

128 FERC ¶ 61,080
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Story Wind, LLC

Docket No. OA09-28-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued July 23, 2009)

1. This order grants Story Wind, LLC's (Story Wind) request for waiver of certain requirements of Order Nos. 888,¹ 889,² and 890,³ and of the Standards of Conduct requirements of Part 358 of the Commission's regulations (Order Nos. 2004 and 717).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

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I. Background

2. Story Wind is a wholly-owned indirect subsidiary of NextEra Energy Resources, LLC (NextEra).⁵ Story Wind owns and operates a 150 MW wind-powered electric generating facility in Story County, Iowa. Its affiliate, Garden Wind, LLC (Garden Wind), is developing and will own a 150 MW wind-powered electric generation facility that will be near the Story Wind facility. Story Wind states that it is an exempt wholesale generator as defined in section 32 of the Public Utility Holding Company Act of 1935.⁶ Story Wind states that it has authority to sell energy, capacity, and ancillary services at market-based rates.⁷ According to Story Wind, Garden Wind will apply for market-based rate authority from the Commission prior to commencing operations, and Garden Wind will also self-certify as an exempt wholesale generator.⁸

3. Story Wind and Garden Wind are parties to a Shared Facilities Agreement. The Shared Facilities Agreement gives Garden Wind the right to use certain Story Wind facilities to transmit energy generated by Garden Wind's wind project to the electric grid at an interconnection point owned by ITC Midwest, LLC (ITC Midwest).⁹ These

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, 73 Fed. Reg. 63,796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008), *reh'g pending*.

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

⁶ *See* Transmittal Letter at 2 n. 4 citing *Story Wind, LLC*, Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status, Docket No. EG08-90-000 (Nov. 19, 2008).

⁷ *See* Transmittal Letter at 2 n. 4 citing *Story Wind, LLC*, Docket No. ER08-1300-001 (Sept. 29, 2008) (unpublished letter order).

⁸ *See* Transmittal Letter at 2 n. 5.

⁹ The Shared Facilities Agreement is designated as Story Wind, LLC Rate Schedule FERC No. 1. It was accepted by delegated letter order on June 19, 2009.

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facilities include a 200-foot long 161 kV transmission line that connects to the ITC Midwest grid.

4. On May 8, 2009, Story Wind filed a request for waivers of requirements of Order Nos. 888, 889, and 890 and of the Standards of Conduct requirements. In support of its request for waiver, Story Wind explains that it owns, operates, and controls limited and discrete transmission facilities that are not an integrated component of any electricity grid and that were designed solely to permit Story Wind and Garden Wind to move the power from their facilities to the ITC Midwest grid. Consequently, Story Wind argues that it should not have to file an open access transmission tariff (OATT) or establish an Open-Access Same Time Information System (OASIS) when it is only providing transmission service to one customer. Story Wind asserts that the Commission has granted similar waiver requests.¹⁰ Story Wind asserts that the Commission's practice has been to grant such waivers to small utilities (4 million MWh annually).¹¹ Story Wind argues that it satisfies this criteria because the maximum amount of energy Story Wind could transmit over its transmission facilities each year is about 2,628,000 MWh, based on 300 MW multiplied by 8,760 hours.¹²

5. Story Wind states that, through the sharing of its transmission facility with its affiliate, Garden Wind, it may be deemed a "Transmission Provider" under section 358.3(k)¹³ of the Commission's regulations. However, Story Wind argues that it should be granted waiver of the Standards of Conduct requirements in Part 358 of the

NextEra Energy Resources, LLC, Docket No. ER09-1104-000 (June 19, 2009) (unpublished letter order).

¹⁰ See Transmittal Letter at 5-6 n. 6, 7, and, 8 (citing *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*) and *Golden Spread Electric Coop., Inc.*, 106 FERC ¶ 61,151, at P 7 (2004) (waiver granted to public utilities that only own, operate or control facilities that do not form an integrated grid); *FPL Energy Oliver Wind, LLC*, 123 FERC ¶ 61,246, at P 11-15 (2008) (waiver granted when a generator provides use of its interconnection facilities to another generator); *Hardee Power Partners Ltd.*, 125 FERC ¶ 61,036, at P 19-21 (2008) (waiver granted 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)).

¹¹ See Transmittal Letter at 6.

¹² *Id.*

¹³ 18 C.F.R. § 358.3(k) (2008).

Commission's regulations. Story Wind points out that under the Commission's new Standards of Conduct Rule set out in Order No. 717, entities can, as before, seek waiver for good cause of Standards of Conduct requirements that might otherwise apply.¹⁴ Story Wind argues that good cause exists to grant it a complete waiver of Part 358 of the Commission's regulations because it has neither the ability nor the incentive to favor its affiliate (Garden Wind) and no ability to harm wholesale energy markets.

6. Notice of Story Wind's filing was published in the *Federal Register*, 74 Fed. Reg. 23,687 (2009), with protests or motions to intervene due on or before May 29, 2009. None were filed.

II. 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 established the standards for waiver of, or exemption from, some or all of the requirements of Order Nos. 888 and 889.¹⁵ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹⁶ Order No. 717 did not change those criteria.¹⁷

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. If the public utility receives a request for transmission service, it 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.¹⁸

¹⁴ See Transmittal Letter at 6 n. 11.

¹⁵ See, e.g., *Black Creek*, 77 FERC ¶ 61,232 at 61,941; *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

¹⁶ 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).

¹⁷ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 54.

¹⁸ *Black Creek*, 77 FERC at 61,941.

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.¹⁹ The Commission grants waivers to small public utilities based on the threshold of whether they dispose of no more than 4 million MWh annually.²⁰ 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 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).²¹

10. Based on the statements in Story Wind's filing, we find that Story Wind's transmission facilities are limited and discrete. The only transmission service that Story Wind's facilities will provide is to itself and Garden Wind. Accordingly, we will grant Story Wind waiver of the requirements in Order Nos. 888 and 890 to have an OATT on file.²² In addition, Story Wind meets the Commission's definition of a small public utility because it has annual electric sales of no more than 4 million MWh.²³ In light of these circumstances, we will grant Story Wind waiver from the requirements of Order No. 889 and the Standards of Conduct requirements of Part 358.²⁴

¹⁹ *Id.*

²⁰ See *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009) (*Wolverine*).

²¹ *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).

²² Consistent with *Black Creek*, Story Wind must file, within 60 days of its facility's receiving a request for transmission service from a customer other than Garden Wind, a *pro forma* OATT in compliance with Order Nos. 888 and 890, and any additional requirements.

²³ See *Wolverine*, 127 FERC ¶ 61,159 at P 15.

²⁴ 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

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The Commission orders:

Story Wind's request 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, is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

not obtain from Story Wind 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 Story Wind has used its access to transmission information to unfairly benefit Story Wind's own sales, or an affiliate's sales. In addition, as the Commission recently explained, Story Wind 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).