

138 FERC ¶ 61,159  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Bishop Hill Interconnection LLC  
Bishop Hill Energy II LLC

Docket Nos. ER12-845-000  
ER12-846-000

ORDER CONDITIONALLY ACCEPTING  
COMMON FACILITIES AGREEMENT AND GRANTING WAIVERS

(Issued March 5, 2012)

1. In this order, we conditionally accept the Common Facilities Agreement between Bishop Hill Energy II LLC (Bishop Hill II), Bishop Hill Energy III LLC (Bishop Hill III), and Bishop Hill Interconnection LLC (Bishop Hill Interconnection)<sup>1</sup> as discussed below.<sup>2</sup> Further, we grant Bishop Hill Interconnection's request for waiver of the requirements under Order Nos. 888,<sup>3</sup> 889,<sup>4</sup> and 890<sup>5</sup> and section 35.28, Part 37, and

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<sup>1</sup> Bishop Hill II and Bishop Hill Interconnection are collectively referred to as the Filing Parties.

<sup>2</sup> The Common Facilities Agreement is designated as Bishop Hill Interconnection and Bishop Hill II's FERC Electric Rate Schedule No. 2.

<sup>3</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>4</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).

Part 358 of the Commission's regulations.<sup>6</sup> We also grant, as requested, Bishop Hill Interconnection: (1) waiver of the filing requirements of Subparts B and C of 18 C.F.R. Part 35 (2011), except sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of the accounting and related reporting requirements of 18 C.F.R. Parts 41, 101, and 141 (2011), except sections 141.14 and 141.15; and (3) blanket authorization under 18 C.F.R. Part 34 (2011) for all future issuances of securities and assumptions of liability.

## **I. Background**

2. Bishop Hill II is constructing and will own and operate wind generation facilities consisting of up to 81 megawatts (MW) (nameplate capacity) located in Henry County, Illinois (the Bishop Hill II Project).<sup>7</sup> Bishop Hill II will sell electric energy and capacity produced from its project at wholesale pursuant to its market-based rate authority.<sup>8</sup>

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<sup>5</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>6</sup> 18 C.F.R. § 35.28 (2011); 18 C.F.R. Part 37 (2011); 18 C.F.R. Part 358 (2011); *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*, 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).

<sup>7</sup> Bishop Hill Interconnection and Bishop Hill II's January 21, 2012 Transmittal Letter (Transmittal Letter) at 3.

<sup>8</sup> *Id.* (citing *Bishop Hill Energy LLC*, 137 FERC ¶ 61,211 (2011) (MBR Order)).

Bishop Hill II is an exempt wholesale generator (EWG)<sup>9</sup> and has been granted waivers of the Commission's Open Access Transmission Tariff (OATT) requirements. Bishop Hill II is currently an indirect, wholly-owned, subsidiary of Invenergy Investment Company LLC (Invenergy Investment). Invenergy Wind Development North America LLC (Invenergy), an indirect, wholly-owned subsidiary of Invenergy Investment, currently owns all of the direct ownership interests in Bishop Hill II.

3. Bishop Hill III is an indirect, wholly-owned, subsidiary of Invenergy Investment that is developing and will construct, own and operate wind generation facilities consisting of up to 136 MW (nameplate capacity) located in Henry County, Illinois (the Bishop Hill III Project). Bishop Hill III will sell electric energy and capacity produced from its project at wholesale pursuant to its market-based rate authority.<sup>10</sup> Bishop Hill III also is an EWG<sup>11</sup> and has been granted waivers of the Commission's OATT requirements.<sup>12</sup>

4. To effectuate their respective wholesale power sales from the Bishop Hill II Project and the Bishop Hill III Project, Bishop Hill II and Bishop Hill III plan initially to own undivided, joint ownership interests in certain limited interconnection facilities that the Bishop Hill II Project and Bishop Hill III Project will need to interconnect with the transmission facilities owned by Ameren Illinois Company (Ameren), which are

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<sup>9</sup> Bishop Hill II filed with the Commission a notice of self-certification for EWG status, which was deemed granted by operation of law under the Commission's EWG rules. *See* 18 C.F.R. § 366.7(a) (2011); Bishop Hill Energy II LLC, Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG11-103-000 (filed July 13, 2011). Bishop Hill II filed a notice of change in material fact regarding the co-tenancy agreements between the parties. Bishop Hill Energy II LLC, Notice of Change in Material Fact, Docket No. EG11-103-000 (filed Oct. 21, 2011).

<sup>10</sup> Transmittal Letter at 3-4 (citing MBR Order, 137 FERC ¶ 61,211).

<sup>11</sup> Bishop Hill III filed with the Commission a notice of self-certification for EWG status, which was deemed granted by operation of law under the Commission's EWG rules. *See* 18 C.F.R. § 366.7(a); Bishop Hill Energy III LLC, Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG11-102-000 (filed July 13, 2011). Bishop Hill III filed a notice of change in material fact regarding the co-tenancy agreements between the parties. Bishop Hill Energy III LLC, Docket No. EG11-102-000 (filed Oct. 21, 2011).

<sup>12</sup> Transmittal Letter at 4 (citing MBR Order, 137 FERC ¶ 61,211).

controlled by Midwest Independent Transmission System Operator, Inc. (MISO).<sup>13</sup> Specifically, Bishop Hill II is in the process of building a collection line substation and related station service transformers and other facilities, and an approximately 28-mile, 138-kV generator-tie line and related facilities (Bishop Hill II Tie-Line collectively with the substation, the Common Interconnection Facilities).<sup>14</sup>

5. Under an Assignment, Co-Tenancy and Shared Facilities Agreement (Shared Facilities Agreement) on file with the Commission between Bishop Hill I, Bishop Hill II and Bishop Hill III, Bishop Hill III has the right to subsequently acquire from Bishop Hill II an undivided ownership in the Common Interconnection Facilities.<sup>15</sup> Further, under the Shared Facilities Agreement, Bishop Hill II also has the right to acquire from Bishop Hill Energy LLC (Bishop Hill I)<sup>16</sup> an undivided interest in poles (the Interconnection Poles) and related real property rights. The Interconnection Poles will be used to separately hold up: (1) the generator tie-line that Bishop Hill I will use to connect the Bishop Hill I Project to transmission system owned by Commonwealth Edison Company (ComEd), which is controlled by PJM (Bishop Hill I Tie-Line); and (2) the Bishop Hill II Tie-Line generator tie-line to connect Bishop Hill II's wind generation project to the transmission system owned by Ameren (Bishop Hill II Tie-Line ) (i.e., the Bishop Hill II Tie-Line will run parallel to the Bishop Hill I Tie-Line). Bishop Hill III also has the right under the Shared Facilities Agreement to acquire an undivided joint ownership interest in the Interconnection Poles and related real property rights in order to connect the Bishop Hill III Project, via the Bishop Hill II Tie-Line, to Ameren's system.

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* (referencing that the Commission accepted by letter order Bishop Hill I, II, and III's shared facilities agreements in Docket Nos. ER12-440-000, ER12-441-000, and ER12-442-000, respectively).

<sup>16</sup> Bishop Hill I is developing and will construct, own, and operate wind generation facilities consisting of up to 213 MW (nameplate capacity) that will be located in Henry County, Illinois (the Bishop Hill I Project). Bishop Hill I is an indirect, wholly owned, subsidiary of Invenergy Investment and has market-based rate authority. *See* MBR Order, 137 FERC ¶ 61,211. Bishop Hill I is also an EWG and has been granted waiver of the Commission's OATT requirements. Transmittal Letter at 4 n.12.

## **II. Description of the Transaction and the Newly Formed Bishop Hill Interconnection**

6. Invenergy (Bishop Hill II's current direct owner) has entered into an agreement with Bishop Hill II Holdings, LLC (Bishop Hill II Holdings) to sell all of Invenergy's membership interests in Bishop Hill II to Bishop Hill II Holdings (the Bishop Hill II Transaction) once conditions to the closing of the transaction have occurred (the Closing Date).<sup>17</sup> The Filing Parties submitted an unexecuted Common Facilities Agreement and upon acceptance of its proposed transaction, will submit an amended agreement, as discussed below.

7. Bishop Hill II Holdings is an indirect, wholly-owned subsidiary of MidAmerican Energy Holdings Company (MidAmerican). Once closing on the Bishop Hill II Transaction occurs, Invenergy will no longer own any interests in Bishop Hill II.<sup>18</sup> In connection with the proposed Bishop Hill II Transaction, Bishop Hill II and Bishop Hill III formed Bishop Hill Interconnection, a direct subsidiary, for the purpose of owning the Common Interconnection Facilities and interests in the Interconnection Poles and related real property rights on or after the Closing Date occurs. Once closing on the Bishop Hill II Transaction occurs, Bishop Hill Interconnection will continue to be owned directly by Bishop Hill II and Bishop Hill III. At the time of the filing, Bishop Hill Interconnection does not own or operate any facilities.<sup>19</sup>

8. However, if the Bishop Hill II Transaction is consummated, then on the Closing Date, (1) Bishop Hill Interconnection will become the owner of the Common Interconnection Facilities that exist as of that date, (2) Bishop Hill II and Bishop Hill III will assign their rights under the Shared Facilities Agreement to acquire undivided ownership interests in the Interconnection Poles to Bishop Hill Interconnection, and an Amended and Restated Assignment, Co-Tenancy and Shared Facilities Agreement (the Amended Common Facilities Agreement) will be executed so that Bishop Hill Interconnection (not Bishop Hill II or Bishop Hill III) will own undivided interests in the Interconnection Poles and related real property rights acquired from Bishop Hill I under the Amended Common Facilities Agreement, and (3) Bishop Hill Interconnection, Bishop Hill II and Bishop Hill III will enter into the Common Facilities Agreement pursuant to which Bishop Hill II and Bishop Hill III will be entitled to interconnect their respective wind generation projects to the interconnection facilities in which Bishop Hill

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<sup>17</sup> Transmittal Letter at 5.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

Interconnection will own interests (i.e., the Common Interconnection Facilities and the Interconnection Poles collectively the Bishop Hill Interconnection Facilities). Bishop Hill Interconnection will transmit Bishop Hill II and Bishop Hill III's power over such facilities to the Ameren transmission system.

9. Bishop Hill Interconnection's sole purpose is to own and operate the Bishop Hill Interconnection Facilities that will be used to connect to transmission facilities owned by Ameren and controlled by MISO. The Bishop Hill Interconnection Facilities will be sized to accommodate transporting energy from Bishop Hill II and Bishop Hill III to the MISO controlled transmission system.<sup>20</sup>

10. Pursuant to the Common Facilities Agreement, Bishop Hill II and Bishop Hill III will be entitled to interconnect their respective generating facilities to the Bishop Hill Interconnection Facilities and to deliver their power through the Bishop Hill Interconnection Facilities to the MISO controlled transmission system for sale to their respective wholesale power customers.<sup>21</sup> Pursuant to the Common Facilities Agreement, Bishop Hill II and Bishop Hill III will reimburse Bishop Hill Interconnection for the costs Bishop Hill Interconnection incurs in operating and maintaining the Bishop Hill Interconnection Facilities and related real property rights based on an allocated share of Bishop Hill II's and Bishop Hill III's use of such facilities. However, until such time as Bishop Hill III interconnects its wind-powered generation projects, Bishop Hill II's cost responsibility will be 100 percent.

11. The Filing Parties argue that the Common Facilities Agreement is just and reasonable because it provides for the direct pass through of Bishop Hill Interconnection's actual costs, without markup.<sup>22</sup> The Filing Parties explain that each of Bishop Hill Interconnection's owners (i.e., Bishop Hill II and Bishop Hill III) will reimburse Bishop Hill Interconnection for actual costs incurred based on the ratio of the maximum nameplate capacity of the owner's generation projects to the lesser of (1) the maximum aggregate capacity from the owners' projects permitted to be injected at the

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<sup>20</sup> *Id.* at 6.

<sup>21</sup> *Id.* (citing Common Facilities Agreement § 2.6). The Filing Parties state that Bishop Hill Interconnection will not buy power from, or sell power to, anyone. The Filing Parties further state that Bishop Hill Interconnection will only transmit Bishop Hill II's and Bishop Hill III's power over the Interconnection Facilities and deliver back-up power to each owner that may purchase from third parties (i.e., station power). *Id.* at 6 n.19.

<sup>22</sup> *Id.* at 6.

point of interconnection (the Delivery Capacity) or (2) the aggregate installed maximum nameplate capacity of both projects. As such, the Filing Parties submit ]the cost sharing arrangements established in the Common Facilities Agreement are equivalent to the terms that typically are included in joint ownership agreements that have been accepted by the Commission for filing under section 205 of the Federal Power Act.<sup>23</sup>

12. Because the Common Facilities Agreement will not become effective or be executed until the Closing Date, the Filing Parties request that the Commission accept the Common Facilities Agreement for filing as their respective FERC Electric Rate Schedules No. 2, without modification or condition, to become effective on the Closing Date. They do not yet know the date when the Closing Date will occur because it is contingent on the satisfaction of various conditions. However, after the Commission accepts the Common Facilities Agreement for filing effective as of the Closing Date, the Filing Parties commit to make an informational compliance filing within 10 days after the Closing Date resubmitting the Common Facilities Agreement notifying the Commission of the effective date.<sup>24</sup>

### **III. Bishop Hill II's Jurisdictional Service**

13. The Filing Parties state that Bishop Hill II will serve as Manager of Bishop Hill Interconnection at the time the Common Facilities Agreement is executed on the Closing Date.<sup>25</sup> As Manager, the Filing Parties explain that Bishop Hill II will be responsible for conducting the daily business affairs of Bishop Hill Interconnection and making day-to-day operating decisions. The Filing Parties assert that the Commission has determined that, when certain direct operational decision making authority of a public utility resides in another entity, such entity may be considered to be operating jurisdictional facilities.<sup>26</sup> Under this precedent, the Filing Parties aver that Bishop Hill II's role as Manager of Bishop Hill Interconnection may be deemed by the Commission to constitute the operation of Bishop Hill Interconnection's jurisdictional facilities.<sup>27</sup> Accordingly, the Filing Parties state, Bishop Hill II is joining with Bishop Hill Interconnection in the filing

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<sup>23</sup> 16 U.S.C. § 824d (2006).

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

<sup>25</sup> *Id.* at 7.

<sup>26</sup> *Id.* (citing *D.E. Shaw Plasma Power, L.L.C.*, 102 FERC ¶ 61,265 (2003); *R.W. Beck Management, Ltd.* 109 FERC ¶ 61,315 (2004)).

<sup>27</sup> *Id.*

of the Common Facilities Agreement. Therefore, Bishop Hill II is submitting the Common Facilities Agreement for filing with the Commission as its rate schedule and requests that the Commission accept it for filing, without suspension, hearing or modification.<sup>28</sup>

#### IV. Requested Waivers

14. Bishop Hill Interconnection requests waiver of the requirements under Order Nos. 888 and 890, and 18 C.F.R. § 35.28 to file an OATT; the requirements under Order No. 889 and 18 C.F.R. Part 37 to establish an Open Access Same-Time Information System (OASIS); and the requirements under Order Nos. 889, 2004, and 717, and Part 18 C.F.R. Part 358 to comply with the Standards of Conduct. The Filing Parties state that the Bishop Hill Interconnection Facilities constitute limited, discrete facilities constructed for the purpose of delivering the output of the Bishop Hill II Project and the Bishop Hill III Project to the MISO controlled transmission system. The Filing Parties explain that such interconnection facilities do not form an integrated transmission grid. Filing Parties further explain that the interconnection facilities will be discrete, radial interconnection facilities used and owned by the owners of the generation projects that such interconnection facilities are being developed to accommodate connection to the transmission grid. As such, the Filing Parties argue that the interconnection facilities that Bishop Hill Interconnection will own are the type of limited, 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>29</sup>

15. The Filing Parties state that Bishop Hill Interconnection's affiliation with MidAmerican does not affect Bishop Hill Interconnection's eligibility for the requested waivers. Consistent with the Commission's determination in *BP Wind Energy North America, Inc.*,<sup>30</sup> the Filing Parties assert that there are no captive customer concerns or concerns about geographic proximity of the Bishop Hill Interconnection Facilities (which will be interconnected to the Ameren transmission system) to the transmission facilities owned or operated by MidAmerican's transmission utility subsidiaries. In sum, the Filing parties maintain that Bishop Hill Interconnection meets the Commission's requirements for granting its requested waivers.<sup>31</sup>

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 8-9.

<sup>30</sup> 129 FERC ¶ 61,207 (2009).

<sup>31</sup> Transmittal Letter at 10.

16. Also, Bishop Hill Interconnection requests that the Commission waive certain of its filing requirements and grant such blanket authorizations as are traditionally accorded to applicants that are not providing cost-based service. Specifically, Bishop Hill Interconnection requests: (1) waiver of the requirements of Parts 41, 101, and 141 with the exception of sections 141.14 and 141.15; (2) waiver of the reporting requirements of Subparts B and C of Part 35, except sections 35.12(a), 35.13(b), 35.15, and 35.16; and (3) blanket authorization under Part 34 of all future issuances of securities and assumptions of liability. Bishop Hill Interconnection states that these waivers and authorizations are consistent with those granted to other owners of limited interconnection facilities.<sup>32</sup>

17. Also, Bishop Hill Interconnection requests that the Commission grant Bishop Hill Interconnection blanket authorization with respect to issuances of securities under Part 34, which the Filing Parties maintain is consistent with the grant of waivers to an interconnection-only company in *Wolverine Goshen*. The Filing Parties argue that it is unnecessary and would be unduly burdensome to require Bishop Hill Interconnection to obtain prior approval for issuances of securities under Part 34 of the Commission's regulations given that the purpose of section 204 of the FPA<sup>33</sup> and its implementing regulations (18 C.F.R. Part 34) is to ensure the financial viability of franchised public utilities obligated to serve captive customers or obligated to provide requirements service at cost-based rates. They assert that that the central purpose of section 204 of the FPA does not apply to Bishop Hill Interconnection because it is not a franchised utility and is not obligated to serve captive customers.<sup>34</sup>

18. Finally, the Filing Parties request waiver of the 60-day prior notice requirement to the extent that the Closing Date occurs less than 60 days after the date of the filings. The

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<sup>32</sup> *Id.* at 10 (citing *Wolverine Creek Goshen Interconnection, LLC*, Letter Order, Docket No. ER06-267-000, *et al.*, (Jan. 13, 2006) (*Wolverine Goshen*); Errata Notice, Docket No. ER06-267-000, *et al.*, (Jan. 27, 2006) (granting waivers of accounting and reporting companies to company owning a discrete, generator lead line used to transmit power to the transmission system for wind generation connected to the line); *Entergy La., Inc.*, 110 FERC ¶ 61,300 (2005) (granting waivers of accounting requirements for entity that owns only limited discrete interconnection facilities); *Resources Recovery (Dade County), Inc.*, 20 FERC ¶ 61,138, at 61,301 (1982) (waivers granted to qualifying facility selling power based on avoided cost rates)).

<sup>33</sup> 16 U.S.C. § 824c (2006).

<sup>34</sup> Transmittal Letter at 11.

Filing Parties maintain that good cause exists to grant waiver because the Closing Date will not occur unless the Commission has already issued orders accepting the Common Facilities Agreement for filing under section 205 of the FPA prior to such date. Moreover, the Filing Parties state that waiver is consistent with the Commission's policy under *Central Hudson Gas and Electric Corp.*<sup>35</sup> because the Common Facilities Agreement provides a new service and has been filed before the proposed effective date.<sup>36</sup>

## V. Notice of Filing and Responsive Pleadings

19. Notice of Bishop Hill Interconnection's filing, in Docket No. ER12-845-000, and Bishop Hill II's filing, in Docket No. ER12-846-000, was published in the *Federal Register*, 77 Fed. Reg. 4557 (2012), with interventions or protests due on or before February 10, 2012. Ameren Services Company, on behalf of Ameren, filed a motion to intervene in both proceedings.

20. On January 31, 2012, the Commission issued a supplemental notice explaining that Bishop Hill Interconnection's filing, in Docket No. ER12-845-000, includes a request for blanket authorization under Part 34 of the Commission's rules and regulations for the future issuance of securities and assumptions of liability. This supplemental notice was separately published in the *Federal Register*, 77 Fed. Reg. 6110 (2012), with interventions or protests due on or before February 21, 2012. None were filed.

## VI. Discussion

### A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motion to intervene serves to make Ameren a party to these proceedings.

### B. Substantive Matters

22. We will conditionally accept the proposed Common Facilities Agreement, to become effective on the Closing Date, subject to a compliance filing. As the Filing Parties commit to do, we will require them to submit a compliance filing, within 10 days

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<sup>35</sup> 60 FERC ¶ 61,106, at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*).

<sup>36</sup> Transmittal Letter at 12 (citations omitted).

of the Closing Date, consisting of the Common Facilities Agreement with its execution date, signatures, and completion of other placeholders for dates that reflect the effective date of the Common Facilities Agreement (the Effective Date), in accordance with Order No. 714. To the extent that the Effective Date happens to be earlier than 60 days from the date that the proposed Facilities Use Agreement was submitted for filing, we will grant the parties' request for waiver of the 60-day prior notice requirement.<sup>37</sup>

**1. Waiver of Requirements Concerning OATT, OASIS, and Standards of Conduct**

23. As explained above, Bishop Hill Interconnection also seeks waiver of the requirements to file an OATT, maintain an OASIS, and abide by the Standards of Conduct. In support of its requests for waiver, Bishop Hill Interconnection states that it does not own, operate, or control any transmission-related equipment other than the limited and discrete facilities constructed for the purpose of delivering the output of the Bishop Hill II and III Projects to the MISO-controlled transmission system. As such, Bishop Hill Interconnection states that the facilities do not form an integrated transmission system.

24. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations require public utilities that own, control, or operate facilities used for the transmission of electric energy in interstate commerce to file an OATT. Order Nos. 889 and Part 37 of the Commission's regulations require public utilities to establish and maintain an OASIS, and Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain standards of conduct.<sup>38</sup> 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.<sup>39</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 No. 888 and Order No. 889.<sup>40</sup> Order No. 717 did not change those criteria.<sup>41</sup>

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<sup>37</sup> See 18 C.F.R. § 35.3 (2011); see also *Central Hudson*, 60 FERC at 61,339.

<sup>38</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>39</sup> See, e.g., *Black Creek Hydo, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996); *Entergy Miss., Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

<sup>40</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).

25. 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 (i.e., facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service.

26. The Commission also has 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 it is a member of a tight power pool, or other circumstances are present that indicate that a waiver would not be justified.<sup>42</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>43</sup>

27. Based on Bishop Hill Interconnection's representations, we find that the Bishop Hill Interconnection Facilities constitute limited and discrete facilities that do not constitute an integrated transmission system for the purpose of the waiver analysis considered in this order. The Bishop Hill Interconnection Facilities were built exclusively for the output of the Bishop Hill II and Bishop Hill III Projects, which will only utilize the facilities to interconnect with, and deliver the power to, MISO's transmission system. Accordingly, we will grant Bishop Hill Interconnection's request for waivers of the requirements of Order Nos. 888 and 890 to have an OATT on file.<sup>44</sup>

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<sup>41</sup> See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

<sup>42</sup> *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at P 3 (2011) (*Black Hills*). As we explained in *Black Hills*, membership or non-membership in a tight power pool is no longer a factor in this determination. Additionally, as we stated in *Black Hills*, size is not relevant to whether waivers are granted to public utilities that participate in a Commission-approved Independent System Operator or Regional Transmission Organization. *Id.* P 2.

<sup>43</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Cent. Minn. Mun. Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998)).

<sup>44</sup> However, if Bishop Hill Interconnection receives a request for transmission service from a customer other than the two generators, it must file with the Commission a

(continued...)

We also will grant Bishop Hill Interconnection's requests for waiver<sup>45</sup> of the requirements to maintain an OASIS and of the Standards of Conduct.<sup>46</sup>

## 2. Other Waivers, Approvals, and Authorizations

28. Bishop Hill Interconnection requests a number of other waivers and authorizations, typically granted by the Commission to entities that are not providing cost-based service, such as market-based rate power sellers. In particular, Bishop Hill Interconnection requests the following waivers and authorizations under the Commission's regulations: (1) waiver of the filing requirements of Subparts B and C of Part 35, except sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of the accounting and related reporting requirements of Parts 41, 101, and 141, except sections 141.14 and 141.15; and (3) blanket authorization under Part 34 for all future issuances of securities and assumptions of liability.

29. We will grant the requested waivers and authorizations consistent with those waivers and authorizations granted to entities with market-based rate authorizations. Notwithstanding the waiver of the accounting and reporting requirements, we expect Bishop Hill Interconnection to keep its accounting records in accordance with generally accepted accounting principles.

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*pro forma* OATT within 60 days of the date of the request, and must comply with any additional requirements effective on the date of the request in compliance with Order Nos. 888 and 890. *See Ashtabula Wind, LLC*, 127 FERC ¶ 61,215, at P 10 & n.16 (2009).

<sup>45</sup> *Id.* Bishop Hill Interconnection must notify the Commission if there is a material change in facts that affect 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, at P 5 (2009).

<sup>46</sup> We note that Bishop Hill Interconnection's waiver of the requirement to establish an OASIS 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. Likewise, Bishop Hill Interconnection'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 Bishop Hill Interconnection has unfairly used its access to information to unfairly benefit itself or its affiliate. *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Cent. Minn. Mun. Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997)); *Easton Utils. Comm'n*, 83 FERC at 62,343.

The Commission orders:

(A) The Filing Parties' proposed Common Facilities Agreement is hereby conditionally accepted for filing, subject to the Filing Parties submitting a compliance filing, within 10 days of the effective date of the Facilities Use Agreement, revising its rate schedule sheets to reflect the effective date of the Common Facilities Agreement.

(B) Bishop Hill Interconnection's request for waiver of the requirements to file an OATT, maintain an OASIS, and comply with the Standards of Conduct is hereby granted, as discussed in the body of this order.

(C) Waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, is hereby granted, as discussed in the body of this order.

(D) Waiver of Parts 41, 101, and 141 of the Commission's regulations, with the exception of sections 141.14 and 141.15, is hereby granted, as discussed in the body of this order.

(E) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Bishop Hill Interconnection is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Bishop Hill Interconnection compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of Bishop Hill Interconnection's issuance of securities or assumptions of liability.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.