

149 FERC ¶ 61,155
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Seiling Wind Interconnection Services, LLC

Docket No. ER14-2885-001

ORDER ACCEPTING SHARED FACILITIES AGREEMENT
AND GRANTING WAIVERS

(Issued November 24, 2014)

1. In this order, the Commission accepts the Shared Facilities Agreement¹ filed by Seiling Wind Interconnection Services, LLC (Seiling Interconnection) between itself and its affiliates, Seiling Wind, LLC (Seiling I) and Seiling Wind II, LLC (Seiling II),² effective October 1, 2014, as requested. Further, as discussed below, we grant Seiling Interconnection's request for a waiver of the requirements to file an Open Access Transmission Tariff (OATT), to establish and maintain an Open Access Same-Time Information System (OASIS) for the common facilities, and to comply with the Commission's Standards of Conduct.

I. Background

2. On September 16, 2014, as amended on September 25, 2014, Seiling Interconnection submitted the instant application. Seiling Interconnection states that Seiling I is developing and will own and operate a 200 MW wind energy generating facility (Seiling I Wind Facility) located in Dewey County, Oklahoma and that Seiling II is developing and will own and operate a 100 MW wind energy generating facility

¹ Seiling Wind Interconnection Services, LLC, FERC Federal Power Act Electric Tariff [Agreements SFA, Seiling Wind Interconnection Services, LLC, 0.1.0.](#)

² Seiling Interconnection states that it, Seiling I, and Seiling II are Delaware limited liability companies and wholly-owned indirect subsidiaries of NextEra Energy Resources, LLC (NextEra Resources), which is a wholly-owned subsidiary of NextEra Energy, Inc.

located in Dewey and Woodward Counties, Oklahoma, in the same general location as the Seiling I Wind Facility.³

3. To accommodate transmitting the output of the Seiling I and Seiling II facilities to the Southwest Power Pool, Inc. (SPP) grid, Seiling Interconnection has entered into a Generator Interconnection Agreement (Interconnection Agreement) with SPP and Oklahoma Gas & Electric Company (Oklahoma Gas & Electric)⁴ that allows Seiling Interconnection to interconnect 300 MW of generation to SPP within the borders of Oklahoma Gas & Electric's system. This interconnection will accommodate both the 200 MW of capacity needed by Seiling I and the 100 MW of capacity needed by Seiling II. Seiling Interconnection has in turn entered into a Shared Facilities Agreement with both Seiling I and Seiling II and seeks approval for the Shared Facilities Agreement in this proceeding. Under this overall contractual arrangement, Seiling Interconnection will be a party to the Interconnection Agreement, thus allowing Seiling I and Seiling II to use the various facilities owned by Seiling Interconnection and receive the service they need to be able to deliver their output to the grid.⁵

³ On July 14, 2013, Seiling I (in Docket No. EG14-73-000) and Seiling II (in Docket No. EG14-74-000) each filed notice with the Commission that it was certifying itself as qualifying for exempt wholesale generator status. On October 15, 2014, the Commission issued notice that the self-certifications by Seiling I and Seiling II of exempt wholesale generator status had become effective. On August 26, 2014, as amended on September 22, 2014, Seiling I (in Docket No. ER14-2708-001) and Seiling II (in Docket No. ER14-2709-001) submitted separate applications for authority to sell energy, capacity, and ancillary services at market-based rates. The market-based rate filings were accepted for filing in a letter order issued under delegated authority by the Director, Division of Electric Power Regulation – West on October 24, 2014.

⁴ Oklahoma Gas and Electric is a transmission owning member of SPP.

⁵ Section 2 of the Shared Facilities Agreement provides that Seiling I and Seiling II each obtains a non-exclusive right to use the shared facilities for purposes of operating their projects. Section 2 also provides that Seiling I and Seiling II will each pay Seiling Interconnection a License Fee based on its pro rata share of the total, aggregate costs, fees, and expenses incurred by Seiling Interconnection for development, real estate rights, and engineering, procurement and construction of the shared facilities. Under section 4, Seiling I and Seiling II are also required to reimburse Seiling Interconnection for operations and maintenance costs as well as costs Seiling Interconnection may incur under the Interconnection Agreement. Section 3 describes the nature of the services under the Agreement, and sets forth the obligations of Seiling Interconnection, which include its commitment to comply with the Interconnection Agreement, and the

(continued...)

4. Seiling Interconnection states that the charges related to the Shared Facilities Agreement consist of a License Fee covering Seiling Interconnection's *pro rata* share of costs, fees, and expenses incurred for engineering, procurement, and construction of the shared facilities, as well as operation and maintenance expenses, and expenses arising under the Interconnection Agreement.

5. In addition to seeking approval of the Shared Facilities Agreement, Seiling Interconnection also requests that the Commission grant waiver of the requirements under Order Nos. 888⁶ and 890⁷ and section 35.28 of the Commission's regulations⁸ to file an OATT for access to the common facilities, as well as waiver of the requirements

obligations of Seiling I and Seiling II, which include performing under the Shared Facilities Agreement in a manner that facilitates Seiling Interconnection's compliance with the Interconnection Agreement. Section 6 establishes certain covenants, including priority of curtailment between the Seiling I and Seiling II projects.

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).

⁸ 18 C.F.R. § 35.28 (2014).

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.

II. Notice of Filing

6. Notice of the filing, as amended, was published in the *Federal Register*, 79 Fed. Reg. 59,765 (2014), with interventions and comments due on or before October 16, 2014. None was filed.

III. Discussion

A. Shared Facilities Agreement

7. Upon review, the Shared 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 Shared Facilities Agreement, to become effective on October 1, 2014, as requested.

B. Waiver Requests

8. 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,¹² Seiling Interconnection states that it is allowing Seiling I and Seiling II to use the common facilities and receive related service necessary to transmit the output from their respective wind energy facilities to the grid. Thus, Seiling Interconnection states that the shared facilities do not comprise part of an integrated

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. Part 37 (2014).

¹¹ 18 C.F.R. Part 358 (2014).

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).

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. Seiling Interconnection asserts that imposing OATT and OASIS requirements would be burdensome in a situation such as this where generators are simply sharing interconnection facilities. Additionally, Seiling Interconnection states that it qualifies for waiver as a small utility because it disposes of no more than four million MWh annually. Specifically, Seiling Interconnection states that the maximum amount of energy that could be transmitted each year from the Seiling I and Seiling II facilities over the common facilities to the substation owned by Oklahoma Gas & Electric is about 2,628,000 MWh.¹³

9. 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, 2004,¹⁴ and 717¹⁵ and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.¹⁶ In prior orders, the Commission has enunciated the standards for waiver of,

¹³ Seiling Interconnection September 16, 2014 Filing at n.11.

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).

¹⁵ *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).

¹⁶ 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.

or exemption from, some or all of the requirements of Order Nos. 888, 889, and 890.¹⁷ 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 889.¹⁸ Order No. 717 did not change those criteria.¹⁹

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.²⁰

11. The Commission has also 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 (1) the applicant owns, operates, or controls only limited and discrete transmission facilities (other than part of an integrated transmission grid), or (2) if the applicant 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.²¹

¹⁷ 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*).

¹⁸ 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).

¹⁹ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

²⁰ *Black Creek*, 77 FERC at 61,941.

²¹ *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 four million MWh annually.

12. 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).²²

13. Based on the statements in Seiling Interconnection's filing, we find that the shared facilities are limited and discrete and do not constitute an integrated transmission system for purposes of the waiver analysis considered in this order. Seiling Interconnection built the shared facilities to enable its affiliates, Seiling I and Seiling II, to deliver the output from their wind generation facilities to the Oklahoma Gas and Electric grid. Accordingly, we will grant Seiling Interconnection's request for waivers of the requirements set forth in Order Nos. 888 and 890, and in section 35.28 of the Commission's regulations to have an OATT on file with respect to those facilities. However, if Seiling Interconnection 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.²³

14. The Commission will also grant Seiling Interconnection's request for waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to the requirement to establish and maintain an OASIS and of the requirements of Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations with respect to abiding by 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.²⁴ Likewise, the waiver of the Standards of Conduct will remain in effect unless and until

²² *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 Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998)) (*Easton*).

²³ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

²⁴ *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).

the Commission takes action on a complaint by an entity that Seiling Interconnection has unfairly used its access to information to unfairly benefit itself or its affiliates.²⁵

The Commission orders:

(A) The Shared Facilities Agreement is hereby accepted for filing, effective October 1, 2014, as requested, as discussed in the body of this order.

(B) Seiling Interconnection'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)

Kimberly D. Bose,
Secretary.

²⁵ *Id.* Seiling Interconnection 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).