

142 FERC ¶ 61,106  
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.

Gray County Wind Energy, LLC

Docket No. ER13-551-000

ORDER ACCEPTING SHARED FACILITIES AGREEMENT AND GRANTING  
REQUEST FOR WAIVERS

(Issued February 11, 2013)

1. On December 13, 2012, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> Gray County Wind Energy, LLC (Gray County Wind) filed a Shared Facilities Agreement<sup>2</sup> between Gray County Wind and Ensign Wind, LLC (Ensign Wind). In its filing, Gray County Wind also requests waivers of certain requirements under Order Nos. 888,<sup>3</sup> 889,<sup>4</sup> and 890,<sup>5</sup> and section 35.28, Part 37 and Part 358<sup>6</sup> of the Commission's

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> Gray County Wind Energy, LLC, FERC FPA Electric Tariff, [Agreements; Gray County and Ensign, Shared Facilities Agreement, 0.0.0.](#)

<sup>3</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) (Order No. 888).

<sup>4</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) (Order No. 889).

<sup>5</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 reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009) (Order No. 890).

regulations. In this order, the Commission accepts for filing the proposed Shared Facilities Agreement between Gray County Wind and Ensign Wind, effective December 14, 2012, as requested, and grants the requested waivers.

## **I. Background**

2. Gray County Wind and Ensign Wind are limited liability companies and wholly-owned indirect subsidiaries of NextEra Energy Resources, LLC. Gray County Wind owns and operates a 112 MW wind-powered electric generating facility located in Gray County, Kansas, which is interconnected with the Mid-Kansas Electric Company LLC (Mid-Kansas) transmission system at Mid-Kansas's Haggard substation. Ensign Wind has developed an approximately 99 MW wind-powered electric generating facility located near the Gray County Wind generation facility in Gray and Meade Counties and is interconnected at the Mid-Kansas Crooked Creek switchyard.<sup>7</sup> Ensign Wind currently operates its facility on a limited basis pursuant to article 5.9 of its Generator Interconnection Agreement (Ensign GIA) until all network upgrades required under the Ensign GIA are constructed and placed in-service.

3. According to Gray County Wind, Southwest Power Pool, Inc. (SPP) notified Ensign Wind in early 2012 that several higher queued suspended projects were coming out of suspension.<sup>8</sup> Consequently, SPP informed Ensign Wind that injections of energy by Ensign Wind project would be limited until all network upgrades required under the Ensign GIA are constructed and in service, which is expected to occur in late 2014.<sup>9</sup> Ensign Wind then made a request to operate its facility on a limited basis pursuant to

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<sup>6</sup> 18 C.F.R. § 35.28, 18 C.F.R. Part 37, and 18 C.F.R. Part 358 (2012). *See also 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); *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); *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).

<sup>7</sup> Gray County Wind Transmittal letter at 2-3.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.*

article 5.9 of the Ensign GIA at a temporary point of interconnection.<sup>10</sup> To accommodate this request during this interim period, Ensign Wind proposed to disconnect from the Crooked Creek switchyard and connect to a temporary point of interconnection at the Mid-Kansas Haggard Substation. Ensign Wind constructed a 6.6 mile 115 KV tie-line from the Ensign Wind generating facility to the Haggard substation. Ensign Wind intends to operate this temporary point of connection through the approval of the Shared Facilities Agreement with Gray County Wind.<sup>11</sup>

## **II. Shared Facilities Agreement**

4. Gray County Wind explains that the key terms and conditions of the Shared Facilities Agreement include provisions, in section 2, that Gray County Wind grants Ensign Wind the non-exclusive right to access and utilize the Shared Facilities<sup>12</sup> as may be reasonably necessary in connection with Ensign Wind's ownership, operation and maintenance of the Ensign Wind generating facility.

5. Section 3 sets forth the nature of the Shared Facilities rights while sections 2.4 and 4 specify the allocation of certain costs and expenses incurred in the operation and repair of the Shared Facilities. Section 5 addresses changes in ownership or law. Section 6 establishes operating restrictions so that the combined output of Gray County Wind and Ensign Wind is 88 MVA based on reliability concerns raised by Mid-Kansas.

6. Section 7 sets forth the parties' respective rights and remedies in the event of a material breach, while section 8 addresses *force majeure*. Section 9 contains general contract provisions.<sup>13</sup> Gray County Wind requests waiver of the Commission's prior notice requirement to allow an effective date of December 14, 2012 for the Shared Facilities Agreement.<sup>14</sup>

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<sup>10</sup> On December 20, 2012, SPP submitted revisions to the Ensign GIA to accommodate the request for limited operation at a temporary point of interconnection in Docket No. ER13-601-000, which will be addressed by separate order.

<sup>11</sup> Gray County Wind Transmittal letter at 3.

<sup>12</sup> *Id.* at 4. *See also* Exhibit A of the proposed Shared Facilities Agreement (defining Shared Facilities as a "section of the 115 KV bus, coupling capacitor voltage transformer, the steel dead-end tower and the revenue meters with its associated current transformer, potential transformer and communication devices on the customer side of the Point-of-Interconnection/Point-of-Change of Ownership switch at the Haggard 115 KV Switching Station").

<sup>13</sup> Gray County Wind Transmittal Letter at 4 (describing the general terms and conditions of the Shared Facilities Agreement).

<sup>14</sup> 18 C.F.R. §§ 35.3 and 35.11 (2012).

### III. Requests for Waiver

7. Gray County Wind requests that the Commission grant waiver of certain requirements of Order Nos. 888, 889, and 890, as well as section 35.28, and parts 37 and 358 of the Commission's regulations.<sup>15</sup> Specifically, Gray County Wind 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). Gray County Wind also requests a waiver of the Standards of Conduct under Part 358 of the Commission's regulations.<sup>16</sup>

8. Gray County Wind states 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.<sup>17</sup> Gray County Wind adds that 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.<sup>18</sup> Further, Gray County Wind states that the Commission has granted utilities' requests for waivers of the Standards of Conduct requirements based on these same criteria.<sup>19</sup>

9. Gray County Wind states that good cause exists for the Commission to grant its request for waivers. According to Gray County Wind, the proposed Shared Facilities Agreement allows Ensign Wind to use the shared facilities as necessary to be able to transmit the output from its wind energy facility to the Mid-Kansas transmission system at a temporary point of interconnection, i.e., the Haggard Substation. As a result, Gray County Wind 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, Gray County Wind argues that it would be

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<sup>15</sup> Gray County Wind Transmittal Letter at 6.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 7 (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); and *Bishop Hill Interconnection LLC*, 138 FERC ¶ 61,159, at P 27 (2012)).

<sup>18</sup> *Id.* (citing *Hardee Power Partners Ltd.*, 125 FERC ¶ 61,036, at PP 19-21 (2008)).

<sup>19</sup> *Id.* (citing *Peetz Table Wind Energy, LLC*, 123 FERC ¶ 61,192, at P 10 (2008)).

burdensome to file an OATT or to establish an OASIS under these circumstances. Gray County Wind adds that the facilities it controls are limited and discrete. Finally, Gray County Wind states that the Commission's practice is to grant waiver to small utilities (4 million MWh annually), and explains that this application satisfies that criteria, since the maximum amount of energy that could be transmitted annually from both the Gray County Wind and Ensign Wind generating facilities would be less than 1.0 million MWh annually.<sup>20</sup>

#### **IV. Notice of Filings and Responsive Pleadings**

10. Notice of Gray County Wind's filing was published in the *Federal Register*, 77 Fed. Reg. 76,023 (2012), with interventions and protests due on or before January 3, 2013. None was filed.

#### **V. Discussion**

##### **A. Shared Facilities Agreement**

11. The Shared Facilities Agreement appears to be just and reasonable, and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we accept the Shared Facilities Agreement, effective December 14, 2012, as requested.<sup>21</sup>

##### **B. Request for Waivers**

12. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations require public utilities to file an OATT before providing transmission service. Order No. 889 and parts 37 and 358 of the Commission's regulations require public utilities to establish an OASIS and abide by certain standards of conduct. In prior orders, the Commission has set forth the standards for waiver of, or exemption from, some or all of the requirements of Order Nos. 888 and 889.<sup>22</sup> The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 are

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<sup>20</sup> *Id.* n.13 (calculation based on the combined maximum output of 88MVA multiplied by 8,760 hours and a 100 percent capacity factor for the wind energy facilities is about 770,880 MWh).

<sup>21</sup> See [Central Hudson Gas & Electric Co.](#), 60 FERC ¶ 61,106 at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

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

unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.<sup>23</sup> Order No. 717 did not change those criteria.<sup>24</sup>

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.<sup>25</sup>

14. Based on the statements in Gray County Wind's filing, we find that the transmission facilities at issue are limited and discrete. The Shared Facilities will be utilized solely to facilitate the transmission of power from the Gray County Wind facility and Ensign Wind facility to the grid. Accordingly, we will grant Gray County Wind's request for waiver of the requirements of Order Nos. 888, 890 and section 35.28 of the Commission's regulations to have an OATT on file.

15. However, if Gray County Wind 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 it 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 has also determined that waiver of Order No. 889 is 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.<sup>26</sup> In addition, the Commission grants waivers to small public utilities based on the criterion

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<sup>23</sup> See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007).

<sup>24</sup> See Order No. 717, *Standards of Conduct for Transmission Providers*, FERC Stats. & Regs. ¶ 31,280 at PP 32-34.

<sup>25</sup> *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

<sup>26</sup> *Id.* 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 the 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.

that they dispose of no more than 4 million MWh annually.<sup>27</sup> 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).<sup>28</sup>

17. Based upon Gray County Wind's representations in its filing, the Commission will also grant Gray County Wind's request for waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to establishing an OASIS, and Order No. 889 and Part 358 of the Commission's regulations with respect to the Standards of Conduct. We note that the 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.<sup>29</sup> Likewise, Gray County Wind's request for waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Gray County Wind has unfairly used its access to information to benefit itself or its affiliate.<sup>30</sup>

The Commission orders:

(A) The Shared Facilities Agreement is hereby accepted for filing effective December 14, 2012, as discussed in the body of this order.

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<sup>27</sup> See *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009).

<sup>28</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>29</sup> See *supra* n.28.

<sup>30</sup> *Id.* Gray County Wind must notify the Commission if there is a material change in facts that affects the 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).

(B) Gray County Wind's request for waiver of the OATT and OASIS requirements of Order Nos. 888, 889, 890 as well as section 35.28 and 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.