

127 FERC ¶ 61,212
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Langdon Wind, LLC

Docket No. OA09-13-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued June 2, 2009)

1. This order grants a request by Langdon Wind, LLC (Langdon Wind) for waiver of Order Nos. 888,¹ 889,² and 890.³

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).

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).

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).

Background

2. Langdon Wind is a wholly-owned subsidiary of FPL Energy, LLC (FPL Energy).⁴ Langdon Wind owns and operates a 159 MW wind-powered electric generating facility (Langdon Wind Facility) located in Cavalier County, North Dakota. Langdon Wind states that it has been granted exempt wholesale generator status,⁵ and that it has been granted market-based rate authority.⁶ Otter Tail Corporation (Otter Tail) owns and operates a 40.5 MW wind-powered electric generation facility (Otter Tail Facility) that is adjacent to the Langdon Wind Facility. Although FPL Energy developed the site and sold it to Otter Tail, FPL Energy currently has no ownership interest in the Otter Tail Facility and it is not affiliated with Otter Tail.

3. Langdon Wind and Otter Tail are parties to the Shared Facilities Agreement that provides Otter Tail the right to use Langdon Wind's facilities in connection with Otter Tail's ownership and operation of its wind project.⁷ These facilities include a 10-mile long 115-kV electric interconnection transmission line that connects the Langdon Wind Facility's substation to Minnkota Power's 115-kV Langdon Wind Substation. The transmission line and associated facilities serve to interconnect the Langdon Wind Facility and the Otter Tail Facility to the electric grid.

4. On December 16, 2008, Langdon Wind filed a request for waiver of Order Nos. 888, 889, and 890.⁸ Specifically, Langdon Wind requests waiver of the requirement

⁴ We note that, on January 7, 2009, FPL Energy changed its name to NextEra, LLC. See, e.g., *Osceola Windpower, LLC*, January 13, 2009 Transmittal Letter, Docket No. ER09-536-000, at 2 n.4.

⁵ *Langdon Wind, LLC*, Notice of Effectiveness of Exempt Wholesale Generator Status, Docket No. EG08-18-000 (Feb. 26, 2008).

⁶ *Langdon Wind, LLC*, Docket No. ER08-250-000, *et al.* (Feb. 21, 2008) (unpublished letter order).

⁷ The Shared Facilities Agreement is designated as Langdon Wind, LLC Rate Schedule FERC No. 1. It was accepted by the Commission February 4, 2009. *FPL Energy, LLC*, Docket No. ER09-404-000 (Feb. 4, 2009) (unpublished letter order).

⁸ It appears that, contrary to the requirements of section 35.28(d)(2) of the Commission's regulations, 18 C.F.R. 35.28(d)(2) (2008), Langdon Wind failed to file a request for waiver of Order Nos. 888 and 889 in a timely manner. We remind Langdon Wind that it must submit required filings on a timely basis or face possible sanctions by the Commission.

to file an Open Access Transmission Tariff (OATT) prior to providing transmission service under Order Nos. 888 and 890, and the requirement to establish an Open-Access Same Time Information System (OASIS) under Order No. 889. In support of its waiver request, Langdon Wind explains that it owns, operates, and controls limited and discrete transmission facilities which were designed solely to provide interconnection service to the Langdon Wind Facility and the Otter Tail Facility, are not an integrated component of any electricity grid, and merely provide Langdon Wind Facility and Otter Tail Facility a way to move the power from their facilities to the Minnkota Power substation. Consequently, Langdon Wind asserts that it would be a waste of resources for it to file an OATT or establish an OASIS when it is providing service to only one customer. Additionally, Langdon Wind states that the Commission has granted such requests in cases when a generator provides use of its interconnection facilities to another generator.⁹ Furthermore, Langdon Wind states that it is the Commission's practice to grant these waivers to small utilities (4 million MWh annually). Langdon Wind states that the maximum amount of energy Langdon Wind could transmit over its facility each year is about 1,392,840 MWh, based on 159 MW multiplied by 8,760 hours.

5. Notice of Langdon Wind's filing was published in the *Federal Register*, 73 Fed. Reg. 79,461 (2008), with protests or motions to intervene due on or before January 6, 2009. No interventions, protests, or comments were filed.

Discussion

6. Order Nos. 888 and 890 require public utilities to file an OATT prior to providing transmission service. Order No. 889 requires public utilities to establish an OASIS. 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 and 889.¹⁰ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹¹

7. 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. Should the public utility receive such a request, the Commission has determined that the public

⁹ See *FPL Energy Oliver Wind, LLC*, 123 FERC ¶ 61,246, at PP 11-15 (2008).

¹⁰ 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*).

¹¹ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007).

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.¹²

8. 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 it is a member of a tight power pool, or other circumstances are present that indicate that a waiver would not be justified.¹³ The Commission grants waivers to small public utilities based on the threshold of whether they dispose of no more than 4 million MWh annually.¹⁴ Moreover, the Commission 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).¹⁵

9. Based on the statements in Langdon Wind's filing, we find that Langdon Wind's transmission facilities are limited and discrete. Langdon Wind's transmission facilities were built exclusively to provide transmission service to itself and Otter Tail, and the only transmission service Langdon Wind's transmission facilities currently provide is to itself and Otter Tail. Accordingly, we will grant Langdon Wind waiver of the requirements in Order Nos. 888 and 890 to have an OATT on file.¹⁶ In addition, Langdon Wind meets the Commission's definition of a small public utility because it has

¹² *Black Creek*, 77 FERC at 61,941.

¹³ *Id.*

¹⁴ See *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009) (*Wolverine*).

¹⁵ *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).

¹⁶ Consistent with *Black Creek*, Langdon Wind must file, within 60 days of its receiving a request for transmission service from a customer other than Otter Tail, a *pro forma* OATT in compliance with Order Nos. 888 and 890, and any additional requirements.

annual electric sales of no more than 4 million MWh.¹⁷ In light of these circumstances, we will grant Langdon Wind waiver from the OASIS requirements of Order No. 889.¹⁸

The Commission orders:

Langdon Wind's request for waiver of the OATT requirements of Order Nos. 888 and 890, and the OASIS requirement of Order No. 889, is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁷ See *Wolverine*, 127 FERC ¶ 61,159 at P 15.

¹⁸ A waiver of the requirement to establish and maintain an information system (i.e., an OASIS) remains effective until the Commission takes action in response to any complaint by an entity alleging that, in evaluating its transmission needs, the entity could not obtain from Langdon Wind information necessary to complete its evaluation. In addition, as the Commission recently explained, Langdon Wind 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); see also *Wolverine*, 127 FERC ¶ 61,159 at n.21 (2009).