

143 FERC ¶ 61,265
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Patua Project, LLC

Docket No. OA13-5-000

ORDER GRANTING REQUEST FOR WAIVERS

(Issued June 24, 2013)

1. This order grants Patua Project, LLC (Patua) the requested waivers of certain requirements under Order Nos. 888,¹ 889,² and 890,³ and Part 358 of the Commission's regulations.⁴

¹ *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).

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 *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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

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

(continued...)

I. Background

2. Patua is a Nevada limited liability company and is the wholly-owned subsidiary of Gradient Resources, LLC.⁵ Patua will own and operate an approximately 90 MW geothermal electric generating facility currently under construction, with the facilities spanning Churchill and Lyons Counties, Nevada (Project). Patua explains that it will also own and operate limited, radial generator interconnection facilities, including a dedicated 8-mile, 120 kV gen-tie line that will interconnect the Project to the integrated transmission system (Interconnection Line) in order to deliver the power from the Project to Sierra Pacific Power Company's (Sierra Pacific) transmission system. Patua states that it will not share ownership of the Interconnection Line with, or provide delivery services over the Interconnection Line to, any other entity. Furthermore, Patua claims that it has no plans or intention of offering or providing transmission services over the Interconnection Line, unless required to do so by applicable law. Accordingly, Patua explains, the Interconnection Line will be constructed for Patua's sole use and exclusively for the purpose of delivering output from the Project to the integrated transmission system.

3. On May 6, 2013, Patua requested waiver of the following Commission regulatory requirements applicable to transmission providers: the Open Access Transmission Tariff (OATT), the Open-Access Same-Time Information System (OASIS), and the Standards of Conduct, in connection with an application for market based rate authority in Docket No. ER13-1248-000.⁶ Specifically, Patua requests waiver of the requirements of Order Nos. 888, 889, and 890 and Part 358 of the Commission's regulations. Patua asserts that the interconnection facilities are radial, sole-use interconnection facilities dedicated exclusively to the generation owner's facility.⁷ Patua claims that the interconnection

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). *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).

⁵ Patua May 6 Filing at 3.

⁶ *Id.* at 1-2.

⁷ *Id.* at 2.

facilities are limited and discrete, not an integrated component of any transmission grid, and designed solely to enable Patua to transmit electrical energy from its Project to the point of interconnection with the integrated transmission system.⁸ Patua also explains that it will not provide delivery services over the Interconnection Line to any other entity, unless required to do so by law.⁹

4. Patua requests that the Commission issue an order no later than May 31, 2013, to prevent delays with respect to the application for market based rate authority in Docket No. ER13-1248-000.

II. Notice of Filing and Responsive Pleadings

5. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 29,129 (2013), with protests or motions to intervene due on or before May 28, 2013. None were filed.

III. Discussion

6. The Commission will grant Patua's requested waivers for the Interconnection Line. Order Nos. 888 and 890 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 regulations¹⁰ require public utilities to establish and maintain an OASIS and Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations¹¹

⁸ *Id.* at 5.

⁹ *Id.*

¹⁰ 18 C.F.R. Part 37 (2012).

¹¹ 18 C.F.R. Part 358 (2012).

require public utilities to abide by the Commission's Standards of Conduct.¹² 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 890.¹³ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004¹⁴ are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹⁵ Order No. 717 did not change those criteria.¹⁶

7. The Commission may grant requests for waiver of the obligation to file an OATT to public utilities that can show 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.¹⁷

8. 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

¹² 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.

¹³ 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*).

¹⁴ *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).

¹⁵ 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).

¹⁶ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 54.

¹⁷ *Black Creek*, 77 FERC at 61,941.

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 and no other circumstances are present that indicate that waiver would not be justified.¹⁸ 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).¹⁹

9. Based on Patua's representations that the Interconnection Line is not an integrated component of any transmission grid, was designed solely to enable Patua to deliver electrical energy from its Project to the point of interconnection with the Sierra Pacific's integrated transmission system, and will not be providing transmission service to any other party, we find that the Interconnection Line qualifies as limited and discrete. Accordingly, we will grant Patua waiver of the requirements in Order Nos. 888 and 890 to have an OATT on file. However, if Patua receives a request for transmission service, it must file with the Commission a *pro forma* OATT 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 in compliance with Order Nos. 888 and 890.²⁰

10. The Commission also will grant Patua waiver from the requirements to maintain an OASIS and of the Standards of Conduct. We note that Patua'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

¹⁸ *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).

¹⁹ *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*)).

²⁰ *Black Creek*, 77 FERC at 61,941.

transmission needs could not get the information necessary to complete its evaluation.²¹ Likewise, Patua'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 Patua has unfairly used its access to information to unfairly benefit itself or its affiliate.²²

The Commission orders:

Patua's request for waivers is hereby granted, as discussed in the body of this order.

By the Commission. Chairman Wellinghoff is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

²¹ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota*, 79 FERC at 62,127; *Easton*, 83 FERC at 62,343).

²² *Id.* Patua 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).