

143 FERC 61,241
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Sky River, LLC

Docket Nos. ER13-388-001
ER13-388-002

ORDER ACCEPTING SHARED FACILITIES AGREEMENT AND
GRANTING REQUEST FOR WAIVERS

(Issued June 20, 2013)

1. This order accepts for filing the Shared Facilities Agreement filed by Sky River LLC (Sky River) between itself and North Sky River Energy, LLC (North Sky), effective November 16, 2012, as requested. In addition, this order grants Sky River's request for waiver of certain requirements under Order Nos. 888,¹

¹ *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) (Order No. 888).

889,² and 890,³ and section 35.28, Part 37 and Part 358⁴ of the Commission's regulations.

I. Background

2. On November 15, 2012, Sky River filed a Shared Facilities Agreement between itself and North Sky. Due to deficiencies with the November 15 Filing, on January 8, 2013, Sky River filed a request to defer action on the Shared Facilities Agreement. On April 24, 2013, Sky River filed an amendment to the November 1 filing, asking the Commission to accept the Shared Facilities Agreement and grant certain waivers.

² *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).

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).

⁴ 18 C.F.R. § 35.28, 18 C.F.R. Part 37, and 18 C.F.R. Part 358 (2012). *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).

3. Sky River and North Sky are wholly-owned subsidiaries of NextEra Energy Resources, LLC, which is a wholly-owned subsidiary of NextEra Energy, Inc. Sky River owns and operates a 77.5 MW wind energy generating facility (Sky River Project) located in Kern County, California. North Sky owns and operates a 162 MW wind energy generating facility (North Sky Project) also in Kern County, California. Output from the North Sky Project is sold to Pacific Gas and Electric Company pursuant to a long-term power purchase agreement.⁵

4. Prior to December 4, 2012, the output of the Sky River and North Sky Project was being transmitted over an 18-mile long, 230 kV radial generator tie-line to the Tehachapi Substation (Sky River Line) and then on to Southern California Edison's Vincent substation via certain transmission facilities and appurtenant substations owned by Sky River or other entities.

5. By December 4, 2012, the Sky River Line disconnected from its previous interconnection with the Tehachapi Substation and was reconfigured to interconnect with the Sky River owned Mandible Switchyard. Output from the North Sky project is received at the Mandible Switchyard over a 12.3 mile 220 kV generator tie-line. From the Mandible Switchyard, the Sky River Line continues for 18 miles and terminates at SoCal Edison's new Highwind Substation. As a result, the output of the North Sky Project and the Sky River Project share the Sky River Line from the Mandible Switchyard to the Highwind Substation.⁶ The Mandible Switchyard and the 18 mile, 220 kV Sky River Mandible to Highwind tie-line constitute the facilities owned by Sky River and used by North Sky and Sky River (Shared Facilities).

II. The Instant Filing

6. The Shared Facilities Agreement memorializes the terms and conditions under which the Shared Facilities and any other shared assets will be constructed, owned, utilized, operated, and maintained. Sky River explains that section 2 of the agreement grants North Sky the non-exclusive right to use the Shared Facilities to operate the North Sky Project.⁷

⁵ Sky River LLC November 15, 2012 Transmittal at 2.

⁶ Sky River LLC April 24, 2013 Amendment at 2.

⁷ Sky River LLC November 15, 2012 Transmittal at 3.

7. Section 3 of the Shared Facilities Agreement details North Sky's obligation to perform in a manner that does not adversely affect the operations of the Sky River Project. Section 4 specifies the allocation of certain costs and expenses incurred in the operation and repair of the Shared Facilities, including the radial transmission line and the interconnection facilities associated with the Highwind Substation, as well as North Sky's sole responsibility for costs associated with the relocation of the Sky River Line from the Tehachapi Substation to the Highwind Substation. Section 5 addresses upgrades to the Sky River Line needed to accommodate the 162 MWs of energy attributable to the North Sky Project's generation and states that Sky River will install the upgrades and North Sky will reimburse Sky River for all reasonable costs associated with the upgrades.⁸

8. Sky River requests waiver of the Commission's prior notice requirement to allow an effective date of November 16, 2012 for the Shared Facilities Agreement.⁹

A. Requests for Waiver

9. For the Shared Facilities, as defined in the Shared Facilities Agreement, Sky River requests that the Commission grant waiver of certain requirements of Order Nos. 888, 889, and 890, as well as section 35.28, and Parts 37 and 358 of the Commission's regulations.¹⁰ Specifically, Sky River requests waiver of the requirement of Order Nos. 888 and 890 to file an Open Access Transmission Tariff (OATT), and the requirement of Order No. 889 to establish an Open-Access Same Time Information System (OASIS). Sky River also requests a waiver of the Standards of Conduct under Part 358 of the Commission's regulations.¹¹

10. Sky River argues that good cause exists for the Commission to grant its request for waivers. According to Sky River, the proposed Shared Facilities Agreement allows North Sky to use the Shared Facilities to receive interconnection service necessary to transmit the output from its wind energy facilities to the point of interconnection and the transmission system of SoCal

⁸ *Id.*

⁹ 18 C.F.R. §§ 35.3 and 35.11 (2012). Sky River LLC November 15, 2012 Transmittal at 5.

¹⁰ Sky River LLC November 15, 2012 Transmittal at 3.

¹¹ *Id.*

Edison. As a result, Sky River asserts that the Shared Facilities are not an integrated component of any electricity grid and that the facilities enable Sky River and North Sky solely to transmit the power from their wind generating facilities to the grid. Furthermore, Sky River argues that it would be burdensome to file an OATT or to establish an OASIS under these circumstances. Sky River adds that the facilities it controls are limited and discrete. Finally, Sky River states that the Commission's practice is to grant waiver to small utilities (4 million MWh annually), and since the maximum amount of energy that could be transmitted annually from both the Sky River and North Sky facilities would be less than 2.1 million MWh annually, this application satisfies that criteria.¹²

IV. Notice of Filings and Responsive Pleadings

11. Notice of Sky River's filing to amend the Sky River LLC Shared Facilities Agreement and to request waivers was published in the *Federal Register*, 78 Fed. Reg. 26,023 (2013), with interventions and protests due on or before May 15, 2013. None was filed.

12. Notice of Sky River's Request to Defer Action on Shared Facilities Agreement was published in the *Federal Register*, 78 Fed. Reg. 2981(2013), with interventions and protests due on or before January 29, 2013. None was filed.

13. Notice of Sky River's filing of the Sky River LLC and North Sky River Energy LLC Shared Facilities Agreement was published in the *Federal Register*, 77 Fed. Reg. 70,427 (2012), with interventions and protests due on or before December 6, 2012. None was filed.

V. Discussion

A. Shared Facilities Agreement

14. The Shared Facilities Agreement appears to be just and reasonable, and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept the Shared Facilities Agreement, effective November 16, 2012, as requested.¹³

¹² *Id.* n.10 (calculation based on 239 MW multiplied by 8,760 hours and a 100% capacity factor for these wind energy facilities is about 2,093,000 MWh).

¹³ See *Central Hudson Gas & Electric Co.*, 60 FERC ¶ 61,106, at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

B. Request for Waivers

15. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations¹⁴ 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 regulations¹⁵ requires public utilities to establish and maintain 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.¹⁶ In prior orders, the Commission has enunciated the standards for exemption, from some or all of the requirements of Order Nos. 888 and 889.¹⁷ The criteria for waiver of these requirements are unchanged by Order Nos. 890, 2004, and 717.¹⁸

16. 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

¹⁴ 18 C.F.R. § 35.28 (2012).

¹⁵ 18 C.F.R. Part 37 (2012).

¹⁶ *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); *see 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).

¹⁷ *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*).

¹⁸ *See Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

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 with the Commission a *pro forma* tariff 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.¹⁹

17. The Commission has also determined that waiver of Order No. 889 would be appropriate for a public utility: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) if the applicant 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.²⁰ 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).²¹

18. Based on the statements in Sky River's filing, and the fact that Sky River will be using the Shared Facilities solely to provide transmission service for itself and for North Sky, an affiliate,²² we find that the Shared Facilities qualify as

¹⁹ *Black Creek*, 77 FERC at 61,941.

²⁰ *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).

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 See, e.g., *Limon Wind, LLC*, 141 FERC ¶ 61,064, at P 15 (2012).

limited and discrete. Accordingly, we will grant Sky River's waiver of the requirements of Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to have an OATT on file. However, if Sky River receives a request for transmission service, it must file with the Commission a *pro forma* tariff 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.²³

19. The Commission will also grant Sky River's request for waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to OASIS and Order No. 717 and Part 358 of the Commission's regulations with respect to the Standards of Conduct. We note that the 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.²⁴ Likewise, the waiver of the Standards of Conduct requirement will remain in effect unless and until the Commission takes action on a complaint by an entity that Sky River has unfairly used its access to information to unfairly benefit themselves or their affiliates.²⁵

The Commission orders:

(A) The proposed Shared Facilities Agreement is hereby accepted for filing, effective November 16, 2012, as requested, as discussed in the body of this order.

(B) Sky River's request for waiver of the requirements under Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to file an OATT, the requirements under Order No. 889 and Part 37 of the Commission's regulations to establish and maintain an OASIS, and the requirements under Order Nos. 889, 2004, and 717, and Part 358 of the Commission's regulations to comply

²³ *Black Creek*, 77 FERC at 61,941.

²⁴ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC, at 62,127 (1997); *Easton Utilities Commission*, 83 FERC, at 62,343 (1998)).

²⁵ *Id.* Sky River 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).

with the Standards of Conduct, is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.