

129 FERC ¶ 61,207
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

BP Wind Energy North America Inc.
Fowler Ridge Wind Farm LLC
Fowler Ridge II Wind Farm LLC
Fowler Ridge III Wind Farm LLC
Dominion Fowler Ridge Wind II, LLC

Docket Nos. ER09-1650-000
OA09-32-000
TS09-12-000

ORDER CONDITIONALLY ACCEPTING COMMON FACILITIES AGREEMENT
AND GRANTING WAIVER

(Issued December 8, 2009)

1. On August 28, 2009, pursuant to section 205 of the Federal Power Act (FPA),¹ BP Wind Energy North America Inc. (BP Wind) filed a Common Facilities Agreement (CFA) on behalf of itself and four Fowler Ridge entities² (collectively, the CFA Parties), and requested waiver of any requirements applicable to transmission providers under

¹ 16 U.S.C. § 824d (2006).

² Fowler Ridge Wind Farm LLC (Fowler Ridge I), Fowler Ridge II Wind Farm LLC (Fowler Ridge II), Fowler Ridge III Wind Farm LLC (Fowler Ridge III), and Dominion Fowler Ridge Wind II LLC (Dominion Fowler Ridge).

Order Nos. 888,³ 889,⁴ and 890,⁵ and section 35.28, Part 37, and Part 358 of the Commission's regulations.⁶ As discussed below, the Commission will accept the proposed CFA, subject to conditions, effective August 29, 2009, as requested. Further, the Commission will grant the CFA Parties' request for waiver of certain requirements applicable to transmission providers.

I. Background

2. Fowler Ridge I, Fowler Ridge II, Fowler Ridge III and Dominion Fowler Ridge own and operate, or will own and operate, wind-powered electric generating facilities located at a site in Benton and Tippecanoe Counties, Indiana (Fowler Ridge Wind Farm Complex). The Fowler Ridge Wind Farm Complex has or will have a total generating capacity of 750 MW⁷ in which the interconnection facilities will allow each of the CFA Parties to interconnect its respective generating facility with the transmission system owned by Indiana Michigan Power Company (IMPCO) and operated by PJM Interconnection, LLC.

³ *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).

⁴ *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).

⁵ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g and clarification*, 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).

⁶ 18 C.F.R. § 35.28, pt. 37, pt. 358 (2009).

⁷ The Fowler Ridge Wind Farm Complex is intended to be developed in multiple phases, upon the completion of which, the project's generation capacity will be proportionally owned as follows: 301 MW (Fowler Ridge I), 200 MW (Fowler Ridge II), 99 MW (Fowler Ridge III), 150 MW (Dominion Fowler Ridge), and 0 MW (BP Wind).

3. The common interconnection facilities that are the subject of the proposed CFA comprise an electric substation and a 15.5-mile 345 kV interconnecting transmission line, as well as appurtenant protection facilities, maintenance facilities, communication facilities, and associated real property (Common Facilities).⁸

II. Notice and Filings

4. Notice of BP Wind's August 28, 2009, filing was published in the *Federal Register*, 74 FR 46190 (2009), with interventions and protests due on or before September 18, 2009. No interventions or protests were filed.

5. On October 26, 2009, the Commission issued a deficiency letter directing the CFA Parties to disclose, *inter alia*, all affiliations of the CFA Parties. On October 28, 2009, in response to the deficiency letter, the CFA Parties filed a supplemental response,⁹ notice of which was published in the *Federal Register*, 74 FR 57305 (2009), with interventions or protests due on or before November 9, 2009. No interventions or protests were filed.

III. CFA Parties' Proposal

6. In seeking the Commission's approval of the CFA, BP Wind indicates that, at the conclusion of the second phase of development of the Fowler Ridge Wind Farm Complex, each of the CFA Parties, except for BP Wind itself, will own an undivided interest in the Common Facilities in proportion to the generating capacity of its generating facility.¹⁰ BP Wind further states that while it does not own, operate, or

⁸ BP Wind August 28, 2009 Filing at 1-2 (BP Wind Filing); *see also* CFA §§ 2.1-2.2.

⁹ BP Wind October 28, 2009 Filing (BP Wind Supplement).

¹⁰ BP Wind Filing at 3 & n.3. BP Wind has not yet completed development of the 350 MW second phase of the Fowler Ridge Wind Farm Complex. Prior to the date the second phase becomes operational, BP Wind will transfer 200 MW of the generating capacity of the second phase to Fowler Ridge II and 150 MW of the generating capacity of the second phase to Dominion Fowler Ridge. As part of its acquisition of 150 MW of the second phase of the Fowler Ridge Wind Farm Complex, Dominion Fowler Ridge also will acquire an undivided ownership in 150 MW of Common Facilities capacity. For the purpose of this order, although neither BP Wind's initial nor supplemental filings so specified, we will assume that acquisition by Fowler Ridge II, of an undivided ownership in 200 MW of Common Facilities capacity, has occurred or will occur consistent with Fowler Ridge II's role and obligations as detailed in the CFA.

control any generating capacity at the Fowler Ridge Wind Farm Complex, it will retain an undivided ownership interest in the Common Facilities for a limited purpose (i.e., potential expansions and upgrades to the Common Facilities to serve future expansions of the Fowler Ridge Wind Farm Complex).

7. BP Wind explains that the Common Facilities, including the 15.5-mile, 345 kV line, are designed and constructed solely for the purpose of interconnecting the generating facilities of the Fowler Ridge Wind Farm Complex. Thus, BP Wind represents that each CFA Party uses or will use its respective share of the common facilities owned solely to interconnect its respective generating facility with the transmission system and that the Common Facilities do not serve, and are not designed to serve, any other customers.¹¹

8. According to BP Wind, Fowler Ridge I and Fowler Ridge III are public utilities with market-based rate wholesale power sales tariffs on file with the Commission, and each sells the entire capacity and energy output of its generating facility to wholesale customers under long-term contracts. Similarly, BP Wind states that Fowler Ridge II and Dominion Fowler Ridge will satisfy the same tariff filing requirements and will operate and make all sales in the same manner as the aforementioned entities.¹²

9. Pursuant to the CFA, BP Wind indicates that each of the CFA Parties will be allowed to own, utilize, operate, and maintain its own undivided interest in the Common Facilities. According to BP Wind, the CFA Parties do not pay fees to each other for their use of the Common Facilities, but pay a share, in proportion to their ownership interests, to the “Common Facilities Manager” for operation, maintenance, and management of the Common Facilities, the costs of land acquisition and ownership, the costs of litigation and environmental compliance in connection with the development and operation of the Common Facilities, and other related, commonly-incurred costs.¹³ Of the aforementioned costs, Fowler Ridge I is allocated 40 percent (301 MW divided by the 750 MW capacity of the Common Facilities), Fowler Ridge II approximately 27 percent, Dominion Fowler Ridge approximately 20 percent, and Fowler Ridge III approximately 13 percent.¹⁴

¹¹ BP Wind Filing at 2.

¹² BP Wind Filing at 3.

¹³ BP Wind Filing at 3-4.

¹⁴ BP Wind Filing at 4.

10. BP Wind explains that each of the CFA Parties, with the exception of Dominion Fowler Ridge, is affiliated with BP America, Inc. and its subsidiaries and affiliates.¹⁵ In addition, the CFA Parties' submissions indicate that Fowler Ridge II is affiliated with Sempra Energy and its affiliates.¹⁶ Further, BP Wind indicates that Fowler Ridge and Dominion Fowler Ridge are affiliated with Dominion Resources, Inc., and its subsidiaries and affiliates.¹⁷ In conjunction with its affiliation disclosures, BP Wind further argues that the CFA Parties' conformance with certain affiliate transaction rules¹⁸ and contractual obligations existing between the CFA Parties and their affiliates, prevent against any opportunity for inappropriate affiliate transactions or market disruptions.¹⁹

11. BP Wind further requests a waiver of the notice requirements to allow for an effective date of August 29, 2009. Supporting its request, BP Wind asserts that no customer or affiliate of any of the CFA Parties will be affected by this effective date because the CFA Parties do not provide service to any customer under the CFA and no cost incurred by any of the CFA Parties affects any affiliate of that party.

IV. Discussion

12. The Commission finds the terms and conditions of the proposed CFA to be just and reasonable and not unduly discriminatory. Accordingly, the Commission will accept the proposed CFA, subject to conditions discussed below, to become effective as of August 29, 2009, as requested.

13. The CFA Parties seek waiver of applicable requirements under 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 require public utilities to file an Open Access Transmission Tariff (OATT) prior to providing transmission service. Order No. 889 requires public utilities to establish an Open Access Same-Time Information System (OASIS). Order

¹⁵ See BP Wind Supplement at 2-3 and Attachment A.

¹⁶ See BP Wind Supplement at 4 and Attachment C.

¹⁷ See BP Wind Supplement at 3-4 and Attachment B.

¹⁸ BP Wind Supplement at 6; *see also* 18 C.F.R. § 35.39.

¹⁹ BP Wind Supplement at 6-7.

No. 889 also required transmission providers to comply with the Standards of Conduct requirements which, under Order No. 717, have been revised and recodified at Part 358.²⁰

14. The Commission may grant requests for waiver of Order Nos. 888 and 890 to public utilities that can show they own, operate, or control only limited and discrete transmission facilities (i.e., 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* tariff 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.²¹

15. Based on the statements in the CFA Parties' filing, we find that the CFA Parties' transmission facilities are limited and discrete, inasmuch as they are radial facilities that do not form part of any integrated electricity grid and will be used to deliver power generated only by the CFA Parties.²² Furthermore, none of the disclosed affiliations present circumstances that would render the CFA Parties ineligible for the requested waivers, due to captive customer concerns or geographic proximity of the CFA Parties' facilities to integrated transmission facilities owned, operated or controlled by the disclosed affiliates and subsidiaries. Accordingly, given the nature of the disclosed affiliations and that the CFA Parties' facilities qualify as "limited and discrete," we will grant the CFA Parties' request for waiver of the applicable OATT, OASIS and Standards of Conduct for Transmission Providers requirements, variously set forth in Order

²⁰ 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, and Part 358 of the Commission's regulations. *See, e.g., Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007), *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005), *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996); *see also 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 (2009), *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009).

²¹ *Black Creek*, 77 FERC at 61,941.

²² *See Story Wind, LLC*, 128 FERC ¶ 61,080, at P 4 (2009). Because we grant the requested waiver on the basis that the Common Facilities qualify as "limited and discrete," we do not need to address the issue of whether the CFA Parties qualify for limited waiver under the narrower "small public utility" exception.

Nos. 888, 889, and 890, and section 35.28, Part 37, and Part 358 of the Commission's regulations.²³

16. As the CFA Parties commit to do, we will require each of those with a tariff on file with the Commission to submit a compliance filing, within 10 days of the date of the issuance of this order, revising each of the rate schedules on file with the Commission to reflect the effective date of the CFA on each of the tariff sheets, in accordance with Order No. 614.²⁴ Finally, we will grant the CFA Parties' request for waiver of the Commission's 60-day notice requirement to allow the CFA to become effective August 29, 2009.

The Commission orders:

(A) The CFA Parties' proposed CFA is hereby accepted, effective August 29, 2009, as requested, subject to the CFA Parties submitting compliance filings within 10 days of issuance of this order and revising each of the rate schedule tariff sheets on file with the Commission to reflect the effective date of the CFA, as discussed in the body of this order.

²³ A waiver of the requirement to establish and maintain an information system (i.e., an OASIS) remains effective until the Commission takes action in response to any complaint by an entity alleging that, in evaluating its transmission needs, the entity could not obtain, from one of the CFA Parties, information necessary to complete its evaluation. A waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that one of the CFA Parties has used its access to transmission information to unfairly benefit one of the CFA Parties' own sales, or an affiliate's sales. In addition, as the Commission recently explained, the CFA Parties 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); *see also Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 14 n.21 (2009).

²⁴ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

(B) The CFA Parties' 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, is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.