

127 FERC ¶ 61,215
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Ashtabula Wind, LLC

Docket No. OA09-20-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued June 2, 2009)

1. This order grants a request by Ashtabula Wind, LLC (Ashtabula) 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. Ashtabula is a wholly-owned indirect subsidiary of FPL Energy, LLC (FPL Energy).⁴ Ashtabula owns and operates a 148.5 MW wind-powered electric generating facility (Ashtabula Facility) located in Barnes County, North Dakota. Ashtabula 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 a 48 MW wind-powered electric generating facility (Otter Tail Facility) that is adjacent to the Ashtabula 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. Ashtabula and Otter Tail are parties to a Common Facilities Agreement that provides Otter Tail the right to use Ashtabula's facilities for the purpose of the operation of the Otter Tail Facility.⁷ These facilities include a 9-mile long electric interconnection transmission line (9-mile line) connecting the Ashtabula Facility's substation to Minnkota Power's 230-kV Pillsbury substation (Minnkota). The 9-mile line serves to interconnect the Ashtabula Facility and Otter Tail Facility with the electric grid and was built exclusively for the purpose of delivering the output of wind generating plants to the interconnection point with Minnkota. Ashtabula states that these facilities are radial and do not serve, and were not designed to serve, any customers other than the wind generating plants.

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

⁵ *Ashtabula Wind, LLC*, Notice of Effectiveness of Exempt Wholesale Generator Status, Docket No. EG08-92-000 (Dec. 10, 2008).

⁶ *Ashtabula Wind, LLC*, Docket No. ER08-1297-000 (Sept. 29, 2008) (unpublished letter order).

⁷ Ashtabula filed the Common Facilities Agreement concurrently with this request for waiver. On February 12, 2009 the Commission re-docketed this request for waiver as OA09-20-000. The Commission separately accepted the Common Facilities Agreement February 19, 2009. *FPL Energy, LLC*, Docket No. ER09-486-000 (Feb. 19, 2009) (unpublished letter order).

4. On December 30, 2008, Ashtabula filed the request for waiver of Order Nos. 888, 889, and 890.⁸ Specifically, Ashtabula requests waiver of the requirement of Order Nos. 888 and 890 to file an open access transmission tariff (OATT) prior to providing transmission service, and the requirement of Order No. 889 to establish an Open-Access Same Time Information System (OASIS). In support of these waivers, Ashtabula states that its transmission facilities: (1) are not an integrated component of any electricity grid and (2) were designed solely to provide interconnection service to the Ashtabula Facility and the Otter Tail Facility. Ashtabula notes that these facilities merely provide the Ashtabula Facility and the Otter Tail Facility a way to move the power from their facilities to the Minnkota Power substation. Ashtabula argues that it would be a waste of resources for Ashtabula to file an OATT or to establish an OASIS when it is providing transmission service to only one customer. Additionally, Ashtabula states that the Commission has granted such requests in cases when a generator provides use of its interconnection facilities to another generator.⁹ Furthermore, Ashtabula contends that the Commission's practice is to grant a waiver to small utilities (4 million MWh annually). Ashtabula states that the maximum amount of energy it could transmit over its transmission facilities each year is about 1,813,320 MWh, based on the 207 MW multiplied by 8,760 hours.

5. Notice of Ashtabula's filing was published in the *Federal Register*, 74 Fed. Reg. 1,675 (2009), with protests or interventions due on or before January 21, 2009. Otter Tail filed a motion to intervene and comments in support. No other interventions, protests, or comments were filed.

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notice of intervention and timely, unopposed motion to intervene serve to make Otter Tail a party to this proceeding.

Discussion

7. 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

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), Ashtabula failed to file a request for waiver of Order Nos. 888 and 889 in a timely manner. We remind Ashtabula that it must submit required filings on a timely basis or face possible sanctions by the Commission.

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

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

8. 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 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

9. 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

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).

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*).

to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).¹⁵

10. Based on the statements in Ashtabula's filing, we find that Ashtabula's transmission facilities are limited and discrete. Ashtabula's transmission facilities were built exclusively to provide transmission service to itself and Otter Tail, and the only transmission service Ashtabula's transmission facilities currently provide is to itself and Otter Tail. Accordingly, we will grant Ashtabula waiver of the requirements in Order Nos. 888 and 890 to have an OATT on file.¹⁶ In addition, Ashtabula meets the Commission's definition of a small public utility because it has annual electric sales of no more than 4 million MWh.¹⁷ In light of these circumstances, we will grant Ashtabula waiver from the OASIS requirements of Order No. 889.¹⁸

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*, Ashtabula 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.

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 Ashtabula information necessary to complete its evaluation. In addition, as the Commission recently explained, Ashtabula 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).

The Commission orders:

Ashtabula'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.