



September 19, 2013

Kimberly D. Bose, Secretary  
Nathaniel J. Davis, Sr., Deputy Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Re: Desert Sunlight 250, LLC and Desert Sunlight 300, LLC Co-Tenancy And Shared Facilities Agreement, Request for Waiver of Order Nos. 888, 889 and 890, Request for Waiver of the 60-Day Rule, and **Request for Expedited Action** Docket No. ER13-\_\_\_\_-000

Dear Ms. Bose and Mr. Davis:

Pursuant to Section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d, and Sections 35.12 of the Federal Energy Regulatory Commission (“Commission” or “FERC”) regulations, 18 C.F.R. § 35.12 (2013), Desert Sunlight 250, LLC (“Desert 250”) and Desert Sunlight 300, LLC (“Desert 300”) submit for filing the Co-Tenancy and Shared Facilities Agreement by and among Desert Sunlight 250, LLC, Desert Sunlight 300, LLC and Desert Sunlight Holdings, LLC, dated September 29, 2011, and designated as Desert 250 and Desert 300 FERC Electric Rate Schedule No. 2 (“Shared Facilities Agreement”). Desert Sunlight Holdings, LLC (“Desert Holdings”) is designated as the Manager in the Shared Facilities Agreement, which is attached hereto as Appendix A. Desert Holdings is a service provider with no operating control over jurisdictional facilities or any authority with respect to sales of electric energy. *See Bechtel Power Corp.*, 60 FERC ¶ 61,156 (1992). Desert 250 and Desert 300 respectfully request that the Commission waive the 60-day notice provision and permit the Tariff to become effective on September 20, 2013, one day after the date of this filing.

Desert 250 and Desert 300 do not believe that any jurisdictional “service” is being provided under the Shared Facilities Agreement, as they own the Shared Facilities as tenants-in-common, with each co-tenant owning an undivided interest in all Shared Facilities in proportion to its co-tenancy percentage interest. Neither party is providing a service to the other party or to any third party under this agreement. Nevertheless, Desert 250 and Desert 300 submit this agreement for filing because they agreed to do so as part of Department of Energy Loan Guarantee (Loan Guarantee”).

In addition to the Shared Facilities Agreement, Desert 250 and Desert 300 also respectfully request that Commission grant Desert 250 and Desert 300 each a waiver of

certain potentially applicable requirements of Order Nos. 888<sup>1</sup>, 889<sup>2</sup>, 890<sup>3</sup>, and Section 35.28, Part 37, and Part 358 of the Commission's regulations,<sup>4</sup> specifically, 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"). Desert 250 and Desert 300 also request a waiver of the Standards of Conduct under Part 358 of the Commission's regulations.

As approval of the Shared Facilities Agreement and waiver requests are requirements under the Loan Guarantee, Desert 250 and Desert 300 respectfully request that the Commission grant expedited action and issue an order accepting the Shared Facilities Agreement and granting the requested waivers by October 21, 2013.

## **I. The Shared Facilities Agreement**

### **A. Description of parties and purpose of arrangement**

The Shared Facilities Agreement between Desert 250 and Desert 300 is intended to enable both Desert 250 and Desert 300 to deliver the power produced by their generating projects to the transmission grid using interconnection facilities owned as tenants-in-common by Desert 250 and Desert 300. Desert 250 and Desert 300 each are Delaware limited liability companies and are a wholly-owned direct subsidiary of Desert

---

<sup>1</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. ¶ 31,306 (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>2</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 889-B, 81 FERC ¶ 61,253 (1997).

<sup>3</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559 (2007); *order on reh'g and clarification*, Order No. 890-A, FERC Stats & Regs. ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g and clarification*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>4</sup> 18 C.F.R. Part 358 (2010); *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); *see also Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, 129 FERC ¶ 61,043, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123, *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010).

Holdings, which in turn is a wholly-owned subsidiary of Desert Sunlight Investment Holdings, LLC (“Desert Investment”). Desert Investment is owned by three entities. First, NextEra Desert Sunlight Holdings, LLC (“NextEra Desert”), a Delaware limited liability company, holds a 50% direct ownership interest in Desert Investment. NextEra Desert is a wholly-owned indirect subsidiary of NextEra Energy Resources, LLC, a Delaware limited liability company, which in turn is a wholly-owned indirect subsidiary of NextEra Energy, Inc., a Florida corporation. Second, EFS Desert Sun, LLC (“EFS Desert Sun”), a Delaware limited liability company, holds a 25% direct ownership interest in Desert Investment. EFS Desert Sun is a wholly-owned indirect subsidiary of General Electric Capital Corporation (“GE”), a Delaware corporation, which in turn is a wholly-owned direct subsidiary of General Electric Company, a New York corporation. Third, Summit Solar Desert Sunlight, LLC (“Summit Solar”), a Delaware limited liability company, holds a 25% direct ownership interest in Desert Investment. Summit Solar is a wholly-owned indirect subsidiary of Sumitomo Corporation, a corporation formed under the laws of Japan.

Desert 250 owns and operates a photovoltaic solar generating facility with a capability to produce up to 250 MW aggregate nameplate capacity located in Riverside County, California. Desert 300 owns and operates a photovoltaic solar generating facility with a capability to produce up to 300 MW aggregate nameplate capacity located in Riverside County, California.<sup>5</sup> The Desert 250 and Desert 300 generating facilities interconnect into the Red Bluff 230kV bus, a 500/230kV substation that is owned by Southern California Edison Company (“SCE”), located near Desert Center, California, which loops in the Devers-Colorado River No. 1 500kV Transmission Line. The “Shared Facilities” owned by Desert 250 and Desert 300 as co-tenants are interconnection facilities, including an approximately 12-mile, 230kV generation tie line, a set of 230kV disconnect switches and other interconnection facilities.<sup>6</sup>

---

<sup>5</sup> On July 17, 2013, Desert 250 and Desert 300 submitted applications for authorization to make market-based sales of energy, capacity and ancillary services under a market-based rate tariff in Docket Nos. ER13-1991-000 and ER13-1992-000, respectively. The tariffs were amended on August 7, 2013, each application is pending approval by the Commission, with a requested effective date of July 18, 2013.

<sup>6</sup> The Shared Facilities Agreement defines “Shared Facilities” to include the following:

(a) the switchyard for the Generating Facilities, including the 230 kV disconnect switches located therein, (b) the Gen-Tie Line, (c) all required CAISO approved metering equipment, (d) all required Participating TO-metering equipment, (e) the metering cabinet to house the retail meters, (f) the G.E. L90 current differential relay and SEL 311L current differential relay, (g) the 120-volt power supply for the remote terminal unit, (h) any other Interconnection Customer’s Interconnection Facilities, (i) any access roads used in connection with the assets, property or equipment described in clauses (a) – (h) or (j) of this definition, (j) all other assets, property (real or personal) and equipment necessary to deliver energy from the Generating Facilities to the Point of Interconnection and (k) any Modification to the assets, property or equipment described in clauses (a) – (j) immediately above, all as more particularly described in Section 3 of Exhibit A to the Shared Facilities Construction Agreement and Exhibit A to the Shared Facilities Equipment Supply Agreement.

The arrangements undertaken through the Shared Facilities Agreement concern the interconnection facilities allowing the solar generating facilities owned by Desert 250 and Desert 300 to sell their output into the California Independent System Operator, Inc. (“CAISO”) balancing authority area. The co-tenancy percentage interest in the Shared Facilities is (i) 45.45% with respect to Desert 250, and (ii) 54.55% with respect Desert 300. The Shared Facilities are described more fully in the Shared Facilities Agreement.

### **B. Description of the Shared Facilities Agreement**

The key terms and conditions of the Shared Facilities Agreement include, in section 4.1.1, that Desert 250 and Desert 300 own the Shared Facilities as tenants-in-common, with each co-tenant owning an undivided interest in all Shared Facilities in proportion to its co-tenancy percentage interest. Section 4.3 specifies the general responsibilities of the Manager, Desert Holdings, and those actions that cannot be taken by the Manager without the concurrence of Desert 250 and Desert 300. Section 4.6 requires each of Desert 250 and Desert 300 to arrange for wholesale metering of its generating facility. Section 4.8 sets forth curtailment rights and allocations, giving the Manager the authority to direct the curtailment of energy on the Shared Facilities under certain circumstances. Section 4.15 which acknowledges that Desert 250 and Desert 300 may be required in the future to file an OATT to allow third parties to use all or certain portions of the Shared Facilities.

Accordingly, in compliance with Section 205 of the FPA and Section 35 of the Commission’s regulations, Desert 250 and Desert 300 hereby submit for filing the Shared Facilities Agreement. To the extent that this filing requires waiver of any other Commission rule or regulation not addressed herein, Desert 250 and Desert 300 also request such waiver.

### **C. Information Required by 18 C.F.R. Part 35**

This is an initial rate filing. As such, Desert 250 and Desert 300 submit the following information required by Section 35.12 of the Commission’s regulations.

#### **1. List of documents submitted with the filing**

This filing consists of:

1. This transmittal letter; and
2. Copy of the Co-Tenancy and Shared Facilities Agreement by and among Desert Sunlight 250, LLC, Desert Sunlight 300, LLC and Desert Sunlight

Holdings, LLC, dated September 29, 2011, and designated as Desert 250 and Desert 300 FERC Electric Rate Schedule No. 2.

**D. Names and addresses of the persons to whom a copy of the rate schedule has been mailed**

A copy of this filing has been delivered to:

Business Manager  
Desert Sunlight 250, LLC  
700 Universe Blvd.  
Juno Beach, FL 33408

Business Manager  
Desert Sunlight 300, LLC  
700 Universe Blvd.  
Juno Beach, FL 33408

**E. Description of the Rate Schedules**

As described above, the Shared Facilities Agreement enables Desert 250 and Desert 300 to receive the needed services to enable them to deliver their output to the point of interconnection and the transmission system of SCE and the CAISO grid.

**F. Showing that All Requisite Agreements Have Been Obtained**

The primary circumstance that demonstrates that all requisite agreements have been obtained is that the Shared Facilities Agreement was freely negotiated and executed by all parties to the agreement. No other parties need to agree to the agreement.

**G. Estimates of Transactions and Revenues by Month and Year, and Basis for the Rate or Charge**

The charges related to the Shared Facilities Agreement consist of the shared expenses, which are paid by Desert 250 and Desert 300 based on their respective co-tenancy percentage interests in accordance with the terms of the Shared Facilities Agreement. These shared expenses include the operation and maintenance expenses, metering charges and costs to wind-up operations.

## **H. Comparison of Rate to Other Rates of Desert 250 and Desert 300**

The only rate schedules Desert 250 and Desert 300 have on file with the Commission are their respective market-based rate schedules. Thus, Desert 250 and Desert 300 request waiver from this requirement.

### **I. Material Required to be Furnished under Statement BL**

This material is not applicable and, therefore, has been omitted.

## **II. REQUEST FOR WAIVER OF THE REQUIREMENT OF ORDER NOS. 888 AND 890 TO FILE AN OATT AND OF ORDER NO. 889 TO MAINTAIN AN OASIS, AND OF THE STANDARDESERT OF CONDUCT**

As set forth above, Desert 250 and Desert 300 will use the Shared Facilities in proportion to their co-tenancy percentage interests to enable their generating facility to transmit power to the grid. As a result, Desert 250 and Desert 300 respectfully request that the Commission grant each of them a waiver of certain potentially applicable requirements of Order Nos. 888, 889, 890, and Section 35.28, Part 37, and Part 358 of the Commission's regulations; specifically, the requirement of Order Nos. 888 and 890 to file an OATT, and the requirement of Order No. 889 to establish an OASIS. Desert 250 and Desert 300 also request a waiver of the Standards of Conduct under Part 358 of the Commission's regulation.

The Commission has consistently granted waivers of the Order Nos. 888 and 890 requirements to public utilities that can show that they own, operate, or control only limited and discrete transmission facilities, *i.e.*, facilities that do not form an integrated grid, until such time as the public utility receives a request for transmission service.<sup>7</sup> The Commission has granted such requests in cases when a renewable energy generator provides use of its interconnection facilities to another affiliated renewable energy generator.<sup>8</sup> The Commission has also granted waivers of Order No. 889 requirements to 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 it is a member of a tight power pool, or other circumstances are present that

---

<sup>7</sup> See, e.g., *Black Creek Hydro, Inc., et al.*, 77 FERC ¶ 61,232, 61,941 (1996); *Golden Spread Electric Coop., Inc.*, 106 FERC ¶ 61,151 at P 7 (2004), *Bishop Hill Interconnection LLC*, 138 FERC ¶ 61,159 at P 27 (2012).

<sup>8</sup> See *Ashtabula Wind, LLC*, 127 FERC ¶ 61,215 (2009); 134 FERC ¶ 61,056 (2011); *Story Wind, LLC*, 128 FERC ¶ 61,080 (2009); *Crystal Lake Wind, LLC*, 127 FERC ¶ 61,213 (2009); *Langdon Wind, LLC*, 127 FERC ¶ 61,212 (2009); *Peetz Table Wind Energy, LLC*, 123 FERC ¶ 61,192 (2008); *FPL Energy Oliver Wind, LLC*, 123 FERC ¶ 61,246 (2008); *Minco Wind Interconnection Services, LLC*, 137 FERC ¶ 61, 224 (2011); *High Majestic Wind Energy Center, LLC*, 139 FERC 61,220 (2012); and *Limon Wind, LLC*, 141 FERC ¶ 61,064 (2012).

indicate that a waiver would not be justified.<sup>9</sup> The Commission has also granted waivers of the Standards of Conduct requirements upon request to utilities based on these same criteria.<sup>10</sup>

Good cause exists for the Commission to grant Desert 250 and Desert 300 these waivers. Under the Shared Facilities Agreement, Desert 250 and Desert 300 own the Shared Facilities as tenants-in-common, with each co-tenant owning an undivided interest in all Shared Facilities in proportion to its co-tenancy percentage, which thus provides each generating facility access to the Shared Facilities necessary for them to receive interconnection service to transmit the output from their solar energy facilities to the point of interconnection and the transmission systems of SCE and the CAISO. In this regard, the Shared Facilities are not an integrated component of any electricity grid and solely enable Desert 250 and Desert 300 to transmit the power from their solar generating facilities to the grid. It would be burdensome for Desert 250 and Desert 300, individually or collectively, to file an OATT or to establish an OASIS for a situation such as this where affiliated generators are simply sharing interconnection facilities as tenants-in-common, and the facilities controlled by Desert 250 and Desert 300 are limited and discrete. Additionally, the Commission's practice is to grant a waiver to small utilities (4 million MWh annually). Desert 250 and Desert 300 satisfy such criteria individually and collectively.<sup>11</sup> Therefore, Desert 250 and Desert 300 request that the Commission grant it a waiver of the requirement to file an OATT under Order Nos. 888 and 890, a waiver of the OASIS requirement of Order No. 889, and a waiver of the Standards of Conduct.

### **III. REQUESTED EFFECTIVE DATE AND WAIVER OF THE 60-DAY NOTICE, AND REQUEST FOR EXPEDITED ACTION**

Desert 250 and Desert 300 request acceptance of FERC Electric Rate Schedule No. 2 to take effect on September 20, 2013, one day after the date of this filing. Desert 250 and Desert 300 thus respectfully request waiver of the Commission's 60-day notice period, pursuant to Section 35.11 of the Commission's regulations.<sup>12</sup> Therefore, Desert

---

<sup>9</sup> See *Hardee Power Partners Ltd.*, 125 FERC ¶ 61,036 at PP 19-21 (2008).

<sup>10</sup> *Peetz Table Wind Energy, LLC*, 123 FERC ¶ 61,192 at P 10 (2008).

<sup>11</sup> As a tenant-in-common, and based on a 100% capacity factor, the maximum amount of energy that could be transmitted each year from the Desert 250 facility over the interconnection facility to the substation owned by SCE is 2,190,000 MWh, and the maximum amount of energy that could be transmitted each year from the Desert 300 facility over the interconnection facility to the substation owned by SCE is 2,628,000 MWh. While together Desert 250 and Desert 300 could theoretically produce more than the annual 4 million MWh threshold found in the Small Business Administration's definition of a small public utility – assuming that the Commission were to combine the generation output of their facilities – each is an intermittent, photovoltaic solar generating facility and is projected to have a capacity factor of approximately 28% (*e.g.*, approximately 1.35 million MWh annually). Accordingly, Desert 250 and Desert 300 individually and collectively will meet the Small Business Administration's definition of small public utility.

<sup>12</sup> 18 C.F.R. § 35.11.

Ms. Kimberly D. Bose  
Mr. Nathaniel J. Davis, Sr.  
September 19, 2013  
Page 8

250 and Desert 300 respectfully request waiver of the Commission's rules to permit the Shared Facilities Agreement to become effective on September 20, 2013.

Desert 250 and Desert 300 also request the Commission to grant a shortened comment period and expedited consideration of this application. The Shared Facilities Agreement and requested waivers are being submitted in accordance with agreements reached with the Department of Energy under its Loan Guarantee program. The two projects are under construction and expeditious acceptance of the Shared Facilities Agreement is needed because the order is a condition to additional construction funding from our lenders under our financing arrangements. In order to facilitate meeting these requirements, Desert 250 and Desert 300 respectfully request that the Commission accept the Shared Facilities Agreement and waiver requests by October 21, 2013.

#### **IV. COMMUNICATIONS**

Desert 250 and Desert 300 request that service be made and communications be directed to the person listed below, who is designated for inclusion on the official service list for this proceeding pursuant to Rules 203(b)(3) and 2010:

Joel D. Newton  
Senior Attorney  
NextEra Energy Resources, LLC  
801 Pennsylvania Ave., N.W.  
Suite 220  
Washington, DC 20004  
(202) 347-7126  
(202) 347-7076 (fax)  
joel.newton@nexteraenergy.com



Ms. Kimberly D. Bose  
Mr. Nathaniel J. Davis, Sr.  
September 19, 2013  
Page 9

**V. CONCLUSION**

WHEREFORE, Desert 250 and Desert 300 request that the Commission accept for filing the Shared Facilities Agreement between Desert 250, Desert 300 and Desert Holdings, FERC Electric Rate Schedule No. 2, with an effective date of September 20, 2013 and that the Commission grant a waiver of the requirements of Order Nos. 888 and 890 to file an OATT and of Order No. 889 to maintain an OASIS, and of the Standards of Conduct regulations. Desert 250 and Desert 300 also respectfully request the Commission to grant a shortened comment period, expedited consideration of the application, issue an order by October 21, 2013, and grant waiver of any Commission regulation or rule necessary to enable the requested actions.

Respectfully submitted,

/s/Joel D. Newton

Joel D. Newton  
Senior Attorney  
NextEra Energy Resources, LLC  
801 Pennsylvania Ave., N.W. Ste. 220  
Washington, D.C. 20004  
(202) 347-7126

*Attorney for Desert Sunlight 250, LLC and  
Desert Sunlight 300, LLC*