

128 FERC ¶ 61,090  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Red Shield Acquisition, LLC

Docket Nos. ER09-760-000  
ER09-760-001

ORDER ACCEPTING COMPLIANCE FILING AND  
GRANTING REQUEST FOR WAIVER

(Issued July 27, 2009)

1. On February 25, 2009, Red Shield Acquisition (Red Shield) submitted for filing Amendment No. 1 to the Standby Facilities Use Agreement (Amendment) between Red Shield and PPL EnergyPlus, LLC and PPL Great Works, LLC (collectively, PPL) together with the underlying Standby Facilities Use Agreement (Facilities Agreement). In its filing, Red Shield requests waiver of certain requirements of Order Nos. 614,<sup>1</sup> 889,<sup>2</sup> and 890,<sup>3</sup> the Standards of Conduct under Part 358 of the Commission's regulations

---

<sup>1</sup> See *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,096 (2000).

<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 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 73 Fed. Reg. 39,092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

(Order Nos. 2004 and 717),<sup>4</sup> as well as waiver of the prior notice requirement under 18 C.F.R. § 35.11. In an unpublished letter order issued April 15, 2009, the Director, Division of Tariffs and Market Development – East, by delegated authority, conditionally accepted the Amendment, granted waiver of the prior notice requirement, and directed Red Shield to integrate the Amendment into the Facilities Agreement, pursuant to Order No. 614. The letter order reserved Red Shield’s other requested waivers to be addressed in a future Commission order. On May 14, 2009, Red Shield filed the integrated amended Facilities Agreement (Amended Facilities Agreement). On June 16, 2009, Red Shield filed a letter clarifying that it also requests waiver of the requirement in Order No. 888 to file an Open Access Transmission Tariff (OATT). In this order, the Commission accepts Red Shield’s compliance filing and grants Red Shield the remaining requested waivers.

## **I. Background**

2. Red Shield owns a qualifying facility biomass boiler with a maximum gross output of 16 MW and appurtenant electric facilities (the Facility), as well as a pulp mill facility (Mill Assets), at a site in Old Town, Maine. The Facility is interconnected with 44 kV facilities owned by the local utility, Bangor Hydro Electric Company (Bangor). When the pulp mill is operational, most of the energy produced by the Facility is used on-site. Red Shield purchases energy from PPL under a retail contract to serve the energy needs of the pulp mill.

3. PPL owns a hydroelectric facility on the same site, i.e., behind the Red Shield-Bangor interconnection point, with a maximum gross output of 5 MW. Like the output of the Facility, when the pulp mill is operational, the output of the hydro facility is used on-site at the pulp mill. However, when the pulp mill is not in operation, the renewable energy from the hydro facility is available to be sold to third parties if that energy can reach the Red Shield/Bangor interconnection point.

---

<sup>4</sup> 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 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*.

4. Red Shield acquired its assets through bankruptcy proceedings from a non-affiliated entity, Red Shield Environmental, LLC (RS Environmental) and began to formalize the post-bankruptcy contractual relationships related to those assets. One of those arrangements is the Facilities Agreement between RS Environmental and PPL. Under the Facilities Agreement, RS Environmental agreed that PPL's hydro facility could use the Facility's electrical equipment and interconnection facilities to reach Bangor's facilities for no compensation.

5. Under the Amended Facilities Agreement, Red Shield, as the new owner of the Facility, will allow PPL to continue to use Red Shield's electric equipment and interconnection facilities, at no charge, to reach the Red Shield/Bangor interconnection point. Red Shield states that the Amended Facilities Agreement will be in effect for a limited time because the hydro facility is to be decommissioned. Red Shield explains that the Commission has approved PPL's request to transfer its license for the hydroelectric facility to the Penobscot River Restoration Trust (the Trust),<sup>5</sup> which plans to surrender its licenses and decommission the hydro facility.<sup>6</sup> However, until the hydro facility is decommissioned, Red Shield states that the Trust expects to temporarily operate the hydro facility and sell the power to the ISO New England market. During this temporary period, power from the hydro facility is transmitted to the Red Shield/Bangor interconnection point pursuant to the Amended Facilities Agreement.

## II. Requested Waivers

6. Red Shield requests waiver of the requirement of Order Nos. 888 and 890 to file an open access transmission tariff (OATT) prior to providing transmission service, the requirement of Order No. 889 to establish an Open-Access Same Time Information System (OASIS), and the Standard of Conduct requirements of Part 358. In support, Red Shield states that its transmission facilities are limited and discrete. Red Shield explains that its facilities operate at 4.5 kV and 44 kV, are radial in nature, and serve to connect the Facility and the hydro facility to a nearby 44 kV line owned by Bangor, which is the local utility. Red Shield states that the only transmission service it provides is to allow PPL to use the facilities, without charge, to reach the interconnection point with the Bangor grid. Red Shield contends that no other generator is likely to locate there and the Trust plans to decommission the hydro facility. In addition, Red Shield contends that its facilities are smaller than the threshold the Commission uses to define a small public

---

<sup>5</sup> *PPL Great Works, L.L.C.*, 126 FERC ¶ 62,004 (2009).

<sup>6</sup> That application is currently pending in Docket No. P-2312-019.

utility.<sup>7</sup> Finally, Red Shield contends that the Commission has granted waivers of Order Nos. 889 and 890 to entities whose jurisdictional activities are more substantial than Red Shield's.<sup>8</sup>

7. Red Shield also requests waiver of the requirement to file electric quarterly reports. Red Shield contends that its sales activities are not subject to the Federal Power Act section 205<sup>9</sup> because it is a qualifying facility smaller than 20 MW. Red Shield contends that its provision of limited transmission service for no compensation under the Facilities Agreement and Amendment represent its only jurisdictional activity. Red Shield requests that the filing of the Facilities Agreement and Amendment be deemed as satisfying its filing and reporting requirements.

8. Red Shield also requests waiver of certain accounting and reporting requirements, as well as rules governing issuance of securities and assumption of liabilities. Red Shield contends that, as a qualifying facility with less than 20 MW of sales, its sales activities are exempt from many of the Commission's routine regulatory requirements, including compliance with the Uniform System of Accounts under 18 C.F.R. Part 101, requirements for adjustments and certification of accounts and reports under 18 C.F.R. Part 50, statements and reports filed with the Commission under 18 C.F.R. Part 141, and securities issuances and assumptions of liability under 18 C.F.R. Part 34.<sup>10</sup>

### **III. Notice of Filings**

9. Notice of Red Shield's compliance filing including the Amended Facilities Agreement was published in the *Federal Register*, 74 Fed. Reg. 25,527 (2009), with interventions, comments and protests due on or before May 14, 2009. None was filed.

---

<sup>7</sup> Citing *Alcoa Power Generating Inc. (Long Sault Division)*, 116 FERC ¶ 61,257, at P 7 n.5 (2006) (finding "To qualify as a small public utility, the applicant must meet the Small Business Administration definition of a small electric utility (i.e., dispose of no more than four million MWh annually).").

<sup>8</sup> Citing *NewCorp Resources Electric Cooperative*, 123 FERC ¶ 61,120 (2008) (granting waiver request for entity with 305 miles of 138 kV transmission lines and 17 substations); *Alcoa Power Generating Inc. (Long Sault Division)*, 120 FERC ¶ 61,035 (2007) (granting waiver request for entity with five 115 kV transmission lines).

<sup>9</sup> 16 U.S.C. § 824d (2006).

<sup>10</sup> 18 C.F.R. § 292.601 (2008) (regarding exemption of qualifying small power production facilities and cogeneration facilities from certain federal and state laws and regulations).

10. Notice of Red Shield's June 16, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 31,269 (2009), with interventions, comments and protests due on or before June 30, 2009. None was filed.

#### IV. Discussion

11. 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 Nos. 888 and 889.<sup>11</sup> The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and the Standards of Conduct are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.<sup>12</sup>

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.<sup>13</sup>

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.<sup>14</sup> The Commission grants waivers to small public utilities based on the threshold of whether

---

<sup>11</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>12</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). See also Order No. 717, 73 Fed. Reg. 63,796, FERC Stats. & Regs. ¶ 31,280 at P 54.

<sup>13</sup> *Black Creek*, 77 FERC at 61,941.

<sup>14</sup> *Id.*

they dispose of no more than 4 million MWh annually.<sup>15</sup> 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).<sup>16</sup>

14. Based on the statements in Red Shield's filing, we find that Red Shield's transmission facilities are limited and discrete. The only transmission service Red Shield's facility provides is to itself and PPL. Accordingly, we will grant Red Shield waiver of the requirements in Order Nos. 888 and 890 to have an OATT on file.<sup>17</sup> In addition, Red Shield meets the Commission's definition of a small public utility because it has annual electric sales of no more than 4 million MWh.<sup>18</sup> In light of these circumstances, we will grant Red Shield waiver from the OASIS requirements of Order No. 889 and the Standards of Conduct requirements of Part 358.<sup>19</sup>

---

<sup>15</sup> See *Wolverine Power Supply Coop.*, 127 FERC ¶ 61,159, at P 15 (2009) (*Wolverine*).

<sup>16</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>17</sup> Consistent with *Black Creek*, Red Shield must file, within 60 days of its receiving a request for transmission service from a customer other than PPL, a *pro forma* OATT in compliance with Order Nos. 888 and 890, and any additional requirements.

<sup>18</sup> See *Wolverine*, 127 FERC ¶ 61,159 at P 15.

<sup>19</sup> 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 Red Shield information necessary 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 that Red Shield has used its access to transmission information to unfairly benefit Red Shield's own sales, or an affiliate's sales. In addition, as the Commission recently explained, Red Shield 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).

15. We will grant Red Shield's request for waiver of the requirement to file electric quarterly reports because the Amended Facilities Agreement provides for limited transmission service to one customer for no compensation. For the same reason, we will grant Red Shield's request for waiver of the requirements to comply with the Uniform System of Accounts under 18 C.F.R. Part 101, requirements for adjustments and certification of accounts and reports under 18 C.F.R. Part 41, requirements for procurement policies and practices under 18 C.F.R. Part 50, statements and reports filed with the Commission under 18 C.F.R. Part 141, and securities issuances and assumptions of liability under 18 C.F.R. Part 34.

The Commission orders:

(A) Red Shield's Amended Facilities Agreement is hereby accepted for filing.

(B) Red Shield's request for waiver of the requirements of Order Nos. 888, 889, and 890, the Standards of Conduct requirements of Part 358 of the Commission's regulations, the requirement to file electric quarterly reports, the requirement to comply with the Uniform System of Accounts, the requirements for adjustments and certification of accounts and reports, the requirements for procurement policies and practices, statements and reports, and securities and assumptions of liability is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.