

141 FERC ¶ 61,064
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Limon Wind, LLC

Docket No. ER12-2537-000

ORDER ACCEPTING SHARED FACILITIES AGREEMENT AND ASSIGNMENT
AND ASSUMPTION OF RIGHTS TO INTERCONNECTION SERVICE AND
GRANTING WAIVERS

(Issued October 25, 2012)

1. On August 28, 2012, pursuant to section 205 of the Federal Power Act (FPA),¹ Limon Wind, LLC (Limon I) filed a Shared Facilities Agreement between Limon I and Limon Wind II, LLC (Limon II). In its filing, Limon I also submitted an Assignment and Assumption of Rights to Interconnection Service under its Large Generator Interconnection Agreement (LGIA), as well as a request for waiver of sections 35.11 and 35.28, Parts 37 and 358² of the Commission's regulations, and Order Nos. 888,³ 889,⁴

¹ 16 U.S.C. § 824d (2006).

² 18 C.F.R. Part 358 (2012). *See also 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); *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 No. 717), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011) .

and 890.⁵ In this order we accept the proposed Shared Facilities Agreement between Limon I and Limon II, and the proposed Assignment and Assumption of Rights to Interconnection Service under Limon I's LGIA, effective September 1, 2012, and grant the requested waivers.

I. Background

2. Limon I and Limon II are both wholly-owned indirect subsidiaries of NextEra Energy Resources, LLC, which is a wholly-owned subsidiary of NextEra Energy, Inc. Limon I is developing a 200 MW wind energy generating facility (Limon I Project) that it will own and operate in Lincoln, Elbert and Arapahoe Counties in the state of Colorado. Limon II is developing a 200 MW wind energy generating facility (Limon II Project) that it will own and operate in Lincoln County, Colorado. Limon I states that the Limon I Project and Limon II Project are in the same general location and are expected to start injecting test power in September 2012 and commence commercial operation in November 2012.⁶

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) (Order No. 888).

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) (Order No. 889).

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 reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009) (Order No. 890).

⁶ Transmittal at 1-2.

3. On August 28, 2012, Limon I filed the Shared Facilities Agreement and Assignment and Assumption of Rights to Interconnection Service. Limon I states that the purpose of the agreements is to meet the interconnection needs of the Limon I and Limon II Projects.⁷ According to Limon I, both Limon I and Limon II own and use 345 kV lines from their respective generating facilities. Limon I states that it owns an approximately 40-mile, radial 345 kV transmission line that connects with the substation owned by Public Service Company of Colorado (PSCo), where the point of interconnection is located. Limon II owns an approximately 4-mile, 345 kV transmission line that connects with the Limon I 40-mile radial line.⁸ Limon I states that the shared facilities owned by Limon I consist of the radial 345 kV transmission line and certain other personal property, fixtures, and equipment.

4. Limon I states that it seeks to assign Limon II rights to receive interconnection services available under the LGIA. According to Limon I, the LGIA provides for interconnection of up to 400 MW of generating capacity and was first entered into between Eastern Colorado Interconnect, LLC, an affiliate of Limon I and Limon II, and PSCo. Limon I states that on July 31, 2012, the facilities owned by Eastern Colorado Interconnect, LLC merged into Limon I.⁹

5. Limon I asserts that it has already paid for all interconnection facilities and network upgrades needed for the 400 MW of capacity, however, it only uses approximately half of the capacity under the LGIA for its 200 MW Limon I Project. Therefore, Limon I states that the LGIA would optimally be partially assigned in such a manner as to create two LGIAs rather than one. Limon I states that Section 19.1 of the LGIA supports this partial assignment and allows Limon I, without the prior consent of PSCo, to assign the LGIA to an affiliate, provided that the affiliate has an equal or greater credit rating than the assignor and has the legal authority and operational ability to satisfy the obligation of the assignor under the LGIA. Limon I states that Limon II meets each of these requirements.¹⁰

⁷ *Id.* at 3.

⁸ *Id.* at 3.

⁹ *Id.* at 2.

¹⁰ *Id.* at 3.

II. Applicant's Filings

A. Shared Facilities Agreement

6. The Shared Facilities Agreement specifies that Limon I and Limon II each are responsible for 50 percent of the costs and expenses of the shared facilities, including the 345 kV radial line. The Shared Facilities Agreement also stipulates that Limon I agrees to exercise its rights and perform its obligations under the Agreement in a reasonable manner, consistent with its obligations under the LGIA.¹¹

B. Assignment and Assumption of Rights to Interconnection Service

7. Section 1 of the Assignment and Assumption of Rights to Interconnection Service states that Limon I will transfer and assign to Limon II the right under the LGIA to receive interconnection service for up to 200 MW of capacity. Under section 2, Limon II assumes all obligations assigned to it, provided that Limon I will not be relieved of its obligations under the LGIA. Finally, section 5 specifies that under no circumstances will Limon I be relieved of any obligations under the LGIA prior to the date of the Assignment and Assumption Agreement of Rights to Interconnection Service.¹²

C. Request for Waiver

8. Limon I requests that the Commission waive the 60-day notice period set forth in section 35.11 of its regulations to allow the Shared Facilities Agreement and the Assignment and Assumption of Rights to Interconnection Service to become effective September 1, 2012. Limon I also requests waiver of the requirements under Order Nos. 888 and 890 to file an open access transmission tariff (OATT), the requirements under Order No. 889 to establish an open access same-time information system (OASIS), and the requirements under Part 358 of the Commission's regulations to comply with the Standards of Conduct.¹³

9. In support of its request for waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct with respect to the shared facilities, Limon I argues that good cause exists because the shared facilities are not an integrated component of any electricity grid. Limon I states that the shared facilities

¹¹ *Id.* at 4.

¹² *Id.* at 4.

¹³ Transmittal at 6.

were designed solely to enable generators to transmit power from their generating facilities to the grid. Limon I asserts that it would be burdensome for Limon I to file an OATT or to establish an OASIS, considering the affiliated generators are simply sharing interconnection facilities and the facilities controlled by Limon I are limited and discrete.¹⁴ Finally, Limon I argues that the Commission's practice is to grant waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct to small utilities disposing of (4 million MWh annually). Limon I states that this application satisfies that criteria since the maximum amount of energy that could be transmitted annually from both the Limon I and Limon II Projects is approximately 3.5 million MWh.¹⁵

III. Notice of Filing

10. Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 54,574 (2012) with interventions and comments due on or before September 18, 2012. None was filed.

IV. Discussion

A. Shared Facilities Agreement and the Assignment and Assumption of Rights to Interconnection Service

11. The Commission finds the terms and conditions of the Shared Facilities Agreement and the Assignment and Assumption of Rights to Interconnection Service to be just and reasonable and not unduly discriminatory or preferential. Accordingly, we will accept the Shared Facilities Agreement and Assignment and Assumption of Rights to Interconnection Service, effective September 1, 2012, as requested.

B. Waiver Requests

12. Limon I requests waiver of the requirements to file an OATT, establish an OASIS and comply with the Commission's Standards of Conduct. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT before providing transmission service. Order No. 889 and Part 37 of the Commission's regulations require public utilities to establish and maintain an OASIS.

¹⁴ *Id.* at 7.

¹⁵ Transmittal at 7 n.12 (calculation based on 400 MW multiplied by 8,760 hours and a 100 percent capacity factor for the wind energy facilities).

Order Nos. 889, 2004, and 717, and Part 358 of the Commission's regulations require public utilities to abide by certain standards of conduct.¹⁶ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.¹⁷ 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 889.¹⁸ Order No. 717 did not change those criteria.¹⁹

13. The Commission may grant requests for waiver of the obligation under Order Nos. 888 and 890 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.²⁰

14. 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.²¹ In addition, the Commission grants waivers to small public utilities based on the

¹⁶ Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 16; Order No. 690, FERC Stats. & Regs. ¶ 31,237; Order No. 717, FERC Stats. & Regs. ¶ 31,280.

¹⁷ 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*).

¹⁸ 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).

¹⁹ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

²⁰ *Black Creek*, 77 FERC at 61,941.

²¹ *Id.*

threshold of whether they dispose of no more than 4 million MWh annually.²² 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).²³

15. Based on the statements in Limon I's Filing, we find that its transmission facilities at issue are limited and discrete. The facilities will be used solely to facilitate the transmission of power from the Limon I and Limon II projects to the grid. Accordingly, we will grant Limon I's request for 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. If, however Limon I receives a request for transmission service, it 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 in compliance with Order Nos. 888 and 890.

16. The Commission will also grant Limon I's requests for waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to establishing an OASIS, and Order Nos. 889, 2004, and 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.²⁴ 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

²² See *Wolverine Power Supply Coop., Inc.* 127 FERC ¶ 61, 159, at P 15 (2009).

²³ *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)).

²⁴ *Id.*

Limon I has unfairly used its access to information to unfairly benefit themselves or their affiliates.²⁵

The Commission orders:

(A) Limon I's Shared Facilities Agreement and Assignment and Assumption of Rights to Interconnection Service are hereby accepted for filing, effective September 1, 2012, as requested, as discussed in the body of this order.

(B) Limon I's request for waiver of the OATT and OASIS requirements of Order Nos. 888, 889 and 890 as well as sections 35.11 and 35.28 and Parts 37 and 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.

²⁵ *Id.* Limon I must notify the Commission if there is a material change in facts that affect the 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).