

136 FERC ¶ 61,138  
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.

TransCanada Maine Wind Development Inc.

Docket No. OA11-9-000

ORDER GRANTING REQUEST FOR WAIVERS

(Issued August 29, 2011)

1. This order grants TransCanada Maine Wind Development Inc. (TCMWD) 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 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 (2011); *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*,  
(continued...)

## I. Background

2. TCMWD states that it owns the Kibby Wind Project, an approximately 132 MW wind powered electric generation facility in Franklin County, Maine (the Kibby Facility). TCMWD was granted market-based rate authority on April 16, 2008.<sup>5</sup> TCMWD sells all of its output to TransCanada Power Marketing Ltd. (TCPM), an affiliated power marketer with authority to sell at market-based rates.<sup>6</sup> TCMWD also owns a 25-mile radial 115 kV generator tie line (the TCMWD Generator Tie Line) that connects the Kibby Facility to the transmission system owned and operated by Central Maine Power Company. The TCMWD Generator Tie Line is wholly owned and solely used by TCMWD to deliver the output of the Kibby Facility.

## II. Description of Filing

3. On June 30, 2011, TCMWD filed a request for waiver of the Commission's requirements to file an Open Access Transmission Tariff (OATT), to establish and maintain an Open Access Same-Time Information System (OASIS), and to comply with the Commission's Standards of Conduct requirements. Specifically, TCMWD requests waivers of the requirements of Order Nos. 888, 889, and 890 and section 35.28, Part 37, and Part 358 of the Commission's regulations. TCMWD asserts that the TCMWD

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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> *TransCanada Maine Wind Development Inc.*, Docket No. ER08-685-000, *et al.* (Apr. 16, 2008) (delegated letter order).

<sup>6</sup> *TransCanada Power Marketing Ltd.*, Docket No. ER98-564-000 (Mar. 2, 1998) (delegated letter order). TCPM is a member of the New England Power Pool and makes sales both on a bilateral basis and into the markets operated by ISO New England Inc. and the New York Independent System Operator. TCPM is also a supplier of wholesale standard offer service in New England and additionally makes sales in New England to retail customers.

Generator Tie Line is a generator interconnection facility that is “limited and discrete” because it does not comprise an integrated transmission system and does not serve and is not designed to serve other customers.<sup>7</sup>

4. TCMWD asserts that it qualifies as a “small public utility” because, even if it generated the full nameplate capacity during every hour of the year, it would generate under the 4 million MWh threshold for qualification as a small utility.<sup>8</sup>

5. TCMWD states that, consistent with the Commission’s current precedent, if it receives a request for transmission service on the TCMWD Generator Tie Line, it will file an OATT with the Commission and satisfy all other applicable regulatory requirements.<sup>9</sup>

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

6. Notice of the filing in Docket No. OA11-9-000 was published in the *Federal Register*, 76 Fed. Reg. 41,774 (2011), with protests or motions to intervene due on or before July 21, 2011. None were filed.

### **IV. Discussion**

7. TCMWD seeks waiver of certain requirements under Order Nos. 888, 889, and 890. As explained above, TCMWD supports its waiver request by stating that it does not own, operate, or control any transmission-related equipment other than the discrete facilities interconnecting the Kibby Facility to the transmission grid. Specifically, TCMWD states that the TCMWD Generator Tie Line is wholly owned and solely used by TCMWD to deliver the output of the Kibby Facility.

8. The Commission will grant TCMWD’s requested waivers for the TCMWD Generator Tie Line. Order Nos. 888 and 890 require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT prior to providing transmission service. Order No. 889 and Part 37 of the

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<sup>7</sup> TransCanada Maine Development Inc., Docket No. OA11-9-000, filed June 30, 2011, Transmittal Letter at 4.

<sup>8</sup> *Id.* at 4 n.18. TCMWD states that its 132 MW generating facility would only be capable of generating 1,156,320 MWh annually if operated at 100 percent capacity factor during every hour of the year.

<sup>9</sup> *Id.* at 4.

Commission's regulations<sup>10</sup> require public utilities to establish and maintain an OASIS and Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations<sup>11</sup> require public utilities to abide by the Commission's Standards of Conduct.<sup>12</sup> 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.<sup>13</sup> The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004<sup>14</sup> are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.<sup>15</sup> Order No. 717 did not change those criteria.<sup>16</sup>

9. The Commission may grant requests for waiver of the obligation to file an OATT 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

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<sup>10</sup> 18 C.F.R. Part 37 (2011).

<sup>11</sup> 18 C.F.R. Part 358 (2011).

<sup>12</sup> Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 16; Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 313.

<sup>13</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*).

<sup>14</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>15</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>16</sup> See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 54.

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.<sup>17</sup>

10. The Commission has also determined that waiver of the requirement to establish an OASIS and abide by the Standards of Conduct 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 a waiver would not be justified.<sup>18</sup>

11. 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>19</sup>

12. Based on TCMWD's representations, we find that the TCMWD Generator Tie Line is limited and discrete. The TCMWD Generator Tie Line does not form an integrated transmission system and will be used solely by TCMWD to interconnect the Kibby Facility to the transmission grid. Accordingly, we will grant TCMWD's request for waiver of the requirements in Order Nos. 888 and 890 to have an OATT on file. However, if TCMWD 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

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<sup>17</sup> *Black Creek*, 77 FERC at 61,941.

<sup>18</sup> *Id.* In *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at P 2-3 (2011), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Additionally, size is not relevant to whether waivers are granted to public utilities that participate in a Commission-approved Independent System Operator or Regional Transmission Organization.

<sup>19</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)).

comply with any additional requirements that are effective on the date of the request in compliance with Order Nos. 888 and 890.<sup>20</sup>

13. The Commission also will grant TCMWD waiver from the requirements to maintain an OASIS and of the Standards of Conduct. We note that TCMWD's waiver of the requirement to establish an OASIS 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.<sup>21</sup> Likewise, TCMWD's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that TCMWD has unfairly used its access to information to unfairly benefit itself or its affiliate.<sup>22</sup>

The Commission orders:

TCMWD'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 TCMWD Generator Tie Line is 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> See *Terra-Gen Dixie Valley, LLC*, 132 FERC ¶ 61,215, at P 47 (2010), *order on reh'g*, 134 FERC ¶ 61,021 (2011).

<sup>21</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>22</sup> *Id.* TCMWD 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).