

172 FERC ¶ 61,226
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and James P. Danly.

Altavista Solar, LLC

Docket Nos. ER20-2030-000
TS20-5-000

ORDER ON REQUEST FOR WAIVERS

(Issued September 17, 2020)

1. In this order, we address Altavista Solar, LLC's (Altavista) 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. As discussed below, we grant in part and dismiss in part, Altavista's requested waivers.

I. Request for Waiver

2. On June 10, 2020, Altavista filed pursuant to sections 35.28(d) & (f) of the Commission's regulations¹ a request for waiver of the Commission's OATT, OASIS, and Standards of Conduct requirements, specifically: (1) Order Nos. 888,² 890,³ and

¹ 18 C.F.R. §§ 35.28(d), (f) (2020).

² *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) (cross-referenced at 77 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *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).

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (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).

section 35.28⁴ of the Commission's regulations to file an OATT; (2) Order No. 889⁵ and part 37⁶ of the Commission's regulations with respect to OASIS; and (3) Order Nos. 889, 2004⁷ and 717⁸ and part 358⁹ of the Commission's regulations with respect to Standards of Conduct (collectively, OATT Requirements). Altavista states that the Commission has granted similar waivers.¹⁰ In addition, Altavista also requests waiver of the 60-day filing requirement and an effective date of the waivers granted herein of June 11, 2020.¹¹

3. Altavista states that "the waivers are necessary to permit timely integration, in accordance with the Commission's rules and regulations, of certain Customer Interconnection Facilities and Transmission Owner Interconnection Facilities (TO

⁴ 18 C.F.R. § 35.28 (2020).

⁵ *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996) (cross-referenced at 75 FERC ¶ 61,078), *order on reh'g*, Order No. 889-A, FERC Stats & Regs. ¶ 31,049 (cross-referenced at 78 FERC ¶ 61,221), *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

⁶ 18 C.F.R. pt. 37 (2020).

⁷ *Standards of Conduct for Transmission Providers*, Order No. 2004, 105 FERC ¶ 61,248 (2003), *order on reh'g*, Order No. 2004-A, 107 FERC ¶ 61,032, *order on reh'g*, Order No. 2004-B, 108 FERC ¶ 61,118, *order on reh'g*, Order No. 2004-C, 109 FERC ¶ 61,325 (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, 118 FERC ¶ 61,012, *order on reh'g*, Order No. 690-A, 118 FERC ¶ 61,229 (2007).

⁸ *Standards of Conduct for Transmission Providers*, Order No. 717, 125 FERC ¶ 61,064 (2008), *order on reh'g and clarification*, Order No. 717-A, 129 FERC ¶ 61,043, *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).

⁹ 18 C.F.R. pt. 358 (2020).

¹⁰ Waiver Request at 2, 8 (citing *Wildhorse Wind Energy, LLC*, 169 FERC ¶ 61,240 (2019)).

¹¹ *Id.* at 2.

Interconnection Facilities) being built by Altavista” under the Option to Build provisions of the Interconnection Service Agreement (ISA) entered into by and among PJM Interconnection, L.L.C. (PJM), Altavista, and Appalachian Power Company (AEP) dated February 13, 2020 and the Interconnection Construction Service Agreement (ICSA) by and among PJM, Altavista, and AEP dated February 13, 2020.¹² Altavista explains that its request is in connection with the construction, ownership and operation of limited and discrete facilities necessary to deliver the output of a new generation facility to the PJM transmission system and certain TO Interconnection Facilities that have been constructed by Altavista pursuant to the Option to Build under the ISA and ICSA.

4. Altavista states that it is in the process of constructing an 80 MW solar generation facility located in Campbell County, Virginia (Facility).¹³ Altavista expects to begin testing in October 2020 and to declare commercial operation in December 2020.¹⁴ Altavista states that it is indirectly owned by Algonquin Power & Utilities Corp. and Apex Clean Energy, Inc. in equal 50 percent shares. Altavista is affiliated with The Empire Electric District Company (Empire), a vertically-integrated public utility supplying open access transmission service under the Southwest Power Pool, Inc. OATT in the Southwest Power Pool Balancing Authority Area.¹⁵ Altavista states that it is separate from, and functions independently of, Empire.

5. Altavista explains that, under section 3.0 of the Specifications in the ISA, and section 5.0 and Schedule D of the ICSA, it selected the Option to Build certain TO Interconnection Facilities, which it has constructed and is in the process of transferring ownership to AEP.¹⁶ Altavista also states that, as identified in section 3.0 of the Specifications in the ISA, its Facility includes certain limited and discrete Customer Interconnection Facilities.¹⁷

6. Altavista states that, on June 9, 2020, it transferred operational control of the TO Interconnection Facilities to AEP and PJM, and that the TO Interconnection Facilities

¹² *Id.* at 1-2, 5-6 (Attachment 1 to the Waiver Request includes the ISA and ICSA).

¹³ *Id.* at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *Id.* at 3-4; ISA, Specifications, sec. 3.0(a)(2); ICSA, sec. 5.0(b)(3) & sched. D.

¹⁷ Waiver Request at 3; ISA, Specifications, sec. 3.0(a)(1); ICSA, sec. 5.0(a) & sched. G.

will be energized on approximately June 12, 2020.¹⁸ Altavista explains that the ISA permits AEP to take operational control of the TO Interconnection Facilities before a formal transfer in ownership when agreed to by the parties. Altavista explains that PJM, in coordination with AEP, will operate the TO Interconnection Facilities pursuant to the PJM Consolidated Transmission Owners Agreement, PJM OATT, and PJM's OASIS.¹⁹ Altavista explains that, until such time as the ownership of the TO Interconnection Facilities is fully transferred to AEP (which is being negotiated and expected to be finalized in approximately six months), Altavista will own (but not control) Commission-jurisdictional interstate transmission facilities.²⁰

7. Altavista states that, absent waiver, it may become subject to the OATT Requirements—both with regard to the Altavista Customer Interconnection Facilities when those facilities are energized²¹ and the TO Interconnection Facilities. According to Altavista, with respect to both the Altavista Customer Interconnection Facilities and the TO Interconnection Facilities, it would be unnecessary and unduly burdensome for the OATT Requirements to apply because Altavista: (1) will own the Altavista Customer Interconnection Facilities only in the PJM footprint, which is remote to the area covered by the SPP transmission network; (2) does not control or operate the TO Interconnection Facilities in PJM as of June 9, 2020; and (3) is separate from and functions independently of Empire.

8. Altavista explains that, out of an abundance of caution, Altavista requests a waiver of the OATT Requirements with respect to the Altavista Customer Interconnection Facilities and the TO Interconnection Facilities for a limited, interim period effective June 11, 2020.²² Altavista states that the waiver would need to remain in effect for the limited time necessary to effectuate transfer of ownership of the TO Interconnection Facilities from Altavista to AEP under mutually acceptable terms. Altavista states that, once the TO Interconnection Facilities are owned by AEP, the Altavista Customer Interconnection Facilities would be covered by the blanket waiver and safe harbor established under Order No. 807 and codified at 18 C.F.R. § 35.29(d)(2) because

¹⁸ Waiver Request at 2-3.

¹⁹ *Id.* at 4, 7.

²⁰ *Id.* at 3-5.

²¹ Altavista anticipates energizing the Customer Interconnection Facilities in October 2020. *Id.* at 5.

²² *Id.* at 5-6.

Altavista will own only the Facility from which electricity at wholesale will be sold and delivered through the limited and discrete Altavista Customer Interconnection Facilities.

9. In support of its request, Altavista states that the Customer Interconnection Facilities and the TO Interconnection Facilities are limited and discrete in nature and do not constitute an integrated transmission grid. Altavista avers that because it has transferred operational control of the TO Interconnection Facilities, Altavista does not have unauthorized physical access to the TO Interconnection Facilities and access to non-public transmission function information pertaining to the TO Interconnection Facilities.²³ Altavista also states that because, as of June 9, 2020, it will not operate or control the TO Interconnection Facilities, with such operation and control instead turned over to AEP, granting the requested waivers will not harm transmission customers or interfere with interconnection or transmission access.²⁴

10. Altavista states that it does not currently have marketing-function employees, but will have marketing function employees when it obtains market-based rate authority. Altavista states that its marketing function employees will not have access to or be provided, directly or indirectly, any non-public information pertaining to the TO Interconnection Facilities. Altavista also states that, to the extent Empire has marketing function employees, such employees do not and will not have access to or be provided, directly or indirectly, any non-public information pertaining to the TO Interconnection Facilities. Altavista states that to the extent it is theoretically possible that Altavista, as an entity that owns but does not control the TO Interconnection Facilities for a limited period of time, may have access to non-public transmission function information of PJM or AEP, Altavista will abide by the Commission's Standards of Conduct requirements under part 358 of the Commission's rules and regulations. Altavista states, that while it has requested waiver of the requirements to establish and maintain an OATT and OASIS out of an abundance of caution, Altavista believes that the waiver of these requirements should be unnecessary.

II. Notice of Filing

11. Notice of Altavista's June 10, 2020 filing was published in the *Federal Register*, 85 Fed. Reg. 36,574 (June 17, 2020), with interventions and protests due on or before July 1, 2020. Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM, and PJM each filed timely motions to intervene. No protests were filed.

²³ *Id.* at 6-7.

²⁴ *Id.* at 7.

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

13. As discussed below, we grant in part and dismiss in part, Altavista's requested waivers.

1. Waiver Requests for the Customer Interconnection Facilities

14. Altavista seeks waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct with respect to the Altavista Customer Interconnection Facilities. In support, Altavista states that the Altavista Customer Interconnection Facilities are limited and discrete, as they are interconnection facilities that would qualify for the automatic exemption under Order No. 807 if Altavista did not own the TO Interconnection Facilities.²⁵

15. 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. Order No. 889 and part 37 of the Commission's regulations require public utilities to establish and maintain an OASIS. Order Nos. 889, 2004, and 717 and part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.²⁶ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888, 889, and 890.²⁷ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 are

²⁵ Waiver Request at 4-5; *Open Access & Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, 150 FERC ¶ 61,211, at PP 165-67, *order on reh'g*, Order No. 807-A, 153 FERC ¶ 61,047 (2015).

²⁶ Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; Order No. 2004, 105 FERC ¶ 61,248 at P 16; Order No. 717, 125 FERC ¶ 61,064 at P 313.

²⁷ 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*).

unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.²⁸ Order No. 717 did not change those criteria.²⁹

16. The Commission has granted requests for waiver of the obligation to file an OATT to public utilities that could 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.³⁰ Should the public utility receive such a request, 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.³¹

17. The Commission has also granted waiver of the requirement to establish an OASIS and abide by the Standards of Conduct if the public utility: (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 a waiver would not be justified.³²

18. The Commission has held that any 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).³³

19. We agree that the Altavista Customer Interconnection Facilities qualify as limited and discrete because they are limited facilities that support the interconnection of the Facility. We grant Altavista's petition for OATT, OASIS, and Standards of Conduct

²⁸ See *Alcoa Power Generating Inc. (Long Sault Division)*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

²⁹ See Order No. 717, 125 FERC ¶ 61,064 at PP 31-33.

³⁰ See, e.g., *Black Creek*, 77 FERC at 61,941.

³¹ *Id.*

³² *Id.*

³³ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Cent. Minn. Mun. Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997) (*Central Minnesota*); *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998) (*Easton*)).

waivers related to the Altavista Customer Interconnection Facilities until Altavista transfers ownership of the TO Interconnection Facilities to AEP.³⁴ Prior to the transfer, this OATT waiver will be revoked if Altavista receives a request for transmission service. The OASIS and Standard of Conduct waivers will remain in effect unless and 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 waiver) or an entity complains that Altavista has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waiver).³⁵

2. Waiver Request for the TO Interconnection Facilities

20. Altavista also seeks waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct with respect to the TO Interconnection Facilities. In support, Altavista represents that the TO Interconnection Facilities are limited and discrete, and that it will own the TO Interconnection Facilities only for a short period after they are energized and prior to the transfer to AEP.

21. Based on the statements in Altavista's application, we find that the TO Interconnection Facilities do not qualify as limited and discrete, as they will be part of AEP's and PJM's integrated transmission grid until the parties complete the transfer of ownership. However, we recognize that, during this limited period, while Altavista will be the owner of the upgrades, AEP and PJM will exercise full operational control over them under the PJM OATT.³⁶

22. Given that Altavista will not control or operate the TO Interconnection Facilities after they are energized, integrated, become jurisdictional, and that they are covered by PJM's OATT and OASIS, we find that Altavista's ownership of the TO Interconnection Facilities prior to the transfer to AEP raises no OATT or OASIS concerns. We therefore deem Altavista's petition for waiver of the OATT and OASIS requirements to be

³⁴ During the time period while Altavista still owns (but does not operate or control) the TO Interconnection Facilities, the Altavista Customer Interconnection Facilities will not qualify for the blanket waiver and safe harbor provisions of Order No. 807. Once the transfer takes place and AEP owns the TO Interconnection Facilities, Order No. 807's blanket waiver and safe harbor provisions will cover the Customer Interconnection Facilities.

³⁵ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota*, 79 FERC at 62,127; *Easton*, 83 FERC at 62,343).

³⁶ Waiver Request at 7.

unnecessary. Accordingly, we dismiss Altavista's petition for waiver as it pertains to these OATT and OASIS requirements.³⁷

23. With regard to Altavista's petition for waiver of the Commission's Standards of Conduct requirements for the TO Interconnection Facilities, we note that Altavista owns transmission facilities and is a transmission provider as that term is defined in section 358.1(b) of the Commission's regulations, until Altavista transfers ownership of the TO Interconnection Facilities to AEP, so we cannot dismiss the petition as unnecessary. Additionally, we note that if Altavista has generation that will be delivered using the TO Interconnection Facilities, that would further trigger the applicability of the Standards of Conduct requirements under section 358.1(b) of the Commission's regulations.

24. Altavista claims that it has no marketing function employees as defined in part 358 of the Commission's rules and regulations, but will have marketing function employees when it obtains market-based rate authority.³⁸ Without additional information regarding the timing of Altavista obtaining market-based rate authority and when Altavista anticipates making sales for resale in interstate commerce, it appears that there is potential that some employees may be engaging in marketing function activities with respect to the sale for resale of electricity generated by Altavista's Facility.

25. We grant waiver of the Commission's Standards of Conduct requirements under part 358.³⁹ Although Altavista is a transmission owner until it transfers the TO Interconnection Facilities, it is not responsible for operation or control of the transmission facilities. Because AEP and PJM, not Altavista, are responsible for operating the transmission facilities, Altavista has no ability to engage in discriminatory behavior to benefit its marketing function activities or to harm non-affiliated customers. Although, as acknowledged by Altavista, certain Altavista employees might have limited access to non-public transmission information until the sale is complete, Altavista has committed that they will be trained in the Standards of Conduct and will observe the Standards of Conduct prohibitions.⁴⁰ Additionally, Altavista states that, to the extent that its affiliate, Empire, has marketing function employees, they do not and will not have access to or be provided access, directly, or indirectly, to any non-public information pertaining to the

³⁷ See, e.g., *Wildhorse Wind Energy, LLC*, 169 FERC ¶ 61,240 at P 17 (dismissing similar request for waiver).

³⁸ Waiver Request at 7.

³⁹ See, e.g., *Wildhorse Wind Energy, LLC*, 169 FERC ¶ 61,240 at P 17 (granting similar request for waiver).

⁴⁰ Waiver Request at 8.

TO Interconnection Facilities. We expect that Altavista will extend that commitment and observe the no-conduit rule with respect to all employees that may have access to non-public transmission information of AEP or PJM, including those who are engaged in marketing function activities. When Altavista's representations are considered in this context we believe it is appropriate to grant its request for waiver of the Standards of Conduct.

26. We note that Altavista's waiver of the requirement to comply with the Standards of Conduct will remain in effect unless and until the Commission takes action in response to a complaint to the Commission that Altavista has unfairly used its access to information about transmission to benefit itself or its affiliate.

27. Altavista must notify the Commission if there is a material change in facts that affects its waivers, within 30 days of the date of such change.⁴¹

The Commission orders:

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

(B) Altavista's request for waiver of the requirements to file an OATT, and to establish and maintain an OASIS for the TO Interconnection Facilities, is hereby dismissed as unnecessary, as discussed in the body of this order.

⁴¹ *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).

(C) Altavista's request for waiver of the requirements to comply with the Standards of Conduct for the TO Interconnection Facilities is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.