

150 FERC ¶ 61,136  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Limon Wind II, LLC and Limon Wind III, LLC

Docket No. OA14-4-000

ORDER GRANTING REQUEST FOR WAIVERS

(Issued February 24, 2015)

1. In this order, we grant the request of Limon Wind II, LLC (Limon II) and Limon Wind III, LLC (Limon III) for waiver of the requirements to file an Open Access Transmission Tariff (OATT), to establish and maintain an Open Access Same-Time Information System (OASIS), and to comply with the Commission's Standards of Conduct.

**I. Background**

2. On July 22, 2014, Limon II and Limon III (collectively, Applicants)<sup>1</sup> filed a request that the Commission grant waiver of the requirements to file an OATT, to establish and maintain an OASIS, and to comply with the Commission's Standards of

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<sup>1</sup> Applicants state that they, along with Limon Wind, LLC (Limon I), are subsidiaries of NextEra Energy Resources, LLC (NextEra Resources), which is a wholly-owned subsidiary of NextEra Energy, Inc.

Conduct found in Order Nos. 888,<sup>2</sup> 889,<sup>3</sup> and 890<sup>4</sup> and of section 35.28<sup>5</sup> and Parts 37<sup>6</sup> and 358 of the Commission's regulations.<sup>7</sup> Applicants state that they each own and control a wind generating facility with an aggregate capacity of about 200 MW located in Lincoln County, Colorado. In addition, Applicants state that Limon II owns a 345 kV transmission line that is approximately 4.5 miles long, while Limon III is constructing and will own a 345 kV transmission line that will be approximately 9.5 miles long. Applicants also state that their affiliate, Limon I, owns a 345 kV transmission line that is approximately 41 miles long that is interconnected to the Public Service Company of Colorado (Public Service Colorado) transmission system. Applicants state that Limon I currently transmits the output of Limon II to the Public Service Colorado transmission system and will also transmit the power from the Limon III wind generation facility to the Public Service Colorado grid once the Limon III transmission line becomes energized. Limon II and Limon III both have long-term contracts with Public Service

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<sup>2</sup> *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).

<sup>3</sup> *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).

<sup>4</sup> *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).

<sup>5</sup> 18 C.F.R. § 35.28 (2014).

<sup>6</sup> 18 C.F.R. pt. 37 (2014).

<sup>7</sup> 18 C.F.R. pt. 358 (2014).

Colorado to sell the output of their respective generating facilities to Public Service Colorado under market-based rate authority.<sup>8</sup>

3. In support of their request, Applicants state that the interconnection customer interconnection facilities of Limon II and Limon III<sup>9</sup> will be used by one or both affiliates, but not by unaffiliated third parties, and that each must also receive service from its affiliate, Limon I, to transmit its power to the Public Service Colorado grid.<sup>10</sup> Applicants characterize their facilities as “radial interconnection facilities” and maintain that these interconnection facilities are not an integrated component of any electricity grid but function solely to enable Limon II and Limon III to transmit the power from their respective wind generating facilities to the transmission grid.<sup>11</sup> Applicants further maintain that it would be burdensome for Limon II or Limon III to file an OATT or to establish an OASIS for a situation where they are the sole users of their interconnection facilities and where an affiliated generator may, or may not, share a portion of their interconnection facilities in the future. Moreover, Applicants assert that the facilities controlled by Limon II and Limon III are limited and discrete. Additionally, Applicants state that both Limon II and Limon III satisfy the waiver criteria for small entities as they each sell less than 4 million MWh annually.<sup>12</sup>

## II. Notice of Filing

4. Notice of the filing was published in the *Federal Register*, 79 Fed. Reg. 44,167 (2014), with interventions and comments due on or before August 12, 2014. None was filed.

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<sup>8</sup> Limon II and Limon III both were granted authority by the Commission to sell power at market-based rates. See *Limon Wind, LLC*, Docket No. ER12-2226-000 *et al.*, unpublished letter order (Sept. 6, 2012) and *Limon Wind III, LLC*, Docket No. ER14-2138-001, unpublished letter order (Sept. 12, 2014).

<sup>9</sup> 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).

<sup>10</sup> Application at 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

### III. Discussion

5. 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 Part 37 of the Commission's regulations require public utilities to establish an OASIS. Order Nos. 889, 2004,<sup>13</sup> and 717<sup>14</sup> and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.<sup>15</sup> 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 and 889.<sup>16</sup> 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.<sup>17</sup> Order No. 717 did not change those criteria.<sup>18</sup>

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<sup>13</sup> *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).

<sup>14</sup> *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).

<sup>15</sup> 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.

<sup>16</sup> *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*).

<sup>17</sup> *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).

<sup>18</sup> *See* Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

6. 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.<sup>19</sup>

7. 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 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.<sup>20</sup>

8. 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).<sup>21</sup>

9. Based on the statements in Applicants' filing, we find that their respective facilities are limited and discrete and do not constitute an integrated transmission system for purposes of the waiver analysis considered in this order. Applicants built their transmission facilities to provide transmission service to themselves. Accordingly, we will grant Applicants' requests for waivers of the requirements set forth in Order

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<sup>19</sup> *Black Creek*, 77 FERC at 61,941.

<sup>20</sup> *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.

<sup>21</sup> *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*).

Nos. 888, and 890, and in section 35.28 of the Commission's regulations to have an OATT on file. However, if Limon II or Limon III 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.<sup>22</sup>

10. We will also grant Applicants 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 with respect to abiding by the Standards of Conduct. We note that Applicants' respective waivers of the requirement to establish an OASIS will remain in effect until the Commission takes action in response to a complaint to the Commission alleging that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.<sup>23</sup> Likewise, Applicants' respective waivers of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity alleging that either Limon II or Limon III has unfairly used its access to information to unfairly benefit itself or its affiliates.<sup>24</sup>

The Commission orders:

Applicants 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, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>22</sup> *Black Creek*, 77 FERC at 61,941.

<sup>23</sup> *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).

<sup>24</sup> *Id.* Limon II and Limon III each 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).