

144 FERC ¶ 61,109  
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.

DPL Energy, LLC

Docket No. ER13-1744-000

ORDER ACCEPTING LEASE AGREEMENT AND  
GRANTING REQUESTS FOR WAIVER

(Issued August 7, 2013)

1. On June 21, 2013, DPL Energy, LLC (DPLE) filed a lease agreement<sup>1</sup> (Lease Agreement) between DPLE and AES ES Tait, LLC (AES ES Tait). Under the Lease Agreement, DPLE will lease certain facilities to AES ES Tait and AES ES Tait will install metering and related equipment which will enable AES ES Tait to offer and deliver regulation service into the PJM Interconnection, L.L.C. (PJM) market. In this order, the Commission accepts for filing the Lease Agreement, effective August 10, 2013, as requested. We also grant DPLE's requests for waiver of the obligation to file an Open Access Transmission Tariff (OATT) at this time, to comply with the Commission's Standards of Conduct, and to establish and maintain an Open Access Same-Time Information System (OASIS).

**I. Background**

2. DPLE is a wholly-owned subsidiary of DPL Inc., which is also the parent company of the Dayton Power and Light Company (DP&L). DPL Inc. is owned by AES Corporation (AES). DPLE owns and operates merchant generation facilities with an installed capacity of approximately 556 MW, and all of these facilities are interconnected with the transmission system controlled by PJM. DPLE makes all of its

---

<sup>1</sup> Designated as DPL Energy, LLC, Rate Schedule No. 3.

sales under market-based rate authorization granted by the Commission.<sup>2</sup> Among DPLE's generating assets are four gas-fired combustion turbines located at the site of the Tait Electric Generating Station (Tait Station) in Dayton, Ohio, which have an installed capacity of 307 MW.<sup>3</sup> These generators are interconnected with DP&L's transmission system. The interconnection facilities owned by DPLE at the Tait Station are the subject of the instant filing.

3. AES ES Tait is a wholly-owned subsidiary of AES Energy Storage, LLC, which is owned by AES. AES ES Tait is the successor to AES ES Westover, LLC (AES ES Westover), which formerly operated a 20 MW battery-based storage project within the New York Independent System Operator's balancing authority area. The Commission granted AES ES Westover market-based rate authorization on April 23, 2010.<sup>4</sup> AES ES Tait filed a Notice of Succession to AES ES Westover's market-based rate tariff on May 23, 2013, and the Commission accepted that filing on June 26, 2013.<sup>5</sup> AES ES Tait now plans to relocate the same storage project (now known as the Tait Battery Project) to the Tait Station in order to offer regulation service into the PJM market.

4. Under the Lease Agreement, DPLE will lease certain facilities to AES ES Tait and AES ES Tait will install metering and related equipment to connect the Tait Battery Project to the DP&L transmission system and offer regulation service into the PJM market. AES ES Tait will use a portion of a transformer and certain related infrastructure owned by DPLE (Leased Facilities), including a line physically interconnecting DPLE's

---

<sup>2</sup> *Dayton Power & Light Co.*, Docket No. ER10-2491-000 (Nov. 1, 2010) (delegated letter order).

<sup>3</sup> DPLE December 14, 2010 Submission of 2010 Market Power Analysis of the Dayton Power and Light Company and DPL Energy, LLC at Exhibit 1 (Docket No. ER96-2601-000).

<sup>4</sup> *AES ES Westover, LLC*, Docket Nos. ER10-712-000 and ER10-712-001 (Apr. 23, 2010) (delegated letter order). AES ES Westover's market-based rate authority is not subject to any limitations.

<sup>5</sup> *AES ES Tait, LLC*, Docket No. ER13-1544-000 (Jun. 26, 2013) (delegated letter order).

facilities at the Tait Station to the DP&L transmission system. Specifically, AES ES Tait will use a tap connection to Tait Unit 7, owned by DP&L, using the existing 13.8/69 kV generator step-up transformer and related appurtenances.<sup>6</sup> AES ES Tait will also install certain metering and related equipment (Equipment) at the site. The Lease Agreement sets out the terms and conditions governing DP&L's lease of the Leased Facilities to AES ES Tait, and AES ES Tait's installation of the Equipment.

5. DP&L states that the Lease Agreement has been freely negotiated between DP&L and AES ES Tait and that, under the terms of the Lease Agreement, rent payments will be paid quarterly by AES ES Tait to DP&L for an initial term of seven years, beginning with the commercial operation of the Tait Battery Project.<sup>7</sup> DP&L further states that neither DP&L nor AES ES Tait has any captive wholesale or transmission service customers.<sup>8</sup> DP&L requests an effective date for the Lease Agreement of August 10, 2013, to allow the Tait Battery Project to commence operation at the time it is first expected to be able to discharge energy to the transmission grid.<sup>9</sup>

6. DP&L states that the Leased Facilities are less than 250 yards in total length and include a 13.8 kV bus duct, 13.8/69 kV step-up transformer, 69 kV line, and associated protection equipment.<sup>10</sup> AES ES Tait will connect its battery generation facilities at a bus duct to interconnect with DP&L facilities. The bus extends approximately 50 yards to the low-side of the 13.8/69 kV step-up transformer owned by DP&L that increases the voltage of the power produced to 69 kV. DP&L also owns and is leasing the 69 kV line that extends less than 200 yards from the step-up transformer to the point of interconnection to DP&L's transmission system.<sup>11</sup>

---

<sup>6</sup> DP&L June 21, 2013 Transmittal Letter (Transmittal Letter) at n. 14.

<sup>7</sup> DP&L estimates that the annual revenue it will receive from AES ES Tait under the Lease Agreement over the initial seven year term is \$34,200 (Transmittal Letter at 5-6).

<sup>8</sup> Transmittal Letter at 6.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> DP&L July 29, 2013 Supplemental Information Letter at 1, 2.

<sup>11</sup> *Id.* at 2.

7. DPLE states that it meets the criteria set by the Commission for waiver of the requirements of Order Nos. 888,<sup>12</sup> 889,<sup>13</sup> 890,<sup>14</sup> and section 35.28,<sup>15</sup> Part 37,<sup>16</sup> and Part 358<sup>17</sup> of the Commission's regulations. It avers that the Leased Facilities are limited and discrete and do not constitute an integrated transmission system, and that DPLE disposes of no more than 4 million MWh of energy annually.

8. DPLE requests waiver of the requirement to provide a statement of its cost computations pursuant to section 35.12(b)(2)(ii) of the Commission's regulations,<sup>18</sup> based on its statement that the charges to be paid by AES ES Tait under the Lease Agreement have been freely negotiated between the parties. DPLE also requests waiver of any obligation to provide estimated monthly revenues pursuant to section 35.12(b)(1) of the Commission's regulations.<sup>19</sup> In its filing, DPLE provides estimated quarterly revenues instead.

---

<sup>12</sup> *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).

<sup>13</sup> *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).

<sup>14</sup> *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 clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>15</sup> 18 C.F.R. § 35.28 (2012).

<sup>16</sup> 18 C.F.R. pt. 37.

<sup>17</sup> 18 C.F.R. pt. 358.

<sup>18</sup> 18 C.F.R. § 35.12(b)(2)(ii).

<sup>19</sup> 18 C.F.R. § 35.12(b)(1).

## II. Notice of Filing

9. Notice of DPLE's filing was published in the *Federal Register*, 78 Fed. Reg. 40,135 (2013), with motions to intervene, comments, and protests due on or before July 12, 2013. None were filed.

## III. Discussion

10. The Commission finds the terms and conditions of the Lease Agreement to be just and reasonable and not unduly discriminatory or preferential. Accordingly, we will accept the proposed Lease Agreement for filing, to be effective August 10, 2013, as requested.

11. 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 prior to providing transmission service. Order No. 889 and Part 37 of the Commission's regulations require public utilities to establish an OASIS. Order No. 889 and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct. 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.<sup>20</sup> The Commission has stated that the criteria for waiver of the requirements of Order No. 890 have not changed from those used to evaluate requests for waiver under Order Nos. 888 and 889.<sup>21</sup> Order No. 717<sup>22</sup> did not change those criteria.<sup>23</sup>

12. The Commission may grant requests for waiver of the obligation to file an OATT 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

---

<sup>20</sup> 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*).

<sup>21</sup> 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).

<sup>22</sup> *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).

<sup>23</sup> See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

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 are effective on the date of the request.<sup>24</sup>

13. The Commission has determined that waiver of the requirements to establish an OASIS and abide by the Standards of Conduct would be appropriate for a public 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, unless other circumstances are present that indicate that waiver would not be justified.<sup>25</sup> The Commission grants waivers to small public utilities based on the threshold of whether they dispose of no more than 4 million MWh annually.<sup>26</sup> Moreover, 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).<sup>27</sup>

14. Based on DPLE's representations, we find that the Leased Facilities are limited and discrete and do not constitute an integrated transmission system for purposes of the waiver analysis considered in this order. The facilities will be used solely to facilitate the transmission of power from the Tait Battery Project and DPLE's generating resources at

---

<sup>24</sup> *Black Creek*, 77 FERC at 61,941.

<sup>25</sup> *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 because they participate in a Commission-approved Independent System Operator or Regional Transmission Organization. See 18 C.F.R. § 358.1(c) (2012).

<sup>26</sup> See *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009).

<sup>27</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998)).

the Tait Station to the grid.<sup>28</sup> Accordingly, we will grant DPLE's requests for waiver of the requirements set forth in Order Nos. 888 and 890, and section 35.28, Part 37, and Part 358 of the Commission's regulations, as those requirements pertain to the Leased Facilities.<sup>29</sup> However, if DPLE 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.

15. We will grant DPLE's requests for waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations, with respect to OASIS, and Order Nos. 889 and Part 358, with respect to the Standards of Conduct, as those requirements pertain to the Leased Facilities. We note that DPLE'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 transmission needs could not get the information necessary to complete its evaluation.<sup>30</sup> Likewise, DPLE'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 DPLE has unfairly used its access to information to benefit itself or its affiliate.<sup>31</sup>

16. We will grant DPLE's request for waiver of the requirement to provide a statement of its cost computations pursuant to section 35.12(b)(2)(ii) of the Commission's regulations. We will also grant DPLE's request for waiver of the requirement to provide estimated monthly revenues pursuant to section 35.12(b)(1). The quarterly revenues estimates provided by DPLE in its filing are deemed sufficient.

---

<sup>28</sup> 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).

<sup>29</sup> *Evergreen Wind Power III, LLC*, 135 FERC ¶ 61,030 at n.18 (2011).

<sup>30</sup> *CSOLAR IV South LLC*, 143 FERC ¶ 61,275, at P 17 (2013).

<sup>31</sup> *Id.* DPLE 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).

The Commission orders:

(A) The Lease Agreement between DPLE and AES ES Tait is hereby accepted for filing, as discussed in the body of this order, effective August 10, 2013, as requested.

(B) DPLE's requests for waiver of the Commission's OATT, OASIS, and Standards of Conduct requirements are hereby granted, as discussed in the body of this order.

(C) DPLE's request for waiver of the relevant sections of Part 35 of the Commission's regulations is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.