

135 FERC ¶ 61,251  
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.

Horseshoe Bend Wind, LLC	Docket Nos. ER11-3381-000
North Hurlburt Wind, LLC	ER11-3382-000
South Hurlburt Wind, LLC	ER11-3383-000

ORDER ACCEPTING SHARED FACILITIES AGREEMENT AND GRANTING  
REQUEST FOR WAIVERS

(Issued June 17, 2011)

1. This order accepts the Shepherds Flat Wind Project Shared Facilities Agreement (Shared Facilities Agreement) filed by Horseshoe Bend Wind, LLC, (Horseshoe Bend), North Hurlburt Wind, LLC (North Hurlburt), and South Hurlburt Wind, LLC (South Hurlburt) (collectively, Applicants), effective June 17, 2011, and grants the requested waivers of certain requirements under Order Nos. 888,<sup>1</sup> 889,<sup>2</sup> and 890,<sup>3</sup> and section 35.28, Part 37, and Part 358 of the Commission's regulations.<sup>4</sup>

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<sup>1</sup> *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).

<sup>2</sup> *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).

<sup>3</sup> *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 (continued...)

## I. Background

2. Applicants state that they are individually developing separate phases of an 845 MW wind generating facility, the Shepherds Flat Wind Facility, that will be located in Eastern Oregon. Applicants also state that each company is an exempt wholesale generator (EWG)<sup>5</sup> and has filed, concurrently with this filing, an application for market-based rate authority.<sup>6</sup> The total anticipated output of each phase, as discussed further below, has been sold to Southern California Edison Company under three separate 20-year long-term power purchase agreements. In addition, Applicants explain that test power from the Horseshoe Bend facility will begin in August 2011, with completion of all three facilities by the end of 2012.

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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).

<sup>4</sup> 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).

<sup>5</sup> *Horseshoe Bend Wind, LLC*, Notice of Self-certification of Exempt Wholesale Generator Status, Docket No. EG09-84-000 (August 12, 2009); *North Hurlburt Wind, LLC*, Notice of Self-certification of Exempt Wholesale Generator Status, Docket No. EG09-82-000 (August 12, 2009); and *South Hurlburt Wind, LLC*, Notice of Self-certification of Exempt Wholesale Generator Status, Docket No. EG09-83-000 (August 12, 2009). The Notice of Effectiveness of Exempt Wholesale Generator Status was accepted for the Shepherds Flat Group on November 16, 2009.

<sup>6</sup> *See* *Horseshoe Bend*, Docket No. ER11-3376-000; *North Hurlburt*, Docket No. ER11-3377-000; and *South Hurlburt*, Docket No. ER11-3378-000.

3. Horseshoe Bend and South Hurlburt are each developing a 290 MW wind generating facility that will consist of 116 wind turbines with each having a nameplate capacity of 2.5 MW. Similarly, North Hurlburt is developing a 265 MW wind generating facility that will consist of 106 wind turbines. The total output from these facilities will be delivered over Bonneville Power Administration's (Bonneville) transmission system and each project will interconnect to Bonneville's Slatt Substation. The shared transmission facilities consist of a 230 kV ring bus and two 4.5 mile 230 kV lines.

## **II. Description of Filing**

4. On April 18, 2011, Horseshoe Bend filed a Shared Facilities Agreement on behalf of itself, North Hurlburt, and South Hurlburt, with a requested effective date of June 17, 2011. Applicants state that each of these three companies is a Co-Tenant under the Shared Facilities Agreement.<sup>7</sup> Thus, according to the Applicants, they will own an undivided tenancy in common interest in the shared facilities that will be allocated according to their respective percentage interest in the nameplate capacity of each facility. Hence, Horseshoe Bend and South Hurlburt will each own an approximate 34 percent interest in the shared facilities and North Hurlburt will have an approximate 31 percent interest. Additionally, Applicants state that all construction costs and operating expenses will be shared by the Co-Tenants in proportion to their percentage interests.

5. The Applicants explain that the Shared Facilities Agreement establishes the terms and conditions under which Applicants will jointly own, utilize, operate, and maintain certain shared facilities, for the sole purpose of interconnecting their respective wind generation facility to Bonneville's transmission grid. Applicants also explain that the Shared Facilities Agreement does not establish rates, terms, or conditions for the provision of a Commission jurisdictional service. Moreover, Applicants contend that no payments will be made among Co-Tenants other than to reimburse shared construction costs and expenses that might have been advanced by one of the Co-Tenants on behalf of the others. Applicants offer that the terms and conditions of the Shared Facilities Agreement are consistent with the terms and conditions of similar agreements that have

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<sup>7</sup> On April 18, 2011, in Docket Nos. ER11-3382-000 and ER11-3383-000, North Hurlburt and South Hurlburt filed Certificates of Concurrence with this filing.

been approved by the Commission.<sup>8</sup> Accordingly, Applicants request that the Commission accept the Shared Facilities Agreement, effective June 17, 2011.

6. In addition, Applicants 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 shared transmission facilities. Applicants assert that their transmission facilities are “limited and discrete” because the shared facilities and the individually owned facilities (i.e, certain 34.5 kV collecting lines and a 34.5/230 kV switchyard necessary to connect the generators to the shared facilities) are, even when taken together, limited and discrete and do not form an integrated transmission grid. Finally, Applicants contend that none of these facilities are designed or intended to be used to transmit power to any other entity.

7. Applicants also assert that they each qualify as “small public utility” because even if each of their wind facilities generated the full nameplate capacity during every hour of the year each entity would generate under the 4 million MWh threshold for qualification as a small utility.<sup>9</sup>

### **III. Notice of Filing**

8. Notice of the filings in Docket Nos. ER11-3381-000, ER11-3382-000, and ER11-3383-000 were published in the *Federal Register*, 76 Fed. Reg. 22,690 (2011), with protests or motions to intervene due on or before May 9, 2011. None were filed.

### **IV. Discussion**

9. The Commission finds the terms and conditions of the Shared Facilities Agreement to be just and reasonable, and not unduly discriminatory or preferential. Accordingly, we will accept the proposed Shared Facilities Agreement, effective June 17, 2011, as requested.

10. In addition, the Commission will grant the Applicants’ requested waivers for the shared facilities. 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

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<sup>8</sup> Transmittal Letter at 6 (citing *Goshen Phase II, LLC*, 133 FERC ¶ 61,090 (2010); *Evergreen Wind Power V, LLC*, 131 FERC ¶ 61,239 (2010)).

<sup>9</sup> *Id.* at 7.

requirements of Order Nos. 888, 889, and 890.<sup>10</sup> The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004<sup>11</sup> are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.<sup>12</sup> Order No. 717 did not change those criteria.<sup>13</sup>

11. 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.<sup>14</sup>

12. 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

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<sup>10</sup> 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*); 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).

<sup>11</sup> *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).

<sup>12</sup> 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).

<sup>13</sup> See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 54.

<sup>14</sup> *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

grid); and (2) no other circumstances are present that indicate that waiver would not be justified.<sup>15</sup> The Commission also allows waivers for small public utilities that do not participate in a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO)<sup>16</sup> based on whether such utilities dispose of no more than 4 million MWh annually.<sup>17</sup> 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).<sup>18</sup>

13. Based on the Applicants' representations, we find that the shared facilities and the generator tie lines are limited and discrete facilities that do not constitute an integrated transmission system for the purpose of the waiver analysis considered in this order. The Applicants will only utilize the shared facilities to interconnect with, and deliver their own power onto, Bonneville's transmission system. Accordingly, we will grant the Applicants' request for waivers of the requirements for the shared facilities as set forth in Order Nos. 888, 889, and 890, and section 35.28 and Parts 37 and 358 of the Commission's regulations.<sup>19</sup>

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<sup>15</sup> *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at P 3 (2011) (*Black Hills*). As we explained in *Black Hills*, membership or non-membership in a tight power pool is no longer a factor in this determination.

<sup>16</sup> As we stated in *Black Hills*, size is not relevant to whether waivers are granted to public utilities that participate in a Commission-approved ISO or RTO. *Black Hills*, 135 FERC ¶ 61,058 at P 2.

<sup>17</sup> *See Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009) (*Wolverine*).

<sup>18</sup> *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)).

<sup>19</sup> We note that if there is a material change in facts that affect the waivers granted herein, Applicants must notify the Commission 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.

14. If the Applicants receive 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.<sup>20</sup>

The Commission orders:

(A) The Shared Facilities Agreement is hereby accepted for filing, effective June 17, 2011, as requested.

(B) The 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 Part 358 of the Commission's regulations are hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>20</sup> *Black Creek*, 77 FERC ¶ 61,232 at 61,941.