

131 FERC ¶ 61,239
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Evergreen Wind Power V, LLC and
Stetson Wind II, LLC

Docket No. ER10-1117-000

ORDER ACCEPTING AGREEMENT FOR FILING AND GRANTING REQUEST
FOR WAIVERS

(Issued June 17, 2010)

1. On April 28, 2010, pursuant to section 205 of the Federal Power Act (FPA),¹ Evergreen Wind Power V, LLC (Evergreen) and Stetson Wind II, LLC (Stetson) (collectively, Applicants) filed a shared facilities agreement (SFA). The SFA governs operation of Evergreen's and Stetson's shared generator interconnection facilities. These facilities allow Evergreen and Stetson to interconnect their wind generating facilities to a generator lead line (not subject to the SFA) and deliver power to the transmission system owned by Bangor Hydro-Electric Company (Bangor Hydro). With respect to the SFA, Applicants request waivers of certain open access transmission tariff (OATT), open access same-time information system (OASIS), and standards of conduct requirements applicable to transmission providers under Order Nos. 888,² 889,³ and 890⁴ and of

¹ 16 U.S.C. § 825d (2006).

² *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)

section 35.28 and Parts 37 and 358 of the Commission's regulations.⁵ As discussed below, we will accept the proposed SFA with the requested effective date of February 17, 2010. Further, we will grant the Applicants' requested waivers of the Commission's regulations.

Background

2. Each of the Applicants is a subsidiary of First Wind Holdings, LLC (First Wind Holdings). Applicants state that First Wind Holdings is developing a multiple-phase wind generating project located in Washington and Penobscot Counties, Maine (Maine Wind Project). Applicants maintain that the first phase of the project, owned and operated by Evergreen, is a 57 MW (nameplate) wind-powered generating facility that

¶ 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).

³ *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).

⁴ *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 reh'g*, Order No 890-D, 129 FERC ¶ 61,126 (2009).

⁵ 18 C.F.R. § 35.28, 18 C.F.R. Part 37, and 18 C.F.R. Part 358 (2009). *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 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, 73 Fed. Reg. 63,796 (Oct. 27, 2008), 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).

commenced operations in 2009.⁶ Applicants state the second phase of the project, owned and operated by Stetson, is a 25.5 MW (nameplate) wind-powered generating facility that became operational in 2010.⁷ Two other subsidiaries of First Wind Holdings, Evergreen Wind Power III and Champlain Wind, according to Applicants, are developing as yet unbuilt wind-powered generating facilities that will be part of the Maine Wind Project.

3. Applicants maintain that the Maine Wind Project uses a 38-mile, 115 kv generator lead line that interconnects the Maine Wind Project with the Bangor Hydro transmission system, which is part of the ISO New England, Inc. (ISO-NE), regional transmission organization. Applicants further maintain that this Maine Wind Project generator lead line is designed, constructed, and used solely to interconnect the Maine Wind Project with the Bangor Hydro system. Applicants also state that the generator lead line for the Maine Wind Project is a radial facility that does not constitute an integrated transmission system and neither serves, nor is designed to serve, other customers. Applicants maintain the Commission recently granted a waiver of those transmission-related requirements with respect to the generator lead line.⁸

4. Applicants explain that the Shared Facilities comprise a set of generator interconnection facilities that allow Evergreen and Stetson to interconnect their generating facilities with the Maine Wind Project generator lead line and, at the other end of that line, the Bangor Hydro transmission system. Applicants state the Shared Facilities constitute bus work, circuit breakers, transformers, other facilities and equipment located in a substation that serves the generating projects owned by Evergreen and Stetson, together with other facilities and equipment that support the generating facilities. Applicants state that the Shared Facilities are a discrete set of generator interconnection facilities that allow Evergreen and Stetson to interconnect their generating facilities with the shared generator lead line and that each party owns discrete components of the Shared Facilities.

⁶ The Commission accepted for filing Evergreen's market-based rate power sales tariff and granted its application for authority to sell power at market-based rates in an unpublished letter order in Docket Nos. ER09-174-000 and ER09-174-001 on January 15, 2009.

⁷ The Commission accepted for filing Stetson's market-based rate power sales tariff and granted its application for authority to sell power at market-based rates in an unpublished letter order in Docket Nos. ER10-426-000, ER10-426-001 and ER10-426-003 on April 16, 2010.

⁸ *Evergreen Wind Power V, LLC*, 130 FERC ¶ 61,186 (2010).

5. Applicants explain, pursuant to the SFA tendered here, Evergreen and Stetson use the Shared Facilities to allow each to interconnect its generating facilities with the transmission system. Applicants maintain the SFA memorializes the terms and conditions under which the Shared Facilities are owned, used, operated, and maintained by Evergreen and Stetson for the purpose of interconnecting their generating facilities with the transmission system. Applicants state neither party pays the other for services under the SFA; rather, they share the cost of operating and maintaining the Shared Facilities. Applicants explain each party pays a share, in proportion to its ownership interests in the Shared Facilities, of the costs of operating and maintaining the Shared Facilities. Applicants aver the SFA does not establish rates, terms, or conditions for the provision of a FERC-jurisdictional service, and neither Evergreen nor Stetson has collected revenues from the other for the provision of FERC-jurisdictional services under the SFA. Applicants explain that they submit the SFA out of an abundance of caution to ensure compliance with the Commission's requirement under FPA section 205 and request that the Commission accept it for filing.

6. Applicants request an effective date of February 17, 2010, the date on which Stetson commenced the production of test energy and Evergreen and Stetson began sharing the use of the Shared Facilities to interconnect their generating facilities with the transmission system. Applicants further request any waivers of the Commission's regulations to allow a February 17, 2010 effective date.

7. The Applicants also request waivers of Order Nos. 888, 889, and 890 and section 35.28 and Parts 37 and 358 of the Commission's regulations – the OATT, OASIS, and standards of conduct requirements – for the Shared Facilities. They maintain the Commission has established criteria for waiving regulatory requirements applicable to transmission providers.⁹ Applicants explain that the Commission has routinely granted waiver where the applicant demonstrates that it owns, operates, or controls only limited and discrete transmission facilities, rather than an integrated transmission grid, or where the applicant is a small public utility that disposes of no more than 4 million MWh of energy annually. Applicants state that they satisfy the waiver criteria in each instance.¹⁰

⁹ Applicants cite as support *Northern States Power Company*, 76 FERC ¶ 61,250, at 62,296 (1996) and *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*).

¹⁰ Applicants cite as support *Grand Ridge Energy*, 128 FERC ¶61,134 (2009) and *Wolverine Power Supply Cooperative*, 127 FERC ¶ 61,159 (2009) (*Wolverine*).

8. Notice of the Applicant's filing was published in the *Federal Register*, 75 Fed. Reg. 25,223 (2010), with protests or interventions due on or before May 19, 2010. None were filed.

Discussion

9. The Commission finds the terms and conditions of the SFA to be just and reasonable and not unduly discriminatory, and, accordingly, we will accept the proposed SFA, effective February 17, 2010, as requested.

10. Order Nos. 888 and 890 require public utilities that own, control, or operate facilities used for the transmission of electric energy in interstate commerce to file an OATT. Order No. 889 requires public utilities to establish an OASIS. 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 and 889.¹¹ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹²

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 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

12. The Commission has also determined that waiver of Order No. 889 would be appropriate for a public utility in these circumstances: (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.¹⁴ The

¹¹ See, e.g., *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*); *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*).

¹² See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007).

¹³ *Black Creek*, 77 FERC at 61,941.

¹⁴ *Id.*

Commission grants waivers to small public utilities based on the threshold of whether they dispose of no more than 4 million MWh annually.¹⁵ 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 used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).¹⁶

13. Based on the statements in Applicants' filing, we find that the Applicants' transmission facilities are limited and discrete. Applicants' transmission facilities, the Shared Facilities, in Maine were built exclusively to interconnect the Maine Wind Project with the transmission system of Bangor Hydro. Accordingly, we will grant Applicants' requested waivers.¹⁷

14. A waiver of the requirement to establish and maintain an OASIS site remains effective until the Commission takes action in response to any complaint by an entity alleging that, in evaluating its transmission needs, the entity could not obtain information from Applicants that it needed to complete its evaluation. A waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity alleging that Applicants have used their access to transmission information to unfairly benefit Applicants' own sales, or an affiliate's sales. In addition, Applicants must notify the Commission if there is a material change in facts that affects its waiver, within 30 days of the date of such change.¹⁸ In light of these circumstances, we will grant Applicants' waiver of the OASIS requirements of Order No. 889 and of the requirements of section 35.28 and Parts 37 and 358 of the Commission's regulations.

¹⁵ See *Wolverine*, 127 FERC ¶ 61,159 at P 15.

¹⁶ See, e.g., *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).

¹⁷ Consistent with *Black Creek*, Applicants must file, within 60 days of its receiving a request for transmission service, a *pro forma* OATT and any additional requirements in compliance with Order Nos. 888 and 890. *Black Creek*, 77 FERC at 61,941.

¹⁸ *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 n.21.

The Commission orders:

(A) Applicants' proposed Shared Facilities Agreement is hereby accepted for filing, as discussed in the body of this order.

(B) Applicants' request for waiver of the OATT requirements of Order Nos. 888, 889, 890, and of the requirements of 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.