

139 FERC ¶ 61,196
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Interstate Power and Light Company

Docket No. ER12-1127-000

ORDER ACCEPTING COMMON FACILITIES AGREEMENT AND GRANTING
WAIVERS

(Issued June 8, 2012)

1. In this order, the Commission accepts the Common Facilities Capacity Agreement (Common Facilities Agreement)¹ filed by Interstate Power and Light Company (Interstate)² and Franklin County Wind, LLC (Franklin Wind)³ (collectively, Applicants), effective September 24, 2012, as requested. Further, as discussed below, we grant Applicants' requests for waiver of the requirements to file an Open Access Transmission Tariff (OATT), to comply with the Commission's Standards of Conduct, and to establish and maintain an Open Access Same-Time Information System (OASIS).

I. Background

2. Interstate states that it owns and operates the Whispering Willow Windfarm – East Project (Whispering Willow Project), a wind generation facility located in

¹ Interstate Power and Light Company, FERC FPA Electric Tariff, Interstate Power and Light Company (IPL) Agreements, [IPL and FCW CFCA, IPL and FCW - CFC Agreement, 0.0.0.](#)

² Interstate, a direct subsidiary of Alliant Energy Corporation (Alliant Energy), is engaged in the generation, distribution, and sale of electric energy, serving retail and wholesale customers in Iowa and Minnesota.

³ Franklin Wind, an indirect subsidiary of Alliant Energy, is self-certified as an exempt wholesale generator under 18 C.F.R. § 366.7(a) (2011) of the Commission's regulations. *See* Franklin County Wind, LLC, Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG11-125-000 (filed Sept. 14, 2011).

Franklin County, Iowa, with a generating capacity of 200 MW. The project is interconnected with the ITC Midwest LLC (ITC Midwest) transmission system in the region of the Midwest Independent Transmission System Operator, Inc. (MISO).

3. Franklin Wind states that it owns the Franklin Wind Project, a 100 MW wind generation facility located adjacent to the Whispering Willow Project. Franklin Wind anticipates selling the project's electric energy at wholesale, pursuant to a market-based rate wholesale power sales tariff that it plans to file with the Commission. The Franklin Wind Project will interconnect to transmission facilities owned by ITC Midwest and under the functional control of MISO.

4. On February 21, 2012, Applicants filed the Common Facilities Agreement to allow them to share use of the common facilities to interconnect their projects' generating facilities with the ITC Midwest transmission system without the need for Franklin Wind to develop duplicative and costly generator interconnection facilities. Applicants state that the common facilities include bus work, circuit breakers, transformers, switches, and other facilities and equipment.

5. Under the Common Facilities Agreement, Franklin Wind will be granted the non-exclusive right to access and utilize 99 MW of generator interconnection capacity on the common facilities as necessary to interconnect the Franklin Wind Project. Interstate will utilize 200 MW of generator interconnection capacity. As consideration for its use of the common facilities, Franklin Wind will pay a license fee to Interstate that represents 33.3 percent of the costs, fees, and expenses that Interstate incurred in developing the common facilities. Franklin Wind's share is based on the nameplate capacity of the Franklin Wind Project as measured against the aggregate capacity of the Franklin Wind and Whispering Willow Projects. Additionally, Franklin Wind will pay Interstate 33.3 percent of its costs and expenses for operating and maintaining the common facilities.

6. Applicants also state that the Common Facilities Agreement's terms and conditions are consistent with similar agreements that the Commission has accepted for filing.

7. Applicants request that the Commission waive the requirements under Order Nos. 888⁴ and 890⁵ and section 35.28 of the Commission's regulations⁶ to file an OATT,

⁴ *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

(continued...)

the requirements under Order No. 889⁷ and Part 37 of the Commission's regulations⁸ to establish an OASIS, and the requirements under Order No. 889 and Part 358 of the Commission's regulations⁹ to comply with the Standards of Conduct.

8. On May 15, 2012, Interstate submitted supplemental information to clarify that Interstate and its affiliates do not own or operate networked transmission facilities. In the supplemental filing, Interstate states that Interstate and its affiliate, Wisconsin Power and Light Company, formerly owned transmission systems and provided transmission service. However, Interstate states that each has divested its transmission system and neither currently owns or operates transmission facilities other than limited generator interconnection facilities that interconnect their generating facilities with the MISO transmission system, and that MISO is the transmission provider for those transmission systems. Additionally, Interstate states that Franklin Wind does not own or operate networked transmission facilities and will own limited generator interconnection facilities that will interconnect its generating facility with the MISO transmission system.

II. Notice of Filing

9. Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 12,276 (2012) with interventions and comments due on or before March 13, 2012. None were filed.

¶ 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).

⁵ *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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁶ 18 C.F.R. § 35.28 (2011).

⁷ *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).

⁸ 18 C.F.R. Part 37 (2011).

⁹ 18 C.F.R. Part 358 (2011).

III. Discussion

A. Common Facilities Agreement

10. The Commission finds the terms and conditions of the Common Facilities Agreement to be just and reasonable and not unduly discriminatory or preferential. Accordingly, we will accept the proposed Common Facilities Agreement, to become effective on September 24, 2012, as requested.

B. Waiver Requests

11. In support of their request for waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct with respect to their common facilities, Applicants state that the common facilities do not comprise an integrated transmission system and that they do not serve, and are not designed to serve, other customers. They state further that the common facilities comprise only limited and discrete facilities that have been designed to solely serve as, and will be operated to exclusively serve as, generator interconnection facilities. Applicants assert that imposing on them the requirements applicable to transmission providers would impose the expense and burden of compliance on each of them without providing any benefits to users of the transmission system. Applicants state that the Commission has granted waivers of the transmission provider requirements to a number of owners and operators of wind generating facilities that do not provide transmission service on their interconnection facilities, and that for the same reasons, it should grant waivers to them with respect to the common facilities.

12. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT. Order No. 889 and Part 37 of the Commission's regulations require public utilities to establish and maintain an OASIS. Order Nos. 889, 2004, and 717, and Part 358 of the Commission's regulations require public utilities to abide by certain standards of conduct.¹⁰ In prior orders, the

¹⁰ *Open Access Same Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; *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, (continued...)

Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.¹¹ The criteria for waiver of these requirements are unchanged by Order Nos. 890, 2004, and 717.¹²

13. The Commission may grant requests for waiver of the obligation to file an OATT 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 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.¹³

14. 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 other circumstances are present that indicate that a waiver would not be justified.¹⁴ The Commission has held that waiver of Order No. 889 will remain in effect until the

order on reh'g, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *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), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

¹¹ 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*).

¹² See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

¹³ *Black Creek*, 77 FERC at 61,941.

¹⁴ *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 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.

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).¹⁵

15. Based on the statements in Applicants' filing, we find that their transmission facilities qualify as limited and discrete. Accordingly, we will grant Applicants waiver of the requirements of Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to have an OATT on file. However, if Applicants receive a request for transmission service, they must file with the Commission a *pro forma* OATT within 60 days of the date of the request.

16. The Commission will also grant Applicants' request for waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to an OASIS, and Order No. 717 and Part 358 of the Commission's regulations with respect to the Standards of Conduct. We note that the 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.¹⁶ Likewise, the waiver of the Standards of Conduct requirement will remain in effect unless and until the Commission takes action on a complaint by an entity that Applicants have unfairly used their access to information to unfairly benefit themselves or their affiliates.¹⁷

The Commission orders:

(A) Applicants' proposed Common Facilities Agreement is hereby accepted for filing, effective September 24, 2012, as requested, as discussed in the body of this order.

(B) Applicants are hereby granted waiver of the requirements under Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to file an OATT,

¹⁵ *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)).

¹⁶ *Id.*

¹⁷ *Id.* Applicants must notify the Commission if there is a material change in facts that affect the 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).

the requirements under Order No. 889 and Part 37 of the Commission's regulations to establish and maintain an OASIS, and the requirements under Order No. 717 and Part 358 to comply with the Standards of Conduct, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.