

137 FERC ¶ 61,033  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Cedar Point Wind, LLC

Docket No. OA11-6-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued October 11, 2011)

1. This order grants Cedar Point Wind, LLC's (Cedar Point) request for waiver of certain requirements under Order Nos. 888,<sup>1</sup> 889,<sup>2</sup> and 890,<sup>3</sup> and section 35.28, Part 37, and Part 358 of the Commission's regulations.<sup>4</sup>

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<sup>1</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>2</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>3</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>4</sup> 18 C.F.R. Part 358 (2011); *Standards of Conduct for Transmission Providers*,

(continued...)

## I. Background

2. Cedar Point is completing the development of a 252 MW wind-powered generation facility (Facility) consisting of an array of 139 Vestas V90 1.815 MW turbines.<sup>5</sup> The Facility will be located in Lincoln, Elbert, and Arapahoe Counties, Colorado and will interconnect to the transmission system of Public Service Company of Colorado (PSC Colorado) at PSC Colorado's Missile Site Switching Station via a 42-mile 230 kv generation tie line (Generator Lead Line). Cedar Point states that the Generator Lead Line will not comprise an integrated transmission system and will not serve transmission customers.

3. On January 25, 2011, as supplemented on February 28 and March 3, 2011, Cedar Point submitted an application for market-based rates and a baseline market-based rate tariff.<sup>6</sup> Cedar Point requested an effective date April 1, 2011 to concur with its plan to begin delivering test energy in early April 2011. In an unpublished letter order issued on April 14, 2011, the Commission accepted Cedar Point's tariff for filing and found that the proposed tariff met the Commission's criteria regarding horizontal and vertical market power and met the Commission's requirements to obtain authorization to sell wholesale power at market-based rates.<sup>7</sup>

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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, 129 FERC ¶ 61,043, *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).

<sup>5</sup> The Facility would be capable of generating 2.2 million MWh annually if operated at a 100 percent capacity factor for every hour of the year. Based on wind conditions in the region, a 40 percent factor is a realistic assumption.

<sup>6</sup> *Cedar Point Wind, LLC*, Docket No. ER11-2753-000, (April 14, 2011) (unpublished letter order).

<sup>7</sup> *Id.*

## II. Description of Filing

4. Applicant requests that the Commission waive any requirements applicable to transmission providers, namely the requirement 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 Standards of Conduct. Cedar Point asserts that it qualifies for these waivers because its shared generator interconnection facilities are limited and discrete and do not comprise an integrated transmission system. Specifically, Applicant requests 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,<sup>8</sup> consistent with prior Commission orders.

5. In support of the waiver request, Applicant explains further that it owns, operates, and controls limited and discrete transmission facilities that are not an integrated component of any electricity grid but merely provide the Facility with a means to transmit power to the PSC Colorado transmission system.

6. Applicant states that the Commission has routinely waived these requirements where the applicant demonstrates that it owns, operates, or controls only limited and discrete transmission facilities, rather than an integrated transmission grid, or where the applicant is a small public utility that disposes of no more than 4 million MWh of energy annually. Applicant states that they satisfy individually the size criterion of a small public utility by disposing of no more than 4 million MWh of energy annually.<sup>9</sup>

7. Applicant points out that the Commission has waived its OATT, OASIS, and Standards of Conduct requirements for a number of owners and operators of wind generating facilities that own generator interconnection facilities and cite several such orders.<sup>10</sup> Applicant urges that the facts and circumstances of these cited cases are analogous to their facts and circumstances.

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<sup>8</sup> Transmittal Letter at 3.

<sup>9</sup> *Id.* at 3 & n. 5. Applicant states that Cedar Point's 252 MW wind generating facility would be capable of generating 2.2 million MWh annually if operated at a 100 percent capacity factor for every hour of the year. According to applicant, a 40 percent capacity factor is a realistic assumption.

<sup>10</sup> *Id.* at 3 & n. 7 (citing *Goshen Phase II, LLC and Ridgeline Alternative Energy, LLC*, 133 FERC ¶ 61,090 (2010); *Grand Ridge Energy*, 128 FERC ¶ 61,134 (2009);

(continued...)

8. Applicant states that if Cedar Point receives a request for transmission service, it will file an OATT with the Commission and satisfy all other applicable regulatory requirements.<sup>11</sup>

### **III. Notice of Filing**

9. Notice of Applicant's filing was published in the *Federal Register*, 76 Fed. Reg. 14,965-66 (2011), with protests or motions to intervene due on or before March 30, 2011. None was filed.

### **IV. Discussion**

10. Cedar Point seeks waiver of certain requirements under Order Nos. 888, 889, and 890. As explained above, Cedar Point supports its waiver request by stating that it does not own, operate, or control any transmission-related equipment other than the discrete facilities interconnecting the Cedar Point Facility to the PSC Colorado transmission grid. Specifically, Cedar Point states that the Cedar Point Generator Lead Line will be wholly owned and solely utilized by Cedar Point to interconnect its generating facility with the PSC Colorado transmission grid at PSC Colorado's Missile Site Switching Station.

11. The Commission will grant Cedar Point's requested waivers for the Cedar Point Generator Lead Line. Order Nos. 888 and 890 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<sup>12</sup> require public utilities to establish and maintain an OASIS and Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations<sup>13</sup> require public utilities to abide by the Commission's Standards of Conduct.<sup>14</sup> In prior

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*Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 (1996) (Black Creek); *Wolverine Power Supply Coop. Inc.*, 127 FERC ¶ 61,159 (2009); *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149 (2009); *BP Wind North America Inc.*, 129 FERC ¶ 61,207 (2009); *Ashtabula Wind, LLC*, 127 FERC ¶ 61,215 (2009); *Crystal Lake Wind, LLC*, 127 FERC ¶ 61,213 (2009); *Langdon Wind, LLC*, 127 FERC ¶ 61,212 (2009); *Osceola Windpower, LLC*, 127 FERC ¶ 61,214 (2009); *Story Wind, LLC*, 128 FERC ¶ 61,080 (2009)).

<sup>11</sup> *Id.* at 4.

<sup>12</sup> 18 C.F.R. Part 37 (2011).

<sup>13</sup> 18 C.F.R. Part 358 (2011).

<sup>14</sup> Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; Order No. 2004, FERC

(continued...)

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.<sup>15</sup> The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004<sup>16</sup> are unchanged 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>

12. The Commission may grant requests for waiver of the obligation to file an OATT to public utilities that can show 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* 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.<sup>19</sup>

13. The Commission has also determined that waiver of the requirement to establish an OASIS and abide by the Standards of Conduct would be appropriate for a public

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Stats. & Regs. ¶ 31,155 at P 16; Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 313.

<sup>15</sup> See, e.g., *Black Creek*, 77 FERC at 61,941; *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

<sup>16</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); see also *Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

<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 P 54.

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

utility if the applicant (1) owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) is a small public utility that owns, operates, or controls an integrated transmission grid and no other circumstances are present that indicate that waiver would not be justified.<sup>20</sup>

14. 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>

15. Based on Cedar Point's representations, we find that the Cedar Point Generator Lead Line is limited and discrete. The Cedar Point Generator Lead Line does not form an integrated transmission system and will be used solely by Cedar Point to interconnect its wind project to the transmission grid. Accordingly, we will grant Cedar Point waiver of the requirements in Order Nos. 888 and 890 to have an OATT on file. However, if Cedar Point 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, and must comply with any additional requirements that are effective on the date of the request in compliance with Order Nos. 888 and 890.<sup>22</sup>

16. The Commission also will grant Cedar Point waiver of the OASIS and Standards of Conduct requirements. We note that Cedar Point's 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

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<sup>20</sup> *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at P 3 (2011) (*Black Hills*). As we explained in *Black Hills*, membership or non-membership in a tight power pool is no longer a factor in this determination. Additionally, as we stated in *Black Hills*, size is not relevant to whether waivers are granted to public utilities that participate in a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO). *Id.* P 2.

<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); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998)).

<sup>22</sup> See *Terra-Gen Dixie Valley, LLC*, 132 FERC ¶ 61,215, at P 47 (2010), *order on reh'g*, 134 FERC ¶ 61,021 (2011).

get the information necessary to complete its evaluation.<sup>23</sup> Likewise, Cedar Point's Standards of Conduct waiver will remain in effect unless and until the Commission takes action on a complaint by an entity that Cedar Point has unfairly used its access to information to unfairly benefit itself or its affiliate.<sup>24</sup>

The Commission orders:

Applicant'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. Commissioner Spitzer is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>23</sup> *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).

<sup>24</sup> *Id.* Cedar Point 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).