

141 FERC ¶ 61,210
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.

Canandaigua Power Partners, LLC	Docket Nos. ER10-2460-001
Canandaigua Power Partners II, LLC	ER10-2461-001
Erie Wind, LLC	ER12-682-002
Evergreen Wind Power, LLC	ER10-2463-001
Evergreen Wind Power III, LLC	ER11-2201-005
Stetson Holdings, LLC	ER12-1311-001
Stetson Wind II, LLC	ER10-2466-002
Vermont Wind, LLC	ER11-4029-001
Evergreen Gen Lead, LLC	ER12-2295-000

ORDER ACCEPTING NOTICE OF CHANGE IN STATUS AND
ADDRESSING STANDARDS OF CONDUCT WAIVERS

(Issued December 14, 2012)

1. In this order, the Commission accepts a filing submitted by Canandaigua Power Partners, LLC (Canandaigua Power); Canandaigua Power Partners II, LLC (Canandaigua II); Evergreen Wind Power, LLC; Stetson Holdings, LLC; Stetson Wind II, LLC (Stetson II); Evergreen Wind Power III, LLC (Evergreen III); Vermont Wind, LLC; and Erie Wind, LLC (collectively, the JV MBR Entities); and Evergreen Gen Lead, LLC (Evergreen Gen Lead) (collectively, Applicants) notifying the Commission of certain changes resulting from new affiliations. As discussed below, the Commission finds that the JV MBR Entities continue to satisfy the Commission's standards for market-based rate authority. We also find that Canandaigua Power, Canandaigua II, and Evergreen Gen Lead (collectively, the Waiver Entities) continue to meet the Commission's requirements with respect to waiver of the Standards of Conduct.¹

¹ 18 C.F.R. Part 358 (2012). *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,

(continued...)

I. Background

2. On July 16, 2012, as amended on July 24, 2012 and October 15, 2012, Applicants submitted a notice of change in status with respect to the JV MBR Entities' market-based rate authority pursuant to the reporting requirements of Order No. 652² and section 35.42 of the Commission's regulations³ adopted in Order No. 697⁴ and a change in facts with respect to the Waiver Entities' Standards of Conduct waivers.

3. Applicants explain that after certain Transactions⁵ were consummated, the JV MBR Entities, Evergreen Gen Lead, and Niagara Wind Power, LLC became wholly-owned subsidiaries of Northeast Wind Partners II, LLC (NE Wind Partners II), which is jointly owned by a subsidiary of First Wind Holdings, LLC (First Wind Holdings) and Northeast Wind Holdings, LLC (Northeast Wind Holdings).

4. Applicants state that Northeast Wind Holdings is an indirect wholly-owned subsidiary of Emera Incorporated (Emera). Emera is a publicly traded holding company headquartered in Halifax, Nova Scotia, Canada. Emera also holds

131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

² *See Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

³ 18 C.F.R. § 35.42 (2012).

⁴ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Public Citizen, Inc. v. FERC*, 2012 U.S. LEXIS 4820 (U.S. June 25, 2012).

⁵ The Transactions were authorized in *Niagara Wind Power, LLC*, 137 FERC ¶ 62,001 (2011) and *Erie Wind, LLC*, 139 FERC ¶ 62,203 (2012).

10 percent or more of the voting securities of Algonquin Power & Utilities Corp. (Algonquin). Applicants state that both Emera and Algonquin have subsidiaries and affiliates that are located or doing business in several of the same markets as the JV MBR Entities.

5. Applicants represent that the JV MBR Entities' affiliation with Northeast Wind Holdings and its affiliates raises no market power concerns. Applicants represent that they and other subsidiaries of First Wind Holdings own or are affiliated with 217 megawatts (MW) of generation in ISO New England Inc. (ISO-NE), 2,307 MW in New York Independent System Operator, Inc. (NYISO), and 42 MW in the New Brunswick System Operator (NBSO) balancing authority area. They also state that Emera owns 628 MW of generation in ISO-NE (of which 573 MW is controlled by a third-party), and 263 MW in the NBSO balancing authority area. They state that Algonquin owns 55 MW of generation in ISO-NE, 6 MW in NYISO and 72 MW in the NBSO balancing authority area. Finally, Applicants represent that an additional 61 MW of generation affiliated with Algonquin is located in PJM Interconnection, L.L.C. (PJM).

6. Applicants represent that none of the JV MBR Entities, nor any of their affiliates through First Wind Holdings, owns, operates, or controls electric transmission facilities in the United States for the transmission of electricity in interstate commerce, other than the limited equipment necessary to connect individual generating facilities to the transmission grid. With respect to those interconnection facilities, Applicants represent that the Waiver Entities and Milford Wind Corridor, LLC have obtained waivers from the Commission from filing an open access transmission tariff (OATT).⁶ Applicants also state that certain Emera Entities own limited and discrete interconnection facilities, and with respect to the transmission facilities owned, operated or controlled by Bangor Hydro Electric Company (Bangor Hydro), Maine Public Service Company (MPS) and Maine Electric Power Company (MEPCO) (collectively, the Emera Transmission Companies), all transmission is provided under Commission-filed OATTs, and each of Emera Transmission Companies is subject to the Commission's Standards of Conduct.

7. Applicants state that Evergreen Gen Lead, which is directly owned by Evergreen III, Stetson Holdings, and Stetson II, owns a 38 mile generator lead line

⁶ See *Evergreen Wind Power V, LLC*, 130 FERC ¶ 61,186 (2010) (*Evergreen V*); *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149 (2009) (*Milford*).

connecting the three wind powered generators to the transmission system of Bangor Hydro located in the ISO-NE market (Evergreen Lead Line). Applicants also state that Canandaigua Power and Canandaigua II own a 9 mile generator lead, which is used to deliver output to the NYISO transmission system. Applicants have received waiver of the Standards of Conduct with respect to these two lines.⁷ Applicants represent that the Transactions did not result in a physical change to, or different usage of, these lead lines.

II. Notice of Filings

8. Notice of Applicants' July 16, 2012 Filing was published in the *Federal Register*,⁸ with interventions and comments due on or before August 6, 2012. None was filed.

9. Notice of Applicants' October 15, 2012 Filing was published in the *Federal Register*,⁹ with interventions and comments due on or before November 19, 2012. None was filed.

III. Determination

10. As discussed below, we will accept the notice of change in status and change in facts.

A. Market-Based Rate Authorization

11. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.¹⁰ As discussed below, we find that the JV MBR Entities continue to meet the requirements for market-based rate authority.

⁷ See Applicants' July 16, 2012 Filing at 2 (citing *Evergreen V*, 130 FERC ¶ 61,186).

⁸ 77 Fed. Reg. 43,280 (2012). We note that on July 24, 2012, the Commission issued an Errata Notice adding Evergreen Gen Lead and Docket No. ER12-2295-000 to this proceeding.

⁹ 77 Fed. Reg. 68,759 (2012).

¹⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

1. Horizontal Market Power

12. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.¹¹ The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.¹²

13. Applicants represent that the Transactions and resulting increases in uncommitted capacity do not affect the conditions the Commission relied upon when granting them market-based rate authority.

14. Applicants submitted market share and pivotal supplier screens for the NYISO and ISO-NE markets, as well as the NBSO balancing authority area and the New York City submarket.¹³ The Commission has reviewed the pivotal supplier and wholesale market share screens submitted by the Applicants and determined that Applicants pass the screens for the ISO-NE and NYISO markets, and the NBSO balancing authority area, but fail the market share screen for the New York City submarket.

15. Specifically, for the ISO-NE market, Applicants' market share screen indicates that Applicants' market share ranges from 8.0 to 11.2 percent. Applicants' pivotal supplier screen indicates that the net uncommitted supply in the ISO-NE market exceeds Applicants' uncommitted capacity.

16. For the NYISO market, Applicants' market share screen indicates that their market share ranges from 11.8 to 12.9 percent. Applicants' pivotal supplier screen indicates that the net uncommitted supply in the NYISO market exceeds Applicants' uncommitted capacity.

17. For the New York City submarket, Applicants' pivotal supplier screen indicates that the net uncommitted supply exceeds Applicants' uncommitted

¹¹ *Id.* P 62.

¹² *Id.* PP 33, 62-63.

¹³ In their October 15, 2012 submittal, Applicants amended their filing to include indicative screens for the New York City submarket and to include sensitivity analyses to support the results of their NBSO indicative screens.

capacity. However, Applicants fail the market share screen in the New York City submarket, with market shares ranging from 34.3 to 37.2 percent. Nevertheless, as Applicants note, the Commission stated in Order No. 697 that with respect to market concentration within regional transmission organization (RTO) or independent system operator (ISO) submarkets, it will consider any existing Commission-approved market monitoring and mitigation regime already in place within the RTO/ISO that provides for mitigation of the submarket.¹⁴ We find that the NYISO market monitoring and mitigation rules are sufficient to address market power concerns in the New York City submarket.¹⁵

18. For the NBSO balancing authority area, Applicants submitted three sets of indicative screens, each based on different assumptions regarding import capability. The first set of screens utilized an estimate of non-simultaneous total import capability into the NBSO balancing authority area. The second set of screens utilized a 1,000 MW import capability, representing the largest single transfer capability into New Brunswick. The third set of screens utilized the Simultaneous Transmission Import Limit (SIL) values based on a 2005-2006 study period that the Commission relied upon in accepting New Brunswick Power Generation's most recent updated market power analysis.¹⁶

19. We find that the assumption of up to 1,000 MW of import capability into the NBSO balancing authority area is a conservative assumption in this instance, particularly when compared to previously accepted SIL values for this market which ranged from 1,602 MW to 1,685 MW. Under the 1,000 MW assumption, Applicants' market share screen indicates that their market share in the NBSO balancing authority area ranges from 5.8 to 14.7 percent. Also under this assumption, Applicants' pivotal supplier screen indicates that the net uncommitted supply in the NBSO balancing authority area exceeds Applicants' uncommitted capacity. The Commission accepts the 1,000 MW of import capacity into the NBSO balancing authority area for all seasons as a proxy for the SIL value for that balancing authority area. Until the Commission has approved an alternative SIL

¹⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 242, 290. *See also* Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 111 (clarifying that there is a rebuttable presumption that RTO/ISO mitigation is adequate to mitigate market power in the RTO/ISO market).

¹⁵ *Niagara Mohawk Power Corp.*, 123 FERC ¶ 61,175, at P 35 (2008).

¹⁶ *New Brunswick Power Generation*, 134 FERC ¶ 61,243 (2011).

study for NBSO, or until the next round of triennial filings are due for the Northeast region, whichever is earlier, future filers submitting screens for the NBSO balancing authority area are encouraged to use this 1,000 MW value as a substitute for a Commission-accepted SIL value. In the alternative, a filer may propose different SIL values provided that the filer's accompanying SIL studies comply with Commission directives and that the filer fully supports the values used.

20. Accordingly, based on Applicants' representations in this proceeding, we find that Applicants satisfy the Commission's requirements for market-based rates regarding horizontal market power.

2. Vertical Market Power

21. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.¹⁷

22. Applicants state that their new affiliations as a result of the Transactions do not raise any concerns with regard to vertical market power. In this case, as discussed more fully below, the Commission finds that the Waiver Entities continue to meet the requirements for waiver of the Standards of Conduct. Applicants state that neither they nor any of their affiliates own or control any transmission facilities in the United States other than the limited equipment necessary to connect individual generating facilities to the transmission grid. Applicants note that the Waiver Entities and Milford Wind Corridor, LLC have obtained from the Commission waivers from filing an OATT.¹⁸ Under those waivers, the Waiver Entities and Milford Wind Corridor, LLC remain obligated to file a *pro forma* OATT and provide open and nondiscriminatory transmission service if a third party requests transmission service in the future. These interconnection facilities are designed and operated to provide generator interconnection service to wind-powered electric generating facilities and are not designed and operated as networked transmission facilities for the provision of transmission service to third parties.

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

¹⁸ See *Evergreen V*, 130 FERC ¶ 61,186; *Milford*, 129 FERC ¶ 61,149. We note that Milford Wind Corridor, LLC owns and operates an 88 mile, 345 kV generator lead line in Utah.

23. Applicants state that certain Emera owned entities own limited and discrete interconnection facilities, and with respect to the transmission facilities owned, operated or controlled by Bangor Hydro, Maine Public Service Company (MPS) and MEPCO (collectively, the Emera Transmission Companies), all transmission is provided under Commission-filed OATTs, and each of Emera Transmission Companies continue to be subject to the Commission's Standards of Conduct. As affiliates of the Emera Transmission Companies, Applicants will be subject to certain restrictions to the extent required by the obligations of the Emera Transmission Companies to comply with the Standards of Conduct. Applicants represent that there are adequate protections in place to ensure that there are no vertical market power concerns resulting from the Transactions.

24. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.¹⁹ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).²⁰ The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.²¹ The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.²²

25. Applicants represent that neither the JV MBR Entities nor their affiliates have established barriers to entry in the relevant markets. With the exception of the affiliation with certain natural gas pipelines through Emera, none of the

¹⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²⁰ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²² *Id.* P 446.

Applicants own natural gas transportation, storage, or distribution facilities, nor do they have any ownership or control of coal supplies or coal transportation.²³

26. Consistent with Order No. 697, Applicants affirmatively state that the JV MBR Entities and their affiliates have not erected barriers to entry and will not erect barriers to entry in the future.

27. Based on these representations, we find that the Applicants' instant notification raises no vertical market power issues.

B. Notification of Change in Facts Relating to Standards of Conduct Waiver

28. The Commission has stated that entities that have received waiver of Order No. 889²⁴ or the Standards of Conduct requirements must notify the Commission if there is a material change in facts that affects their waiver.²⁵

29. Applicants state that the new affiliations of the Waiver Entities with the Emera Entities do not affect the basis on which the waivers were granted.²⁶ Applicants represent that the lead line owned by Canandaigua Power and Canandaigua II continues to be a limited and discrete transmission facility used solely to deliver energy produced by Canandaigua Power and Canandaigua II to the transmission system owned by New York State Electric and Gas Corporation. Similarly, Applicants represent that the Evergreen Lead Line continues to be a

²³ Applicants' July 16, 2012 Filing at 20. Pursuant to Order No. 697, interstate pipeline capacity subject to FERC-regulated open access tariffs is excluded from the vertical market power analysis. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 442-444.

²⁴ *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).

²⁵ *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).

²⁶ Applicants' July 16, 2012 Filing at 22. Waiver of the requirements of Standards of Conduct was granted to the Waiver Entities in *Evergreen V*, 130 FERC ¶ 61,186.

limited and discrete transmission facility that is used solely to deliver energy produced by the respective generating facilities of Evergreen Gen Lead's owners, i.e., Evergreen III, Stetson Holdings and Stetson II. Applicants represent that the Transactions did not result in a physical change, or change in usage, of these lines.

30. Applicants represent that the Waiver Entities continue to meet the Commission's definition of a small public utility because each of the generating projects connected to the lead lines has annual electric sales of no more than 4 million megawatt hours (MWh), and that the lead lines continue to be limited and discrete. Applicants also state that (1) the new affiliation with Bangor Hydro does not affect the basis of the Standards of Conduct waiver; (2) Bangor Hydro continues to be subject to the use of ISO-NE's Open Access Same Time Information System (OASIS); (3) Bangor Hydro continues to be subject to the Standards of Conduct; and (4) as affiliates of Bangor Hydro, the Waiver Entities will be subject to restrictions to the extent required by Bangor Hydro's obligations to comply with the Standards of Conduct.

31. We find that the Waiver Entities' facilities continue to meet the Commission's requirements with respect to waiver of the Standards of Conduct, based on the fact that the transmission facilities remain limited and discrete.

32. The Waiver Entities must notify the Commission if there is a material change in facts that affect the Standards of Conduct waiver, within 30 days of the date of such change.

The Commission orders:

Applicants' filing is hereby accepted for filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.