

136 FERC ¶ 61,143  
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.

Dempsey Ridge Wind Farm, LLC

Docket No. OA11-8-000

ORDER GRANTING REQUEST FOR WAIVERS

(Issued August 30, 2011)

1. This order grants Dempsey Ridge Wind Farm, LLC (Dempsey Ridge) 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 (2010); *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No.

(continued...)

## **I. Background**

2. Dempsey Ridge states that its 132 MW wind generating facility, the Dempsey Ridge Facility, will be located in Roger Mills County, Oklahoma. Dempsey Ridge will sell the facility's entire output into the wholesale markets at market-based rates. Dempsey Ridge has filed with the Commission a market-based rate wholesale power sales tariff<sup>5</sup> and a self-certification of status as an exempt wholesale generator (EWG).<sup>6</sup> The Dempsey Ridge Facility includes a 34.5 kV collection system and a substation where power is stepped up to 230 kV and is then fed into an approximately 15.5-mile, 230 kV tie line (Dempsey Ridge Generator Tie Line). The Dempsey Ridge Generator Tie Line will be wholly owned and solely utilized by Dempsey Ridge to interconnect its generating facility with the Public Service Company of Oklahoma (PSO) transmission system at PSO's Sweetwater substation.

## **II. Description of Filing**

3. On May 27, 2011, Dempsey Ridge requested waiver for the Dempsey Ridge Generator Tie Line 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. Specifically, Dempsey Ridge 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. Dempsey Ridge

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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, 129 FERC ¶ 61,043, *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).

<sup>5</sup> Dempsey Ridge filed its market-based rate application in Docket No. ER11-3391-000 on April 19, 2011, as supplemented on May 27 and June 15, 2011.

<sup>6</sup> Dempsey Ridge filed its EWG self-certification in Docket No. EG11-75-000 on April 19, 2011. On July 13, 2011, the Commission issued a Notice of Effectiveness of EWG Status for Dempsey Ridge.

asserts that the Dempsey Ridge Generator Tie Line is a generator interconnection facility that is “limited and discrete” because it does not comprise an integrated transmission system, will be used only to interconnect the Dempsey Ridge Facility to the PSO system, and does not serve and is not designed to serve other customers.<sup>7</sup>

4. Dempsey Ridge 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. Dempsey Ridge states that consistent with the Commission’s current precedent, if it receives a request for transmission service on the Dempsey Ridge 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 was published in the *Federal Register*, 76 Fed. Reg. 32,186 (2011), with protests or motions to intervene due on or before June 17, 2011. None were filed.

### **IV. Discussion**

7. Dempsey Ridge seeks waiver of certain requirements under Order Nos. 888, 889, and 890. As explained above, Dempsey Ridge 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 Dempsey Ridge Facility to the PSO transmission grid. Specifically, Dempsey Ridge states that the Dempsey Ridge Generator Tie Line will be wholly owned and solely utilized by Dempsey Ridge to interconnect its generating facility with the PSO transmission grid at PSO’s Sweetwater substation.

8. The Commission will grant Dempsey Ridge’s requested waivers for the Dempsey Ridge 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

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<sup>7</sup> Dempsey Ridge May 27 Filing at 2-3.

<sup>8</sup> *Id.* at 3 n.15. Dempsey Ridge states that its 132 MW generating facility would 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 3-4.

commerce to file an OATT prior to providing transmission service. Order No. 889 and Part 37 of the 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. The

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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.

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 and no other circumstances are present that indicate that waiver would not be justified.<sup>17</sup> 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>

10. Based on Dempsey Ridge's representations, we find that the Dempsey Ridge Generator Tie Line is limited and discrete. The Dempsey Ridge Generator Tie Line does not form an integrated transmission system and will be used solely by Dempsey Ridge to interconnect its wind project to the transmission grid. Accordingly, we will grant Dempsey Ridge waiver of the requirements in Order Nos. 888 and 890 to have an OATT on file. However, if Dempsey Ridge 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 requirements that are effective on the date of the request in compliance with Order Nos. 888 and 890.<sup>19</sup> The Commission also will grant Dempsey Ridge waiver from the requirements to maintain an OASIS and of the Standards of Conduct. We note that Dempsey Ridge'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

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<sup>17</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. Additionally, 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. *Id.* at P 2.

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

get the information necessary to complete its evaluation.<sup>20</sup> Likewise, Dempsey Ridge'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 Dempsey Ridge has unfairly used its access to information to unfairly benefit itself or its affiliate.<sup>21</sup>

**The Commission orders:**

Dempsey Ridge's 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 is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>20</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>21</sup> *Id.* Dempsey Ridge 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).