

139 FERC ¶ 61,017
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Spinning Spur Wind LLC Docket No. ER12-1030-000
Spinning Spur Wind Two LLC
Spinning Spur Interconnect LLC

Spinning Spur Wind Two LLC Docket No. ER12-1033-000

Spinning Spur Interconnect LLC Docket No. ER12-1036-000

ORDER ACCEPTING AGREEMENTS AND GRANTING WAIVERS

(Issued April 6, 2012)

1. On February 8, 2012, Spinning Spur Wind LLC (Spinning Spur), Spinning Spur Wind Two LLC (Spinning Spur Two), and Spinning Spur Interconnect LLC (Spinning Spur Interconnect) (collectively, Applicants) filed a baseline tariff in Docket No. ER12-1030-000 consisting of: (1) an Amended and Restated Assignment, Cotenancy, and Common Facilities Agreement (Common Facilities Agreement);¹ and (2) an Amended and Restated Company Agreement of Spinning Spur Interconnect between Spinning Spur and Spinning Spur Two (Company Agreement).² Applicants request waivers of Order

¹ Spinning Spur Wind LLC, FERC FPA Electric Tariff, Tariffs, Rate Schedules and Agreements, Rate Schedule FERC No. 1, Assignment, Cotenancy and Common Facilities Agreement, 0.0.0.

² Spinning Spur Wind LLC, FERC FPA Electric Tariff, Tariffs, Rate Schedules and Agreements, Rate Schedule FERC No. 2, Company Agreement of Spinning Spur Interconnect LLC, 0.0.0.

No. 888,³ Order No. 889,⁴ and Order No. 890,⁵ as well as section 35.28 and Parts 37 and 358 of the Commission's regulations.⁶ In addition, Spinning Spur Interconnect and Spinning Spur Two filed Concurrences⁷ to the Common Facilities Agreement and

³ *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).

⁴ *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).

⁵ *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 clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁶ 18 C.F.R. § 35.28 (2011), 18 C.F.R. Part 37 (2011), and 18 C.F.R. Part 358 (2011). *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 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, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *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), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

⁷ Spinning Spur Interconnect filed a Concurrence in Docket No. ER12-1036-000 designated as: Spinning Spur Interconnect LLC, FERC FPA Electric Tariff, Tariffs, Rate

(continued...)

Company Agreement. In this order, the Commission accepts the Common Facilities Agreement, Company Agreement, and Concurrences effective April 8, 2012, as requested, and grants the waivers requested by Applicants, as discussed below.

I. Background

2. Applicants state that Spinning Spur, owned by enXco Development Corporation (enXco), will construct, own and operate a wind-powered electric generation facility with expected nameplate capacity of approximately 161 megawatts (MW) in Oldham County, Texas (Spinning Spur One Project).⁸ Applicants state that Spinning Spur Two is a Texas limited liability company owned by enXco and Cielo Spinning Spur Two Limited that will construct, own and operate a wind-powered electric generation facility with expected nameplate capacity of approximately 161 MW in Oldham County, Texas (Spinning Spur Two Project) in the vicinity of the Spinning Spur One Project.⁹ Applicants further state that requests for market-based rate authorization and exempt wholesale generator status will be made for both Projects.¹⁰

3. Applicants explain that Spinning Spur Interconnect, owned by Spinning Spur and Spinning Spur Two, has entered into a Generator Interconnection Agreement (GIA) dated May 3, 2011 with SPS and SPP.¹¹ Applicants state that under the GIA, the Projects will electrically interconnect to the transmission facilities owned by Southwestern Public

Schedules and Agreements, Rate Schedule FERC No. 1, Assignment, Cotenancy and Common Facilities Agreement, 0.0.0; Rate Schedule FERC No. 2, Company Agreement of Spinning Spur Interconnect LLC, 0.0.0.

Spinning Spur Two filed a Concurrence in Docket No. ER12-1033-000 designated as: Spinning Spur Wind Two LLC, FERC FPA Electric Tariff, Tariffs, Rate Schedules and Agreements, Rate Schedule FERC No. 1, Assignment, Cotenancy and Common Facilities Agreement, 0.0.0; Rate Schedule FERC No. 2, Company Agreement of Spinning Spur Interconnect LLC, 0.0.0.

⁸ Applicants, Transmittal Letter at 2.

⁹ *Id.* The Spinning Spur One Project and Spinning Spur Two Project are hereinafter collectively referred to as “Projects.”

¹⁰ *Id.*

¹¹ *Id.*

Service Company (SPS) and under the operational control of Southwest Power Pool, Inc. (SPP). Applicants further state that Spinning Spur Interconnect will hold the GIA on behalf of Spinning Spur and Spinning Spur Two, which will receive service as interconnection customers under the GIA.¹²

II. The Agreements

A. Common Facilities Agreement

4. Applicants state that the Common Facilities Agreement memorializes the terms and conditions under which Spinning Spur and Spinning Spur Two will jointly own certain interconnection facilities as tenants in common.¹³ Applicants describe these Common Facilities as shared project agreements, shared licenses and permits, and shared real property documents, as well as a 345 kV radial transmission line, a switching station, and all other interconnection and transmission facilities between the switching station and the point of interconnection with the SPP-controlled substation.¹⁴

5. Moreover the Common Facilities Agreement will allow each of the cotenants to transmit electric energy from their respective projects to the SPP-controlled transmission system. Applicants further state that neither cotenant will provide interconnection or transmission service to the other under the agreement. Applicants explain that after certain payments are made and network upgrades completed, Spinning Spur and Spinning Spur Two will generally have equal priority and the same right to use the Common Facilities if they have the same level of transmission service.

6. Applicants explain that Spinning Spur and Spinning Spur Two will share responsibility for the costs associated with the Common Facilities on the basis of the Sharing Ratio set forth in the Common Facilities Agreement, which reflects the ratio of maximum nameplate capacity of each of the Projects.¹⁵ Applicants state that under the Common Facilities Agreement, costs and charges attributable to the operation of each of the Projects will generally be paid by that Project's owner. Applicants further explain

¹² *Id.* at 3. Spinning Spur Interconnect avers it will own no physical transmission assets or other paper assets pursuant to which Spinning Spur Interconnect would be a transmission owner or provider.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

that the Common Facilities Agreement provides that additional covenants under the Common Facilities Agreement will be allocated incremental line losses over and above those resulting from the operation of previously existing projects.

7. Applicants state that the Common Facilities Agreement lists agreements related to the real property comprising the Common Facilities that do not significantly affect jurisdictional rates and services, and so Applicants did not file the agreements.¹⁶ Applicants assert that the terms and conditions of the Common Facilities Agreement are similar to other agreements previously accepted by the Commission.¹⁷

B. The Company Agreement

8. Applicants also filed a Company Agreement through which Spinning Spur and Spinning Spur Two have agreed to own and operate Spinning Spur Interconnect.¹⁸ Applicants explain that under the Company Agreement, Spinning Spur Interconnect will hold the GIA that governs the interconnection between the Projects and the transmission system and will administer and manage the GIA in connection with the Common Facilities Agreement. Applicants state that expenses related to the management of the GIA will be shared using the Sharing Ratio in the Company Agreement, which reflects the maximum nameplate capacity of each of the Projects. Applicants state that they are filing the Company Agreement with the Commission out of an abundance of caution in the event the Commission considers the agreement to be subject to its jurisdiction. Applicants state that the Company Agreement provides for the sharing of rights and obligations under the GIA in connection with the Common Facilities Agreement, and as such, urge the Commission to accept the agreement.

III. Requests for Waivers

9. Applicants state that the Commission has established criteria for waiver of the requirements of Order Nos. 888, 889, and 890, and sections 35.28, Parts 37 and 358 of the Commission's regulations.¹⁹ Applicants state that pursuant to these criteria, the

¹⁶ *Id.* at 4 (citing *Wildorado Wind, LLC*, 132 FERC ¶ 61,116, at PP 12 and n.13, 26 (2010) (*Wildorado*)).

¹⁷ *Id.* (citing *Wildorado*, 132 FERC ¶ 61,116 at PP 12, 26; *Grand Ridge Energy*, 128 FERC ¶ 61,134 (2009); *BP Wind Energy N. Am. Inc.*, 129 FERC ¶ 61,207 (2009)).

¹⁸ *Id.*

¹⁹ *Id.* at 5 (citing *Wildorado*, 132 FERC ¶ 61,116 at P 26; *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 (1996) (*Black Creek*)).

Commission has granted waivers where the applicant has demonstrated that it owns, operates or controls only limited and discrete transmission facilities, as opposed to an integrated system.²⁰ Applicants assert that they qualify for these waivers and request them here.

10. In support of their requests, Applicants state that the Common Facilities are not currently connected with any generating facilities (with the exception that they will interconnect to the Projects) and will interconnect the Projects to the transmission system.²¹ Applicants further state that the electric power will flow over the Common Facilities in only two circumstances: (1) power generated by the Projects is being marketed at wholesale; and (2) start-up, back-up and maintenance power is being delivered to the Projects for their own use. Accordingly, Applicants assert that the Common Facilities do not comprise an integrated transmission system and instead comprise only limited and discrete transmission facilities. Applicants further assert that none of the Applicants owns, operates, or controls, or will own, operate, or control, any transmission facilities other than the Common Facilities. Therefore, Applicants argue that they qualify for the requested waivers.

11. Applicants further note that the Commission has granted waivers of Open Access Transmission Tariff (OATT), Open Access Same-Time Information System (OASIS) and Standards of Conduct regulations.²² Applicants state that their request falls within the scope of these orders and that good cause exists to grant its requested waivers. Applicants contend that not granting the waivers would impose significant burdens on Applicants with no offsetting benefits. Applicants further state that granting the requested waivers would promote the Commission's policy in favor of encouraging the development of renewable resources.

²⁰ *Id.* (citing *Black Creek*, 77 FERC at 61,941).

²¹ *Id.* at 6. Applicants note that the Common Facilities Agreement contemplates the admission of an affiliated entity as a future cotenant with respect to the Common Facilities, provided that certain conditions are met and approvals are received.

²² *Id.* (citing *Wildorado*, 132 FERC ¶ 61,116; *BP Wind Energy N. Am., Inc.*, 129 FERC ¶ 61,207 at P 15; *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149, at P 24 (2009); *Grand Ridge Energy*, 128 FERC ¶ 61,134 at P 17; *Ashtabula Wind, LLC*, 127 FERC ¶ 61,215, at P 10 (2009); *Crystal Lake Wind, LLC*, 127 FERC ¶ 61,213, at P 10 (2009); *Langdon Wind, LLC*, 127 FERC ¶ 61,212, at P 9 (2009)).

IV. Notice of Filing

12. Notice of the filings was published in the *Federal Register*, 77 Fed. Reg. 9,914 (2012), with comments due for Docket No. ER12-1030-000 on or before February 29, 2012, and comments due for Docket Nos. ER12-1033-000 and ER12-1036-000 on or before March 1, 2012. None was filed.

V. Discussion

13. Our review indicates that the terms and conditions of the Common Facilities Agreement and the Company Agreement are just and reasonable. Accordingly, we accept the Common Facilities Agreement and Company Agreement here. In addition, we accept the Concurrences filed by Spinning Spur Two and Spinning Spur Interconnect.

14. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations²³ require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT. Order No. 889 and Part 37 of the Commission's regulations²⁴ require public utilities to establish and maintain an OASIS. Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain standards of conduct.²⁵ In prior orders, the Commission has enunciated the standards for exemption from some or all of the

²³ 18 C.F.R. § 35.28 (2011).

²⁴ 18 C.F.R. Part 37 (2011).

²⁵ Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; *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); *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *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), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

requirements of Order Nos. 888 and 889.²⁶ The criteria for waiver of these requirements are unchanged by Order Nos. 890, 2004, and 717.²⁷

15. The Commission may grant requests for waiver of the obligation to file an OATT 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.²⁸

16. The Commission has also determined that waiver of the requirement to establish an OASIS and abide by the Standards of Conduct would be appropriate for a public utility if the applicant: (1) owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) is a small public utility that owns, operates, or controls an integrated transmission grid, unless other circumstances are present that indicate that a waiver would not be justified.²⁹ 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

²⁶ 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*).

²⁷ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

²⁸ *Black Creek*, 77 FERC at 61,941.

²⁹ *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 2-3 (2011), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Additionally, size is not relevant to whether waivers are granted to public utilities that participate in a Commission-approved Independent System Operator or Regional Transmission Organization.

used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).³⁰

17. Based on the statements in Applicants' filing, we find that their transmission facilities qualify as limited and discrete. Accordingly, we will grant Applicants waiver of the requirements of Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to have an OATT on file. However, if Applicants receive a request for transmission service, they must file with the Commission a *pro forma* OATT 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. The Commission will also grant Applicants' request for waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to OASIS and Order Nos. 717 and Part 358 of the Commission's regulations with respect to the Standards of Conduct. We note that the waiver of the requirement to establish an OASIS 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.³¹ Likewise, the waiver of the Standards of Conduct requirement will remain in effect unless and until the Commission takes action on a complaint by an entity that Applicants have unfairly used its access to information to unfairly benefit themselves or their affiliates.³²

The Commission orders:

(A) Applicants' proposed Common Facilities Agreement, Company Agreement, and Concurrences are hereby accepted for filing, effective April 8, 2012, as requested, as discussed in the body of this order.

³⁰ *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)).

³¹ *Id.*

³² *Id.* Applicants 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).

(B) Applicants are hereby granted waiver of the requirements under Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to file an OATT, the requirements under Order No. 889 and Part 37 of the Commission's regulations to establish and maintain an OASIS, and the requirements under Order Nos. 717, and Part 358 to comply with the Standards of Conduct, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.