

143 FERC ¶ 61,040
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Lockhart Power Company

Docket No. ER13-63-000

ORDER GRANTING WAIVER OF ORDER NO. 1000

(Issued April 18, 2013)

1. On October 10, 2012, Lockhart Power Company (Lockhart) requested waiver of the requirements of Order No. 1000.¹ This order grants Lockhart a waiver of the requirements of Order No. 1000.

Background

2. In Order No. 1000, the Commission amended the transmission planning and cost allocation requirements of Order No. 890² to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. Order No. 1000's transmission planning reforms require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional plan; (2) amend its Open Access Transmission Tariff (OATT) to describe procedures for the consideration of transmission needs driven by public policy requirements established by state or federal laws or regulations in the local and regional transmission planning process; (3) remove

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

² *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).

federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities; and (4) improve coordination between neighboring transmission planning regions for new interregional transmission facilities.

3. Order No. 1000 also requires that each public utility transmission provider must participate in a regional transmission planning process that has: (1) a regional cost allocation method for the cost of new transmission facilities selected in a regional transmission plan for purposes of cost allocation; and (2) an interregional cost allocation method for the cost of certain new transmission facilities that are located in two or more neighboring transmission planning regions and are jointly evaluated by the regions in the interregional transmission coordination procedures required by Order No. 1000.

Request for Waiver

4. Lockhart states that it is a small electric utility located in upstate South Carolina. Lockhart is predominately engaged in retail power sales and serves only one wholesale customer, the City of Union, South Carolina (Union City), pursuant to a pre-OATT grandfathered bundled sales agreement.³

5. Lockhart states that it is interconnected with Duke Energy Carolinas, LLC (Duke Energy) and has limited and discrete transmission facilities that are devoted to delivering generation from Duke Energy to Union City. Specifically, Lockhart states that it owns and operates approximately 90 miles of 34.5 kV transmission lines that serve as a radial extension of Duke's transmission system.

6. Lockhart states that it was granted waivers of Order Nos. 888, 889,⁴ and 890,⁵ including the requirement to have an OATT on file. However, Lockhart committed to comply with the requirements of Order No. 890 regarding coordinated, open and transparent transmission planning by participating in the regional planning activities undertaken by the transmission providers in its region.

7. Lockhart states that it intends to participate in the North Carolina Transmission Planning Collaborative (NCTPC) as a stakeholder. Lockhart states that it does not meet the standards for enrolling as a transmission provider in NCTPC, since in order to enroll,

³ Service Agreement No. 3 under Lockhart's FERC Electric Tariff, Original Volume No. 1.

⁴ *Soyland Power Coop., Inc.*, 78 FERC ¶ 61,095 (1997).

⁵ *Lockhart Power Co.*, 120 FERC ¶ 61,036 (2007).

an entity must have an OATT and be registered with the North American Electric Reliability Corporation (NERC) as a Planning Authority and a Transmission Service Provider. Lockhart notes that it is not a registered Transmission Owner, Transmission Operator, or Transmission Service Provider with NERC. As such, Lockhart states it has no obligation to abide by NERC's Transmission Planning Reliability Standards.

8. Lockhart notes that Duke Energy, the utility with which Lockhart is interconnected, has enrolled in the transmission planning process for the NCTPC region. Lockhart asserts that it is a network transmission customer of Duke Energy and will thus bear a load-ratio share of any transmission cost allocation to Duke Energy.

9. For the reasons discussed above, Lockhart requests waiver of the requirements of Order No. 1000.

Notice of Filing

10. Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 64,975 (2012), with interventions, comments and protests due on or before November 26, 2012. On November 26, 2012, American Wind Energy filed an intervention. No protests or adverse comments were filed.

Discussion

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notices of intervention and timely, unopposed motions to intervene serve to make the entity that filed it a party to this proceeding.

12. In Order No. 1000, the Commission stated that the criteria for waiver of the requirements of the Final Rule is unchanged from that used to evaluate request for waiver under Order Nos. 888, 889, and 890.⁶ The Commission subsequently clarified that it would "entertain requests for waiver of Order No. 1000 on a case-by-case basis."⁷

13. In *Black Creek Hydro, Inc.*,⁸ the Commission stated that it would grant requests for waiver of Order No. 888 by 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

⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 832.

⁷ Order No. 1000-A, 139 FERC ¶ 61,132 at P 753.

⁸ 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*).

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. The Commission also explained that waiver of Order No. 889 would be appropriate: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities; or (2) if the applicant is a small public utility that owns, operates, or controls an integrated transmission grid, unless other circumstances are present which indicate that a waiver would not be justified.⁹ As Lockhart notes, the Commission previously granted its waiver of Order No. 890's requirement to have an OATT on file, reasoning that Lockhart's transmission facilities are limited and discrete.¹⁰ The Commission did, however, require Lockhart to participate in the regional planning activities undertaken by transmission providers in Lockhart's region pursuant to Order No. 890.¹¹

14. Based on the statements in Lockhart's filing, we find that Lockhart's transmission facilities continue to be limited and discrete. The only transmission service that Lockhart provides is based on a pre-OATT agreement. In light of these circumstances, we grant Lockhart a waiver of the Order No. 1000 requirements related to OATT revisions. However, while we are granting waiver here of the requirements of Order No. 1000, this does not mean that Lockhart is immune from the potential of being allocated costs of regional transmission facilities that are selected in the regional transmission plan for purposes of cost allocation.¹² As noted in Order No. 1000-A, the public utility transmission providers in each transmission planning region, in consultation with their stakeholders, may consider proposals to allocate costs directly to entities (for example, generators or network customers) as beneficiaries that could be subject to regional or interregional cost allocation.¹³ Further, we accept Lockhart's commitment to participate,

⁹ *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.

¹⁰ *Lockhart Power Co.*, 120 FERC ¶ 61,036 at P 9.

¹¹ *Id.* P 10.

¹² Lockhart acknowledges this fact in its transmittal. Lockhart Filing at 3 (“Lockhart, in truth, is a network transmission customer of [Duke Energy] and thus will bear a load-ratio share of any transmission cost allocation to [Duke Energy].”).

¹³ Order No. 1000-A, 139 FERC ¶ 61,132 at P 680.

as a stakeholder, in the Order No. 1000 compliant regional transmission planning activities undertaken by public utility transmission providers in its region.¹⁴

The Commission orders:

Lockhart's request for waiver of the Order No. 1000 requirements is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁴ Lockhart Filing at 2 (“...Lockhart committed to participate in the regional planning activities undertaken by the transmission providers in its region pursuant to Order No. 890,” and “...Lockhart plans to participate in regional planning activities under Order No. 1000 as a stakeholder...”).