

133 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Goshen Phase II, LLC and
Ridgeline Alternative Energy, LLC

Docket No. ER10-2510-000

ORDER ACCEPTING SHARED FACILITIES AGREEMENT FOR FILING AND
GRANTING REQUEST FOR WAIVER

(Issued October 28, 2010)

1. This order accepts for filing the Shared Facilities Agreement (Agreement) filed by Goshen Phase II, LLC (Goshen) on behalf of itself and Ridgeline Alternative Energy LLC (Ridgeline)¹ (collectively, Applicants), effective September 1, 2010, as requested. In addition, this order grants Applicants' request for waiver of certain requirements under Order Nos. 888,²

¹ Goshen and Ridgeline are Delaware limited liability companies. Ridgeline was formerly known as Ridgeline Airtricity Energy, LLC.

² *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).

889,³ and 890,⁴ and section 35.28, Part 37, and Part 358 of the Commission's regulations.⁵

I. Background

2. Goshen and Ridgeline are developing wind-power generating facilities that will be located near Idaho Falls, Idaho. Goshen's generating facility will have a generating capacity of approximately 125 MW and Ridgeline generating facility could have a capacity of up to approximately 91 MW. These facilities will be located in the vicinity of an existing wind-powered generating facility owned and operated by Wolverine Creek Energy, LLC.⁶ Goshen and Ridgeline facilities will be interconnected with PacifiCorp's transmission system through the Wolverine Creek Goshen Interconnection LLC, which owns a substation, transmission line, and other facilities (WCGI Common Facilities).⁷

³ *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).

⁴ *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 Clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁵ 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).

⁶ Wolverine is not affiliated with either Applicant. Transmittal Letter at 2 n.3.

⁷ The WCGI Common Facilities are jointly owned by Goshen, Ridgeline and Wolverine. The WCGI Common Facilities Agreement was accepted under delegated authority. *Wolverine Creek Goshen Interconnection LLC and Wolverine Creek Energy*

(continued...)

3. Goshen and Ridgeline are currently developing jointly a shared set of generator interconnection facilities (Shared Facilities), consisting of a substation with separate generator lead-lines approximately 7 miles in length and rated at 34.5 kV, through which Applicants will interconnect their respective wind-powered projects to the WCGI Common Facilities. They indicate that the transmission line component of the Shared Facilities will be a radial facility that will not comprise an integrated system and will not serve other customers.

II. The Filing

4. The Agreement memorializes the terms and conditions under which the Shared Facilities and other shared assets will be constructed, owned, utilized, operated, and maintained by Applicants, including the parties' cost liability. According to Applicants, the Agreement does not establish rates, terms, or conditions for the provision of a jurisdictional service. Goshen and Ridgeline will not pay fees to each other for their use of the Shared Facilities. Rather, each party will pay a share of the costs of managing, operating, and maintaining the Shared Facilities.⁸

5. Applicants request an effective date of September 1, 2010, to coincide with the date the parties expect the Goshen generating facility to begin generating and transmitting test energy on the Shared Facilities.

6. Applicants request that the Commission waive any requirements applicable to transmission providers, namely FERC's Open Access Transmission Tariff (OATT), Open-Access Same Time Information System (OASIS), and Standards of Conduct, as the shared generator interconnection facilities are limited and discrete and do not comprise an integrated transmission system. Specifically, Applicants request waiver of the requirements of Order Nos. 888, 889, and 890 and section 35.28, Part 37, and Part 358 of the Commission's regulations,⁹ consistent with prior Commission orders.

7. In support of the waiver request, Applicants explain further that they own, operate, and control limited and discrete transmission facilities that are not an integrated component of any electricity grid but merely provide Goshen and Ridgeline with a means to transmit power from their generating facilities to the PacifiCorp transmission system.

LLC. Docket Nos. ER06-267-000, OA06-1-000, and TS06-4-000 (Jan. 13, 2006) (delegated letter order).

⁸ Applicants retained AE Power Services to provide management and operation and maintenance services to Goshen and Ridgeline through a separate agreement.

⁹ Transmittal Letter at 5.

8. Applicants state that the Commission has routinely waived these requirements where the applicant demonstrates that it owns, operates, or controls only limited and discrete transmission facilities, rather than an integrated transmission grid, or where the applicant is a small public utility that disposes of no more than 4 million MWh of energy annually. Applicants state that they satisfy individually the size criterion of a small public utility by disposing of no more than 4 million MWh of energy annually.¹⁰

9. Applicants point out that the Commission has waived its OATT, OASIS, and Standards of Conduct requirements for a number of owners and operators of wind generating facilities that own generator interconnection facilities and cite several such orders.¹¹ Applicants urge that the facts and circumstances of these cited cases are analogous to their facts and circumstances.

10. Applicants state that, if either Goshen or Ridgeway receives a request for transmission service, they will file an OATT with the Commission and satisfy all other applicable regulatory requirements.¹²

III. Notice of Filing

11. Notice of Applicants' filing was published in the Federal Register, 75 Fed. Reg. 55,320 (2010), with protests or motions to intervene due on or before September 21, 2010. None was filed.

¹⁰ *Id.* at 6 & n.17. Applicants state that the Goshen generating facility would be capable of generating 1,000,750 MWh annually if operated at 100 percent capacity factor every hour of the year, while Ridgeline's 91 MW generator facility would be capable of generating 733,460 MWh annually if operated at 100 percent capacity factor during every hour of the year. Accordingly, the maximum total output of both generating facilities is 1,734,210 MWh which is less than 4 million MWh per year. Applicants further state that the Shared Facilities will have a capacity of approximately 250 MW and that, if fully loaded every hour of the year, would be capable of carrying only 2,190,000 MWh of energy per year.

¹¹ *Id.* at 5 & nn. 9-16 (citing *Grand Ridge Energy*, 128 FERC ¶ 61,134 (2009); *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 (1996); *Wolverine Power Supply Coop. Inc.*, 127 FERC ¶ 61,159 (2009); *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149 (2009); *BP Wind North America Inc.*, 129 FERC ¶ 61,207 (2009); *Ashtabula Wind, LLC*, 127 FERC ¶ 61,215 (2009); *Crystal Lake Wind, LLC*, 127 FERC ¶ 61,213 (2009); *Langdon Wind, LLC*, 127 FERC ¶ 61,212 (2009); *Osceola Windpower, LLC*, 127 FERC ¶ 61,214 (2009); *Story Wind, LLC*, 128 FERC ¶ 61,080 (2009)).

¹² *Id.* at 6.

IV. Discussion

12. We find the terms and conditions of the Agreement to be just and reasonable, and not unduly discriminatory. Accordingly, we will accept the proposed Agreement, to be effective September 1, 2010, as requested.

13. 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 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 889.¹³ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004¹⁴ are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹⁵ Order No. 717 did not change those criteria.¹⁶

14. 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 an OATT within 60 days of the date of the request,

¹³ 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*).

¹⁴ *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*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

¹⁵ 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).

¹⁶ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 54.

and must comply with any additional requirements that are effective on the date of the request.¹⁷

15. 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 waiver would not be justified.¹⁸ The Commission grants waivers to small public utilities based on the threshold of whether they dispose of no more than 4 million MWh annually.¹⁹ Moreover, 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).²⁰

16. Based on the statements in Applicants' filing, we find that the Shared Facilities are limited and discrete and do not constitute an integrated transmission system. Goshen and Ridgeline will only utilize the Shared Facilities to deliver power from their respective wind-power projects to the WGCII Common Facilities. In addition, we find that Applicants meet the Commission's definition of a small public utility because the annual electric sales of either company are no more than 4 million MWh.²¹ Accordingly, we will grant the Applicants' request for waivers of the requirements set forth in Order Nos.

¹⁷ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

¹⁸ *Id.*

¹⁹ *See Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009) (*Wolverine*).

²⁰ *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)).

²¹ *See Wolverine*, 127 FERC ¶ 61,159 at P 15.

888, 889, and 890,²² and section 35.28 and Parts 37 and 358 of the Commission's regulations.²³

17. A waiver of the Standards of Conduct remains in effect unless and until the Commission takes action on a complaint by an entity alleging that Applicants used access to transmission information to unfairly benefit one of their own sales, or an affiliate's sales. Additionally, Applicants must notify the Commission if there is a material change in facts that affects this waiver, within 30 days of the date of such change.²⁴

The Commission orders:

(A) Applicants' Agreement is hereby accepted for filing, effective September 1, 2010, as requested.

(B) Applicants' request for waiver of the requirements of Order Nos. 888, 889, and 890, and of section 35.28, Part 37 and the Standards of Conduct requirements of

²² Consistent with *Black Creek*, Applicants must file, within 60 days of receiving a request for transmission service from another entity, a *pro forma* OATT and any other requirements to comply with Order Nos. 888 and 890.

²³ 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 Goshen II 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 Goshen has used its access to transmission information to unfairly benefit Goshen own sales, or an affiliate's sales. In addition, as the Commission recently explained, Goshen 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 P 14 n.21 (2009).

²⁴ *See 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 Power Supply Coop. Inc.*, 127 FERC ¶ 61,159, at P 14 n.21 (2009).

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)

Kimberly D. Bose,
Secretary.