

148 FERC ¶ 61,069
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Broken Bow Wind, LLC
Broken Bow Wind II, LLC

Docket Nos. ER14-2060-000
ER14-2074-000

ORDER ACCEPTING COMMON FACILITIES AGREEMENT
AND GRANTING WAIVERS

(Issued July 28, 2014)

1. In this order, the Commission accepts the Common Facilities Agreement¹ filed by Broken Bow Wind, LLC (Broken Bow I) between Broken Bow I and Broken Bow Wind II, LLC (Broken Bow II), effective July 28, 2014, as requested. The Commission also accepts the certificate of concurrence related to the Common Facilities Agreement filed by Broken Bow II, effective July 28, 2014, as requested.² Further, as discussed below, we grant Broken Bow I'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 shared generator interconnection facilities (Common Facilities).

¹ Broken Bow Wind, LLC, FERC FPA Electric Tariff, FERC Electric Tariff, [Common Facilities Agmt, Rate Schedule FERC No. 1, 0.0.0](#).

² Broken Bow Wind II, LLC, FERC FPA Electric Tariff, Broken Bow Wind II, LLC FERC Electric Tariff No. 1 Market Based Rate Tariff, [Rate Schedule, Rate Schedule No. 1, Common Facilities Agreement, 1.0.0](#).

I. Background

2. Broken Bow I states that it is wholly-owned indirectly by Capistrano Wind Partners, LLC. Broken Bow I is a qualifying small power production facility (QF)³ and an exempt wholesale generator (EWG)⁴ and has been authorized to sell energy, capacity, and ancillary services at market-based rates.⁵ Broken Bow I states that it owns and operates the Broken Bow I QF, a wind energy generating facility with a net capacity of 77.8 MW, a collection system, and associated interconnection facilities located in Custer County, Nebraska. Broken Bow I further states that it sells the full output of the Broken Bow I QF to Nebraska Public Power District (NPPD) pursuant to a long-term contract.

3. Broken Bow I states that Broken Bow II is a wholly-owned subsidiary of Sempra Energy, and additionally, Broken Bow II operates a QF⁶ and has a pending application for authorization to sell energy, capacity, and ancillary services at market-based rates.⁷ According to Broken Bow I, Broken Bow II will own and operate the Broken Bow II QF, a wind-powered generating facility with a net capacity of 75 MW, a collection system, and associated interconnection facilities which are also located in Custer County, Nebraska that will interconnect with the Common Facilities. Broken Bow states that Broken Bow II will also sell the full output of the Broken Bow II QF to NPPD pursuant to a long-term contract.

4. On May 29, 2014, Broken Bow I filed the Common Facilities Agreement in Docket No. ER14-2060-000 (May 29 Filing), which, it states, will allow for the timely interconnection of Broken Bow II's QF with what will be shared generator

³ Broken Bow Wind, LLC, Docket No. QF12-66-000 (filed Nov. 16, 2011) (notice of self-certification of QF status).

⁴ Fire Island Wind, LLC, Docket Nos. EG12-9-000, *et al.* (Feb. 9, 2012) (notice of effectiveness of EWG status); Broken Bow Wind, LLC, Docket No. EG12-13-000 (Nov. 16, 2011) (notice of self-certification of EWG status).

⁵ *Broken Bow Wind, LLC*, Docket Nos. ER12-1238-000, *et al.* (Apr. 20, 2012) (delegated letter order).

⁶ Broken Bow Wind II, LLC, Docket No. QF14-54-000 (filed Nov. 5, 2014) (notice of self-certification of QF status).

⁷ The Commission granted the application on July 21, 2014. *Broken Bow Wind II, LLC*, 148 FERC ¶ 61,052 (2014).

interconnection facilities interconnected with the NPPD transmission grid.

Broken Bow II will acquire a pro rata interest in the Common Facilities upon the connection of its interconnection facilities with the Common Facilities. Broken Bow I states that it currently fully owns the Common Facilities, which are located within a switchyard, and consist of: (1) a 3-phase 115 kV, 1200 A manually operated disconnect switch that will interconnect to the NPPD generator-tie line; (2) a 3-phase 115 kV, 1200 A manually operated disconnect switch that will interconnect to the Broken Bow II interconnection facilities; (3) a 3-phase 115 kV, 1200 A manually operated disconnect switch that interconnects to the Broken Bow I interconnection facilities; (4) a 3-phase 115 kV, 1200 A circuit breaker; and (5) all associated support structures, bus, control wiring, conduits, grounding material, and associated protection and control relays, and transformer.

5. The Common Facilities Agreement memorializes the terms and conditions under which Broken Bow I and Broken Bow II will own, utilize, operate, and maintain the Common Facilities for the purpose of interconnecting their respective generating facilities with the NPPD-owned transmission system.

6. As required by Section 3.1 of the Common Facilities Agreement, Broken Bow II has given notice in advance of commencing construction of its interconnection facilities that will start on or around August 1, 2014. Following the connection of Broken Bow II's interconnection facilities with the Common Facilities, Broken Bow I will initially be designated as the Operator. The entity designated as the Operator will be responsible under Section 4.2 of the Common Facilities Agreement for operating, maintaining, inspecting, repairing, and replacing the Common Facilities, for paying real and personal property taxes on such facilities, and for procuring and maintaining specified insurance policies and coverages on such facilities. Under Section 4.3, the Operator will be entitled to recover a pro rata share of the operations and maintenance (O&M) costs and a fairly-allocated share of tax payments. Among other things, Section 8.1 of the Common Facilities Agreement expressly requires Commission acceptance of the agreement pursuant to section 205 of the Federal Power Act prior to Broken Bow II's use of the Common Facilities.

7. Broken Bow I states that neither Broken Bow I nor Broken Bow II will provide Commission-jurisdictional transmission or wholesale sales services to the other under the Common Facilities Agreement, and neither party will pay the other party for jurisdictional transmission or wholesale sales services under the Common Facilities Agreement. The only payments, other than indemnification payments or damages, under the Common Facilities Agreement will be payments to reimburse the Operator for O&M

costs and tax payments, and such payments will only occur following the connection of Broken Bow II's interconnection facilities with the Common Facilities.

8. Broken Bow I requests that the Commission waive the requirements under Order Nos. 888⁸ and 890⁹ and section 35.28 of the Commission's regulations¹⁰ to file an OATT for access to the Common Facilities, the requirements under Order No. 889¹¹ and Part 37 of the Commission's regulations¹² to establish an OASIS, and the requirements under

⁸ *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).

⁹ *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).

¹⁰ 18 C.F.R. § 35.28 (2013).

¹¹ *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).

¹² 18 C.F.R. pt. 37 (2013).

Order Nos. 889, 717,¹³ and 2004¹⁴ and Part 358 of the Commission's regulations¹⁵ to comply with the Standards of Conduct.

9. On May 30, 2014, Broken Bow II submitted a certificate of concurrence related to the Common Facilities Agreement in Docket No. ER14-2074-000, to be effective July 28, 2014. Broken Bow II states that in Order No. 714¹⁶ the Commission held that, in situations where multiple public utilities are parties to the same tariff, the joint tariff may be filed by a single designated filer and any non-designated parties must submit a certificate of concurrence and a single tariff page containing the name of the tariff and the utility designated to file the joint tariff on behalf of the other parties. Broken Bow II also explains that the Common Facilities Agreement is a rate schedule of each of Broken Bow I and Broken Bow II, and the certificate of concurrence identifies the Common Facilities Agreement and Broken Bow I as the designated filer for the Common Facilities Agreement.

¹³ *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).

¹⁴ *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 Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

¹⁵ 18 C.F.R. pt. 358 (2013).

¹⁶ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 63 (2008).

II. Notice of Filing

10. Notice of the filing in Docket No. ER14-2060-000 was published in the *Federal Register*, 79 Fed. Reg. 32,930 (2014), with interventions and comments due on or before June 19, 2014. None was filed.

11. Notice of the filing in Docket No. ER14-2074-000 was published in the *Federal Register*, 79 Fed. Reg. 32,932 (2014), with interventions and comments due on or before June 20, 2014. None was filed.

III. Discussion

A. Common Facilities Agreement

12. 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 July 28, 2014, as requested.

B. Waiver Requests

13. 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 Common Facilities,¹⁷ Broken Bow I states that its ownership in the Common Facilities is used solely to transmit the output from its wind energy facility to the grid. Additionally, Broken Bow I states that Broken Bow II will use its pro rata interest in the Common Facilities to transmit the output from its wind energy facility to the grid; thus, the Common Facilities do not comprise part of an integrated transmission system and they are limited and discrete facilities.

14. Additionally, Broken Bow I asserts that imposing OATT and OASIS requirements would be burdensome for a situation such as this where generators are simply sharing interconnection facilities. Additionally, Broken Bow I states that Broken Bow I and Broken Bow II qualify for waiver and satisfy the criterion of “small public utilities;” Broken Bow I states that the Broken Bow I QF has a generating capacity of about

¹⁷ 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).

80 MW. Even at an unrealistic 100 percent load capacity factor during every hour of the year, Broken Bow I would dispose of no more than 700,800 MWh annually; substantially less than 4,000,000 MWh annually; thus satisfying the small public utility criterion.

15. Consistent with Commission precedent, Broken Bow I recognizes that the requested waiver of the OATT requirements will be effective only until it receives a third-party request for transmission service, and the requested waivers of the OASIS and Standards of Conduct will cease to be effective if the Commission finds that it has unfairly used its access to information to benefit itself or an affiliate. Broken Bow I states that it will notify the Commission within 30 days of any material change in facts that affects its waiver of the OASIS and Standards of Conduct requirements.

16. 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, and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain 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 Nos. 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

17. 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

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 PP 31-33.

date of the request, and must comply with any additional requirements that are effective on the date of the request.²²

18. 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 circumstances are present that indicate that waiver would not be justified.²³ 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).²⁴

19. Based on the statements in Broken Bow I's filing, we find that its portion of the Common Facilities qualify as limited and discrete facilities. Accordingly, we will grant Broken Bow I's request for waiver of the requirements to have an OATT on file with respect to its portion of those facilities. However, if Broken Bow 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.²⁵

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) (*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*, 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)).

²⁵ *Black Creek*, 77 FERC at 61,941.

20. The Commission will also grant Broken Bow I'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.²⁶ 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 Broken Bow I has unfairly used its access to information to unfairly benefit itself or its affiliates.²⁷

C. Certificate of Concurrence

21. The Commission is accepting the Common Facilities Agreement and granting the waiver request of Broken Bow I related to the Common Facilities; therefore, the Commission finds that it appropriate to accept Broken Wind II's certificate of concurrence effective July 28, 2014.

The Commission orders:

(A) Broken Bow I's proposed Common Facilities Agreement is hereby accepted for filing, effective July 28, 2014, as requested, as discussed in the body of this order.

(B) Broken Bow I'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.

²⁶ *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)).

²⁷ *Id.* Broken Bow 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).

(C) Broken Wind II's certificate of concurrence related to the Common Facilities Agreement is accepted effective July 28, 2014, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.