

122 FERC ¶ 61,086
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Jon Wellinohoff.

Peetz Logan Interconnect, LLC

Docket Nos. ER08-302-000
TS08-1-000

ORDER ACCEPTING AGREEMENTS FOR FILING AND
GRANTING REQUESTS FOR WAIVERS

(Issued February 1, 2008)

1. This order accepts for filing a proposed transmission agreement between Peetz Logan Interconnect, LLC (PLI) and Peetz Table Wind Energy, LLC (Peetz Table), effective February 4, 2008, and a proposed transmission agreement between PLI and Logan Wind Energy, LLC (Logan), effective February 4, 2008. In addition, this order grants PLI's requests for waivers of Order Nos. 888,¹ 889,² 890,³ Part 358 of the

¹ *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 (1997), *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).

² *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 (1997), *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g and clarification*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007).

Commission's regulations – Standards of Conduct,⁴ and Part 101 of the Commission's regulations – Uniform System of Accounts.⁵

Background

2. PLI owns and operates an approximately 78 mile, 230 kV transmission line and related facilities in northeastern Colorado that connect wind generation projects owned by two of PLI's affiliates, Peetz Table and Logan, to the transmission grid of Public Service Company of Colorado (PS Colorado). PLI states that its transmission line is radial in nature and was built only for the purpose of delivering the output of Peetz Table and Logan to the transmission grid of PS Colorado. PLI, Peetz Table and Logan have all been granted exempt wholesale generator status by the Commission.⁶

3. Peetz Table owns and operates a wind-powered generation facility with a nameplate capacity of up to 199.5 MW, which became operational in August 2007. Logan owns and operates a wind-powered generation facility with a nameplate capacity of up to 201 MW, which became operational in September 2007. Peetz Table and Logan

⁴ 18 C.F.R. Part 358 (2007); *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs., ¶ 31,161 (2004), *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs., ¶ 31,166 (2004), *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 also Standards of Conduct for Transmission Providers*, Interim Rule, Order No. 690, 72 Fed. Reg. 2,427 (Jan. 19, 2007), FERC Stats. & Regs. ¶ 31,237 (2007), Notice of Proposed Rulemaking, 72 Fed. Reg. 3,958 (Jan. 29, 2007) FERC Stats & Regs. ¶ 32,611 (2007) (NOPR seeking comment on, among other things, whether or not the standards of conduct should govern the relationship between electric utility transmission providers and their energy affiliates).

⁵ 18 C.F.R. Part 101 (2007).

⁶ *See Peetz Logan Interconnect, LLC*, Docket No. EG06-84-000, Notice of Effectiveness of Exempt Wholesale Generator Status (December 15, 2006) and Notice of Change in Material Facts (April 26, 2007); *Peetz Table Wind Energy, LLC*, Docket No. EG07-62-000, Notice of Effectiveness of Exempt Wholesale Generator Status (September 12, 2007); and *Logan Wind Energy, LLC*, Docket No. EG07-76-000, Notice of Effectiveness of Exempt Wholesale Generator Status (November 14, 2007).

will sell all of the output of their facilities to PS Colorado pursuant to a long-term power purchase agreement. Peetz Table and Logan have been granted authority to sell energy, capacity and ancillary services at market-based rates.⁷

Filing

4. On December 5, 2007, PLI filed, under section 205 of the Federal Power Act (FPA), executed Amended and Restated Transmission Service Agreements (Agreements) with Peetz Table and Logan, setting forth the terms, conditions and rates under which PLI will transmit the power produced by the generating facilities of Peetz Table and Logan over PLI's transmission line to a substation owned by PS Colorado. PLI proposes a firm, point-to-point transmission service rate of \$1.44 per kW/month under both Agreements.⁸

5. PLI includes cost support showing that PLI calculated its proposed rate based on a revenue requirement of \$6,923,221 per year, which recovers PLI's operation and maintenance costs, administrative and general expenses, depreciation, property taxes and income taxes. PLI derived the revenue requirement using a net rate base of \$38.9 million, a return on common equity of 10.5 percent, cost of debt of 7.8 percent, and a capital structure of 50 percent debt and 50 percent equity. PLI's annual depreciation expense is based on an expected 40 year life of PLI's transmission line.

6. PLI requests waiver of notice to allow the Agreements to become effective when they were initially executed: August 6, 2007 for Peetz Table and August 27, 2007 for Logan.⁹ PLI states that it has commenced service under the Agreements, but has not yet collected any charges from Peetz Table or Logan.

7. PLI also asks that the Commission grant waiver of Order Nos. 888, 889, and 890, and also requests waiver of the Standards of Conduct under Part 358 of the Commission's regulations. In addition, PLI requests waiver of Part 101 of the Commission's regulations regarding the Uniform System of Accounts.

⁷ *Peetz Table Wind Energy, LLC*, Docket No. ER07-875-000, Letter Order (June 26, 2007); *Logan Wind Energy, LLC*, Docket No. ER07-1157-000, Letter Order (October 16, 2007).

⁸ The proposed rate will result in total monthly charges of \$288,000 for Peetz Table and \$289,440 for Logan.

⁹ Both Agreements state that they were entered into on October 5, 2006, and that they amend and restate the Transmission Service Agreements dated August 6, 2006 and August 27, 2006.

Notice

8. Notice of PLI's filing was published in the *Federal Register*, 72 Fed. Reg. 71,886 (2007), with protests or motions to intervene due on or before December 26, 2007. No interventions, protests, or comments were filed.

Discussion

Section 205 Filing – Transmission Agreements

9. We find that the proposed rate for transmission service is just and reasonable, and has not been shown to be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful. Accordingly, we will accept the proposed Agreements for filing, without hearing or suspension.

10. PLI states that it commenced service under the Agreements in August 2007, and requests retroactive effective dates. The FPA provides that, absent waiver, rates, terms, and conditions cannot become effective earlier than after 60 days notice to the Commission.¹⁰ Waiver of the 60 day prior-notice requirement is granted for untimely filings only upon showing of extraordinary circumstances.¹¹ PLI has not made such a showing. Therefore, waiver of the prior-notice requirement is denied, and the Agreements are accepted, effective February 4, 2008, the sixty-first day from the date of filing. When waiver of notice is denied, the Commission requires that the utility refund the time values of any revenues collected prior to the effective date.¹² Here, PLI has not yet collected any charges from Peetz Table or Logan. Therefore, no refunds are due.

Waiver of Order Nos. 888, 889, and 890

11. Order Nos. 888 and 890 require public utilities to file an open-access transmission tariff (OATT) prior to providing transmission service. Order No. 889 requires public utilities to establish an Open Access Same Time Information System (OASIS). In prior orders the Commission has enunciated the standards for waiver of, or exemption from,

¹⁰ 16 U.S.C. § 824d (2000); 18 C.F.R. § 35.3 (2007).

¹¹ See *Central Hudson Gas & Electric Co.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¹² See *El Paso Electric Co.*, 101 FERC ¶ 61,276 (2002), *reh'g denied*, 105 FERC ¶ 61,131 (2003).

some or all of the requirements of Order Nos. 888 and 889.¹³ 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 889.¹⁴

12. 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.¹⁵

13. The Commission has also determined that waiver of Order No. 889 would be appropriate for 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 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 Standard of Conduct waivers).¹⁷

14. In support of its request for waiver of the requirements of Order Nos. 888, 889, and 890, PLI asserts that its transmission facility is a limited and discrete radial line that does not form a part of any integrated transmission grid, and that it serves only to move power from Petz Table and Logan to an interconnection point with PS Colorado. PLI

¹³ See, e.g., *Black Creek Hydro, Inc. (Black Creek)*, 77 FERC ¶ 61,232 at 61,941 (1996); *Entergy Mississippi, Inc. (Entergy)*, 112 FERC ¶ 61,228 at P 22 (2005).

¹⁴ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035 at P 3 (2007).

¹⁵ *Black Creek*, 77 FERC at 61,941.

¹⁶ *Id.*

¹⁷ *Entergy* 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).

also asserts that because of the location of its facility, it is unlikely that any other generator would request transmission service. In addition, PLI states that PLI meets the Commission's definition of a small public utility, since it transmits less than 4 million MWh annually.¹⁸

15. PLI requests waiver of the requirement of Order Nos. 888 and 890 to file an OATT prior to providing transmission service, and the requirement of Order No. 889 to establish an OASIS. As stated above, the criteria for waiver of Order No. 890 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889. Based on the statements in PLI's filing, we find that PLI's facility is a limited and discrete facility. The only transmission service PLI's facility provides is to Peetz Table and Logan and it is unlikely that any other generator would request transmission service from PLI. In addition, PLI meets the Commission's definition of a small public utility. In light of these circumstances, we will grant PLI waiver from the OASIS requirements of Order No. 889,¹⁹ and waiver of the requirements in Order Nos. 888 and 890 to have an OATT on file prior to providing transmission service.²⁰

Waiver of Standards of Conduct

16. PLI also requests waiver of the Standards of Conduct requirement under Order No. 2004, as codified in Part 358 of the Commission's regulations.

17. PLI argues that it meets the Commission's requirements for waiver of the Standards of Conduct because PLI controls a limited and discrete transmission facility that is not part of the grid. In addition, PLI states that it will only provide service to two customers, Peetz Table and Logan. PLI also asserts that it meets the Commission's standard of a small public utility.

¹⁸ PLI states that the maximum amount of energy that it will transmit is about 3.5 million MWh (400.5 MW combined from Peetz Table and Logan multiplied by 8,760 hours).

¹⁹ A waiver of the requirement to establish and maintain an information system (*i.e.*, an OASIS) 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 from PLI information necessary to complete its evaluation.

²⁰ Consistent with *Black Creek*, PLI must file, within 60 days of its facility's receiving a request for transmission service from a customer other than Peetz Table or Logan, a *pro forma* OATT in compliance with Order Nos. 888 and 890, and any additional requirements.

18. The Commission will grant PLI a waiver of the Standards of Conduct. Waivers of Order No. 2004 are granted upon request to certain entities: (1) a utility that owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) a small public utility that owns, operates, or controls an integrated transmission grid unless it is a part of a tight power pool, or unwarranted by other circumstances.²¹ We find that PLI controls a discrete, stand-alone transmission facility. We also find that the transmission facility operated by PLI is not part of the grid and is not operated by any ISO. Consequently, under these facts, we find good cause exists to grant PLI's request for an exemption from the requirements of Order No. 2004 and Part 358 of the Commission's regulations.²²

Waiver of Part 101 – Uniform System of Accounts

19. PLI requests waiver of Part 101 of the Commission's regulations – Uniform System of Accounts. PLI states that it would be costly and burdensome to comply with Part 101 for transmission services provided to only two customers over *de minimis* jurisdictional facilities. The Commission grants the requested waiver.

The Commission orders:

(A) The proposed Agreements filed by PLI are hereby accepted without hearing or suspension, to become effective on February 4, 2008.

(B) PLI's requests for waiver of the requirements of Order Nos. 888, 889, 890, the Standards of Conduct, and Part 101 are hereby granted, as discussed in the body of this order.

²¹ *Central New York Oil and Gas Co., LLC, et al.*, 109 FERC ¶ 61,231 at P 26-27 (2004).

²² A waiver from the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that PLI has used its access to transmission information to benefit unfairly PLI's own sales, or an affiliate's sales.

(C) Waiver of the 60 day prior-notice requirement is denied, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Kimberly D. Bose,
Secretary.