

134 FERC ¶ 61,056
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Ashtabula Wind, LLC

Docket No. ER11-2227-000

ORDER ACCEPTING SHARED FACILITIES AGREEMENT FOR FILING AND
GRANTING REQUEST FOR WAIVER

(Issued January 28, 2011)

1. This order accepts for filing the Shared Facilities Agreement (Agreement) filed on November 30, 2010, by Ashtabula Wind, LLC (Ashtabula) between itself and Ashtabula Wind III, LLC (Ashtabula III),¹ to be effective December 1, 2010, as requested. In addition, this order grants Ashtabula's request for waiver of certain requirements under Order Nos. 888,² 889,³ and 890,⁴ and section 35.28, Part 37, and Part 358 of the Commission's regulations.⁵

¹ Both Ashtabula and Ashtabula III are wholly-owned indirect subsidiaries of NextEra Energy Resources, LLC.

² *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).

³ *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).

⁴ *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).

⁵ 18 C.F.R. Part 358 (2010); *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-

(continued...)

I. Background

2. Ashtabula owns and operates a 148.5 MW wind energy generating facility located in Barnes County, North Dakota (Ashtabula Wind Facility). Adjacent to the Ashtabula wind facility is Otter Tail Power Company's (Otter Tail) 48 MW wind energy generating facility (Otter Tail Wind Facility). Ashtabula and Otter Tail have a Common Facilities Agreement (Ashtabula/Otter Tail Agreement) that was accepted by the Commission.⁶ The Common Facilities covered by the Ashtabula/Otter Tail Agreement include an operations and maintenance building, a substation, a supervisory control and data acquisitions system, a collection system, certain personal property, real property, fixtures, easements, access roads, and a 9-mile long electric interconnection transmission line that connects the Ashtabula Wind Facility's Barnes substation to the 230-kV Pillsbury substation owned by Minnkota Power Cooperative Inc. (Minnkota). From the Pillsbury substation, the power is transmitted via Minnkota's 61-mile Pillsbury line, a transmission owner interconnection facility, to the Maple River substation, the point of interconnection to the transmission grid. The 9-mile line that interconnects the Ashtabula Wind Facility and the Otter Tail Wind Facility with Minnkota's Pillsbury substation is radial and was built exclusively for the purpose of delivering the output of wind generating plants to the Minnkota Pillsbury substation.

3. Ashtabula III is developing a 64.2 MW wind energy generating facility (Ashtabula III Wind Facility) in the same general location as the Ashtabula and Otter Tail wind facilities. Ashtabula III requires access to many of Ashtabula's facilities, including the 9-mile line in order to deliver the output of its wind facility to the Pillsbury substation. To that end, Ashtabula and Ashtabula III have entered into the Agreement.

II. The Filing

4. The Agreement memorializes the terms and conditions under which the Shared Facilities will be constructed, owned, utilized, operated, and maintained by Ashtabula,

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*, 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, *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010).

⁶ *Ashtabula Wind, LLC*, Unpublished Letter Order, Docket No. ER09-486-000 (February 19, 2009); *Ashtabula Wind, LLC*, Unpublished Letter Order, Docket No. ER09-1161-000 (June 19, 2009).

including the parties' cost liability.⁷ Ashtabula will provide Ashtabula III with access to the Shared Facilities so that Ashtabula III can transmit the output of its wind facility to the Pillsbury substation. The Agreement provides for payment by Ashtabula III of a License Fee based on its *pro rata* share of the total, aggregate costs, fees and expenses of the Shared Facilities. Upon completion of the Ashtabula III Wind Facility, the *pro rata* share of each project is estimated to be Ashtabula 57.36 percent, Otter Tail 18.53 percent, and Ashtabula III 24.10 percent.⁸

5. Ashtabula requests that the Commission waive certain potentially applicable requirements of Order Nos. 888, 889, and 890; specifically, it requests waiver of the requirement of Order Nos. 888 and 890 to file an open access transmission tariff (OATT), and the requirement of Order No. 889 to establish an Open-Access Same Time Information System (OASIS). Ashtabula also requests that the Commission waive the Standards of Conduct under Part 358 of the Commission's regulation.

6. Ashtabula contends that the Commission has consistently granted waivers of the Order Nos. 888 and 890 requirements to public utilities that can show that they own, operate, or control only limited and discrete transmission facilities, i.e., facilities that do not form an integrated grid, until such time as the public utility receives a request for transmission service.⁹ Ashtabula also points out that the Commission has granted such requests in cases when a wind energy generator provides use of its interconnection facilities to another wind energy generator.¹⁰ According to Ashtabula, the Commission has granted waivers of Order No. 889's requirements to a public utility: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) if the applicant is a small public utility that owns, operates, or controls an integrated transmission grid, unless it is a member of a tight power pool, or other circumstances are present that indicate that a

⁷ The Shared Facilities include an operations and maintenance building, the 9-mile line connecting Ashtabula's Barnes substation to Minnkota's Pillsbury substation, protection and control equipment, communication pathways, access roads, gates, fences, and secure storage facilities. Ashtabula explains that the Shared Facilities and the Common Facilities overlap in many respects but are not identical. For instance, the Barnes substation is used by the Ashtabula Wind Facility and Otter Tail Wind Facility, but not the Ashtabula III Wind Facility (except for output buswork, and control and protection equipment, which is shared).

⁸ Ashtabula Filing at 3.

⁹ *Id.* at 6 (citing *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Golden Spread Electric Coop., Inc.*, 106 FERC ¶ 61,151, at P 7 (2004)).

¹⁰ *Id.* at 6 (citing *FPL Energy Oliver Wind, LLC*, 123 FERC ¶ 61,246, at P 11-15 (2008), *Ashtabula Wind, LLC*, 127 FERC ¶ 61,215 (2009)).

waiver would not be justified.¹¹ Ashtabula also notes that the Commission has also granted waivers of the Standards of Conduct requirements, upon request, to utilities based on these same criteria.¹²

7. Ashtabula argues that the Commission has good cause to grant the requested waivers since it is not providing transmission or interconnection service to Ashtabula III, but, rather, is allowing Ashtabula III to use the Shared Facilities to transmit the output from its wind energy facility towards the point of interconnection. In this regard, Ashtabula points out that the 9-mile line is a radial line: (1) that is not an integrated component of any electricity grid and (2) was designed solely to enable generators to transmit the power from their facilities to the grid. According to Ashtabula, it would be expensive, burdensome, and a waste of resources for Ashtabula to file an OATT or to establish an OASIS where the generators are simply sharing interconnection facilities, and the facilities controlled by Ashtabula are limited and discrete transmission facilities. Additionally, Ashtabula states that the Commission's practice is to grant a waiver to small utilities (4 million megawatt hours annually) and that it satisfies the criteria.¹³ Finally, Ashtabula argues that since it already received the requested waivers to allow Otter Tail to use the Common Facilities, it is therefore appropriate to also grant the same waivers for the comparable arrangement with Ashtabula III regarding the Shared Facilities.¹⁴ Therefore, Ashtabula requests that the Commission grant it a waiver of the requirement to file an OATT under Order Nos. 888 and 890, a waiver of the OASIS requirement of Order No. 889, and a waiver of the Standards of Conduct.

8. Ashtabula requests acceptance of the Agreement and waiver of the 60-day prior notice requirement to allow the Agreement to take effect on December 1, 2010, the day after filing. Ashtabula notes that the Agreement was executed on November 30, 2010 and that Ashtabula III plans to start generating test power at the Ashtabula III Wind Facility in early December, 2010.

¹¹ *Id.* at 7 (citing *Hardee Power Partners Ltd.*, 125 FERC ¶ 61,036, at P 19-21 (2008)).

¹² *Id.* (citing *Peetz Table Wind Energy, LLC*, 123 FERC ¶ 61,192, at P 10 (2008)).

¹³ *Id.* (citing the maximum amount of energy that could be transmitted each year over the 9-mile line, including the output from the Ashtabula Wind Facility, the Otter Tail Wind Facility, and the Ashtabula Wind III Facility is about 2,267,964 MWh, based on 258.9 MW multiplied by 8,760 hours and a 100 percent capacity factor for these wind energy facilities).

¹⁴ *Id.* (citing *Ashtabula Wind, LLC*, 127 FERC ¶ 61,215 (2009)).

III. Notice of Filing

9. Notice of Ashtabula's filing was published in the *Federal Register*, 75 Fed. Reg. 76,716 (2010), with protests or motions to intervene due on or before December 21, 2010. None were filed.

IV. Discussion

10. Our review indicates that the Agreement is just and reasonable. And, we find that good cause exists to grant the requested waiver of the prior notice requirement.¹⁵ Accordingly, we will accept the proposed Agreement for filing, to be effective on December 1, 2010, as requested.

11. Order Nos. 888 and 890 require public utilities to file an OATT prior to providing transmission service. Order No. 889 requires public utilities to establish an OASIS and abide by certain standards of conduct. 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 889.¹⁶ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004¹⁷ are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹⁸ Order No. 717 did not change those criteria.¹⁹

¹⁵ See *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¹⁶ See, e.g., *Black Creek*, 77 FERC ¶ 61,232, at 61,941 (1996); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

¹⁷ *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*, 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).

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 P 54.

12. The Commission may grant requests for waiver of Order Nos. 888 and 890 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 an 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

13. The Commission has also determined that waiver of Order No. 889 would be appropriate for a public utility: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) if the applicant is a small public utility that owns, operates, or controls an integrated transmission grid, unless it is a member of a tight power pool, or other circumstances are present that indicate that waiver would not be justified.²¹ The Commission grants waivers to small public utilities based on the threshold of whether they dispose of no more than 4 million MWh annually.²² Moreover, 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).²³

14. Based on the statements in Ashtabula's filing, we find that the Shared Facilities are limited and discrete and do not constitute an integrated transmission system. Ashtabula's transmission facilities were built exclusively to provide transmission service to itself and Otter Tail. This includes the 9-mile line that was jointly designed and built for use by Ashtabula and Otter Tail and is operated by NextEra Energy. Now, Ashtabula III seeks to use the 9-mile line and will pay its *pro rata* share of the costs to do so. The only transmission service Ashtabula's transmission facilities currently provide is to itself, Otter Tail, and its affiliate, Ashtabula III, to deliver power from their wind facilities to Minnkota's Pillsbury substation.²⁴ In addition, we find that Ashtabula meets the

²⁰ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

²¹ *Id.*

²² *See Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009) (*Wolverine*).

²³ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998)).

²⁴ *See Crystal Lake Wind, LLC*, 131 FERC ¶ 61,132 (2010).

Commission's definition of a small public utility.²⁵ Accordingly, we will grant Ashtabula's request for waivers of the requirements set forth in Order Nos. 888, 889, and 890, and section 35.28 and Parts 37 and 358 of the Commission's regulations. As noted above, Ashtabula meets the Commission's requirements for waiver of the obligation to file an OATT until it receives a request for transmission service from a non-affiliated third party.

15. Consistent with our prior precedent, Ashtabula must file a *pro forma* OATT in compliance with Order Nos. 888, and any other applicable requirements, within 60 days of receipt of a request for a specific transmission service. Also, waiver of the Standards of Conduct remains in effect unless and until the Commission takes action on a complaint by an entity alleging that Ashtabula used access to transmission information to unfairly benefit one of their own sales, or an affiliate's sales. Additionally, Ashtabula must notify the Commission if there is a material change in facts that affects this waiver, within 30 days of the date of such change.²⁶

The Commission orders:

(A) The Agreement between Ashtabula and Ashtabula III is hereby accepted for filing, effective December 1, 2010, as requested.

(B) Ashtabula's request for waiver of the requirements of Order Nos. 888, 889, and 890, and of section 35.28, Part 37 and the Standards of Conduct requirements of 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.

²⁵ See *Wolverine*, 127 FERC ¶ 61,159 at P 15.

²⁶ See *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).