

145 FERC ¶ 61,142
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.

Genesis Solar, LLC

Docket No. OA13-8-000

ORDER GRANTING REQUEST FOR WAIVERS

(Issued November 21, 2013)

1. In this order, the Commission grants Genesis Solar, LLC's (Genesis Solar) request for waiver of the Commission's obligations 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, effective October 1, 2013, as requested.

I. Background

2. On September 18, 2013, pursuant to section 205 of the Federal Power Act (FPA),¹ Genesis Solar filed a request for waiver of the requirements of Order Nos. 888² and 890³

¹ 16 U.S.C. § 824d (2006).

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), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81FERC ¶ 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) (Order No. 888).

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

to file an OATT, the requirement of Order No. 889⁴ to establish an OASIS, and the Standards of Conduct under Part 358 of the Commission's regulations,⁵ though Genesis Solar acknowledges that no facilities are currently being shared.

3. Genesis Solar states that it will own and operate a solar thermal generating facility with a net electrical output of 250 MW located in Riverside County, California. This generating station consists of two separate units which share linear facilities. Each unit has a net electrical output of 125 MW. The generating facility will interconnect to the Southern California Edison Company's (SoCal Edison) Colorado River substation via a 14-mile 220kV generation tie line owned by Genesis Solar, among other interconnection-related elements.⁶ Additionally, Genesis Solar states that, while it is currently the sole user of the tie line, its affiliate, McCoy Solar, LLC (McCoy), may share certain interconnection facilities that are owned by Genesis Solar in the future.⁷

4. Genesis Solar contends that good cause exists for the Commission to grant the requested waivers. According to Genesis Solar, this interconnection facility is not an integrated component of any electricity grid and is designed solely to enable Genesis Solar to transmit the power from its generating facilities to the transmission grid.⁸

⁴ *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) (Order No. 889).

⁵ 18 C.F.R. Part 358 (2013). *See also 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); *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) (Order No. 717).

⁶ Request for Waivers at 2.

⁷ *Id.*

⁸ *Id.* at 3-4.

Furthermore, Genesis Solar argues that it would be burdensome to file an OATT or to establish an OASIS where it is the sole user of the interconnection facility and where an affiliated generator may or may not share a portion of the interconnection facilities in the future. Genesis Solar also asserts that the facilities are limited and discrete.⁹ Finally, Genesis Solar notes that the Commission's practice is to grant waiver to small utilities (no more than 4 million MWh annually) and explains that its application satisfies that criteria, since the maximum amount of energy that could be transmitted annually over the 220 kV line to SoCal Edison's substation is approximately 2,190,000 MWh.¹⁰

5. Genesis Solar also requests waiver of the Commission's 60-day notice requirements to allow an effective date of October 1, 2013, which is the same date Genesis Solar requested that its market-based rate tariff become effective.¹¹ According to Genesis Solar, it is participating in the Department of Energy's loan guarantee program and therefore needs coordination of these dates.

II. Notice of Filings and Responsive Pleadings

6. Notice of Genesis Solar's filing was published in the *Federal Register*, 78 Fed. Reg. 59,664 (2013), with interventions and protests due on or before October 9, 2013. None was filed.

III. Discussion

7. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations¹² require public utilities to file an OATT before providing transmission service. Order No. 889 and Parts 37 and 358 of the Commission's regulations¹³ require public utilities to establish an OASIS and abide by certain Standards of Conduct. In prior orders, the Commission has set forth the standards for waiver of, or exemption from, some or all of the requirements of Order Nos. 888 and 889.¹⁴ The Commission has stated that the

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ See Docket No. ER13-2112-000. Genesis Solar's application for market-based rate authority was accepted by letter order on September 25, 2013.

¹² 18 C.F.R. § 35.28 (2013).

¹³ See 18 C.F.R. Part 37 and Part 358 (2013).

¹⁴ 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*).

criteria for waiver of the requirements of Order No. 890 and Order No. 2004¹⁵ are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹⁶ Order No. 717 did not change those criteria.¹⁷

8. The Commission may grant requests for waiver of Order Nos. 888 and 890 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. If the public utility receives such a request, the Commission has determined that the public utility 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.¹⁸

9. The Commission has also determined that waiver of Order No. 889 is appropriate for a public utility under the following circumstances: (1) the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) the applicant is a small public utility that owns, operates, or controls an integrated transmission grid, unless it is a member of a tight power pool, or other circumstances are present that indicate that a waiver would not be justified.¹⁹ In addition, the Commission grants waivers to small public utilities based on the criterion that they dispose of no more than 4 million MWh annually.²⁰ Moreover, the Commission

¹⁵ See 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).

¹⁶ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007).

¹⁷ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 32-34.

¹⁸ *Black Creek*, 77 FERC at 61,941.

¹⁹ *Id.* 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 the Standards of Conduct. Additionally, size is not relevant to whether waivers are granted to public utilities because they participate in a Commission-approved Independent System Operator or Regional Transmission Organization.

²⁰ See *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009).

has held that a 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).²¹

10. Based on the statements in Genesis Solar's filing, we find that the transmission facilities at issue are limited and discrete. The 14-mile 220 kV generation tie line is not an integrated component of the electricity grid and will be utilized solely to facilitate the transmission of power to the transmission system of SoCal Edison or for its affiliate, McCoy.²² Accordingly, we will grant Genesis Solar's request for waiver of the requirements of Order Nos. 888, 890 and section 35.28 of the Commission's regulations to have an OATT on file.

11. However, if Genesis Solar receives a request for transmission service from a non-affiliate, it must file with the Commission a *pro forma* OATT within 60 days of the date of the request, and it must comply with any additional requirements that are effective on the date of the request.

12. The Commission will also grant Genesis Solar's request for waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to establishing an OASIS, and Order No. 889 and Part 358 of the Commission's regulations with respect to the Standards of Conduct. In addition to owning and operating a limited a discrete transmission line, Genesis Solar qualifies as a small utility.

13. 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.²³ Similarly, Genesis Solar's request for waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an

²¹ *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).

²² Commission precedent allows a waiver to continue if the transmission service is merely for an affiliate. *E.g.*, *Limon Wind, LLC*, 141 FERC ¶ 61,064, at P 15 (2012).

²³ *See supra* n.28.

entity that Genesis Solar has unfairly used its access to information to benefit itself or its affiliate.²⁴

14. Finally, we will grant Genesis Solar's request that the waivers become effective on October 1, 2013, consistent with Genesis Solar's authorization to charge market-based rates.²⁵

The Commission orders:

Genesis Solar's request for waiver of the OATT, OASIS, and Standards of Conduct requirements is hereby granted, effective October 1, 2013, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁴ *Id.* Genesis Solar must notify the Commission if there is a material change in facts that affects the 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).

²⁵ *See Central Hudson Gas & Electric Co.*, 60 FERC ¶ 61,106, at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992).