

137 FERC ¶ 61,224
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Minco Wind Interconnection Services, LLC

Docket No. ER12-338-000

ORDER ACCEPTING SHARED FACILITIES AGREEMENT AND GRANTING
REQUEST FOR WAIVERS

(Issued December 16, 2011)

1. On November 2, 2011, pursuant to section 205 of the Federal Power Act,¹ Minco Wind Interconnection Services, LLC (Minco Interconnection) filed a Shared Facilities Agreement² between Minco Interconnection, Minco Wind, LLC (Minco I), and Minco Wind II, LLC (Minco II) and requested waivers of Order Nos. 888,³ 889,⁴ and 890,⁵ as

¹ 16 U.S.C. § 824d (2006).

² The Shared Facilities Agreement is designated as Minco Interconnection Services, LLC Rate Schedule FERC No. 1.

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*, 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 reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

well as section 35.28, Parts 37 and 358 of the Commission's regulations,⁶ and of the Commission's prior notice requirement.⁷ In this order, the Commission accepts the Shared Facilities Agreement, effective November 3, 2011, as requested, and grants the requested waivers.

I. Background

2. Minco Interconnection, Minco I, and Minco II are each Delaware limited liability companies and wholly-owned indirect subsidiaries of NextEra Energy Resources, LLC, which is a wholly-owned subsidiary of NextEra Energy Resources, Inc. Minco Interconnection is the immediate upstream owner of both Minco I and Minco II.

3. In 2010, Minco I entered into a large generator interconnection agreement (LGIA) with Southwest Power Pool, Inc. and Oklahoma Gas & Electric Company (OG&E), allowing Minco I to interconnect 200 MW of wind generating facilities. Under the LGIA, Minco I's interconnection facilities include a 34.5/345 kV transformer, a 345 kV line stub, switches, breakers and the metering and communication equipment (Shared Facilities). The Shared Facilities interconnect with OG&E's Minco 345 kV switching station, allowing Minco I to deliver energy to the grid.

4. To date, Minco I has developed and operates a wind energy generating facility totaling 99.2 MW (Minco I Facility), and thus uses approximately half of the capacity under the LGIA. Minco II is currently developing a 100.8 MW wind generating facility (Minco II Facility). In order to enable Minco II to use the remaining 100.8 MW of

⁶ 18 C.F.R. § 35.28, 18 C.F.R. Part 37, and 18 C.F.R. Part 358 (2010). *See 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 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), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

⁷ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *order on reh'g*, 65 FERC ¶ 61,081 (1993).

capacity under the LGIA, Minco I plans to assign separately the LGIA to Minco Interconnection so that Minco Interconnection will become the owner of the Shared Facilities under the LGIA. Minco Interconnection, in turn, proposes to enter into the Shared Facilities Agreement with both Minco I and Minco II. Minco Interconnection explains that the Shared Facilities Agreement is intended to enable Minco I and Minco II to use the Shared Facilities to deliver energy to the grid.

II. The Shared Facilities Agreement

5. Section 2 of the Shared Facilities Agreement grants Minco I and Minco II the non-exclusive rights to use the Shared Facilities for purpose of operating their respective generation facilities. Section 2 of the Shared Facilities Agreement also provides for payment by Minco I and Minco II to Minco Interconnection of a license fee based on their pro rata share of the total aggregate costs, fees, and expenses incurred by Minco Interconnection for development, real estate rights, engineering, procurement and construction of the Shared Facilities. Section 3 describes the nature of the services under the Shared Facilities Agreement and sets forth the obligations of Minco Interconnection, including its obligation to comply with the LGIA, as well as the obligations of Minco I and Minco II, including their obligation to perform in a manner that facilitates such compliance. In addition, section 4 of the Shared Facilities Agreement requires Minco I and Minco II to reimburse Minco Interconnection for operations and maintenance costs as well as costs Minco Interconnection may incur under the LGIA. Finally, section 6 of the Shared Facilities Agreement establishes certain covenants, including priority of curtailment between the Minco I Facility and the Minco II Facility.

6. Minco Interconnection requests waiver of the Commission's prior notice rule in order to permit the Shared Facilities Agreement to be effective November 3, 2011. In support, Minco Interconnection states that the Shared Facilities Agreement required extensive consideration among the parties and that Minco II intends to begin commercial operation shortly.

III. Request for Waivers

7. Minco Interconnection requests that the Commission grant waiver of certain requirements of Order Nos. 888, 889, and 890, as well as section 35.28, and Part 37 of the Commission's regulations.⁸ Specifically, Minco Interconnection 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). Minco Interconnection also requests a waiver of the Standards of Conduct under Part 358 of the Commission's regulations.

⁸ Minco Interconnection's Filing at 1, 6-7.

8. Minco Interconnection argues that the Commission has consistently granted waivers of the requirements of Order Nos. 888 and 890 to public utilities that show they own, operate, or control 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 Minco Interconnection asserts that the Commission has granted similar requests for waiver in cases where a wind energy generator has provided use of its interconnection facilities to another wind energy generator.¹⁰ Minco Interconnection states the Commission has also 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 waiver would not be justified.¹¹ Further, Minco Interconnection states that the Commission has granted utilities' requests for waivers of the Standards of Conduct requirements based on these same criteria.¹²

9. Minco Interconnection contends that good cause exists for the Commission to grant its request for waivers. According to Minco Interconnection, the Agreement allows Minco I and Minco II to utilize the Shared Facilities and receive related service necessary to transmit their output toward the point of interconnection. As a result, Minco Interconnection asserts that the Shared Facilities are not an integrated component of any electricity grid and were designed solely to enable generators to transmit the power from their facilities to the grid. Furthermore, Minco Interconnection argues that it would be burdensome to file an OATT or to establish an OASIS under the circumstances. Finally, Minco Interconnection states that the Commission's practice is to grant waiver to small utilities (4 million MWh annually), and that it satisfies this criterion.¹³

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

¹¹ *Id.* (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.* at 7 and n.11 (stating, "The maximum amount of energy that could be transmitted each year from the Minco I and Minco II facilities over the 345 kV line to the substation owned by OG&E is about 1,752,000 MWh, based on 200 MW multiplied by 8,760 hours and a 100% capacity factor for these wind energy facilities.").

IV. Notice of Filing

10. Notice of Minco Interconnection's filing was published in the *Federal Register*, 76 Fed. Reg. 70,435 (2011), with comments, protests, or interventions due on or before November 23, 2011. No interventions, protests, or comments were filed.

V. Discussion

A. The Shared Facilities Agreement

11. The Commission finds the terms and conditions of the Shared Facilities Agreement to be just and reasonable, and not unduly discriminatory. Accordingly, we will accept the Shared Facilities Agreement, effective November 3, 2011, as requested.

B. Request for Waivers

12. With regard to the requested waivers, 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 889.¹⁴ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹⁵ Order No. 717 did not change those criteria.¹⁶

13. 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. If the public utility receives 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.¹⁷

¹⁴ See, e.g., *Black Creek*, 77 FERC ¶ 61,232 at 61,941; *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

¹⁵ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007).

¹⁶ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 54.

¹⁷ *Black Creek*, 77 FERC at 61,941.

14. The Commission has also determined that waiver of Order No. 889 would be appropriate for a public utility under the following circumstances: (1) the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) 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 waiver would not be justified.¹⁸ In addition, the Commission grants waivers to small public utilities based on the threshold of whether they dispose of no more than 4 million MWh annually.¹⁹ Moreover, the Commission has held that a 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).²⁰

15. Based on the statements in Minco Interconnection's filing, we find that the transmission facilities at issue are limited and discrete and do not constitute an integrated transmission system. The Shared Facilities will be utilized solely to facilitate the transmission of power from Minco I's Facilities and Minco II's Facilities, affiliates of Minco Interconnection, to the grid. Accordingly, we will grant Minco Interconnection's request for waiver of the requirements of Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to have an OATT on file. However, if Minco Interconnection receives a request for transmission service from a non-affiliate, 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.

16. The Commission will also grant Minco Interconnection waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to OASIS and Order Nos. 889, 2004, and 717 and Part 358 with respect to the Standards of Conduct.

¹⁸ *Id.* In *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at P 2-3 (2011), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Additionally, size is not relevant to whether waivers are granted to public utilities that participate in a Commission-approved Independent System Operator or Regional Transmission Organization.

¹⁹ See *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009).

²⁰ *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).

We note that Minco Interconnection'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 get the information necessary to complete its evaluation.²¹ Likewise, Minco Interconnection's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Minco Interconnection has unfairly used its access to information to unfairly benefit itself or its affiliate.²²

The Commission orders:

(A) The Shared Facilities Agreement is hereby accepted for filing effective November 3, 2011, as requested.

(B) Minco Interconnection's request for waiver of the OATT and OASIS requirements of Order Nos. 888, 889, 890 as well as section 35.28 and Parts 37 and 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.

²¹ *Id.*

²² *Id.* Minco Interconnection must notify the Commission if there is a material change in facts that affect their 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).