

134 FERC ¶ 61,130
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.

Cedar Creek Wind Energy, LLC
Cedar Creek II, LLC

Docket Nos. ER11-2416-000
OA11-3-000

ORDER ACCEPTING COTENANCY, COMMON FACILITIES AND EASEMENT
AGREEMENT AND GRANTING REQUESTS FOR WAIVERS

(Issued February 17, 2011)

1. On December 20, 2010, Cedar Creek II, LLC filed on its own behalf and on behalf of Cedar Creek Wind Energy, LLC (collectively, the Cedar Creek Entities), a Cotenancy, Common Facilities and Easement Agreement (Cotenancy Agreement) between the Cedar Creek Entities. This order accepts the Cotenancy Agreement, effective December 21, 2010¹ and grants the requested waivers of certain requirements

¹ The Commission is issuing this order pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824(d) (2006). This order does not prejudice any determinations the Commission may make with respect to Cedar Creek's appeal of a compliance registry decision under section 215 of the FPA in Docket No. RC11-1-000.

under Order Nos. 888,² 889,³ and 890,⁴ and section 35.28, Part 37, and Part 358 of the Commission's regulations.⁵

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).

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, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010).

I. Background

2. Cedar Creek is a public utility with a market-based rate wholesale power sales tariff on file with the Commission⁶ and an exempt wholesale generator (EWG).⁷ Cedar Creek owns and operates an approximately 300 MW wind-powered generating facility in Colorado (Cedar Creek Facility).⁸ Cedar Creek sells the entire output of its Cedar Creek Facility to the Public Service Company of Colorado (PSCo) under a long-term power sales agreement.

3. Cedar Creek II is developing an approximately 250 MW wind-powered generating facility that will be located in Weld County, Colorado (Cedar Creek II Facility) at a site adjacent to the Cedar Creek Facility. The Cedar Creek II Facility will consist of (1) the wind generating turbines, (2) an approximately 18 mile, 230 kV interconnection line that will be wholly owned and solely utilized by Cedar Creek II (the Cedar Creek II Generator Tie Line), and (3) Cedar Creek II's ownership interest in an approximately 72 mile portion of a 76 mile, 230 kV generator tie line and associated switchyard and appurtenant equipment. Cedar Creek II intends to execute a long-term power sales agreement to sell the entire output of the Cedar Creek II Facility to PSCo. Cedar Creek II filed with the Commission a market-based rate wholesale power sales tariff⁹ and a self-certification of status as an EWG.¹⁰

4. The Cedar Creek Entities state that they jointly own approximately 72 miles of the 76 mile generator tie line that extends from the Cedar Creek Facility and the adjacent

⁶ *Cedar Creek Holdings, LLC*, Letter Order in Docket Nos. ER07-1105-000 and ER07-1105-001 (August 8, 2007).

⁷ *Cedar Creek Holdings, LLC*, Notice of Self-certification of Exempt Wholesale Generator Status, Docket No. EG07-21-000 (December 11, 2006); *Cedar Creek Wind Holdings, LLC*, Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Status, Docket No. EG07-21-000 (March 13, 2007).

⁸ Cedar Creek began operating its generating facility in August 2007.

⁹ Cedar Creek II filed its market-based rate application in Docket No. ER11-2029-000 on November 3, 2010, and filed a non-material amendment in Docket No. ER11-2029-001 on December 8, 2010. On December 29, 2010, the Commission issued a letter order accepting for filing Cedar Creek II's market-based rate tariff, effective December 16, 2010, as requested.

¹⁰ Cedar Creek II filed its EWG self-certification in Docket No. EG11-8-000 on November 3, 2010.

Cedar Creek II Facility to PSCo's Keenesburg Switching Station, together with associated switchyard facilities and equipment (Common Facilities).¹¹ The Cedar Creek Entities state that the Cedar Creek Facility and Cedar Creek II Facility utilize the Common Facilities solely for the purpose of interconnecting with the PSCo transmission system.

II. The Filings

Docket No. ER11-2416-000

5. On December 20, 2010, Cedar Creek II filed on its own behalf and on behalf of Cedar Creek, a Cotenancy Agreement between Cedar Creek and Cedar Creek II, dated December 16, 2010, and requested an effective date of December 21, 2010. The Cedar Creek Entities state that the Cotenancy Agreement establishes the terms and conditions under which the Cedar Creek Entities jointly own, utilize, operate, and maintain the Common Facilities, for the sole purpose of interconnecting their wind generation facilities with the PSCo transmission system. The Cedar Creek Entities further state that the Cotenancy Agreement does not establish rates, terms, or conditions for the provision of a Commission jurisdictional service. Moreover, the Cedar Creek Entities explain that neither Cedar Creek nor Cedar Creek II has collected or will collect revenues from the other for the provision of Commission jurisdictional service under the Cotenancy Agreement. The Cedar Creek Entities also explain that the terms and conditions of the Cotenancy Agreement are consistent with the terms and conditions of similar agreements that the Commission has accepted for filing.¹²

6. The Cedar Creek Entities request that the Commission accept the Cotenancy Agreement, effective as of December 21, 2010, and request any waivers of Commission regulations necessary to achieve that effective date.¹³

¹¹ PSCo owns, operates, and maintains the other 4 miles of tie line into the Keenesburg Switching Station and the line breaker, line disconnect, and ground disconnect equipment located in the Keenesburg Switching Station. PSCo has operational control over the entire 76 mile tie line.

¹² Cedar Creek Wind Energy LLC, Cedar Creek II, LLC, Docket No. ER11-2416-000, filed December 20, 2010, Transmittal Letter at 4 (Cedar Creek Entities Transmittal Letter) (citing *Goshen Phase II, LLC and Ridgeline Alternative Energy, LLC*, 133 FERC ¶ 61,090 (2010); *Grand Ridge Energy*, 128 FERC ¶ 61,134 (2009); *FPL Energy, LLC*, Letter Order in Docket No. ER09-404-000 (February 4, 2009)).

¹³ *Id.*

7. The Cedar Creek Entities also request waiver of the following Commission regulatory requirements applicable to transmission providers: the Open Access Transmission Tariff (OATT), the Open-Access Same Time Information System (OASIS), and the Standards of Conduct with respect to the Common Facilities. The Cedar Creek Entities explain that they will utilize the Common Facilities solely to interconnect their generation facilities with the PSCo transmission system. The Cedar Creek Entities state that the Common Facilities do not and will not comprise an integrated transmission system and they are not intended or designed to serve other customers. Thus, the Cedar Creek Entities assert that the Commission's OATT, OASIS, and Standards of Conduct requirements do not apply to their ownership of the Common Facilities.¹⁴ However, the Cedar Creek Entities explain that, out of an abundance of caution, they are requesting 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, consistent with prior Commission orders.¹⁵

8. The Cedar Creek Entities state that the Commission has established criteria for waiver of these requirements and that, consistent with these criteria, the Commission has granted waivers when an applicant demonstrates that it owns, operates or controls limited and discrete facilities, rather than an integrated transmission grid. The Cedar Creek Entities state that the Commission has granted these waivers to a number of owners and operators of wind facilities that own generator tie line facilities, under facts and circumstances similar to those described by the Cedar Creek Entities.¹⁶

9. The Cedar Creek Entities also state that both Cedar Creek and Cedar Creek II qualify as a "small public utility." Because the Cedar Creek Facility will have a generating capacity of 250 MW and the Cedar Creek II Facility will have a generating

¹⁴ *Id.* at 6 (citing *Sagebrush*, 103 FERC ¶ 61,300 (2003); *EDFD-Handsome Lake et al.*, 127 FERC ¶ 61,243 (2009)).

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 7 (citing *Goshen Phase II, LLC* and *Ridgeline Alternative Energy, LLC*, 133 FERC ¶ 61,090 (2010); *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); *Grand Ridge Energy*, 128 FERC ¶ 61,134 (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)).

capacity of 300 MW, the Cedar Creek Entities point out that neither party will generate and sell 4 million MWh of energy annually.¹⁷

10. Cedar Creek and Cedar Creek II state that if either party receives a request for transmission service, it will file an OATT with the Commission and satisfy all other applicable regulatory requirements.¹⁸

Docket No. OA11-3-000

11. Cedar Creek II requests that the Commission grant waivers of the Commission's OATT, OASIS, and Standards of Conduct requirements applicable to transmission providers with respect to the Cedar Creek II Generator Tie Line. Cedar Creek II will utilize the Cedar Creek II Generator Tie Line together with its interest in the Common Facilities to interconnect its generating facility with the PSCo transmission system. Cedar Creek II states that the Cedar Creek II Generator Tie Line is a limited and discrete facility that does not and will not comprise an integrated transmission system and does not serve, nor is it intended to serve, other customers.¹⁹

12. Moreover, Cedar Creek II explains that the Cedar Creek II Facility will have a generating capacity of approximately 250 MW and thus will not generate and sell 4 million MWh of energy annually. Therefore, Cedar Creek II states that it is a "small public utility." Cedar Creek II asserts that, although it does not believe that the Commission's OATT, OASIS, and Standards of Conduct requirements apply to the Cedar Creek II Generator Tie Line, it is seeking waiver of these requirements out of an abundance of caution.²⁰ Accordingly, Cedar Creek II requests 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, consistent with prior Commission orders.²¹

¹⁷ *Id.* at 7-8.

¹⁸ *Id.* at 8.

¹⁹ Cedar Creek II, LLC, Docket No. OA11-3-000, filed December 20, 2010, Transmittal Letter at 3.

²⁰ *Id.* at 3-4.

²¹ *Id.* at 3.

III. Notice of Filing

13. Notice of the filings in Docket Nos. ER11-2416-000 and OA11-3-000 was published in the *Federal Register*, 76 Fed. Reg. 354 (2011), and *Federal Register*, 76 Fed. Reg. 356 (2011), respectively, with protests or motions to intervene due on or before January 10, 2011. None were filed.

IV. Discussion

14. The Commission finds the terms and conditions of the Cotenancy Agreement to be just and reasonable, and not unduly discriminatory. Accordingly, we will accept the proposed Cotenancy Agreement, to be effective December 21, 2010, as requested.

15. In addition, the Commission will grant the Cedar Creek Entities' requested waivers for the Common Facilities and Cedar Creek II's requested waivers for the Cedar Creek II Generator Tie Line. 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, 889, and 890.²² The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004²³ are

²² See, e.g., *Black Creek*, 77 FERC ¶ 61,232, at 61,941; *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*); see also *Goshen Phase II, LLC and Ridgeline Alternative Energy, LLC*, 133 FERC ¶ 61,090 (2010) (noting that the Commission will evaluate requests for waiver of Order Nos. 888 and 890 utilizing the same criteria).

²³ *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).

unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.²⁴ Order No. 717 did not change those criteria.²⁵

16. 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 a transmission service request, the Commission has determined that the public utility must file an OATT with the Commission within 60 days of the date of the request, and it must comply with any additional requirements that are effective on the date of the request.²⁶

17. The Commission may also grant a public utility's request for waiver of the requirements set forth in Order No. 889: (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.²⁷ The Commission's threshold for a small public utility is based on whether they dispose of no more than 4 million MWh annually.²⁸ 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).²⁹

²⁴ 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).

²⁵ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 54.

²⁶ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

²⁷ *Id.*

²⁸ See *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009) (*Wolverine*).

²⁹ *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)).

18. Based on Cedar Creek Entities' representations, we find that the Common Facilities and the Cedar Creek II Generator Tie Line are limited and discrete facilities that do not constitute an integrated transmission system for the purpose of the waiver analysis considered in this order. Cedar Creek and Cedar Creek II will only utilize the Common Facilities to interconnect with, and deliver power onto, the PSCo transmission system. Cedar Creek II will similarly use the Cedar Creek II Generator Tie Line only to interconnect the Cedar Creek II Facility to the PSCo transmission system. Accordingly, we will grant the Cedar Creek Entities' request for waivers of the requirements for the Common Facilities and Cedar Creek II's request for waiver of the requirements for the Cedar Creek II Generator Tie Line as set forth in Order Nos. 888, 889, and 890, and section 35.28 and Parts 37 and 358 of the Commission's regulations.³⁰

19. If Cedar Creek or Cedar Creek II receives a request for transmission service, it must file with the Commission a pro forma OATT within 60 days of the date of the request, and must comply with any additional regulatory requirements effective on the date of the request in compliance with Order Nos. 888 and 890.³¹

The Commission orders:

(A) The Cotenancy Agreement is hereby accepted for filing, effective December 21, 2010, as requested.

(B) Cedar Creek's and Cedar Creek II's requests 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 Part 358 of the Commission's regulations for the Common

³⁰ 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 Cedar Creek or Cedar Creek 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 Cedar Creek or Cedar Creek II has used its access to transmission information to unfairly benefit Cedar Creek or Cedar Creek II own sales, or an affiliate's sales. In addition, Cedar Creek and Cedar Creek II 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).

³¹ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

Facilities and the Cedar Creek II Generator Tie Line are hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.