

143 FERC ¶ 61,139
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.

SU FERC, L.L.C.

Docket No. OA12-1-000

ORDER GRANTING WAIVER OF ORDER NO. 1000

(Issued May 16, 2013)

1. On October 11, 2011, SU FERC, L.L.C. (SU FERC) filed a request for waiver of the requirements of Order No. 1000.¹ This order grants SU FERC a waiver of the requirements of Order No. 1000, as described below.

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 transmission 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 local, state, or federal laws or regulations in the local and regional transmission planning processes; (3) remove federal rights of first refusal from Commission-jurisdictional tariffs

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).

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. 1000.³

Request for Waiver

4. SU FERC states that it is a public utility transmission provider in Texas that was formed to lease, maintain and operate the Commission-jurisdictional transmission facilities owned by NewCorp Resources Electrical Cooperative, Inc. (NewCorp). On October 8, 2010, the Commission accepted SU FERC's succession to and adoption of NewCorp's OATT.⁴ SU FERC's affiliate, Sharyland Utilities, L.P. (Sharyland), operates the transmission facilities at SU FERC's direction.

5. SU FERC requests waiver of the requirements in Order No. 1000. SU FERC argues that it satisfies the waiver criteria set forth in Order No. 1000 because it controls limited and discrete transmission facilities that do not form an integrated transmission grid. SU FERC states that it has limited resources, makes no sales of energy, and serves only one customer, its affiliate Sharyland. SU FERC also states that it is not aware of any entity that has been unable to receive information to evaluate transmission needs for service on the transmission facilities under SU FERC's operational control. SU FERC argues that these facts, which the Commission relied upon to grant NewCorp and SU FERC waiver of the requirements of Order Nos. 889 and 890 and the Standards of Conduct, justify granting SU FERC waiver of the requirements of Order No. 1000. SU FERC notes that its balancing authority, Southwestern Public Service Company (SPS), has complied with the Order No. 890 planning requirements and will presumably comply with Order No. 1000.

6. Pursuant to an order issued by the Public Utilities Commission of Texas, SU FERC adds that it will disconnect most of its transmission facilities from SPP and interconnect them with the Electric Reliability Council of Texas (ERCOT) on or before

³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 9.

⁴ *SU FERC, L.L.C.*, 133 FERC ¶ 61,022 (2010).

January 1, 2014.⁵ SU FERC explains that, at that time, the entire load of its only customer, Sharyland, will move to ERCOT.⁶ SU FERC argues that it would be impractical and a substantial burden on SU FERC, its customer, and other participants in the regional planning process to comply with Order No. 1000.

Notice of Filing

7. Notice of SU FERC's filing was published in the *Federal Register*, 76 Fed. Reg. 64,937 (2011), with interventions and protests due on or before November 1, 2011. No interventions, comments or protests were filed.

Discussion

8. 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 requests for waiver under Order Nos. 888, 889, and 890.⁷ The Commission subsequently clarified that it would "entertain requests for waiver of Order No. 1000 on a case-by-case basis."⁸

9. In *Black Creek Hydro, Inc.*,⁹ 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 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

⁵ See SU FERC October 11, 2011 Waiver Request at 1 n.4 (citing *Application of Sharyland Utilities, L.P. to Approve Study and Plan Pursuant to the Commission's Order in Docket No. 37990 Concerning the Movement of Sharyland's Stanton and Colorado City Divisions From the Southwest Power Pool to ERCOT*, Docket No. 39070, Order (P.U.C. Tex. July 8, 2011)).

⁶ See *id.* at 1-2, 7-8; see also Southwestern Public Service Co., Application for Authorization under Section 203 of the Federal Power Act for Disposition of Jurisdictional Facilities, Docket No. EC13-100-000, at 3 n.6 (filed Apr. 29, 2013) (noting that two divisions of Sharyland currently are interconnected with SPP, but those divisions will be disconnected from SPP and interconnected to ERCOT by December 31, 2013).

⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 832.

⁸ Order No. 1000-A, 139 FERC ¶ 61,132 at P 753.

⁹ 77 FERC ¶ 61,232, at 61,941 (1996).

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.¹⁰

10. We find that, given SU FERC's unique circumstances, it is appropriate to grant it waiver of the transmission planning and cost allocation requirements in Order No. 1000. Based on the statements in SU FERC's filing, we find that SU FERC controls limited and discrete transmission facilities that do not form an integrated transmission grid. SU FERC has only one customer, its affiliate Sharyland. SU FERC states that it does not have any other existing or potential transmission customers directly interconnected with its transmission facilities, and SU FERC's transmission system is primarily radial with limited interconnections.

11. In light of these circumstances, we grant SU FERC a waiver of the Order No. 1000 requirements. However, while we are granting waiver here of the requirements of Order No. 1000, this does not mean that SU FERC is immune from the potential of being allocated costs of regional transmission facilities that are selected in a regional transmission plan for purposes of cost allocation. 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.¹¹

¹⁰ *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.

¹¹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 680.

The Commission orders:

SU FERC'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.