

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

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

NaturEner Rim Rock Wind Energy, LLC

Docket Nos. OA12-6-000
TS12-3-000

ORDER GRANTING REQUEST FOR WAIVERS

(Issued January 4, 2013)

1. In this order, we grant the request of NaturEner Rim Rock Wind Energy, LLC (Rim Rock) for waiver of the obligations to file an Open Access Transmission Tariff (OATT), to establish and maintain an Open Access Same-Time Information System (OASIS) (collectively, Open Access Waivers) and to comply with the Commission's Standards of Conduct found in Order Nos. 888,¹ 889,² 890,³ 717⁴ and 2004⁵ and of section 35.28 and Parts 37 and 358 of the Commission's regulations.⁶

¹ *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).

² *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).

³ *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

(continued...)

I. Background

2. Rim Rock, an indirect, wholly-owned subsidiary of NaturEner USA LLC (NaturEner), has constructed and owns a 189 MW wind-powered electric generating facility (Rim Rock Facility) located in Kevin, Montana. In its August 20, 2012 request for waivers, Rim Rock states that the Rim Rock Facility is expected to commence operation around the end of August or early September, 2012. Rim Rock states that it

(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 (2209).

⁴ *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) (Order No. 717).

⁵ *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* Order No. 717.

⁶ 18 C.F.R. Part 358 (2012); *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), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

will sell energy at wholesale under its market-based rate tariff.⁷ Rim Rock has entered into an agreement with MATL LLP (MATL) under which MATL will provide long-term firm transmission service to Rim Rock over a transmission line that MATL is constructing (MATL Line). When completed, the MATL Line will run from Alberta, Canada in the north, to a point in the south terminating at the Great Falls Substation on NorthWestern Energy's (NorthWestern) transmission system. Under the MATL agreement, Rim Rock has rights for firm transmission service for delivery of its output over the MATL Line (MATL Contract Path).

3. According to Rim Rock, construction of the MATL Line may not be fully completed before the expected operation date of the Rim Rock Facility, in which case the MATL Contract Path will not be available to Rim Rock for transmission of its power. Therefore, Rim Rock has entered into a Temporary Use Agreement (Temporary Agreement)⁸ with its affiliate, NaturEner Glacier Wind Energy 1, LLC (Glacier Wind 1) that allows Rim Rock to utilize, on a temporary basis, a small portion of Glacier Wind 1's generator lead line (Glacier Tie Line) to deliver the output of the Rim Rock Facility to the NorthWestern switchyard until Rim Rock is able to transmit power over the MATL Contract Path.⁹

4. Under the Temporary Agreement, Rim Rock will connect the Rim Rock Facility with the Glacier Tie Line by constructing and owning the following two temporary generator tie lines: (1) a 230 kV, approximately 2.3 mile line that will connect the Rim Rock Facility to a temporary tap on the partially constructed MATL Line (Hay Lake Tap), south of MATL's planned Hay Lake Substation (Temporary Line 1); and (2) an approximately 0.1 mile, 230 kV line extending from another point on the partially constructed MATL Line (Temporary Line 2), which will be a temporary tap at a voltage of 230 kV on the MATL Line south of the Hay Lake Tap (Marias Tap), through a

⁷ *NaturEner Rim Rock Wind Energy, LLC*, Docket No. ER12-295-000 (Dec. 21, 2011) (unpublished letter order).

⁸ *NaturEner Glacier Wind Energy, LLC*, 140 FERC ¶ 61,131 (2012).

⁹ The expiration date of the Temporary Agreement is defined as "the date upon which (a) MATL has been constructed, commissioned, energized and been interconnected and fully permitted to operate at 300 MW capacity with generation interconnected, and (b) the Hay Lake Substation has been constructed, commissioned, energized and Rim Rock has been interconnected thereto and fully permitted to operate." *NaturEner Glacier Wind Energy 1, LLC*, FERC Electric Rate Schedule No. 1, at 2. According to Rim Rock, the MATL Contract Path is expected to be available before the end of 2012.

Rim Rock transformer substation to a point on the Glacier Tie Line. Rim Rock explains that, although the MATL Contract Path will not be available for use prior to the expected in-service date of the Rim Rock Facility, a portion of the MATL Line will be used to provide a connection between Temporary Line 1 and Temporary Line 2.

5. As a result of entering into the Temporary Agreement, Rim Rock states that it will be able to deliver its power over Temporary Line 1 to the Hay Lake Tap. From the Hay Lake Tap, MATL will transmit Rim Rock's power over the completed portion of the MATL Line to the Marias Tap. From the Marias Tap, Rim Rock will transmit the power over Temporary Line 2 to a point of interconnection with the Glacier Tie Line. Pursuant to the Temporary Agreement, Glacier Wind 1 will transmit the power delivered by Rim Rock over a portion (approximately 156 feet) of the Glacier Tie Line to the NorthWestern Switchyard.

6. Rim Rock states that, once the MATL Contract Path becomes available, the Temporary Agreement will terminate.¹⁰ Rim Rock will then be able to deliver the output from the Rim Rock Facility to MATL's Hay Lake substation over a permanent lead line, and the temporary tie lines will be removed from service.¹¹

II. Rim Rock's Waiver Request

7. In support of its request for the Open Access Waivers, Rim Rock states that all of the interconnection facilities it owns or will own, including Temporary Line 1 and Temporary Line 2, constitute limited and discrete facilities that were constructed for the sole purpose of delivering the output of energy produced by the Rim Rock Facility to Rim Rock's customer at the NorthWestern switchyard during the term of the Temporary Agreement, and at the Hay Lake Substation on the MATL Line once the MATL Contract Path becomes available.¹² Rim Rock therefore asserts that these facilities are the type of facilities over which the Commission routinely grants waiver of its open access requirements, and accordingly, it claims that it meets the Commission's criteria for granting open access waivers.

¹⁰ Rim Rock Filing at 3.

¹¹ The permanent lead line consists of two line segments. One 4.8 mile segment connects turbines located on the eastern edge of the project site to a project substation located on the western side of the project site, and the other 2 mile segment connects the entire project output to the Hay Lake substation.

¹² Rim Rock Filing at 4.

III. Notice of Filing

8. Notice of Rim Rock's filing was published in the *Federal Register*, 77 Fed. Reg. 54,908 (2012), with motions to intervene, comments, and protests due on or before September 10, 2012. None was filed.

IV. Discussion

9. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations 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 require public utilities to establish and maintain an OASIS. Order Nos. 889, 2004, and 717, and Part 358 of the Commission's regulations require public utilities to 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 889.¹³ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004¹⁴ 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 See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

¹⁴ *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), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

¹⁵ 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).

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

10. The Commission may grant requests for waiver of the obligation to file an OATT 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 an OATT with the Commission 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

11. The Commission has also determined that waiver of the requirements to establish an OASIS and abide by the Standards of Conduct 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 other circumstances are present that indicate that waiver would not be justified.¹⁸ 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 waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the Commission alleging that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for OASIS waivers) or until the Commission takes action on a complaint alleging 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

¹⁷ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

¹⁸ *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 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. See 18 C.F.R. § 358.1(c) (2012).

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)).

12. Based on the statements in Rim Rock's filing, we find that the Rim Rock Facilities are limited and discrete and do not constitute an integrated transmission system for purposes of the waiver analysis considered in this order. Rim Rock built its transmission facilities to provide transmission service to itself. The only transmission service Rim Rock intends to provide is to itself, to deliver power from the Rim Rock Facility to the NorthWestern switchyard on a temporary basis²¹ and to the Hay Lake Substation on the MATL Line once the MATL Contract Path becomes available. In addition, the Temporary Agreement²² previously accepted by the Commission allows the Rim Rock Facility to begin operating on schedule regardless of any delay in completion of the MATL Line. Accordingly, we will grant Rim Rock's request for waivers of the requirements set forth in Order Nos. 888, and 890, and in section 35.28 of the Commission's regulations. However, if Rim Rock 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.

13. The Commission will also grant Rim Rock waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to the requirement to establish and maintain an OASIS and of the requirements of Order Nos. 889, 2004, and 717 and Part 358 with respect to abiding by the Standards of Conduct. We note that Rim Rock'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 alleging that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.²³ Likewise, Rim Rock's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity alleging that Rim Rock has unfairly used its access to information to unfairly benefit itself or its affiliate.²⁴

²¹ See *Crystal Lake Wind, LLC*, 131 FERC ¶ 61,132 (2010).

²² *NaturEner Glacier Wind Energy I, LLC*, 140 FERC ¶ 61,131 (2012).

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 *supra* note 23. Rim Rock 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).

The Commission orders:

Rim Rock's request for waivers is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.