

152 FERC ¶ 61,015
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Maine GenLead, LLC

Docket No. ER14-1151-001

ORDER GRANTING REHEARING

(Issued July 2, 2015)

1. By order issued March 25, 2014,¹ the Commission accepted for filing an executed Facilities Use Agreement (Agreement) between Maine GenLead, LLC (Maine GenLead) and Evergreen Wind Power II, LLC (Evergreen II); granted in part and denied in part Maine GenLead's requests that the Commission waive the requirements of several of the Commission's regulations; and denied Maine GenLead's request for blanket authorization under section 204 of the Federal Power Act (FPA)² and Part 34³ of the Commission's regulations for issuance of securities and assumptions of liabilities. As discussed below, we find it appropriate to grant Maine GenLead's request for blanket authorization and will grant rehearing.

I. Background

2. On January 24, 2014, Maine GenLead filed the Agreement, pursuant to FPA section 205,⁴ with a requested effective date of March 26, 2014. Maine GenLead also

¹ *Maine GenLead, LLC*, 146 FERC ¶ 61,223 (2014) (March 25, 2014 Order).

² 16 U.S.C. § 824c (2012).

³ 18 C.F.R. pt. 34 (2014).

⁴ 16 U.S.C. § 824d (2012).

requested that the Commission waive the requirements under Order Nos. 888⁵ and 890⁶ and section 35.28 of the Commission's regulations⁷ to file an Open Access Transmission Tariff for the 59 mile, 115 kV generator interconnection transmission line and related facilities (Maine GenLead Line), the requirements under Order No. 889⁸ and Part 37 of the Commission's regulations⁹ to establish an Open Access Same-Time Information System, and the requirements under Order No. 889 and Part 358 of the Commission's regulations¹⁰ to comply with the Standards of Conduct. In addition, Maine GenLead requested waiver of the requirements of Parts 41,¹¹ 101,¹² and 141,¹³ 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

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 (2014).

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 (2014).

¹⁰ 18 C.F.R. pt. 358 (2014).

¹¹ 18 C.F.R. pt. 41 (2014).

¹² 18 C.F.R. pt. 101 (2014).

¹³ 18 C.F.R. pt. 141 (2014).

sections 35.12(a), 35.13(b), 35.15 and 35.16.¹⁴ Lastly, Maine GenLead requested blanket authorization for the issuance of securities and assumptions of liability under Part 34 of the Commission's regulations.¹⁵

3. Maine GenLead stated that it and Evergreen II are indirect, wholly owned subsidiaries of First Wind Holdings, LLC (First Wind), a Delaware limited liability company. Evergreen II is developing a 147.6 MW wind powered generation facility (Evergreen II facility) in Oakfield, Maine. Maine GenLead was formed to construct, own, and operate the 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. Maine GenLead stated 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 stated that First Wind will construct the Maine GenLead Line at an estimated cost of \$60 million. Maine GenLead further stated 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. Maine GenLead further stated 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. In the March 25, 2014 Order, the Commission accepted the Agreement for filing, to become effective March 26, 2014 as requested. The Commission also granted 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, as well as waiver of the requirements of sections 41.10 through 41.12. The Commission denied waiver of the balance of the requirements of Part 41, and Subparts B and C of Part 35. Finally, at issue here, the Commission denied Maine GenLead's request for blanket authorization for the issuance of securities and assumptions of liability under Part 34 of the Commission's regulations. The Commission stated that, as explained in Order No. 697, the Commission's practice is "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

¹⁴ 18 C.F.R. pt. 35, Subparts B and C (§§ 35.12 - 35.29) (2014).

¹⁵ 18 C.F.R. pt. 34 (2014).

market-based rate authority.”¹⁶ Because Maine GenLead did not file to obtain market-based rate authority, the Commission denied its request for blanket authorization under Part 34.¹⁷

II. Request for Rehearing

6. On rehearing, Maine GenLead argues that the Commission erred in denying Maine GenLead’s request for blanket authorization for issuance of securities and assumptions of liability because Maine GenLead does not have market-based rate authority. Maine GenLead states that it cited Order No. 697 in its request because the Commission explained therein that the purpose of FPA section 204 is to ensure the financial viability of franchised public utilities obligated to serve captive customers or to provide requirements service at cost-based rates. Maine GenLead argues that Order No. 697 found that blanket authorizations are appropriate for non-franchised public utilities that happen to be market-based rate entities, but that Order No. 697 does not mandate that the only type of non-traditional utility that can obtain blanket authorization is a market-based rate entity.¹⁸

7. Maine GenLead further argues that the Commission erred in failing to follow its established policy and precedent of granting blanket authorizations under Part 34 to interconnection-only companies that are not franchised public utilities, i.e., companies formed to own and operate limited generation interconnection facilities that do not have and do not seek market-based rate authorization. Maine GenLead asserts that it is established Commission policy to grant blanket authorization to interconnection-only

¹⁶ March 25, 2014 Order at P 20 (citing *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)).

¹⁷ *Id.*

¹⁸ Rehearing Request at 4-5.

companies such as Maine GenLead, stating that Maine GenLead is similar to other entities that have been granted blanket authorization.¹⁹

III. Discussion

8. Upon reconsideration, we find it appropriate to grant Maine GenLead's request for blanket authorization, as it is an interconnection-only entity that serves only its own affiliate.²⁰

9. A review of the legislative history pertaining to section 204 of the FPA shows that the section was intended to protect the public from unsound financial choices by public utilities. As noted in Senate Report No. 621, "[c]ontrol over the capitalization of operating utilities is plainly an essential means of safeguarding the public against the unsound financial practices which make impossible the proper and most economical performance of public utility functions."²¹ As the Commission previously has noted, FPA section 204 serves to ensure that public utilities do not, by issuing securities or assuming obligations or liabilities, put at risk their ability to provide service to customers that depend on that service.²²

¹⁹ *Id.* at 5-7 (citing *Bishop Hill Interconnection LLC*, 138 FERC ¶ 61,159 (2012); *Invenergy Wind Development Michigan LLC*, 136 FERC ¶ 61,209 (2011); and *Wolverine Creek Goshen Interconnection, LLC*, Docket No. ER06-267-000 (Jan. 13, 2006) (delegated letter order), *errata* (Jan. 27, 2006)).

²⁰ While we grant Maine GenLead's request, we disagree with Maine GenLead that the Commission has generally granted blanket authorization for issuance of securities and assumptions of liability under Part 34 to entities that do not have market-based rate authorization. *See, e.g., Conjunction LLC*, 103 FERC ¶ 61,198 at P 27 (2003) ("while the Commission has traditionally waived non-statutory regulatory requirements in the past for certain entities, such as power sellers with market-based rates, it has not done so for transmission providers."). *See also Energia Sierra Juarez U.S. Transmission, LLC*, 149 FERC ¶ 61,052 (2014); *Spring Canyon Energy LLC, et al.*, 149 FERC ¶ 61,106 (2014) (where request for blanket authorization is associated with entities that own generation with the authority to sell electric power at market-based rates, the request should be included in applications for market-based rate authority under section 205 of the FPA).

²¹ S. Rep. No. 621, 74th Cong., 1st Sess. 50 (1935).

²² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 999.

10. Applying the foregoing principles here, we find that it is appropriate to grant Maine GenLead's request for rehearing and will grant Maine GenLead's request for blanket authorization for issuance of securities and assumptions of liability under Part 34. Maine GenLead is an interconnection-only entity whose only customer is its own affiliate, Evergreen II. However, Maine GenLead must notify the Commission if the circumstances providing the basis for the blanket authorization change.²³

The Commission orders:

(A) Maine GenLead's request for rehearing of the March 25, 2014 Order is hereby granted, as discussed in the body of this order.

(B) Maine GenLead's request for blanket authorization for issuance of securities and assumptions of liability under Part 34 is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²³We further note that if the Commission subsequently grants a request by a non-affiliated entity to use the Maine GenLead facilities, Maine GenLead would no longer qualify for blanket authorization and the Commission may revoke the blanket authorization at that time.