

139 FERC ¶ 61,043
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Otter Tail Power Company

Docket No. OA09-31-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued April 18, 2012)

1. On July 1, 2009, pursuant to section 205 of the Federal Power Act,¹ Otter Tail Power Company (Otter Tail) filed a proposed Common Facilities Agreement between Otter Tail and Ashtabula Wind II, LLC (Ashtabula II) with a requested effective date of September 1, 2009 (in Docket No. ER09-1398-000), and a request for waiver of the requirements of Order Nos. 888² and 890³ (in Docket No. OA09-31-000) (July 1 Filing). The Commission accepted the Common Facilities Agreement by letter order issued on August 28, 2009, but Otter Tail's request for waiver of Order Nos. 888 and 890 remained pending. As discussed below, we grant Otter Tail's request for waiver of Order Nos. 888 and 890.

¹ 16 U.S.C. § 824d (2006).

² *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).

³ *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).

I. Background

2. Otter Tail is an investor-owned public utility headquartered in Fergus Falls, Minnesota. Otter Tail states that, aside from the 13-mile, 230 kV electric interconnection transmission line (13-mile line) at issue here, it transferred control over its other transmission facilities to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).⁴ Otter Tail explains that, because the Midwest ISO's operational control of the transmission system includes the provision of open access transmission service, and the administration of a system-wide transmission tariff, Otter Tail does not presently have its own OATT.

3. Otter Tail stated that construction of a 49.5 MW wind-powered electric generating facility located in Steele County, North Dakota (Otter Tail Wind Facility) would be completed in 2009.⁵ Ashtabula II is a wholly-owned indirect subsidiary of NextEra Energy Resources, LLC (NextEra). Otter Tail states that the Otter Tail Wind Facility will be adjacent to Ashtabula II's planned 120 MW wind facility (the Ashtabula II Wind Facility). Ashtabula II is expected to complete construction of and begin operation of the Ashtabula II Wind Facility by December, 2009.⁶

A. Common Facilities Agreement

4. The Common Facilities Agreement provides Ashtabula II the non-exclusive right to access and utilize Common Facilities in connection with Ashtabula II's operation and maintenance of the Ashtabula II Wind Facility. These Common Facilities include the 13-mile line extending from a substation at the Otter Tail Wind Facility to the 230-kV Pillsbury Substation owned by Minnkota Power Cooperative (Minnkota).⁷ Otter Tail

⁴ Otter Tail cites *Otter Tail Power Co.*, 97 FERC ¶ 61,226 (2001) (authorizing the transfer of operational control over jurisdictional facilities to the Midwest ISO); *Otter Tail Power Co.*, 98 FERC ¶ 62,218 (2002) (authorizing the transfer of operational control over additional jurisdictional facilities to the Midwest ISO). *See also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 135, n.105 (existing waivers of obligations to file an OATT or provide open access transmission service pursuant to Order No. 888 shall remain in place).

⁵ We note that the Otter Tail Wind Facility began commercial operation in 2009.

⁶ We note that the Ashtabula II Wind Facility began commercial operation in 2009.

⁷ These facilities also include a wind farm substation, communications pathway, collection system, certain personal property, real property, fixtures, easements, and access roads.

states that the 13-mile line was built exclusively for the purpose of delivering the output of the Ashtabula II Wind Facility and the Otter Tail Wind Facility to Minnkota's substation. These facilities are radial and do not serve, and were not designed to serve, any customers other than the wind generating plants referenced herein.⁸ Moreover, Otter Tail states that the 13-mile line and the other Common Facilities are not directly interconnected to any transmission facilities of Otter Tail. The costs and expenses of the operation and maintenance (O&M) of the Common Facilities will be shared proportionately between Ashtabula II and Otter Tail, as mutually agreed by the parties.

5. Under the Common Facilities Agreement, as of the date the first turbines at the Ashtabula II Wind Facility start commercial operations, Otter Tail will make the Common Facilities available to Ashtabula II to transmit energy generated by the Ashtabula II Wind Facility to the point of change of ownership with Minnkota at Minnkota's Pillsbury Substation. Otter Tail states that it will provide the described service to Ashtabula II over the 13-mile line, as well as the right to use the other, non-jurisdictional facilities and equipment identified in the Common Facilities Agreement.

6. Otter Tail explains that the only charges related to the Agreement are the Shared Expenses, which include O&M expenses, and a License Fee covering Ashtabula's *pro rata* share of costs, fees, and expenses incurred by Otter Tail for engineering, procurement, and construction of the Common Facilities.⁹

B. Request for Waiver of Order Nos. 888 and 890

7. Otter Tail requests waiver of the requirement to maintain an OATT under Order Nos. 888 and 890 for the 13-mile line. Otter Tail asks that the Commission find that, absent a qualifying request for new service, the 13-mile line need not be subject to an OATT. Otter Tail states that the Commission has consistently held that limited and

⁸ Otter Tail states that the 13-mile line is a radial facility solely connecting generation and serving no loads. It states that energy is expected to flow only in one direction on the line, i.e., from the wind farms to Minnkota's Pillsbury Substation.

⁹ Shared common expenses and O&M costs are estimated to be approximately \$25,000 to \$50,000 annually. These actual costs are shared by Otter Tail and Ashtabula II based on the aggregate installed nameplate capacity of all wind turbines owned by each party at the combined site compared to the sum of the aggregate installed nameplate capacity of the wind turbines at the Otter Tail Wind Facility and the Ashtabula II Wind Facility, as more fully described in the Common Facilities Agreement.

discrete transmission facilities that do not form an integrated grid do not trigger the need for an OATT until such time that a request for transmission service has been received.¹⁰

8. In support of its request for these waivers, Otter Tail states that its transmission facilities: (1) are not an integrated component of any electricity grid; and (2) were designed solely to provide interconnection service to the Otter Tail Wind Facility and the Ashtabula II Facility. Otter Tail asserts that these facilities merely provide the Otter Tail Wind Facility and the Ashtabula II Wind Facility a way to move the power from their facilities to the Minnkota Power substation. Additionally, Otter Tail states that the Commission has granted such requests in cases where a generator provides use of its interconnection facilities to another generator.¹¹

II. Notice of Filing

9. Notice of Otter Tail's July 1 Filing was published in the *Federal Register*, 74 Fed. Reg. 34,332 (2009), with protests or interventions due on or before July 22, 2009.¹² None were filed.

III. Discussion

10. Order Nos. 888 and 890 require public utilities to file an OATT prior to providing transmission service. In prior orders, the Commission has enunciated the standards for waiver of some or all of the requirements of Order No. 888.¹³ The Commission has

¹⁰ Otter Tail's Filing at 6 (citing, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Golden Spread Electric Coop. Inc.*, 106 FERC ¶ 61,151, at P 7 (2004)).

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

¹² By errata notice issued on August 17, 2009, the Commission added Docket No. OA09-31-000 to the July 1 Filing with respect to Otter Tail's request for waiver of Order Nos. 888 and 890.

¹³ See, e.g., *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005); *Black Creek*, 77 FERC at 61,941. See also *Coram California Development, L.P.*, 138 FERC ¶ 61,070, at PP 25-26 (2012); *Heritage Garden Wind Farm I, LLC*, 138 FERC ¶ 61,056, at PP 21-22 (2012); *Bishop Hill Energy LLC*, 137 FERC ¶ 61,211, at PP 27-28 (2011); *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149, at PP 24-25 (2009).

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. 888.¹⁴

11. 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

12. We will grant Otter Tail's request for waiver of the requirements of Order Nos. 888 and 890. Given the unique circumstances in this case, as the Commission accepted the Common Facilities Agreement in 2009, we will not require Otter Tail to file an OATT with the Commission.¹⁶ Nonetheless, if Otter Tail receives any future requests for transmission service, it will be required to file an OATT with the Commission within 60 days of the date of the request for service.¹⁷

The Commission orders:

Otter Tail's request for waiver of the OATT requirements of Order Nos. 888 and 890 is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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

¹⁵ *Black Creek*, 77 FERC at 61,941.

¹⁶ *Accord Ashtabula Wind, LLC*, 127 FERC ¶ 61,215, at P 10 (2009).

¹⁷ See *Soyland Power Cooperative, Inc.*, 104 FERC ¶ 61,288, at P 7 (2003).