

156 FERC ¶ 61,012  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

4C Acquisition, LLC

Docket No. ER16-1662-000

ORDER DENYING REQUEST FOR WAIVERS

(Issued July 6, 2016)

1. On May 6, 2016, 4C Acquisition, LLC (4C Acquisition) submitted a request for waiver of the Commission's requirements to file an Open Access Transmission Tariff (OATT), to establish and maintain an Open Access Same-Time Information System (OASIS), and to comply with the Commission's Standards of Conduct. 4C Acquisition states that its request stems from its acquisition of a seven percent interest in certain generating facilities and associated interconnection facilities. In this order, we deny 4C Acquisition's requested waivers.

**I. Background**

2. 4C Acquisition, a wholly-owned subsidiary of Pinnacle West Capital Corporation (Pinnacle West) and an affiliate of Arizona Public Service Company (APS), is a limited liability company in the business of directly and indirectly constructing, investing in, acquiring, and holding interests in electric generation facilities. 4C Acquisition states that, on July 6, 2016, it will acquire El Paso Electric Company's (El Paso) seven percent ownership interest in the Four Corners Power Plant (Four Corners), a coal-fired

generating facility located on the Navajo Nation in Fruitland, New Mexico.<sup>1</sup> 4C Acquisition states that Four Corners is a joint participation project<sup>2</sup> that currently consists of two generation units (Units 4 and 5)<sup>3</sup> and associated interconnection facilities.

3. The acquisition of the seven percent interest in Four Corners is also subject to a December 2013 Option Agreement between APS and the Navajo Transitional Energy Company, LLC (Navajo Energy) under which Navajo Energy has the option to purchase El Paso's seven percent ownership interest from APS. 4C Acquisition states that Navajo Energy has elected to exercise this option and has until July 6, 2017 to close the transaction.

## **II. Request for Waivers**

4. 4C Acquisition states that, during the interim period between its acquisition and Navajo Energy's closing, it will hold rights to the seven percent interest in Four Corners and that, absent a waiver, its ownership interest in the Four Corner's 345 kV and 500 kV switchyards and 345/500 kV transformer<sup>4</sup> (collectively, Associated Facilities) would subject it to the requirements to establish and maintain an OATT and an OASIS. 4C Acquisition asserts that during the interim period its ability to process requests over the Associated Facilities will be limited due to Navajo Energy's rights. 4C Acquisition explains that Navajo Energy may require use of the Associated Facilities to deliver its entitlement in Four Corners to interconnections with transmission providers, which 4C Acquisition asserts will limit 4C Acquisition's ability to enter into long-term transmission agreements during the interim period when it will own the Associated Facilities. 4C Acquisition states that currently it does not have in place an OATT, transmission

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<sup>1</sup> On December 22, 2015, the Commission authorized the purchase of the seven percent interest in Four Corners by either APS or another Pinnacle West affiliate. *See Pinnacle West Capital Corp.*, 153 FERC ¶ 62,223 (2015).

<sup>2</sup> Following the acquisition by 4C Acquisition, Four Corners will be owned by APS (63 percent), Public Service Company of New Mexico (13 percent), Salt River Project Agricultural Improvement and Power District (10 percent), Tucson Electric Power Company (seven percent), and 4C Acquisition (seven percent).

<sup>3</sup> Unit 4 and Unit 5 are steam electric generating units with a nameplate rating of 755 MW each.

<sup>4</sup> 4C Acquisition states that the 345/500 kV tie transformer is rated at 1000 megavolt-ampere (MVA) comprised of three single phase 333 MVA transformers and one 280 MVA single phase spare transformer with required bus work, taps, and steel terminating towers for the 345 and 500 kV leads.

personnel, or an OASIS that would enable it to make capacity over the Associated Facilities available for third-party use; therefore, 4C Acquisition seeks waiver of each of the Commission's requirements.

5. 4C Acquisition states that, in Order No. 888,<sup>5</sup> the Commission required every public utility that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce to have on file with the Commission an OATT containing minimum terms and conditions of non-discriminatory transmission service. 4C Acquisition also states that, in Order No. 889,<sup>6</sup> the Commission required every public utility that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce to develop an OASIS, and to implement Standards of Conduct that functionally separate transmission and wholesale merchant functions. 4C Acquisition notes that, under certain circumstances, a public utility may receive a waiver to file an OATT, maintain an OASIS, and implement the Standards of Conduct.

6. Additionally, 4C Acquisition asserts that it is eligible for a blanket waiver of the OATT, OASIS, and Standards of Conduct requirements under Order No. 807.<sup>7</sup> Nevertheless, 4C Acquisition states that, out of an abundance of caution, it makes this filing to demonstrate its eligibility under Order No. 807 and under the Commission's traditional test for waiver. 4C Acquisition explains that, under Order No. 807, a blanket waiver is available to any public utility that is subject to OATT, OASIS, and Standards of Conduct requirements solely because it owns, controls, or operates Interconnection Customer's Interconnection Facilities (ICIF). 4C Acquisition asserts that it meets the standards of Order No. 807 for waiver because the Associated Facilities meet the definition of ICIF. 4C Acquisition asserts that, as the co-owners of Four Corners own the

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<sup>5</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>6</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>7</sup> *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367, *order on reh'g*, Order No. 807-A, 153 FERC ¶ 61,047 (2015).

Associated Facilities as tenants in common, 4C Acquisition's right to use the Associated Facilities is directly linked to the entitlement to Four Corners' output acquired by 4C Acquisition. 4C Acquisition states that the relevant rights to be transferred to 4C Acquisition are a seven percent interest in the output of Units 4 and 5 and a right, as tenant in common, to use the Associated Facilities up to the seven percent interest in Units 4 and 5 for delivery of such output to interconnections with transmission lines separately owned by transmission providers.

7. Furthermore, 4C Acquisition states that its affiliate, APS, is a Commission regulated transmission provider that maintains an OATT and an OASIS. However, 4C Acquisition states that the Commission has clarified that ICIF-owning affiliates can receive waiver of Order No. 807, regardless of their affiliation with a jurisdictional transmission provider and of the geographic location of their ICIF.<sup>8</sup> 4C Acquisition further states that it is eligible for waiver under Order No. 807 because (1) it is a corporate entity that is separate from, and functions independently from APS; and (2) it is not a part of the APS generation function and its interest in the Four Corners interconnection facilities is therefore not subject to the APS OATT.<sup>9</sup> 4C Acquisition asserts that requiring it to maintain an OASIS or file an OATT would create an administrative burden given the limited duration of its ownership of the Associated Facilities.

8. Alternatively, 4C Acquisition states that the Commission may waive the OATT and OASIS requirements for good cause.<sup>10</sup> 4C Acquisition asserts that it also satisfies the Commission's traditional test for waiver of the requirements of Order Nos. 888 and 889 because the Associated Facilities are limited and discrete facilities that do not form an integrated transmission grid. 4C Acquisition argues that the Associated Facilities are analogous to those in *Hardee Power Partners, Ltd.*,<sup>11</sup> where the Commission found that switchyard facilities used to deliver the output of a generating plant to transmission facilities are limited and discrete facilities, which qualify for a waiver of Order Nos. 888 and 889.<sup>12</sup> 4C Acquisition states that the purpose of the Associated Facilities is to enable

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<sup>8</sup> 4C Acquisition Transmittal at 9 (citing Order No. 807, FERC Stats. & Regs. ¶ 31,367 at P 165).

<sup>9</sup> *Id.* (citing Order No. 807, FERC Stats. & Regs. ¶ 31,367 at PP 166, 169).

<sup>10</sup> *Id.* at 7 (citing 18 C.F.R. §§ 35.28(d), 358.1(d) (2015)).

<sup>11</sup> *Hardee Power Partners, Ltd.*, 114 FERC ¶ 61,131 (2006) (*Hardee Power Partners*).

<sup>12</sup> 4C Acquisition Transmittal at 10 (citing *Hardee Power Partners*, 114 FERC ¶ 61,131 at P 13 (addressing 230 kV switchyard facilities)).

the joint participants in the Four Corners project to transfer energy generated by Units 4 and 5 of the Four Corners to each participant's respective transmission system. 4C Acquisition states that Unit 4 is connected to the 345 kV Switchyard and Unit 5 is connected to the 500 kV switchyard, and the 345/500 kV transformer serves as the tie between Units 4 and 5 and the two switchyards. 4C Acquisition asserts that each participant's entitlement to the use of the Associated Facilities is as a tenant in common and, therefore, the Associated Facilities cannot be used on an integrated basis with the surrounding transmission facilities. Moreover, 4C Acquisition states that, if it were to commit the Associated Facilities to third parties for transmission service, the use of the Associated Facilities would be divorced from the Four Corners entitlement, which would strand Navajo Energy's seven percent entitlement of Units 4 and 5 of Four Corners and deprive it of the ability to use the power and energy.

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

9. Notice of 4C Acquisition's filing was published in the *Federal Register*, 81 Fed. Reg. 31,232 (2016), with motions to intervene, comments, and protests due on or before May 27, 2016. None was filed.

### **IV. Discussion**

10. Order Nos. 888 and 890 and section 35.28<sup>13</sup> 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. Order No. 889 and Part 37<sup>14</sup> of the Commission's regulations require public utilities to establish and maintain an OASIS. Order Nos. 889, 2004,<sup>15</sup> and 717,<sup>16</sup> and Part 358<sup>17</sup> of the Commission's regulations

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<sup>13</sup> 18 C.F.R. § 35.28 (2015).

<sup>14</sup> 18 C.F.R. pt. 37 (2015).

<sup>15</sup> *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 Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

require public utilities to abide by certain Standards of Conduct.<sup>18</sup> In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.<sup>19</sup> The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.<sup>20</sup> Order No. 717 did not change those criteria.<sup>21</sup>

11. The Commission may grant requests for waiver of the obligation to file an OATT to public utilities that can show that they own, operate, or control only limited and discrete transmission facilities (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 utility must file with the Commission a pro forma tariff 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.<sup>22</sup>

12. The Commission has also determined that waiver of the requirement 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

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<sup>16</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, 129 FERC ¶ 61,043, 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).

<sup>17</sup> 18 C.F.R. pt. 358 (2015).

<sup>18</sup> 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.

<sup>19</sup> *See, e.g., Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

<sup>20</sup> *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).

<sup>21</sup> *See* Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

<sup>22</sup> *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

circumstances are present that indicate that a waiver would not be justified.<sup>23</sup> The Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for OASIS waivers) or an entity complains that the public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).<sup>24</sup>

13. We find that the Associated Facilities do not qualify as limited and discrete and therefore deny 4C Acquisition's requests for waiver. The Associated Facilities described in this filing consist of the 345 kV Switchyard connected to Unit 4 and the 500 kV switchyard connected to Unit 5, and the 345/500 kV transformer serves as the tie between Units 4 and 5, and allows for bi-directional flow across Four Corners, making it part of an integrated transmission grid.<sup>25</sup> Indeed, the 345/500 kV transformer is listed on APS's OASIS. Therefore, the Associated Facilities at the Four Corners station are not limited and discrete and do not qualify for waiver under the Commission's traditional waiver analysis.<sup>26</sup> We also disagree with 4C Acquisition's assertion that the Associated Facilities are analogous to the facilities that were subject to the waiver request in *Hardee Power Partners*. The switchyard at issue in *Hardee Power Partners* did not form an

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<sup>23</sup> *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 2-3 (2011) (*Black Hills*), 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.

<sup>24</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998)).

<sup>25</sup> *See Consolidated Edison Co. of N.Y., Inc.*, 152 FERC ¶ 61,173, at P 3 (2015) (finding that the proposal for power to flow unidirectional did not constitute grounds for revoking waivers of Orders Nos. 888, 889, 890, and the Standards of Conduct requirements of part 358 of the Commission's regulations).

<sup>26</sup> Likewise, the Associated Facilities do not qualify as ICIF for the blanket waiver under the standards of Order No. 807 because they are integrated into the transmission system. *See* Order No. 807, FERC Stats. & Regs. ¶ 31,367 at P 101 (finding that a blanket waiver would no longer be appropriate were the ICIF to become integrated into a transmission system); *see also id.* n.1, P 43; Order No. 807-A, 153 FERC ¶ 61,047 at n.2.

integrated transmission grid because Tampa Electric Company and Seminole Electric Cooperative, Inc. were directly interconnected at the switchyard and did not need to obtain transmission service from the switchyard in order to exchange power or provide transmission service to each other under their respective OATTs.<sup>27</sup>

14. Furthermore, we disagree with 4C Acquisition's argument regarding the burden of maintaining an OASIS and filing an OATT. 4C Acquisition is an affiliate of APS, which maintains an OATT and has an OASIS for its transmission facilities including the 345/500 kV transformer at Four Corners, and 4C Acquisition has provided no explanation as to why it is unable to use APS's OATT or OASIS. We are also not persuaded by 4C Acquisition's statement that requiring it to post and market its limited capacity, which Navajo Energy has publicly announced that it intends to purchase, could impede or adversely affect the value of the Associated Facilities to Navajo Energy. 4C Acquisition has failed to explain how using these facilities to make short-term capacity available for third-party use during the interim period harms Navajo Energy.

The Commission orders:

4C Acquisition's request for waivers is hereby denied, as described in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>27</sup> *Hardee Power Partners*, 114 FERC ¶ 61,131 at P 13.