

139 FERC ¶ 61,220
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

High Majestic Interconnection Services, LLC	Docket Nos. ER12-1555-000
	ER12-1556-000
High Majestic Wind Energy Center, LLC	ER12-1559-001

(Not Consolidated)

ORDER ACCEPTING AGREEMENTS AND GRANTING REQUEST FOR WAIVERS

(Issued June 15, 2012)

1. On April 17, 2012, pursuant to section 205 of the Federal Power Act (FPA),¹ High Majestic Interconnection Services, LLC (HM Interconnection) filed two coordination services agreements in separate dockets. In Docket No. ER12-1555-000, HM Interconnection filed a coordination services agreement (Coordination Agreement I)² between HM Interconnection and High Majestic Wind Energy Center, LLC (HM I). In Docket No. ER12-1556-000, HM Interconnection filed a coordination services agreement (Coordination Agreement II)³ between HM Interconnection and High Majestic Wind II (HM II). Also, on April 18, 2012, as amended on May 21, 2012, HM I filed a common facilities agreement (Facilities Agreement)⁴ among HM I, HM Interconnection, and HM II in Docket No. ER12-1559-000. HM Interconnection and HM I (together, Applicants)

¹ 16 U.S.C. § 824d (2006).

² Coordination Agreement I is designated as HM Interconnection Services, LLC FERC Electric Rate Schedule No. 1.

³ Coordination Agreement II is designated as HM Interconnection Services, LLC FERC Electric Rate Schedule No. 2.

⁴ The Facilities Agreement is designated as High Majestic Wind Energy, LLC FERC Electric Rate Schedule No. 2.

request waivers of Order Nos. 888,⁵ 889,⁶ and 890,⁷ as well as section 35.28, parts 37 and 358, of the Commission's regulations,⁸ and of the Commission's prior notice requirement.⁹

⁵ *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).

⁶ *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).

⁷ *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 reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁸ 18 C.F.R. § 35.28, 18 C.F.R. Part 37, and 18 C.F.R. Part 358 (2011). *See 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), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

⁹ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *order on reh'g*, 65 FERC ¶ 61,081 (1993).

2. In this order, the Commission accepts Coordination Agreements I and II and the amended Facilities Agreement for filing, effective June 16, 2012, as requested, and grants the requested waivers, as discussed below.

I. Background

3. HM Interconnection, HM I, and HM II are each Delaware limited liability companies and wholly-owned indirect subsidiaries of NextEra Energy Resources, LLC, which is a wholly-owned subsidiary of NextEra Energy, Inc. HM Interconnection states that it is owned by HM I and HM II with each parent company owning 50 percent of HM Interconnection. HM Interconnection adds that it does not own any generation facilities or interconnection facilities; rather, it was created in order to become a party to the large generator interconnection agreement (LGIA) with Southwest Power Pool, Inc. (SPP) and Southwestern Public Service Company (Southwestern) and to enter into Coordination Agreements I and II.

4. In 2005, HM I entered into the LGIA with SPP and Southwestern, allowing HM I to interconnect 160 MW of generating capacity to SPP and Southwestern's transmission system. To date, HM I has developed and operates a wind energy generating facility totaling 79.5 MW (HM I Project) located in Carson County, Texas, that started commercial operations in 2009. HM II is currently developing a wind energy generating facility totaling 79.6 MW (HM II Project), which is expected to enter commercial operation in August 2012. This facility is located in the same geographical area as HM I's wind energy generating facility. Each of the HM I and HM II projects uses its own set of 34.5 kV collection lines to collect the output of their respective wind turbines, which lead to separate 34.5/115 kV step-up transformers at the projects' substation. From the projects' substation, a 115 kV transmission line connects with the substation owned by Southwestern, where the point of interconnection is located. HM Interconnection states that no change in the physical configuration of the HM I Project was necessary to accommodate the HM II Project.¹⁰

5. HM Interconnection explains that the arrangement undertaken through the Facilities Agreement and Coordination Agreements I and II derives from the interconnection needs for the HMI and HM II Projects. HM I has already paid for all interconnection facilities (both its own and that of the transmission owner) and network upgrades needed for 160 MW of interconnection capacity under the LGIA. However, HM I uses only approximately half of the capacity under the LGIA for its 79.5 MW project. To allow HM II to use the balance of the interconnection service in the LGIA,

¹⁰ April 17, 2012 Transmittal Letter in Docket No. ER12-1555-000 at 3; April 17, 2012 Transmittal Letter in Docket No. ER12-1556-000 at 3; and April 17, 2012 Transmittal Letter in Docket No. ER12-1559-000 at 3.

HM I will assign the entire LGIA to HM Interconnection. In turn, HM Interconnection will be the conduit for interconnection service to HM I and HM II as set forth in Coordination Agreements I and II. Applicants explain that, while a partial assignment of the LGIA from HM I and HM II would be optimal, SPP, like other regional transmission organizations, did not support a partial assignment.¹¹ Applicants state that the overall contractual arrangement is intended to allow HM Interconnection to be a party to the LGIA, while enabling HM I and HM II to receive needed transmission service for delivery of their output to the grid. HM Interconnection adds that the Facilities Agreement is necessary because HM I owns certain interconnection facilities that HM Interconnection and HM II will use. Finally, HM Interconnection explains that the arrangement set forth in Coordination Agreements I and II and the Facilities Agreement is similar to that approved by the Commission in a recent case.¹²

II. Applicants' Filings

A. Coordination Agreements

6. Coordination Agreements I and II state that HM Interconnection will provide services to HM I and HM II to enable all the energy from their respective projects to reach the point of interconnection and the transmission system. Section 2 describes the nature of the services under Coordination Agreements I and II and sets forth the obligations of HM Interconnection, including its obligation to comply with the LGIA, as well as the obligations of HM I and HM II, including their obligations to perform in a manner that facilitates such compliance. In addition, section 3 of Coordination Agreements I and II also requires that certain expenses, including potential costs under section 10.5 of the LGIA for operations and maintenance expenses incurred to administer coordination services to HM I and HM II not directly caused by HM I or HM II, shall be paid for as provided in section 9 of the Facilities Agreement. Finally, section 5 of Coordination Agreements I and II establishes certain covenants for each project, related to adverse events and priority of curtailments. HM Interconnection requests acceptance of Coordination Agreements I and II to take effect June 16, 2012.

¹¹ April 17, 2012 Transmittal Letter in Docket No. ER12-1555-000 at 3; April 17, 2012 Transmittal Letter in Docket No. ER12-1556-000 at 3; and April 17, 2012 Transmittal Letter in Docket No. ER12-1559-000 at 3.

¹² April 17, 2012 Transmittal Letter in Docket No. ER12-1555-000 at 4; April 17, 2012 Transmittal Letter in Docket No. ER12-1556-000 at 4; and April 17, 2012 Transmittal Letter in Docket No. ER12-1559-000 at 4 (citing *Minco Interconnection Services, LLC*, 137 FERC ¶ 61,224 (2011)).

B. Facilities Agreement

7. The Facilities Agreement provides that HM I grants HM II and HM Interconnection the non-exclusive right to use the common facilities for the HM II project, and for HM Interconnection's performance of its obligations under the LGIA and Coordination Agreements I and II. Section 6 specifies certain covenants, including the parties' obligation to cooperate with each other so that each can benefit from the common facilities as needed for the operation of the projects. Section 6 also specifies that, in the event that an operational issue arises with one of the two projects that results in a breach of the LGIA or Facilities Agreement, or harms the operations or facilities of the other project, then HM Interconnection shall promptly take reasonable action to resolve the issue, including curtailment of the project causing the adverse event. Section 9 provides that HM I and HM II will each pay their *pro rata* share of shared expenses, which include operating expenses for the common facilities, maintenance costs, costs that HM Interconnection is responsible for under the LGIA, and other pertinent expenses. Finally, section 11 specifies that HM I and HM II are each responsible for the operation of their separate projects. HM I requests acceptance of the Facilities Agreement to take effect June 16, 2012.

8. On May 21, 2012, HM I submitted an amendment to the Facilities Agreement in Docket No. ER12-1559-001, to add the "Complete Wind Farm Map" under Exhibit A-1, which was inadvertently omitted from the original filing. HM I also requests waiver of the Commission's prior notice requirements to allow the amended Facilities Agreement to be effective June 16, 2012, as originally requested. HM I supports this request for waiver of the prior notice requirement, explaining that the addition of the map is made only to complete the Facilities Agreement. HM I further requests a shortened notice period of five days, stating that the shortened period is appropriate under the circumstances when a minor amendment is made to a filing, and the party has a significant interest in maintaining the originally requested effective date.

C. Request for Waivers

9. Applicants request that the Commission grant waiver of certain requirements of Order Nos. 888, 889, and 890, as well as section 35.28, parts 37 and 358 of the Commissions regulations.¹³ Specifically, Applicants request waiver of the requirement of Order Nos. 888 and 890 to file an Open Access Transmission Tariff (OATT), and the requirement of Order No. 889 to establish an Open-Access Same Time Information

¹³ April 17, 2012 Transmittal Letter in Docket No. ER12-1555-000 at 7-8; April 17, 2012 Transmittal Letter in Docket No. ER12-1556-000 at 7-8; and April 17, 2012 Transmittal Letter in Docket No. ER12-1559-000 at 7-8.

System (OASIS). Applicants also request a waiver of the Standards of Conduct under Part 358 of the Commission's regulations.¹⁴

10. Applicants state that the Commission has consistently granted waivers of the requirements of Order Nos. 888 and 890 to public utilities that show they own, operate, or control limited and discrete transmission facilities, i.e., facilities that do not form an integrated grid, until such time as the public utility receives a request for transmission service.¹⁵ Applicants add that the Commission has also granted waivers of Order No. 889's requirements to 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 a waiver would not be justified.¹⁶ Further, Applicants state that the Commission has granted utilities' requests for waivers of the Standards of Conduct requirements based on these same criteria.¹⁷

11. Applicants contend that good cause exists for the Commission to grant their request for waivers. According to HM I, the proposed agreements allow HM Interconnection to use the common facilities as necessary to perform its obligations under the LGIA and for HM II to receive related service necessary to transmit its output to the point of interconnection. As a result, HM I asserts that the common facilities are not an integrated component of any electricity grid and were designed solely to enable

¹⁴ April 17, 2012 Transmittal Letter in Docket No. ER12-1555-000 at 7; April 17, 2012 Transmittal Letter in Docket No. ER1556-000 at 7; and April 17, 2012 Transmittal Letter in Docket No. ER12-1559-000 at 7.

¹⁵ April 17, 2012 Transmittal Letter in Docket No. ER12-1555-000 at 3; April 17, 2012 Transmittal Letter in Docket No. ER12-1556-000 at 3; and April 17, 2012 Transmittal Letter in Docket No. ER12-1559-000 at 3 (citing *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Golden Spread Electric Coop., Inc.*, 106 FERC ¶ 61,151, at P 7 (2004)).

¹⁶ April 17, 2012 Transmittal Letter in Docket No. ER12-1555-000 at 3; April 17, 2012 Transmittal Letter in Docket No. ER12-1556-000 at 3; and April 17, 2012 Transmittal Letter in Docket No. ER12-1559-000 at 3 (citing *Hardee Power Partners Ltd.*, 125 FERC ¶ 61,036, at P 19-21 (2008)).

¹⁷ April 17, 2012 Transmittal Letter in Docket No. ER12-1555-000 at 3; April 17, 2012 Transmittal Letter in Docket No. ER12-1556-000 at 3; and April 17, 2012 Transmittal Letter in Docket No. ER12-1559-000 at 3 (citing *Peetz Table Wind Energy, LLC*, 123 FERC ¶ 61,192, at P 10 (2008)).

generators to transmit the power from their facilities to the grid. Furthermore, Applicants argue that it would be burdensome to file an OATT or to establish an OASIS under these circumstances. HM I adds that the facilities controlled by HM Interconnection are limited and discrete. Finally, HM I states that the Commission's practice is to grant waiver to small utilities (4 million MWh annually), and explains that its combined output of 160 MW at 100 percent capacity from both projects over the course of a year would be less than 1.5 million MWh annually, noting that it satisfies this criterion.

III. Notice of Filings

12. Notice of Applicants' original filings was published in the *Federal Register*, 77 Fed. Reg. 24,695 (2012), with comments, protests, or interventions due on or before May 8, 2012. No interventions, protests or comments were filed.

13. Notice of Applicants' May 21, 2012 amended filing was published in the *Federal Register*, 77 Fed. Reg. 31,609 (2012), with comments, protests or interventions due on or before June 11, 2012. No interventions, protests or comments were filed.

IV. Discussion

A. Facilities Agreement and Coordination Agreements

14. The Commission finds the terms and conditions of the Facilities Agreement and Coordination Agreements I and II to be just and reasonable, and not unduly discriminatory or preferential. Accordingly, we accept the Facilities Agreement and Coordination Agreements I and II for filing, effective June 16, 2012, as requested.¹⁸

B. Request for Waivers

15. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations require public utilities to file an OATT before providing transmission service. Order No. 889 and parts 37 and 358 of the Commission's regulations require public utilities to establish an OASIS and abide by certain standards of conduct. In prior orders, the Commission has set forth the standards for waiver of, or exemption from, some or all of the requirements of Order Nos. 888 and 889.¹⁹ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 are

¹⁸ *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,339, *order on reh'g*, 61 FERC ¶ 61,089 (1992).

¹⁹ *See, e.g., Black Creek*, 77 FERC ¶ 61,232 at 61,941; *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.²⁰ Order No. 717 did not change those criteria.²¹

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. If the public utility receives such a request, the Commission has determined that the public utility must file with the Commission a *pro forma* OATT 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.²²

17. The Commission has also determined that waiver of Order No. 889 is appropriate for a public utility under the following circumstances: (1) the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) 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 a waiver would not be justified.²³ In addition, the Commission grants waivers to small public utilities based on the threshold of whether they dispose of no more than 4 million MWh annually.²⁴ Moreover, the Commission has held that a 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

²⁰ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007).

²¹ See Order No. 717, *Standards of Conduct for Transmission Providers*, FERC Stats. & Regs. ¶ 31,280, at PP 32-34.

²² *Black Creek*, 77 FERC at 61,941.

²³ *Id.* 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 the 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.

²⁴ See *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009).

used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).²⁵

18. Based on the statements in these filings, we find that the transmission facilities at issue are limited and discrete and do not constitute an integrated transmission system. The common facilities will be utilized solely to facilitate the transmission of power from the HM I and HM II projects to the grid. Accordingly, we will grant Applicants' request for 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 from a non-affiliate, they must file with the Commission a *pro forma* OATT within 60 days of the date of the request.

19. 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 establishing an OASIS and Order Nos. 889, 2004, and 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.²⁶ Likewise, Applicants' request for waiver of the Standards of Conduct 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.²⁷

The Commission orders:

(A) Coordination Agreements I and II and the amended Facilities Agreement are hereby accepted for filing, effective June 16, 2012, as requested, as discussed in the body of this order.

²⁵ *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).

²⁶ *See supra* note 25.

²⁷ *Id.* Applicants must notify the Commission if there is a material change in facts that affects 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).

(B) Applicants' request for waiver of the OATT and OASIS requirements of Order Nos. 888, 889, 890 as well as section 35.28 and parts 37 and 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.