *see Me. GenLead, LLC*, 146 FERC ¶ 61,223 (2014), *order on reh'g*, 152 FERC ¶ 61,015 (2015).

The Commission orders:

(A) ITC Interconnection's motion for clarification is hereby granted, as discussed in the body of this order.

(B) ITC Interconnection's request for waiver of the reporting requirements in Subparts B and C of Part 35 of the Commission's regulations is hereby denied, as discussed in the body of this order.

(C) ITC Interconnection's request for waiver of Part 141 of the Commission's regulations is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.