

142 FERC ¶ 61,112  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Alpaugh 50, LLC  
Alpaugh North, LLC

Docket Nos. ER13-604-000  
ER13-605-000

ORDER ACCEPTING CO-TENANCY AGREEMENT AND GRANTING REQUESTS  
FOR WAIVERS

(Issued February 14, 2013)

1. In this order, the Commission accepts for filing a Co-Tenancy Agreement between Alpaugh 50, LLC (Alpaugh 50) and Alpaugh North, LLC (Alpaugh North) (together, Alpaugh Companies), effective December 21, 2012, as requested. We also grant Alpaugh Companies' request for waivers of the obligation to file an Open Access Transmission Tariff (OATT), to comply with the Commission's Standards of Conduct and to establish and maintain an Open Access Same-Time Information System (OASIS).

**I. Background**

2. Alpaugh North and Alpaugh 50 are both qualifying small power production facilities and are both authorized to sell power under market-based rates.<sup>1</sup> The Alpaugh Companies are subsidiaries of Consolidated Edison Development Inc., a wholly-owned subsidiary of Consolidated Edison, Inc.

3. Alpaugh North is developing and will own a 20 MW solar photovoltaic generating facility and related interconnection facilities (Alpaugh North Project) located in Alpaugh,

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<sup>1</sup> See *SPS Alpaugh 50, LLC, et al.*, Docket No. ER12-2051-002, *et al.*, (Sept. 17, 2012) (unpublished letter order) (authorizing market-based rate authority and accepting market-based rate tariffs for both Alpaugh 50 and Alpaugh North); *Alpaugh 50 LLC*, Notice of Self-Recertification, Docket No. QF12-405 (Aug. 21, 2012) (Alpaugh 50's self certification regarding continuing qualified facility status); and *Alpaugh North, LLC*, Notice of Self-Recertification, Docket No. QF12-406 (Aug. 21, 2012) (Alpaugh North's self certification regarding continuing qualified facility status).

Tulare County, California. The Alpaugh North Project will be interconnected to transmission facilities owned by Pacific Gas and Electric Company (PG&E) and operated by the California Independent System Operator Corporation (CAISO).<sup>2</sup>

4. Alpaugh 50 is developing and will own a 50 MW solar photovoltaic generating facility and related interconnection facilities (Alpaugh 50 Project) located in Alpaugh, Tulare County, California. The Alpaugh 50 Project will be interconnected at the same point as the Alpaugh North Project to PG&E's transmission system and operated by CAISO.<sup>3</sup>

5. Alpaugh North is constructing a one-mile radial generator tie line to connect the Alpaugh North Facility to CAISO's transmission system and related transmission equipment (Shared Interconnection Facilities). The Alpaugh Companies will utilize certain Common Facilities located on the Shared Premises in connection with their respective projects. Alpaugh North plans to commence construction of its facilities, including the Common Facilities,<sup>4</sup> prior to the commencement of construction of the Alpaugh 50 Project. Alpaugh 50 intends to acquire an undivided interest in the Shared Interconnection Facilities and the Common Facilities.<sup>5</sup>

## II. Filing

### A. Co-Tenancy Agreement

6. The Co-Tenancy Agreement will govern the joint ownership and use of the Shared Interconnection Facilities and the Common Facilities. The Co-Tenancy Agreement also allows Alpaugh 50 to use the Shared Interconnection Facilities to deliver energy to CAISO's transmission system prior to the transfer of the undivided interest from

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<sup>2</sup> Alpaugh Companies Transmittal Letter at 2.

<sup>3</sup> *Id.*

<sup>4</sup> Common Facilities means the assets and facilities located on the Shared Premises and described in Exhibit A-1 to the Co-Tenancy Agreement, and any future facilities contemplating common ownership and use by the Parties in accordance with the Co-Tenancy and Common Facilities Agreement. Shared Premises means the premises in which Alpaugh North and Alpaugh 50, as co-grantees, possess certain easement rights pursuant to the Canal Easement Agreement, the Jimenez Easement Agreement, the Lanting Easement Agreement, the Building and Parking Easement Agreement and the Road Easement Agreement. *See* Alpaugh Companies December 20, 2012 Tariff Filings, Attachment A at 3 and 5.

<sup>5</sup> *Id.*

Alpaugh North to Alpaugh 50. Alpaugh North states that it will not assess charges for Alpaugh 50's use of the Shared Interconnection Facilities during the pre-acquisition period.<sup>6</sup>

7. Under the Co-Tenancy Agreement, the costs of operating and maintaining the Shared Interconnection Facilities will be allocated based on the Alpaugh Companies' respective ownership percentage of the facilities. The costs associated with the jointly-owned Shared Interconnection Facilities will be shared based on the respective owners' pro-rata ownership interests. Alpaugh Companies state that the Co-Tenancy Agreement only provides for the pass-through of actual costs based on each owner's pro-rata ownership interests and the terms are consistent with those typically included in joint ownership or shared facility agreements previously accepted by the Commission. In addition, if either company incurs costs in connection with activities of the other, then the company incurring such costs shall be reimbursed.<sup>7</sup>

## **B. Waivers**

8. Alpaugh Companies request waiver of the requirements under Order Nos. 888,<sup>8</sup> 889,<sup>9</sup> and 890<sup>10</sup> and the requirements under the Commission's regulations at

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<sup>6</sup> *Id.* at 3.

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

<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> *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>10</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).

section 35.28,<sup>11</sup> and Parts 37,<sup>12</sup> and 358<sup>13</sup> of the Commission's regulations. The Alpaugh Companies state that the Shared Interconnection Facilities constitute limited and discrete facilities constructed for the purpose of delivering the output of their solar generation facilities to CAISO's transmission system. They contend that the Shared Interconnection Facilities 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. Accordingly, Alpaugh Companies assert that their requests for waiver meet the Commission's requirements for granting waiver.<sup>14</sup> The Alpaugh Companies also claim that good cause exists for waiver of the 60 day notice requirement because the waiver will enable Alpaugh 50, which is at an advanced stage of construction, to effectuate interconnection of its solar generating facility to the CAISO transmission system as quickly as possible.<sup>15</sup>

9. Alpaugh Companies also request waiver of the Commission's prior notice requirements, set forth in section 35.3 of the Commission's regulations,<sup>16</sup> to permit the Co-Tenancy Agreement to become effective December 21, 2012. The Alpaugh Companies explain that the Co-Tenancy Agreement was filed prior to the proposed effective date and assert that waiver is consistent with Commission policies under *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, *order on reh'g*, 61 FERC ¶ 61,089 (1992).<sup>17</sup>

10. Finally, Alpaugh Companies request waiver of the requirement in section 35.12(b)(1) of the Commission's regulations,<sup>18</sup> which requires companies to provide an estimate of transactions and revenues. Alpaugh Companies contend that because the Co-Tenancy Agreement provides that the owners will share actual costs on the basis of

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<sup>11</sup> 18 C.F.R. § 35.28 (2012).

<sup>12</sup> 18 C.F.R. Part 37 (2012).

<sup>13</sup> 18 C.F.R. Part 358 (2012).

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.*

<sup>16</sup> 18 C.F.R. § 35.3 (a)(1).

<sup>17</sup> Alpaugh Companies Transmittal Letter at 4.

<sup>18</sup> 18 C.F.R. § 35.12(b)(1) (2012).

their pro rata ownership interests in the Shared Interconnection Facilities, no estimate of transactions and revenues is necessary.<sup>19</sup>

### III. Notice of Filing

11. Notice of Alpaugh Companies' filings were published in the *Federal Register*, 78 Fed. Reg. 91 (2013), with motions to intervene, comments, and protests due on or before January 10, 2013. None was filed.

### IV. Discussion

12. The Co-Tenancy Agreement appears to be just and reasonable and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Additionally, we find that good cause exists to grant the requested waiver of the prior notice requirements. Accordingly, we will accept the proposed Co-Tenancy Agreement for filing, to be effective December 21, 2012, as requested.

13. Order Nos. 888 and 890 and section 35.28 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 prior to providing transmission service. Order No. 889 and Part 37 of the Commission's regulations require public utilities to establish an OASIS. Order Nos. 889, 2004,<sup>20</sup> and 717<sup>21</sup> and Part 358 of the

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<sup>19</sup> Alpaugh Companies Transmittal Letter at 4.

<sup>20</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*, 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).

<sup>21</sup> *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).

Commission's regulations require public utilities to abide by certain standards of conduct.<sup>22</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>23</sup> The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 have not changed from those used to evaluate requests for waiver under Order Nos. 888 and 889.<sup>24</sup> Order No. 717 did not change those criteria.<sup>25</sup>

14. 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 an OATT with the Commission 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>26</sup>

15. The Commission has also determined that waiver of the requirements 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 circumstances are present that indicate that waiver would not be justified.<sup>27</sup> The

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<sup>22</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>23</sup> See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

<sup>24</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>25</sup> See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

<sup>26</sup> *Black Creek*, 77 FERC at 61,941.

<sup>27</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), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Additionally, 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. See 18 C.F.R. § 358.1(c) (2012).

Commission grants waivers to small public utilities based on the threshold of whether they dispose of no more than 4 million MWh annually.<sup>28</sup> Moreover, 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>29</sup>

16. Based on the Alpaugh Companies' representations, we find that the Shared Interconnection Facilities are limited and discrete and do not constitute an integrated transmission system for purposes of the waiver analysis considered in this order. Alpaugh Companies' transmission facilities were built to provide transmission service to them alone. The only transmission service Alpaugh North intends to provide is to itself and its affiliate, Alpaugh 50, to deliver power from the Alpaugh 50 Project to CAISO's transmission system.<sup>30</sup> Accordingly, we will grant Alpaugh Companies' requests for waivers of the requirements set forth in Order Nos. 888 and 890, and section 35.28, Part 37, and Part 358 of the Commission's regulations. However, if the Alpaugh Companies receive a request for transmission service, it must file with the Commission a *pro forma* OATT within 60 days of the date of the request.

17. The Commission will also grant Alpaugh Companies' request for waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations, with respect to OASIS, and Order Nos. 889, 2004, and 717 and Part 358, with respect to the Standards of Conduct. We note that Alpaugh Companies' 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.<sup>31</sup> Likewise, Alpaugh Companies' waiver of the Standards of Conduct will remain in effect unless and until the Commission

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<sup>28</sup> See *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009).

<sup>29</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998)).

<sup>30</sup> See *NaturEner Glacier Wind I, LLC*, 140 FERC ¶ 61,131 (2012).

<sup>31</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998)).

takes action on a complaint by an entity that Alpaugh Companies has unfairly used its access to information to unfairly benefit itself or its affiliate.<sup>32</sup>

18. In addition, we will grant Alpaugh Companies' request for waiver of section 35.12(b) of the Commission's regulations because Alpaugh North will not assess charges on Alpaugh 50 under the Co-Tenancy Agreement. Finally, we will grant Alpaugh Companies' request for waiver of section 35.3 of the Commission's regulations because granting waiver will ultimately benefit consumers by avoiding delays in the commercial operation of the solar generating facility.

The Commission orders:

(A) The Co-Tenancy Agreement between Alpaugh 50 and Alpaugh North is hereby accepted for filing, as discussed in the body of this order, effective December 21, 2012, as requested.

(B) Alpaugh Companies' request for waiver of the requirements of Order Nos. 888, 889, and 890, and the requirements of sections 35.3, 35.12(b), and 35.28 and Parts 37 and 358 of the Commission's regulations is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>32</sup> See *supra* note 25. Alpaugh Companies 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).