

128 FERC ¶ 61,134
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Grand Ridge Energy

Docket Nos. ER09-1356-000
OA09-30-000
TS09-6-000

ORDER CONDITIONALLY ACCEPTING AGREEMENT FOR FILING AND
GRANTING WAIVERS

(Issued August 5, 2009)

1. On June 25, 2009, as supplemented on July 16, 2009, pursuant to section 205 of the Federal Power Act (FPA),¹ five Grand Ridge Energy companies (collectively, Grand Ridge)² filed a shared facilities agreement (SFA) and requested waiver of certain requirements under Order Nos. 888,³ 889,⁴ and 890⁵ and the Standards of Conduct for

¹ 16 U.S.C. § 825d (2006).

² Grand Ridge consists of: Grand Ridge Energy LLC (GR I), Grand Ridge Energy II LLC (GR II), Grand Ridge Energy III LLC (GR III), Grand Ridge Energy IV (GR IV) and Grand Ridge Energy V (GR V).

³ *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).

⁴ *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).

⁵ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g and clarification*, 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).

Transmission Providers requirements set forth in Part 358 of the Commission's regulations (Order Nos. 2004 and 717).⁶ The SFA governs operation of Grand Ridge's wind generating projects interconnecting to the PJM Interconnection L.L.C. (PJM) transmission system. As discussed below, we will conditionally accept the proposed SFA, subject to Grand Ridge submitting a compliance filing, as discussed below. Further, we will grant Grand Ridge's request for waiver of certain requirements under Order Nos. 888, 889 and 890 and Part 358 of the Commission's regulations.

I. Background

2. GR I owns and operates a wind-powered electric generation facility with a nameplate rating of 99 MW, which is located in LaSalle County, Illinois. GR I sells electric energy and capacity produced from the GR I facility exclusively at wholesale pursuant to its market-based rate authority. The GR I facility is interconnected to transmission facilities owned and operated by Commonwealth Edison Company (ComEd) and under operational control of PJM.

3. GR II, GR III, GR IV and GR V are each developing and will own wind-powered generation facilities, with expected capacities of up to 51 MW (GR II facility), 49.5 MW (GR III facility), 10.5 MW (GR IV facility), and 130.5 MW (GR V facility). The facilities will be located in the vicinity of the GR I facility and interconnected to ComEd's transmission facilities at the same point of interconnection as the GR I facility. Collection lines will connect each Grand Ridge facility's wind turbines to a substation, and a radial interconnection transmission line will connect each substation to the ComEd switchyard. The collection lines will be individually owned by the applicable Grand Ridge company.⁷ The voltage of the collection facilities is 34.5 kV. Upon reaching the substation, energy will be stepped-up to 138 kV, and then delivered over the

⁶ 18 C.F.R. Part 358 (2009); *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004A, 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, 73 Fed. Reg. 63,796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008), *reh'g pending*.

⁷ As the SFA is implemented, the substation equipment and transmission line will be jointly-owned by two or more of the Grand Ridge companies.

approximately 1.6 mile, 138 kV radial interconnection transmission line to the ComEd switchyard.⁸

II. Grand Ridge's Proposal

4. According to the SFA, each Grand Ridge company will own undivided interests in certain interconnection facilities currently owned by GR I and interconnection facilities that are being constructed to accommodate the interconnection of the other Grand Ridge companies (collectively, the Shared Interconnection Facilities). Certain interconnection facilities will be owned jointly by GR I, GR II, GR III and GR IV, while other interconnection facilities will be jointly owned by only two of these companies, i.e., owned only by GR I and GR II or only GR III and GR IV.⁹ In the future, GR V may develop, own and operate a wind power project to interconnect through the Shared Interconnection Facilities, in which case, Grand Ridge commits to revising and resubmitting the SFA accordingly.¹⁰

5. The SFA provides that the actual costs associated with the operation and maintenance of the Shared Interconnection Facilities and real property jointly owned by the Grand Ridge companies will be shared on the basis of the respective owners' pro rata ownership interests.¹¹ Grand Ridge states that the cost-sharing arrangements will be implemented, and the pro rata allocation adjusted, as each of the Grand Ridge companies acquires its interest in the jointly-owned interconnection facilities.¹² Grand Ridge asserts that, because the SFA provides only for the pass-through of actual costs based on each owner's pro rata ownership interests, these terms are consistent with joint ownership or shared facility agreements previously accepted by the Commission.¹³

6. Pursuant to the SFA, the Grand Ridge companies will receive certain administrative and operation and maintenance services from Invenergy Services Grand

⁸ Grand Ridge's July 16, 2009 supplemental filing at 3 and Exhibit A.

⁹ *See, e.g.*, SFA §§ 2.1, 6.1(a) and Exhibit D ¶¶ 1, 6 and 7.

¹⁰ Grand Ridge's June 25, 2009 Transmittal Letter at 4 (Transmittal Letter).

¹¹ SFA § 6.2.

¹² Transmittal Letter at 5. Grand Ridge adds that, if a Grand Ridge company requires access to Shared Interconnection Facilities prior to obtaining its joint ownership interest (e.g., to deliver test energy), access will be provided at no charge up until the time the company becomes responsible for its pro-rata share of costs applicable to its shared facilities.

¹³ Transmittal Letter at 6 (citing, *e.g.*, *Amergen Vermont LLC*, 90 FERC ¶ 61,307 (2000); *Hardee Power Partners, Ltd.*, 125 FERC ¶ 61,306 (2008)).

Ridge LLC (Invenergy). Grand Ridge represents that, while Invenergy is a party to the SFA, it will not own or operate jurisdictional facilities or sell power at wholesale, and therefore, the services Invenergy will provide are not subject to the Commission's jurisdiction.¹⁴

7. The SFA further establishes a net revenue loss calculation methodology (loss methodology) that will be used as the basis for indemnification and reimbursement of losses suffered by a Grand Ridge company if its facilities are disconnected or its power deliveries are curtailed due to the operation, maintenance or construction of another Grand Ridge facility.¹⁵ Grand Ridge asserts that the loss methodology provides only for reimbursement of the curtailed Grand Ridge company's actual lost revenues, without mark-up or other fees. Moreover, according to Grand Ridge, the loss methodology satisfies the Commission's requirements for pricing the energy component of such losses, by reflecting actual prices reported by PJM for the relevant period.¹⁶ If a Grand Ridge company incurs costs in order to support another Grand Ridge company's compliance with other agreements or to execute and deliver documents required by another Grand Ridge company, the supporting Grand Ridge company shall be reimbursed for its actual costs.¹⁷

8. According to the SFA, each company's rights and obligations will not become effective until the "Operative Date," i.e., the date the Commission accepts the SFA in this proceeding and various other statutory requirements are satisfied.¹⁸ Hence, Grand Ridge

¹⁴ Transmittal Letter at 5 (citing *Duke Energy Corp., et al.*, 97 FERC ¶ 61,177 (2001) (*Duke Energy*)).

¹⁵ *See*, SFA, Exhibit F. The loss methodology is based on: (1) the MWh of electricity that would have been produced during the period of disconnection and the price reported by PJM for real-time sales at the Northern Illinois hub during the period of disconnection; (2) the dollar value for federal production tax credits (PTCs) that would have been payable to the curtailed company, if eligible; and (3) the dollar value of renewable energy credits that would have been payable to the curtailed company, if eligible.

¹⁶ Transmittal Letter at 7 (citing *Brownsville Power I, L.L.C.*, 111 FERC ¶ 61,398, at P 10 (2005) (*Brownsville Power*)).

¹⁷ SFA §§ 8.6 and 17.9.

¹⁸ Some or all of the Grand Ridge companies must also be granted: (1) exempt wholesale generator status; (2) Commission authorization under section 203 of the FPA to transfer ownership interests in jurisdictional facilities contemplated under the SFA; (3) market-based rate authority under section 205 of the FPA for the sale of power at wholesale; (4) waivers from the Commission's accounting and related reporting requirements under Parts 41, 101 and 141 of the Commission's regulations; and

(continued...)

requests that the Commission accept the SFA for filing, to become effective as of the Operative Date. To the extent the Operative Date occurs less than 60 days from its filing here, Grand Ridge requests waiver of the Commission's 60-day prior notice requirement.¹⁹ In accordance with Order No. 614,²⁰ Grand Ridge commits to making a filing within 10 days of the Operative Date to revise each of the rate schedules to include the actual FERC rate schedule effective date.²¹

9. Grand Ridge further requests waiver of certain requirements under Order Nos. 888, 889, and 890 and the Commission's Standards of Conduct regulations. In support of its request, Grand Ridge asserts that the Shared Interconnection Facilities constitute limited, discrete facilities, constructed by Grand Ridge for the sole purpose of delivering power generated by the Grand Ridge companies' wind generation facilities to the PJM-controlled transmission grid.²² Grand Ridge describes the Shared Interconnection Facilities as radial facilities, not a transmission system, and states that applying the open access requirements would be unnecessarily burdensome.²³ Grand Ridge contends that the Commission routinely grants waiver to such limited, discrete facilities, unless and until the owner of such facilities receives a request for transmission service.²⁴

10. Grand Ridge further seeks waiver of Part 358 of the Commission's regulations, stating that each company will participate in joint ownership under the SFA, and

(5) blanket authorization to issue securities or assume liabilities under Part 34 of the Commission's regulations. SFA § 12.1 and definition of "Operative Date" in Appendix A of the SFA.

¹⁹ 18 C.F.R. § 35.3 (2009). Grand Ridge states that certain of its new wind generation projects are at an advanced stage of construction, and expedited action in this case may permit service to commence under the SFA and facilitate interconnection of wind projects to PJM's transmission system.

²⁰ *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 FR 18221 (2000), FERC Stats. and Regs. ¶ 31,096 (2000).

²¹ Transmittal Letter at 9 (citing *Potomac Electric Power Co.*, 93 FERC ¶ 61,240 (2000)).

²² Grand Ridge's July 16, 2009 supplemental filing at 5.

²³ *Id.* 4-5 (citing *Crystal Lake Wind, LLC*, 127 FERC ¶ 61,213, at P 10 (2009) (shared interconnection facilities are limited and discrete because the only transmission service the owner of such transmission facilities provides is to deliver energy for itself and another facility to the grid)).

²⁴ Transmittal Letter at 10.

therefore, will be deemed a Transmission Provider as defined in Part 358.²⁵ Grand Ridge asserts that Commission policy is to grant waiver of Part 358 of the Commission's regulations where, as here, there would be an unnecessary burden placed on limited and discrete facilities.²⁶

III. Notice of Filing

11. Notice of Grand Ridge's filing was published in the *Federal Register*, 74 FR 32141 (2009), with interventions and comments due on or before July 9, 2009. No interventions or comments were filed.

IV. Discussion

12. The Commission finds the terms and conditions of the SFA to be just and reasonable and not unduly discriminatory, and, accordingly, we will accept the proposed SFA, subject to condition, to become effective as of the Operative Date, subject to a further compliance filing, as discussed below.

13. As Grand Ridge commits to do, we will require it to submit a compliance filing, within 10 days of the Operative Date, revising each of the FERC rate schedules to reflect the effective date of the SFA (i.e., the Operative Date) on each of the tariff sheets, in accordance with Order No. 614. To the extent that the effective date happens to be earlier than 60 days from the date the proposed SFA was submitted for filing, we will grant Grand Ridge's request for waiver of the Commission's 60-day notice requirement.

14. Grand Ridge also seeks waiver of certain requirements under Order Nos. 888, 889 and 890 and Part 358 of the Commission's regulations. 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 Open Access Same-Time Information System (OASIS) and abide by certain standards of conduct. 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 889.²⁷ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and the Standards of Conduct are

²⁵ Grand Ridge's July 16, 2009 supplemental filing at 5 (citing 18 C.F.R. § 358.3(a) (2009) (Transmission Provider means any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce)).

²⁶ *Id.* (citing *Northern States Power Co.*, 76 FERC ¶ 61,250, at 62,297 (1996) (*Northern States*)).

²⁷ *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).

unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.²⁸

15. The Commission may grant requests for waiver of Order Nos. 888 and 890 to public utilities that can show 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.²⁹

16. The Commission has also determined that waiver of Order No. 889 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 it is a member of a tight power pool, or other circumstances are present that indicate that waiver would not be justified.³⁰ In addition, the Commission grants waivers to small public utilities based on the threshold finding that they dispose of no more than four million MWh annually.³¹

17. Based on the statements in Grand Ridge's filing, as supplemented on July 16, 2009, we find that the Grand Ridge transmission facilities are limited and discrete. The Shared Interconnection Facilities will be used to deliver power generated only by the Grand Ridge companies. In addition, Grand Ridge meets the Commission's definition of a small public utility, with annual electric sales of no more than four million MWh.³² Accordingly, we will grant Grand Ridge's request for waiver of the OATT requirements

²⁸ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

²⁹ *Black Creek*, 77 FERC at 61,941.

³⁰ *Id.*

³¹ See *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009) (*Wolverine*).

³² See *id.*, 127 FERC ¶ 61,159 at P 15. Using the expected capacities of each Grand Ridge facility, as set forth in Grand Ridge's filing, Commission Staff calculates that Grand Ridge companies' annual electric sales will not exceed 2,982,780 MWh, based on 340.5 MW (the total expected capacity for GR I (99 MW), GR II (51 MW), GR III (49.5 MW), GR IV (10.5 MW), and GRV (130.5)) multiplied by 8,760 (the number of hours in a year, i.e., 24 multiplied by 365).

in Order Nos. 888, 889, and 890³³ and the Standards of Conduct requirements of Part 358.³⁴

The Commission orders:

(A) Grand Ridge's proposed SFA is hereby accepted for filing, subject to Grand Ridge submitting a compliance filing, within 10 days of the effective date of the SFA, revising each of the FERC rate schedule tariff sheets to reflect the effective date of the SFA.

(B) Grand Ridge's request for waiver of the requirements of Order Nos. 888, 889 and 890, and the Standards of Conduct requirements of Part 358 of the Commission's regulations is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³³ We note that, consistent with *Black Creek*, Grand Ridge must file, within 60 days of one of its facility's receiving a request for transmission service from a customer other than one of the five Grand Ridge companies addressed herein, a *pro forma* OATT and any additional requirements in compliance with Order Nos. 888, 890.

³⁴ 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 Grand Ridge information necessary to complete its evaluation. A waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Grand Ridge has used its access to transmission information to unfairly benefit Grand Ridge's own sales, or an affiliate's sales. In addition, as the Commission recently explained, Grand Ridge 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).