

171 FERC ¶ 61,023  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Wilderness Line Holdings, LLC

Docket Nos. ER20-519-000  
TS20-2-000

ORDER GRANTING WAIVERS

(Issued April 16, 2020)

1. In this order, we grant Wilderness Line Holdings, LLC's (Wilderness Holdings) request for waiver of the Commission's requirements to establish and maintain an Open Access Same-Time Information System (OASIS) and to comply with the Commission's Standards of Conduct.

**I. Background**

2. On December 4, 2019, as amended on February 19, 2020, Wilderness Holdings submitted a request for waiver of the Commission's OASIS and Standards of Conduct requirements under Order Nos. 889,<sup>1</sup> 2004,<sup>2</sup> and 717,<sup>3</sup> as well as parts 37<sup>4</sup> and 358<sup>5</sup> of the Commission's regulations.

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<sup>1</sup> *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).

<sup>2</sup> *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).

3. In support, Wilderness Holdings states that it is a wholly-owned indirect subsidiary of Terra-Gen, LLC and that it is a special purpose entity that was formed to acquire Sky River LLC's (Sky River) majority ownership interest in the Wilderness Line (Transaction).<sup>6</sup> The Wilderness Line is a nine-mile, 230 kV radial transmission line located in Kern County, CA, that is currently owned by Sky River and several generating facilities.<sup>7</sup> Wilderness Holdings also states that the Wilderness Line is used solely to transmit the output of individual generation facilities to the integrated transmission grid.

4. Wilderness Holdings states that it does not own or control any generation capacity and therefore it will not make any unbundled sales or take service under its Open Access Transmission Tariff (OATT).<sup>8</sup> Wilderness Holdings further states that, following the consummation of the Transaction, it will provide firm point-to-point transmission service under its OATT to two existing customers, Windstar Energy, LLC and Tehachapi Wind Wall, LLC.<sup>9</sup>

5. Wilderness Holdings states that it qualifies for the requested waivers because it is a small public utility and because the Wilderness Line is limited and discrete and not part of the regional power grid. Wilderness Holdings explains that it meets the definition of a small public utility because the electric sales on the Wilderness Line will be less than four million MWh annually.

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<sup>3</sup> *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).

<sup>4</sup> 18 C.F.R. pt. 37 (2019).

<sup>5</sup> 18 C.F.R. pt. 358 (2019).

<sup>6</sup> Wilderness Holdings December 4, 2019 Filing Letter at 2.

<sup>7</sup> Qualifying Facilities are defined in the Public Utilities Regulatory Policies Act of 1978, as amended, 16 U.S.C. § 2601 *et seq.* (2006).

<sup>8</sup> Wilderness Holdings February 20, 2020 Filing Letter at 2.

<sup>9</sup> *Id.* The Commission is concurrently issuing an order accepting Wilderness Holdings' OATT in Docket No. ER20-511-002.

6. Wilderness Holdings requests that the waivers become effective on the date that the Transaction is consummated. To permit this, Wilderness Holdings requests waiver of the requirements in section 35.28(d)(1) of the Commission's regulations so that it may file a request for waiver of the OASIS and Standards of Conduct requirements on less than 60 days prior to the effective date of the compliance requirements. Wilderness Holdings commits to notify the Commission of the effective date of the waivers within 10 days of closing the Transaction.<sup>10</sup>

## II. Notice and Pleadings

7. Notice of Wilderness Holdings' December 4, 2019 filing was published in the *Federal Register*, 84 Fed. Reg. 67,740 (Dec. 11, 2019), with interventions and protests due on or before December 26, 2019. None was filed.

8. Notice of Wilderness Holdings' February 19, 2020 filing was published in the *Federal Register*, 85 Fed. Reg. 11,361 (Feb. 27, 2020), with interventions and protests due on or before March 11, 2020. None was filed.

## III. Discussion

9. Order Nos. 888<sup>11</sup> and 890<sup>12</sup> and section 35.28 of the Commission's regulations<sup>13</sup> require public utilities that own, operate, or control facilities used for the transmission of

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<sup>10</sup> *Id.* at 4.

<sup>11</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) (cross-referenced at 75 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 Pol'y Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. N. Y. v. FERC*, 535 U.S. 1 (2002); *see also City Util. Comm'n of Owensboro*, 140 FERC ¶ 61,163, at P 3 (2012); *Kan. City Bd. of Pub. Utils.*, 140 FERC ¶ 61,113, at P 8 (2012).

<sup>12</sup> *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).

<sup>13</sup> 18 C.F.R. § 35.28 (2019).

electric energy in interstate commerce to file an OATT prior to providing transmission service.<sup>14</sup> Order No. 889 and part 37 of the Commission's regulations<sup>15</sup> require public utilities to establish 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.<sup>16</sup> 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>17</sup> The Commission has stated that the criteria for waiver of the requirements of Order Nos. 890 and 2004 have not changed from those used to evaluate requests for waiver under Order Nos. 888 and 889.<sup>18</sup> Order No. 717 did not change those criteria.<sup>19</sup>

10. The Commission has determined that waiver of the requirement 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 a waiver would not be justified.<sup>20</sup> The Commission grants waivers to small public utilities based on the threshold of whether they dispose of no more than four million MWh annually.<sup>21</sup>

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<sup>14</sup> AMPT did not seek waiver of the requirement to file an OATT with the Commission. AMPT currently has a Commission-approved OATT on file. See *PJM Interconnection, L.L.C.*, 166 FERC ¶ 61,216 (2019) (AMPT Formula Rate Order).

<sup>15</sup> 18 C.F.R. pt. 37.

<sup>16</sup> 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.

<sup>17</sup> See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Miss., Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

<sup>18</sup> See *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

<sup>19</sup> See Order No. 717, 125 FERC ¶ 61,064 at PP 31-33.

<sup>20</sup> *Black Creek*, 77 FERC at 61,941. 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) (*Black Hills*), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Moreover, *Black Hills* did not affect waivers based on a public utility disposing of no more than four million megawatt-hours annually.

<sup>21</sup> See *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009).

11. 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 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>22</sup>

12. We grant Wilderness Holdings' requests for waiver of the requirement to establish and maintain an OASIS and comply with the Standards of Conduct. We find that Wilderness Holdings meets the Commission's definition of a small public utility because it has annual electric sales of no more than four million MWh.<sup>23</sup> Wilderness Holdings states that the Wilderness Line has a total maximum capacity of 400 MW, the majority of which is not subscribed, and that, even if the Wilderness Line is fully subscribed and every MW of capacity is used during every hour of a fiscal year, with no generation or transmission facility outages, the maximum amount of energy that can be transmitted annually over the Wilderness Line is 3,504,000 MWh (400 MW x 8760 hours).<sup>24</sup> Accordingly, based on the statements in Wilderness Holdings' filing, we agree that Wilderness Holdings will not exceed the four million MWh threshold.

13. Waiver of the OASIS and Standard of Conduct requirements 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 waiver) or an entity complains that Wilderness Holdings has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waiver).<sup>25</sup>

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<sup>22</sup> *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*)).

<sup>23</sup> Wilderness Holdings February 19, 2020 Filing Letter at 2.

<sup>24</sup> *Id.*

<sup>25</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota*); *Easton*, 83 FERC ¶ at 62,343. Wildhorse Wind must notify the Commission if there is a material change in facts that affects 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:

Wilderness Holdings' request for waivers of OASIS and the Standards of Conduct, is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.