

144 FERC ¶ 61,228
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Colorado Green Holdings LLC

Docket No. ER13-1891-000

ORDER ACCEPTING OWNERSHIP AGREEMENT AND GRANTING IN PART
AND DENYING IN PART REQUEST FOR WAIVERS

(Issued September 24, 2013)

1. This order accepts the filing by Colorado Green Holdings LLC (Colorado Green); Twin Buttes Wind, LLC (Twin Buttes); and Pacific Wind Development, LLC (PWD) (collectively, Applicants) of a Feeder Line Ownership Agreement for a 44 mile, 230 kV generator lead line (Feeder Line), effective September 1, 2013, as described below. This order also grants Applicants the requested waivers of the Commission's requirement to file an Open Access Transmission Tariff (OATT), maintain an Open Access Same-Time Information System (OASIS), and comply with the Standards of Conduct.

I. Background and Instant Filing

2. Applicants state that they are affiliates of Iberdrola Renewables, LLC (Iberdrola Renewables), that Colorado Green and Twin Buttes own and operate generating facilities in Prowers County, Colorado, and that PWD is developing an expansion of Twin Buttes' wind-powered generating facility (Expansion Project). Applicants state that, pursuant to the terms of the Feeder Line Ownership Agreement, each Applicant owns an undivided interest in the Feeder Line, which interconnects Colorado Green's and Twin Buttes' existing facilities and will interconnect the Expansion Project, to Public Service Company of Colorado's integrated transmission grid.¹

3. Applicants state that the Feeder Line Ownership Agreement governs the terms and conditions under which Applicants own, use, operate, and maintain their interests in the Feeder Line for the purposes of connecting their generating facilities with the integrated

¹ Applicants July 3, 2013 Filing at 2 (Application).

transmission grid.² Applicants state that they do not provide Commission jurisdictional services and, while the Feeder Line Ownership Agreement does not establish rates, terms, or conditions for the provisions of Commission jurisdictional services, they contend that the Feeder Line Ownership Agreement is similar to other ownership agreements that the Commission has accepted for filing.³

4. Applicants request waiver of the Commission's 60-day notice requirement so that the Feeder Line Ownership Agreement can be effective as of July 4, 2013, one day after the instant filing, because Colorado Green's and Twin Buttes' wind-powered generating facilities are currently operational and using the Feeder Line.⁴

5. Applicants also request waiver of the OATT requirements of Order Nos. 888⁵ and 890⁶ and section 35.28 of the Commission's regulations,⁷ the OASIS requirements of

² *Id.* at 3.

³ *Id.* at 6 (citing *Limon Wind, LLC*, 141 FERC ¶ 61,064 (2012); *Mesquite Solar 1, LLC*, 138 FERC ¶ 61,074 (2012)).

⁴ *Id.* at 8.

⁵ *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).

⁶ *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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁷ 18 C.F.R. § 35.28 (2013).

Order No. 889⁸ and Part 37 of the Commission's regulations,⁹ and the Standards of Conduct requirements of Order Nos. 889, 2004,¹⁰ and 717¹¹ and Part 358 of the Commission's regulations.¹² According to Applicants, the Feeder Line is a limited and discrete radial line that is designed to and will be used solely to deliver the output of Applicants' wind-powered generating facilities to the integrated transmission grid. Applicants assert that the Feeder Line is not designed to serve and does not serve transmission customers. As such, Applicants argue that the Feeder Line is the type of limited and discrete facility for which the Commission routinely grants waiver of its open access requirements unless and until the owners receive a transmission request.¹³

6. Applicants state that if Applicants receive a valid, good faith request for transmission service, they will file with the Commission a *pro forma* OATT within 60 days after receipt of the request and will comply with any additional regulatory requirements then in effect. In addition, Applicants commit to notifying the Commission of any material change in facts that affects the requested waivers within 30 days after the date of such change.¹⁴

⁸ *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).

⁹ 18 C.F.R. pt. 37 (2013).

¹⁰ *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).

¹¹ *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).

¹² 18 C.F.R. pt. 358 (2013).

¹³ Application at 9 (citing *Sky River, LLC*, 143 FERC ¶ 61,241 (2013)).

¹⁴ *Id.*

7. PWD had initially included in Applicants' filing a request that the Commission confirm its priority rights to firm transmission capacity on the Feeder Line necessary to interconnect its expansion project to the integrated transmission system. On August 23, 2013, Applicants withdrew this request.¹⁵

II. Notice of Filing and Responsive Pleadings

8. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 42,061 (2013), with protests or motions to intervene due on or before July 24, 2013. None were filed.

III. Discussion

9. We find the terms and conditions of the Feeder Line Ownership Agreement to be just and reasonable and not unduly discriminatory. However, waiver of the notice requirements pursuant to section 35.11 of the Commission's rules and regulations (18 C.F.R. § 35.11) is denied and the Agreement is accepted for filing, effective September 1, 2013.

10. The Commission has determined that waiver of the notice requirements will be granted for service agreements as long as the agreements are filed within 30 days after service commences.¹⁶ Because the Feeder Line Ownership agreement has been in existence since October 1, 2003, waiver of the notice requirement is denied.¹⁷ However, since no Commission jurisdictional services were provided under the agreement and since no rates, terms, and conditions of service were established under the agreement, no refunds are required. Thus, we will accept the Feeder Line Ownership Agreement, effective 60 days after filing, September 1, 2013.

11. The Commission will also grant Applicants' requested waivers of the OATT, OASIS, and Standards of Conduct requirements. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations require public utilities that own, operate,

¹⁵ Applicants' August 23, 2013 Withdrawal of Request for Confirmation of Priority Rights.

¹⁶ *Central Hudson Gas and Electric Corp., et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992), and *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993) (*Waiver Orders*).

¹⁷ Applicants are reminded that they must submit required filings on a timely basis or face possible sanctions by the Commission.

or control facilities used for the transmission of electric energy in interstate commerce to file an OATT prior to providing transmission service. Order No. 889 and Part 37 of the Commission's regulations 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 the Commission's Standards of Conduct.¹⁸ 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, 889, and 890.¹⁹ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.²⁰ Order No. 717 did not change those criteria.²¹

12. The Commission may grant requests for waiver of the obligation to file an OATT to public utilities that can show 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 it must comply with any additional requirements that are effective on the date of the request.²²

13. 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 and no other circumstances are present that indicate that waiver would not be justified.²³ The

¹⁸ Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 16; Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 313.

¹⁹ 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*).

²⁰ 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).

²¹ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 54.

²² *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

²³ *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
(continued...)

Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint 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).²⁴

14. Based on Applicants' representations that the Feeder Line is not an integrated component of any transmission grid, was designed solely to enable Applicants to deliver electrical energy from Applicants' wind-powered generating facilities to the point of interconnection with the integrated transmission system, and it will not be providing transmission service to any other party, we find that the Feeder Line qualifies as limited and discrete. Accordingly, we will grant Applicants waiver of the requirements in Order Nos. 888 and 890 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 they must comply with any additional requirements that are effective on the date of the request.²⁵

15. The Commission also will grant Applicants' request for waiver of the requirements to maintain an OASIS and of the Standards of Conduct because the Feeder Line is a limited and discrete transmission facility. Applicants' waiver of the requirement to establish an OASIS will remain in effect until the Commission takes action in response to a complaint that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.²⁶ Likewise, Applicants' waiver of the Standards of Conduct will remain in effect unless and until the Commission

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 because they participate in a Commission-approved Independent System Operator or Regional Transmission Organization. *See* 18 C.F.R. § 358.1(c) (2013).

²⁴ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997) (*Central Minnesota*); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998) (*Easton*)).

²⁵ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

²⁶ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota*, 79 FERC ¶ 61,260 at 62,127; *Easton*, 83 FERC ¶ 61,334 at 62,343).

takes action on a complaint by an entity that an Applicant has unfairly used its access to information to unfairly benefit itself or its affiliate.²⁷

The Commission orders:

(A) The Feeder Line Ownership Agreement is hereby accepted for filing, effective September 1, 2013, as discussed in the body of this order.

(B) Applicants' request for waivers of the Commission's OATT, OASIS, and Standards of Conduct requirements, is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁷ *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).