

146 FERC ¶ 61,215
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pheasant Run Wind, LLC

Docket No. ER14-1137-000

ORDER ACCEPTING COMMON FACILITIES AGREEMENT
AND GRANTING WAIVERS

(Issued March 21, 2014)

1. In this order, the Commission accepts the Common Facilities Agreement¹ filed by Pheasant Run Wind, LLC (Pheasant Run), effective January 23, 2014, as requested. Further, as discussed below, we grant Pheasant Run's request for a waiver of the requirements to file an Open Access Transmission Tariff (OATT), to comply with the Commission's Standards of Conduct, and to establish and maintain an Open Access Same-Time Information System (OASIS) for the common facilities.

I. Background

2. Pheasant Run states that it owns and operates the Pheasant Run Wind Project, a wind energy generating facility located in Huron County, Michigan, with a generating capacity of 75 MW. In 2013, Pheasant Run entered into a Large Generator Interconnection Agreement (GIA) with Midcontinent Independent System Operator, Inc. (MISO) and International Transmission Company (ITC) allowing for the interconnection of a 150 MW wind energy generating facility. Pheasant Run explains that its parent, NextEra Energy Resources, LLC, established two separate entities, Pheasant Run and

¹ Pheasant Run Wind, LLC, FERC FPA Electric Tariff, Agreements, [Pheasant Run I, Common Facilities Agreement, 0.0.0.](#)

Pheasant Run Wind II, LLC (Pheasant Run II)² for commercial reasons, to develop the project capacity. Pheasant Run states that as the party to the GIA, it is assigning part of the interconnection service to Pheasant Run II under a separate agreement.³

3. On January 22, 2014, Pheasant Run filed the Common Facilities Agreement, which, it states, will allow Pheasant Run II to receive derivative service under the GIA.⁴ Specifically, Pheasant Run states that this contractual arrangement is intended to allow Pheasant Run II to use the various facilities owned by Pheasant Run and receive the needed service to enable Pheasant Run II to deliver its output to the grid. These common facilities are described by Pheasant Run and Exhibit A to the Common Facilities Agreement as an approximately 100-foot long 345kV common bus extending from the point where Pheasant Run II's 345kV line joins Pheasant Run's 345kV line to the Point of Change of Ownership at ITC's substation, as defined in the GIA. The common facilities also include associated surge arrestors, meters, switches, and optical fiber.

4. Under the Common Facilities Agreement, Pheasant Run will be the owner of the common facilities and Pheasant Run II will be a licensee. Pheasant Run states that it will grant Pheasant Run II the non-exclusive right to use the common facilities for purposes of the operation of Pheasant Run II's project. Pheasant Run will be responsible for operations and maintenance of the common facilities under a separate agreement, and Pheasant Run II will be required to reimburse Pheasant Run for Pheasant Run II's

² Pheasant Run II is developing and placing into service a 75 MW wind generating facility also located in Huron County in the same general location as the Pheasant Run Wind Project. Pheasant Run and Pheasant Run II are both Delaware limited liability companies and wholly-owned indirect subsidiaries of NextEra Energy, Inc. Pheasant Run has market-based rate authority, effective November 15, 2013, pursuant to a letter order issued in Docket No. ER13-2461-000. Pheasant Run II has market-based rate authority, effective January 23, 2014, pursuant to a letter order issued in Docket No. ER13-2462-000.

³ Paragraph D in the Recitals to the Common Facilities Agreement states that Pheasant Run and Pheasant Run II have entered into a "Partial Assignment of Generator Interconnection Agreement," under which both parties would receive interconnection service "directly or indirectly" through the GIA.

⁴ Section 9 of the Common Facilities Agreement sets forth certain obligations of Pheasant Run to comply with the GIA and keep Pheasant Run II informed of notices and instructions regarding the GIA. It also obligates Pheasant Run II to perform in a manner that facilitates Pheasant Run's compliance with the GIA.

proportionate share of these costs. For use of the common facilities and the common facilities area, Pheasant Run II will pay Pheasant Run a license fee equal to 50 percent of the actual costs, fees and expenses incurred by Pheasant Run related to the engineering, procurement and construction of the common facilities. The Common Facilities Agreement also establishes that, in the event of a curtailment, the project that is causing the need for curtailment shall be curtailed first, and thereafter, both projects shall be curtailed to an extent equal to such project's *pro rata* portion of the energy delivered to the point of interconnection at the time immediately prior to the event giving rise to the curtailment.

5. Pheasant Run requests that the Commission waive the requirements under Order Nos. 888⁵ and 890⁶ and section 35.28 of the Commission's regulations⁷ to file an OATT for access to the common facilities, the requirements under Order No. 889⁸ and Part 37 of the Commission's regulations⁹ to establish an OASIS, and the requirements under Order

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

⁷ 18 C.F.R. § 35.28 (2013).

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).

No. 889 and Part 358 of the Commission's regulations¹⁰ to comply with the Standards of Conduct.

II. Notice of Filing

6. Notice of the filing was published in the *Federal Register*, 79 Fed. Reg. 5,396 (2014), with interventions and comments due on or before February 12, 2014. None was filed.

III. Discussion

A. Common Facilities Agreement

7. The Common Facilities Agreement appears to be just and reasonable and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept the proposed Common Facilities Agreement, to become effective on January 23, 2014, as requested, as further discussed below.¹¹

8. We find good cause to grant waiver of the 60-day prior notice requirement, under 18 C.F.R. § 35.11 (2013), in order to allow the proposed Common Facilities Agreement to go into effect one day from the date of filing, on January 23, 2014, as requested. Pheasant Run states that Pheasant Run II plans to start commercial operations by January 23, 2014, but that they were unable to execute the Common Facilities Agreement until January 22, 2014, due to the unexpected length of time for details to be negotiated. The requested effective date will ensure that the Common Facilities Agreement is in effect at the time commercial operations commence.

B. Waiver Requests

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

¹⁰ 18 C.F.R. pt. 358 (2013).

¹¹ Our acceptance of the Common Facilities Agreement does not address the transfer of development rights by Pheasant Run, or arrangements or agreements that Pheasant Run may have made to assign part of its GIA capacity to Pheasant Run II.

common facilities,¹² Pheasant Run states that it is allowing Pheasant Run II to use the common facilities and receive related service necessary to transmit the output from its wind energy facility to the grid. Thus, Pheasant Run states that the common facilities do not comprise part of an integrated transmission system and that they are limited and discrete facilities that were solely designed to enable the generators to transmit their power from their facilities to the grid. Pheasant Run asserts that imposing OATT and OASIS requirements would be burdensome for a situation such as this where generators are simply sharing interconnection facilities. Additionally, Pheasant Run states that Pheasant Run and Pheasant Run II qualify for waiver as small utilities that dispose of no more than four million MWh annually. Specifically, Pheasant Run states that the maximum amount of energy that could be transmitted each year from the Pheasant Run and Pheasant Run II facilities over the common facilities to the substation owned by ITC is about 1,314,000 MWh.

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 prior to providing transmission service. Order No. 889 and Parts 37 and 358 of the Commission's regulations require public utilities to establish an OASIS. Order Nos. 889, 2004,¹³ and 717¹⁴ and Part 358 of the

¹² Generator lead lines are transmission facilities. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2012). *See Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149, at P 24 (2009) (noting that designation as a "generator lead line" does not render a line exempt from the Commission's regulation of transmission facilities). *See also Evergreen Wind Power III, LLC*, 135 FERC ¶ 61,030 (2011).

¹³ *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).

¹⁴ *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*,

(continued...)

Commission's regulations require public utilities to abide by certain Standards of Conduct.¹⁵ 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 890.¹⁶ The Commission has stated that the criteria for waiver of the requirements of Order Nos. 890 and 2004 have not changed from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹⁷ Order No. 717 did not change those criteria.¹⁸

10. 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* 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.¹⁹

11. The Commission has determined that waiver of the requirements 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 (other than part of an integrated transmission grid); or (2) is a small public utility that owns, operates, or controls an integrated transmission grid, unless other

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

¹⁵ 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.

¹⁶ 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*).

¹⁷ 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).

¹⁸ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

¹⁹ *Black Creek*, 77 FERC at 61,941.

circumstances are present that indicate that waiver would not be justified.²⁰ 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).²¹

12. Based on the statements in Pheasant Run's filing, we find that the common facilities qualify as limited and discrete. Accordingly, we will grant Pheasant Run waiver of the requirements to have an OATT on file with respect to those facilities. However, if Pheasant Run 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.

13. The Commission will also grant Pheasant Run's request for waiver of the requirement to maintain an OASIS and comply with 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.²² Likewise, the waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Pheasant Run has unfairly used its access to information to unfairly benefit itself or its affiliates.²³

²⁰ *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) (*Black Hills*), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Moreover, *Black Hills* did not affect waivers based on a public utility disposing of no more than 4 million MWh annually.

²¹ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998)).

²² *Kansas City, Kansas, Board of Pub. Utils.*, 140 FERC ¶ 61,113, at P 13 (2012).

²³ *Id.* Pheasant Run 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*

(continued...)

The Commission orders:

(A) Pheasant Run's proposed Common Facilities Agreement is hereby accepted for filing, effective January 23, 2014, as requested, as discussed in the body of this order.

(B) Pheasant Run's request for waiver of the Commission's requirements to file an OATT, to establish and maintain an OASIS, and to comply with the Standards of Conduct is hereby granted with respect to the common facilities, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations, 127 FERC ¶ 61,141, at P 1 (2009).