

127 FERC ¶ 61,213
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Crystal Lake Wind, LLC

Docket No. OA09-14-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued June 2, 2009)

1. This order grants a request by Crystal Lake Wind, LLC (Crystal Lake I) for waiver of Order Nos. 888,¹ 889² and 890³ and of the Standards of Conduct requirements of Part 358 of the Commission's regulations.⁴

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

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g and clarification*, 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).

⁴ 18 C.F.R. Part 358 (2008); *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*

(continued...)

Background

2. Crystal Lake I is wholly-owned subsidiary of FPL Energy, LLC (FPL Energy).⁵ Crystal Lake I owns and operates a 150 MW wind-powered electric generating facility located in Hancock County, Iowa. Its affiliate, Crystal Lake Wind II, LLC (Crystal Lake II), owns and operates a 200 MW wind-powered electric generating facility that is located adjacent to Crystal Lake I's facility. Crystal Lake I states that both it and Crystal Lake II have been granted exempt wholesale generator status.⁶ Additionally, Crystal Lake I states that both it and Crystal Lake II have been granted the authority to sell energy, capacity and ancillary services at market-based rates.⁷

3. Crystal Lake I and Crystal Lake II are parties to a Shared Facilities Agreement that provides Crystal Lake II the right to access and utilize Crystal Lake I's facilities to transmit energy generated by Crystal Lake II's wind project to the electric grid at an interconnection point owned by ITC Midwest, LLC (ITC Midwest).⁸ These facilities include a 38-mile 161 kV transmission line that connects to the ITC Midwest grid, and a 5-mile 161 kV transmission line that connects with the Crystal Lake II facilities.

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), *reh'g pending*.

⁵ We note that, on January 7, 2009, FPL Energy changed its name to NextEra Energy Resources, LLC. *See, e.g., Osceola Windpower, LLC*, January 13, 2009 Transmittal Letter, Docket No. ER09-536-000, at 2 n.4.

⁶ *Crystal Lake Wind, LLC*, Notice of Effectiveness of Exempt Wholesale Generator Status, Docket No. EG08-87-000 (Nov. 19, 2008); *Crystal Lake Wind II, LLC*, Notice of Effectiveness of Exempt Wholesale Generator Status, Docket No. EG08-88-000 (Nov. 19, 2008).

⁷ *Crystal Lake Wind, LLC*, Docket No. ER08-1293-000, *et. al.* (Sept. 29, 2008) (unpublished letter order); *Crystal Lake Wind II, LLC*, ER08-1294-000 (Sept. 29, 2008) (unpublished letter order).

⁸ The Shared Facilities Agreement is designated as Crystal Lake Wind, LLC Rate Schedule FERC No. 1. It was accepted by the Commission February 10, 2009. *Crystal Lake Wind, LLC*, Docket No. ER09-339-000 (Feb. 10, 2009) (unpublished letter order).

4. On December 17, 2008, Crystal Lake I filed the request for waiver of Order Nos. 888, 889, and 890, and the Standards of Conduct requirements of Part 358. In support of its waiver request, Crystal Lake I explains it owns, operates, and controls limited and discrete transmission facilities which are not an integrated component of any electricity grid and merely provide Crystal Lake I and Crystal Lake II a way to move the power from their facilities to the ITC Midwest grid. Consequently, Crystal Lake I asserts that it would be a waste of resources for it to file an open access transmission tariff (OATT) or establish an Open-Access Same Time Information System (OASIS). Additionally, Crystal Lake I states that the Commission has granted such requests in cases when a generator provides use of its interconnection facilities to another generator.⁹ Furthermore, Crystal Lake I states that it is the Commission's practice to grant these waivers to small utilities (4 million MWh annually). Crystal Lake states that were Crystal Lake I and Crystal Lake II jointly to generate 350 MW of energy each hour of the year, they would still fall approximately 1 million MWh short of reaching 4 million MWh.

5. Crystal Lake I states that, because it shares a transmission facility with its affiliate Crystal Lake II, it may be deemed a "Transmission Provider" under section 358.3(a)(1)¹⁰ of the Commission's regulations. Therefore, pursuant to section 358.1(d)¹¹ of the Commission's regulations, Crystal Lake I requests waiver of the Standards of Conduct requirements in Part 358 of the Commission's regulations. Crystal Lake I argues that good cause exists to grant it a complete waiver of Part 358 because it has neither the ability nor the incentive to favor its affiliate (Crystal Lake II) and no ability to harm wholesale energy markets.

6. Notice of Crystal Lake I's filing was published in the *Federal Register*, 73 Fed. Reg. 79,460 (2008), with protests or motions to intervene due on or before January 5, 2009. No interventions, protests, or comments were filed.

Discussion

7. Order Nos. 888 and 890 require public utilities to file an OATT prior to providing transmission service. Order No. 889 requires public utilities to establish an OASIS and abide by certain standards of conduct. In prior orders, the Commission has enunciated the standards for waiver of, or exemption from, some or all of the requirements of Order

⁹ See, *FPL Energy Oliver Wind, LLC*, 123 FERC ¶ 61,246, at PP 11-15 (2008).

¹⁰ 18 C.F.R. § 358.3(a)(1) (2008).

¹¹ 18 C.F.R. § 358.1(d) (2008).

Nos. 888 and 889.¹² The Commission has stated that the criteria for waiver of the requirements of Order Nos. 890 and 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹³ Order No. 717 did not change those criteria.¹⁴

8. 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

9. 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 waiver would not be justified.¹⁶ The Commission grants waivers to small public utilities based on the threshold of whether they dispose of no more than 4 million MWh annually.¹⁷ Moreover, 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

¹² 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*).

¹³ 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).

¹⁴ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 54.

¹⁵ *Black Creek*, 77 FERC at 61,941.

¹⁶ *Id.*

¹⁷ See *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009) (*Wolverine*).

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).¹⁸

10. Based on the statements in Crystal Lake I's filing, we find that the Crystal Lake I transmission facilities are limited and discrete. The only transmission service Crystal Lake I's facilities provide is to itself and Crystal Lake II. Accordingly, we will grant Crystal Lake I waiver of the requirements in Order Nos. 888 and 890 to have an OATT on file.¹⁹ In addition, Crystal Lake I meets the Commission's definition of a small public utility because it has annual electric sales of no more than 4 million MWh.²⁰ In light of these circumstances, we will grant Crystal Lake I waiver from the requirements of Order No. 889 and the Standards of Conduct requirements of Part 358.²¹

¹⁸ *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).

¹⁹ Consistent with *Black Creek*, Crystal Lake I must file, within 60 days of its facility's receiving a request for transmission service from a customer other than Crystal Lake II, a *pro forma* OATT in compliance with Order Nos. 888 and 890, and any additional requirements.

²⁰ *See Wolverine*, 127 FERC ¶ 61,159 at P 15.

²¹ 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 Crystal Lake I information necessary to complete its evaluation. A waiver of from the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Crystal Lake I has used its access to transmission information to unfairly benefit Crystal Lake I's own sales, or an affiliate's sales. In addition, as the Commission recently explained, Crystal Lake I 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); *see also Wolverine*, 127 FERC ¶ 61,159 at n.21 (2009).

The Commission orders:

Crystal Lake I's requests for waiver of the requirements of Order Nos. 888, 889, and 890, and the Standards of Conduct requirements of Part 358 of the Commission's regulations, are hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.