

146 FERC ¶ 61,223
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Maine GenLead, LLC

Docket No. ER14-1151-000

ORDER ACCEPTING AGREEMENT FOR FILING AND
GRANTING IN PART AND DENYING IN PART REQUESTS FOR WAIVER

(Issued March 25, 2014)

1. This order accepts for filing a facilities use agreement between Maine GenLead, LLC (Maine GenLead) and Evergreen Wind Power II, LLC (Evergreen II), to become effective March 26, 2014, as requested. In addition, this order grants Maine GenLead's requests for waiver 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). This order also grants in part and denies in part Maine GenLead's request for waiver of certain filing requirements, and denies Maine GenLead's request for blanket authorization of the issuance of securities and assumptions of liability.

I. Background

2. Maine GenLead and Evergreen II are indirect, wholly owned subsidiaries of First Wind Holdings, LLC (First Wind), a Delaware limited liability company.¹ Evergreen II is developing a 147.6 MW wind powered generation facility in Oakfield, Maine. Maine GenLead was formed to construct, own, and operate a 59 mile, 115 kV generator interconnection transmission line and related facilities (Maine GenLead Line) to connect the Evergreen II facility to the Keene Road Substation, which is owned by Emera Maine and under ISO New England Inc.'s (ISO-NE) operational control.

II. Filing

3. On January 24, 2014, Maine GenLead filed, under section 205 of the Federal Power Act (FPA),² an executed Facilities Use Agreement (Agreement) with Evergreen II.

¹ Filing at 2.

² 16 U.S.C. § 824d (2012).

Maine GenLead states that the Agreement will be designated as Maine GenLead's FERC Electric Rate Schedule No. 1, and requests that the Commission accept the Agreement for filing, to become effective March 26, 2014.³

4. Maine GenLead states that the Agreement will allow the Evergreen II facility to connect to the Maine GenLead Line to deliver the output of the Evergreen II facility to the ISO-NE transmission system.⁴ Maine GenLead states that First Wind will construct the Maine GenLead Line at an estimated cost of \$60 million. Maine GenLead further states that Evergreen II's contribution will be limited to the portion of the costs that are anticipated to be supported by Evergreen II's financing arrangement, but will not exceed the cost incurred to construct the line, and that First Wind will bear the remainder of the costs.⁵ Maine GenLead further states that Evergreen II will reimburse Maine GenLead for the actual costs Maine GenLead incurs to operate and maintain the Maine GenLead Line without mark up.

5. As further discussed below, Maine GenLead also requests that the Commission waive the requirements under Order Nos. 888⁶ and 890⁷ and section 35.28 of the

³ Maine GenLead, LLC, Rate Schedules and Tariffs, Facilities Use Agreement, [Facilities Use Agreement, FERC Electric Rate Schedule No. 1, 1.0.0.](#)

⁴ Filing at 3.

⁵ Filing at 3. Maine GenLead further notes that it will make a compliance filing to report the amount of Evergreen II's initial payment within 30 days from the date the payment is made. *Id.* at n.6.

⁶ *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).

⁷ *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).

Commission's regulations⁸ to file an OATT for the Maine GenLead Line, the requirements under Order No. 889⁹ and Part 37 of the Commission's regulations¹⁰ to establish an OASIS, and the requirements under Order No. 889 and Part 358 of the Commission's regulations¹¹ to comply with the Standards of Conduct. In addition, Maine GenLead requests waiver of the requirements of Parts 41,¹² 101,¹³ and 141,¹⁴ with the exception of sections 141.14 and 141.15, of the Commission's regulations, as well as waiver of the reporting requirements of Subparts B and C of Part 35, with the exception of sections 35.12(a), 35.13(b), 35.15 and 35.16.¹⁵ Maine GenLead also requests blanket authorization of the issuance of securities and assumptions of liability under Part 34 of the Commission's regulations.¹⁶

6. Finally, Maine GenLead states that First Wind is evaluating the possibility of constructing an additional line that would connect the Maine GenLead Line to a point owned and operated by Emera Maine. Maine GenLead acknowledges that it must timely notify the Commission of any departure from the facts presented here in support of the requested waivers and meet the Commission's requirements for any retention of such waivers in light of any changed circumstances.

III. Notice

7. Notice of Maine GenLead's filing was published in the *Federal Register*, 79 Fed. Reg. 6582 (2014), with protests or motions to intervene due on or before February 14,

⁸ 18 C.F.R. § 35.28 (2013).

⁹ *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).

¹⁰ 18 C.F.R. pt. 37 (2013).

¹¹ 18 C.F.R. pt. 358 (2013).

¹² 18 C.F.R. pt. 41 (2013).

¹³ 18 C.F.R. pt. 101 (2013).

¹⁴ 18 C.F.R. pt. 141 (2013).

¹⁵ 18 C.F.R. pt. 35, Subparts B and C (§§ 35.12 - 35.29) (2013).

¹⁶ 18 C.F.R. pt. 34 (2013).

2014. Northern Maine Independent System Administrator, Inc. (NMISA) timely submitted a motion to intervene.

IV. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules and Practice and Procedures, 18 C.F.R § 385.214 (2013), the timely, unopposed motion to intervene serves to make NMISA a party to this proceeding.

V. Discussion

9. The Facilities Use 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 Agreement for filing, to become effective on March 26, 2014, as requested. As discussed below, we also will grant Maine GenLead's request for waiver of Order Nos. 888, 889, 890; and section 35.28, Part 37, Part 358, Part 101 and Part 141 (with the exception of sections 141.14 and 141.15) of the Commission's regulations. We also will grant waiver of the requirements of sections 41.10 through 41.12, but we will deny waiver of the balance of the requirements of Part 41, and Subparts B and C of Part 35. Lastly, we will deny Maine GenLead's request for blanket authorization of the issuance of securities and assumptions of liability under Part 34.

A. Waiver of Order Nos. 888, 889, and 890 and Section 35.28, Part 37 and Part 358 of the Commission's Regulations

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, 2004,¹⁷ and 717¹⁸ and Part 358 of the

¹⁷ *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); *see also Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, FERC Stat. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

Commission's regulations require public utilities to abide by certain Standards of Conduct. 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 2004 have not changed from those used to evaluate requests for waiver under Order Nos. 888 and 889.²⁰ Order No. 717 did not change those criteria.²¹

10. The Commission may grant requests for waiver of the obligation to file an OATT to public utilities that 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* 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.²²

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 (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.²³ The Commission has

¹⁸ *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).

¹⁹ *See, e.g., Black Creek Hydro, Inc. (Black Creek)*, 77 FERC ¶ 61,232, at 61,941 (1996); *Entergy Mississippi, Inc. (Entergy)*, 112 FERC ¶ 61,228, at P 22 (2005).

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. at PP 31-33.

²² *Black Creek*, 77 FERC 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)

further held that a 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 Standard of Conduct waivers).²⁴

12. In support of its request for waiver of the requirements of Order Nos. 888, 889, and 890 and section 35.28, Part 37 and Part 358 of the Commission's regulations, Maine GenLead asserts that the Maine GenLead Line will constitute limited, discrete facilities constructed for the purpose of delivering the output of energy produced by the Evergreen II facility to the ISO-NE transmission system and will not form an integrated transmission system.

13. Based on the statements in Maine GenLead's filing and the technical specifications of the Maine GenLead Line, i.e., a 59 mile, 115 kV generator interconnection transmission line, we find that the Maine GenLead Line qualifies as limited and discrete. Accordingly, we will grant Maine GenLead waiver of the requirements to have an OATT on file with respect to the Maine GenLead Line. However, if Maine GenLead 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.

14. The Commission will also grant Maine GenLead'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.²⁵ 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 Maine

(*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.

²⁴ *Entergy* 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)).

²⁵ *Kansas City, Kansas, Board of Pub. Utils.*, 140 FERC ¶ 61,113, at P 13 (2012).

GenLead has unfairly used its access to information to unfairly benefit itself or its affiliates.²⁶

B. Additional Waivers and Authorizations

15. Maine GenLead requests that the Commission waive certain requirements and grant certain blanket authorizations that the Commission previously has granted other applicants that are not providing cost-based service.²⁷ Specifically, Maine GenLead requests waiver of: (1) the requirements of Part 41 (accounts, records, memoranda and disposition of contested audit findings and proposed remedies), Part 101 (Uniform System of Accounts for Public Utilities and Licensees) and Part 141, except for sections 141.14 and 141.15 (statements and reports); and (2) the reporting requirements in Subparts B and C of Part 35 of the Commission's regulations, except for sections 35.12(a) (filing of initial rate schedules), 35.13(b) (general information to be filed with rate schedules), 35.15 (notices of cancellation or termination), and 35.16 (notices of succession). Maine GenLead further seeks blanket authorization of the issuance of securities and assumptions of liability under Part 34 of the Commission's regulations.

16. Maine GenLead states that the Commission previously has granted the waivers and authorizations requested here to owners of limited transmission facilities, market-based rate sellers and qualifying facilities selling at avoided cost rates because the primary purpose of these regulations is to assist the Commission in determining a public utility's cost of service in order to determine whether its cost-based rates are just and reasonable, but where an entity is not subject to traditional cost-based regulation, these requirements are not applicable. Maine GenLead argues that the logic underlying these waivers applies to Maine GenLead. In particular, Maine GenLead states that no regulatory purpose would be served by requiring Maine GenLead to incur the costs associated with maintaining its accounts in accordance with the Uniform System of Accounts and denying it the more flexible reporting requirements and authorizations afforded to companies that own limited and discrete transmission facilities that do not provide service under traditional cost-based rates.²⁸

²⁶ *Id.* Maine GenLead 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 1 (2009).

²⁷ Filing at 5.

²⁸ Filing at 5-6 (citing *Wolverine Creek Goshen Interconnection LLC*, Docket Nos. ER06-267-000, *et al.*, (Jan. 13, 2006), *errata* (Jan. 27, 2006); *Entergy Louisiana, Inc.*,

17. The Commission will grant Maine GenLead's request for waiver of Part 141 (except for, as requested, sections 141.14 and 141.15), including the Form No. 1 filing requirement. The Commission has previously granted waiver of the Form No. 1 filing requirement to owners of limited, discrete transmission facilities.²⁹ We find this waiver appropriate as the Maine GenLead Line will constitute a limited, discrete transmission facility constructed for the purpose of delivering energy to the ISO-NE transmission system, and based on its proposed configuration does not form an integrated transmission system.

18. We will also grant waiver of Part 101. The Commission has granted waiver of Part 101 in cases where transmission owners are limited and discrete and only serve a merchant generation affiliate.³⁰ However, notwithstanding the waiver of the accounting requirements of Part 101, we expect Maine GenLead to keep its accounting records in accordance with accounting principles generally accepted in the United States (U.S.GAAP). As to Maine GenLead's request for waiver of Part 41, we will grant its request for waiver of sections 41.10 through 41.12, because those sections pertain to the Form No. 1 filing requirements in Part 141, which we will also waive, as discussed above. However, we will deny Maine GenLead's request for waiver of the balance of the requirements of Part 41. These requirements pertain to the Commission's audit process, which remains applicable in this instance. This finding is consistent with the Commission's established policy of denying waiver of Part 41 to transmission providers.³¹ Consistent with our previous orders, we find that it is appropriate to deny waiver of these provisions to facilitate regulatory oversight.

110 FERC ¶ 61,300 (2005); *Resources Recover (Dade County), Inc.*, 20 FERC ¶ 61,138 (1982).

²⁹ *Wyoming*, 127 FERC ¶ 61,125 at P 65; *Linden*, 119 FERC ¶ 61,066 at P 44; *MATL*, 116 FERC ¶ 61,071 at P 66.

³⁰ *Prairie Rose Transmission, LLC*, 140 FERC ¶ 61,245, at P 15 (2012).

³¹ *Rock Island Clean Line LLC*, 139 FERC ¶ 61,142, at P 47 (2012); *TransEnergie U.S. Ltd.*, 98 FERC ¶ 61,147, at 61,457 (2002) (*TransEnergie*); *TransEnergie U.S. Ltd. and Hydro One Delivery Services Inc.*, 98 FERC 61,144, at 61,502 (2002) (*TransEnergie – Hydro One*); *Northeast Utilities*, 98 FERC ¶ 61,130 at 62,331; *Neptune Regional Transmission System, LLC*, 96 FERC ¶ 61,147 at ordering para. (G) (2001) (*Neptune*).

19. The Commission will also deny Maine GenLead's request for waiver of the reporting requirements in Subparts B and C of Part 35 of the Commission's regulations. In Order No. 697,³² the Commission clarified its policy regarding waivers of Subparts B and C of Part 35, explaining that the Commission will continue to grant waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for sections 35.12(a), 35.13(b), 35.15 and 35.16, for entities making market-based sales, but that this waiver would not be granted to an entity that makes sales at cost-based rates.³³ We find that Maine GenLead has not provided sufficient information in its filing upon which to determine how it will establish its rates. Further, Maine GenLead has neither applied for market-based rate authorization from the Commission, nor expressed an intent to do so. We will therefore deny Maine GenLead's request for waiver of the reporting requirements of Subparts B and C of Part 35.

20. The Commission will also deny Maine GenLead's request for blanket authorization of the issuance of securities and assumptions of liability under Part 34. As Maine GenLead notes, the Commission explained in Order No. 697 that the purpose of section 204 of the FPA³⁴ and its implementing regulations is to ensure the financial viability of franchised public utilities obligated to serve consumers of electricity. However, Order No. 697 further states that it is the Commission's practice to grant blanket authorization under Part 34 where the seller is not a franchised public utility providing electric service to customers under cost-based regulation *and has market-based rate authority*.³⁵ As noted above, Maine GenLead has neither been granted market-based rate authority nor submitted an application for this authority. Therefore, we will deny Maine Gen Lead's request for blanket authorization under Part 34.³⁶

³² *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. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

³³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at n.1126.

³⁴ 16 U.S.C. § 824c (2012).

³⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 999.

³⁶ Nothing in this order prevents Maine GenLead from submitting a future market-

The Commission orders:

(A) The Facilities Use Agreement filed by Maine GenLead is hereby accepted, to become effective March 26, 2014, as discussed in the body of this order.

(B) Maine GenLead'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 Maine GenLead Line, as discussed in the body of this order.

(C) Maine GenLead's request for waiver of Part 141 of the Commission's regulations, with the exception of sections 141.14 and 141.15, is hereby granted, as discussed in the body of this order.

(D) Maine GenLead's request for waiver of the requirements of sections 41.10 through 41.12 of the Commission's regulations is hereby granted, and waiver of the balance of the requirements of Part 41 is hereby denied, as discussed in the body of this order.

(E) Maine GenLead's request for waiver of Part 101 of the Commission's regulations is hereby granted, as discussed in the body of this order.

(F) Maine GenLead's requests for waiver of the reporting requirements of Subparts B and C of Part 35 of the Commission's regulations are hereby denied, as discussed in the body of this order.

based rate application with renewed requests for authorizations and waivers, if it so chooses.

(G) Maine GenLead's request for request for blanket authorization under Part 34 of the Commission's regulations is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.