

129 FERC ¶ 61,149
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Milford Wind Corridor, LLC

Docket No. EL09-70-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued November 19, 2009)

1. On September 2, 2009, Milford Wind Corridor LLC (Milford) filed a Petition for Declaratory Order requesting that the Commission confirm Milford's firm priority rights to use the entire 1,000 MW of capacity on the already-constructed 88-mile, 345 kV transmission line (Milford Line) that is intended to connect Milford's multi-phased 1,000 MW wind-powered generating facilities (Milford Wind Project or Project) to the integrated transmission grid. For the reasons discussed below, we will grant the Petition.

I. Background

2. Milford, an affiliate of First Wind Holdings, LLC, requests confirmation of its firm priority rights to use the Milford Line to interconnect the full planned capacity of the Milford Wind Project, located near Milford, Utah, to the integrated transmission system. This interconnection will occur at a substation on the Intermountain Power Project, approximately 88 miles away in Delta, Utah, that connects with a 488-mile, high-voltage, direct current line over which power can be delivered to markets in southern California. Milford states that it has completed construction of the Milford Line, which it describes as a generator lead line, to accommodate the full 1,000 MW capacity of the Project.

3. The Project is being developed in five phases. Milford expects Milford Wind Corridor Phase I, LLC (Milford I), which will consist of approximately 200 MW of wind capacity, to begin commercial operation later this year (Phase I). Milford I states that it closed on the financing necessary to complete Phase I, as well as the entire Milford Line,¹ and Milford I's assets, including its ownership interest in the Milford Line, serve

¹ Milford explains that it negotiated a fixed-price contract for construction of the entire Milford Line at a cost of \$500,000 per mile. Milford September 2, 2009 Petition at 6.

as security for Milford I's financing. Milford also states that it has entered into a 20-year power purchase agreement (PPA) to sell the entire output of Phase I to Southern California Public Power Authority (SCPPA).²

4. The remaining phases of the Project (Phases II through V) are being developed at staggered intervals, with an expected completion date for the entire Project of 2015.³ Milford expects the cost of the entire project to exceed \$1 billion. Milford states that phasing the development of the wind generators optimizes financing, brings renewable power to the market as soon as possible, and mitigates Milford's market risk. Milford explains that significant capital is necessary to construct a wind energy project of this size, and argues that there is limited availability of third-party capital on reasonable terms in the current economic environment. Milford explains that the phased approach enables sequential, cost-efficient construction and allows for diversification of development risk.

5. Milford also explains that the five phases of the Project will be owned by separate affiliated limited liability companies, and each company will be owned by a separate indirect subsidiary of Milford. Milford I, an exempt wholesale generator (EWG), will retain a 25 percent undivided ownership interest in the Milford Line, which will be part of the Milford I EWG.⁴ The remaining ownership interest will be transferred to the Phase II through V affiliates, each of which will acquire a direct, undivided interest in the Milford Line when its respective phase is completed. Milford states that it expects that the Phase II through V affiliates will each self-certify as EWGs and seek market-based rate authority. Milford also explains that it has formed Milford Generator Lead, LLC which will, if and as appropriate, hold a direct, undivided ownership interest in the Milford Line to the extent there is capacity available beyond that needed by Phases I through V.

II. Petition for Declaratory Order

6. Milford asks the Commission to confirm that it retains firm priority rights on the Milford Line to ensure interconnection of its entire planned 1,000 MW Milford Wind

² *Id.* at 4.

³ Milford states that it has accelerated development of Phase II to accommodate another purchase request for 100 MW of renewable capacity. *Id.* at 4-5.

⁴ Milford asserts that, under the Public Utility Holding Company Act of 2005, the undivided ownership interest in the Milford Line is properly considered part of the EWG because it will serve the sole purpose of interconnecting the generation facilities to the integrated transmission system. *Id.* at n.12 (citing 16 U.S.C. § 796(25) (relying on the definition found in 15 U.S.C. § 79z-5a)).

Project to the integrated transmission system. Milford does not ask to have firm transmission rights as to any excess capacity above 1,000 MW that may be available in the future. Milford argues that confirmation of its right to use the Milford Line to interconnect the full 1,000 MW of the Project is in the public interest because such confirmation will further both Milford's and the Commission's goals of fostering the development and interconnection of competitive renewable power generation. Milford also asserts that confirmation of its firm priority rights on the Milford Line will facilitate the cost-effective and timely financing, development, construction and interconnection of the Project. Further, Milford maintains that confirmation of its firm priority rights on the Milford Line will support other similarly situated projects and promote a public policy in favor of developing clean, renewable resources by eliminating regulatory uncertainty regarding treatment of generator lead lines for remote renewable generation. Milford further argues that the Project will help load-serving entities in the western United States meet applicable renewable portfolio standards.⁵

7. Milford asserts that failure to receive confirmation of its firm rights will make it extremely difficult to finance the later phases of the Project on acceptable terms, if at all, because of the risk that the later phases will not be able to interconnect to the grid.⁶ In addition to agreeing to offer any excess capacity above 1,000 MW that may be available in the future, Milford also states that, if it is determined that there is capacity on the Milford Line that is not being used to connect Phases I through V, Milford will make that capacity available to third parties pursuant to applicable Commission requirements.⁷

8. According to Milford, building separate generator lead lines for each phase of the Project or initially sizing the Milford Line to meet the needs of Phase I only, and then upgrading it to accommodate capacity as each phase is completed would be less efficient and more costly.⁸ In addition, Milford asserts that it was able to complete construction of the Milford Line on schedule, far faster, and at costs lower than would have been the case if it had relied on the local transmission provider.⁹ According to Milford, if the Milford

⁵ *Id.* at 3.

⁶ *Id.* n.3.

⁷ *Id.* at n.14.

⁸ *Id.* at 7.

⁹ *Id.* at 6-7. Milford states that it began construction shortly after the Utah Public Service Commission issued a Certificate of Public Convenience and Necessity on October 8, 2008 and that the Milford Line was completed in less than nine months. *Id.* at 6.

Line had to be constructed by a transmission provider, it would have to become a part of that transmission provider's broader plans, Milford's interconnection would have been queued behind other projects that have their own considerations and timing requirements, and the transmission provider would plan, schedule, construct and activate the Milford Line based on its broader objectives and commitments, rather than Milford's particular needs.

9. In support of its claim that it should have priority rights over the Milford Line, Milford relies on the Commission's *Aero*¹⁰ orders to assert that priority rights are appropriate if the generation owner has "definite dates and milestones for expansion and ha[s] made material progress toward meeting its milestones."¹¹

10. Milford also relies on *Chinook Power Transmission, LLC*¹² and *Northeast Utilities Service Company, NSTAR Electric Company*¹³ for the proposition that participants that fund development of a transmission line should receive priority use of that line. Milford argues that existing Commission precedent does not squarely address the unique circumstances of the Milford Project and other renewable projects, because that precedent does not identify the threshold necessary to show sufficient planning and development has occurred to justify priority rights. However, Milford argues that its circumstances are analogous to the participant funding scenarios in *Chinook* and *NU/NSTAR* because Milford planned and built its own interconnection facilities. Therefore, it argues that it should, like the anchor customer in *Chinook* and the transmission customer in *NU/NSTAR*, be granted the firm transmission rights, especially since it has presented more specifics on its generation development plans than were relied upon in *Chinook* and *NU/NSTAR*. Milford also asserts that constructing the Milford Line was the most cost effective alternative and had the least environmental impact of the alternatives considered.¹⁴

¹⁰ *Id.* at 11-12 (citing *Aero Energy, LLC*, 115 FERC ¶ 61,128 (2006) (Aero Proposed Order), *order granting modification*, 116 FERC ¶ 61,149 (2006) (Aero Modification Order), *final order directing interconnection and transmission service*, 118 FERC ¶ 61,204 (2007) (Aero Final Order), *order denying reh'g*, 120 FERC ¶ 61,188 (2007) (Aero Rehearing Order) (collectively, *Aero*).

¹¹ Aero Final Order, 118 FERC ¶ 61,204 at P 7, 19.

¹² 126 FERC ¶ 61,134, at P 42-44 (2009) (*Chinook*).

¹³ 127 FERC ¶ 61,179, at P 2-4, 17, 27 (2009) (*NU/NSTAR*).

¹⁴ Milford September 2, 2009 Petition at 14.

III. Notice of Filings and Responsive Pleadings

11. Notice of Milford's filing was published in the *Federal Register*, 74 Fed. Reg. 47242 (2009), with interventions and comments due on or before October 2, 2009. American Wind Energy Association and Solar Energy Industries Association (jointly, AWEA and SEIA), Puget Sound Energy, Inc. (Puget), Renewable Energy Systems Americas Inc. (RES Americas), and the Utah Division of Public Utilities (Utah DPU) filed motions to intervene and comments on Milford's petition. Iberdrola Renewables, Inc. (Iberdrola) filed a timely motion to intervene. On October 5, 2009 the Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California (Six Cities) filed a motion to intervene out-of-time. On October 16, 2009, Milford filed an answer to the comments (October 16 Answer).

IV. Comments

12. AWEA and SEIA urge the Commission to allow generators, on a case-by-case basis, to have priority rights over the capacity of sole-use generator lead lines that they have funded. They argue that this approach will strike the right balance between the Commission's general open access policy and the need to integrate renewable resources. They also assert that, due to the realities of financing related to renewable resources, it will often be a sub-optimal choice to have a local transmission provider build a lead line to a renewable resource. If the Commission confirms priority rights over a generator lead line, AWEA and SEIA encourage the Commission to require the petitioner (and others in the future) to set forth a reasonable period of years over which its affiliated generation facilities (or phases of a single project) will be built, and they argue that following this "safe harbor period," third parties could seek interconnection and transmission service on the line if the petitioner's projects have not been constructed.

13. Utah DPU explains that the Project is located in an area of Utah that has been identified as suitable for substantial wind development, as well as geothermal and solar development, and states that PacifiCorp's Blundell geothermal facility is nearly adjacent to the Milford wind farm. Utah DPU states that, if the 1,000 MW Project is not developed, consideration should be given to treating the Milford Line in a manner similar to how Milford plans to treat any excess capacity above the 1,000 MW planned generation facilities. Utah DPU also states that, even if all 1,000 MW of planned generation is completed, it believes that Milford should be granted priority rights over the Milford Line, but not exclusive rights to the line. If the project is not developed as anticipated, Utah DPU states that the Commission should be cautious about granting unlimited firm priority rights on the Milford Line, and is concerned that, if there is any excess capacity on the transmission line in any of the phases of the Project, that the excess capacity should not be allowed to be held indefinitely by Milford, especially if other parties are in need of that capacity.

14. Puget supports Milford's development approach and supports Milford's request for confirmation of priority firm rights. Puget states that the Commission's treatment of Milford's petition will establish precedent that may affect Puget's Lower Snake River Wind Energy Project and argues that granting Milford's petition is crucial because it will provide regulatory certainty by signaling to the investment community and wind developers that the Commission recognizes the unique circumstances of wind developers. Further, Puget notes that wind powered generating projects are regularly developed in phases in order to secure needed financing. Puget also states that building the generator lead line in one installment is the most environmentally sensible and economically efficient approach. Puget agrees with Milford's conclusion that those who provide funding for a transmission line should receive priority over that line. Puget also comments that the Commission's determination in *Aero*, that certain expansion plans were insufficient to warrant priority rights on a transmission line, should not apply to the facts presented by Milford because Milford has proven concrete buyer interest in two phases of the Project.¹⁵

15. RES Americas generally supports the comments of AWEA and SEIA, but also seeks Commission confirmation on two points. First, RES Americas seeks confirmation that, if a generator builds a line for its own use, and that generator wants to retain the full capacity of that line for its own use, then that generator can only recover its costs via electricity sales. Second, RES Americas seeks confirmation that, if a generator subsequently determines that it wishes to sell a portion of the line's capacity, then that generator must announce the availability of the capacity via a public process so that any and all interested parties have the opportunity to bid for the capacity.

V. Milford's Answer

16. In its October 16 Answer, Milford states that the Commission should take this opportunity to encourage the development of generator lead lines by providing certainty and assurance of rights. Milford argues that the dedication of its own capital to plan, finance, build and own the Milford Line for the specific purpose of supporting its planned generation project, with no assurance of recovery through cost-of-service rates, should be sufficient to ensure firm rights over the Milford Line. Milford supports offering any excess capacity on the Milford Line to third parties, should it choose not to go forward with the total planned capacity of the Project.

17. Milford supports the suggestion of Utah DPU and AWEA and SEIA that a safe harbor period of firm rights on the Milford Line should be established, and proposes that period be ten years for the Milford Wind Project. Milford proposes that, during the safe

¹⁵ Puget October 2, 2009 Comments at 8 (citing *Aero* Final Order, 118 FERC ¶ 61,204 (2007)).

harbor period, a developer would not be required to defend its firm rights against a third-party request for service. Milford represents that the Project is planned to be developed in five phases over a six to seven year planning horizon, and states that a ten-year period would provide Milford a cushion to accommodate the ever-evolving dynamics of the Project, and still have the certainty to make the project viable. Milford states that if, after the expiration of the safe harbor period, a third party is denied service and submits a petition under section 211 of the Federal Power Act (FPA),¹⁶ it would be appropriate to require a developer to provide facts in support of its plans for a generator lead line and to demonstrate that it is still proceeding on a reasonable path toward using the capacity it had planned for that generator lead line. However, Milford states that it has already made the case in its petition that it is proceeding reasonably on the Milford Project, and has demonstrated sufficient plans to use 1,000 MW of capacity on the Milford Line.¹⁷

18. In response to the Utah DPU's comment that Milford should not be granted "exclusive" rights to the Milford Line, Milford states that it has not sought exclusive rights to the Milford Line, and argues that this proceeding need not be expanded to define the rights of third parties to use the Milford Line. Milford states that it has already committed to make available the capacity on the Milford Line that exceeds its planned needs, "if and to the extent required by applicable [Commission] precedent."¹⁸ Milford states that, if there is disagreement over third-party rights to the Milford Line in the future, the Commission will have the full authority and opportunity to address them at that time.

19. With respect to RES Americas' concerns regarding cost recovery and capacity release on "generator lead lines," Milford states that these issues are beyond the scope of this proceeding, and need not be addressed at this time. Milford states that it only seeks clarification that it retains sufficient priority rights over the Milford Line to ensure that the full output of the five phases of the Project can reach the transmission system. In addition, Milford states that it cannot charge for third-party use of the Milford Line without first seeking Commission approval of the rates, terms and conditions under which any such services would be provided, as required by the FPA, and it argues that any concern over how capacity would be allocated or charges would be established for such third-party use should be addressed in response to that future filing, and not in this proceeding.

¹⁶ 16 U.S.C. § 824j (2006).

¹⁷ Milford October 16, 2009 Answer at 4.

¹⁸ *Id.* at 5.

VI. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.214(d) (2009), the Commission will grant Six Cities' late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding and the absence of undue prejudice or delay.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept Milford's answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

22. Because Milford has shown that it has specific plans for phased development of its generation leading ultimately to 1,000 MW of generation, we will grant Milford's request for firm priority rights for the full 1,000 MW capacity of the Milford Line. In its petition, Milford describes its specific plans that will prevent it from providing firm transmission service to a third party, explaining that: (1) Phase I of the Project, which will consist of approximately 200 MW of wind capacity, will begin commercial operation later this year; (2) it has entered into a 20-year PPA to sell the entire output of Phase I to SCPPA; (3) it has accelerated development of Phase II to accommodate another purchase request for 100 MW of renewable capacity; and (4) Phases II through V of the Project are being developed at staggered intervals over a six to seven year planning horizon,¹⁹ with an expected completion date for the entire Project of 2015. Based on these specific plans and milestones for construction, and Milford's demonstration of material progress towards meeting those milestones, we will grant Milford's request for firm priority rights for the full 1,000 MW capacity of the Milford Line. This determination is consistent with the Commission's determination in *Aero* that a transmission owner that filed specific expansion plans with definite dates and milestones for construction, and had made material progress toward meeting its milestones, had priority over later transmission requests.²⁰

¹⁹ Milford October 16, 2009 Answer at 3-4.

²⁰ *Aero* Modification Order, 116 FERC ¶ 61,149 at P 28. In *Aero*, the Commission provided a transmission owner (Sagebrush) the opportunity to demonstrate
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23. We reject the suggestion of Milford and certain commenters that the Commission establish a “safe harbor” period of firm rights on the Milford Line. While we are granting Milford’s request for firm priority rights for the full 1,000 MW capacity of the Milford Line, consistent with Commission precedent granting waiver of the open access requirement unless and until a third party requests transmission service on the line, we will require Milford to offer service on the Milford Line until Milford is ready to use such capacity for its firm priority rights and to expand the Milford Line if a third party requests capacity and there is no capacity available to meet that request. Granting a “safe harbor” period would be inconsistent with Commission precedent granting waiver of open access requirements unless and until the owner of the line receives a request for transmission service.²¹

24. We note that, although Milford characterizes its 88-mile, 345 kV line interconnecting the Milford Wind Project to the integrated transmission system as a “generator lead line,” such a designation does not render the Milford Line exempt from Commission regulation of transmission facilities.²² The Commission has not found that

that it had pre-existing contractual obligations or other specific plans that would prevent it from providing the requested firm transmission service to a third party (Aero) at a future date. The Commission subsequently determined that only one of the three Sagebrush partners who attempted to demonstrate that they satisfied these criteria, had shown that it satisfied the criteria; while Caithness had demonstrated specific expansion plans with definite dates and milestones for construction of wind generation that will need an additional 33 MW of firm transmission capacity on the line, the Commission concluded that Oasis’ PPA was not evidence of a 10 MW expansion obligation, because Oasis had no contractual obligation to sell more than 60 MW by expanding its nameplate capacity, and because unlike Caithness, it had not presented evidence of milestones having been met. The Commission rejected Eurus’ claim that it had concrete plans to expand its use of the line by 3.85 MW because this amount of required transmission capacity was accounted for and included in the original allocation of 420 MW of transmission capacity amongst the Sagebrush partners. Aero Final Order, 118 FERC ¶ 61,204 at P 19-22.

²¹ *PSEG Energy Resources & Trade, Cross Hudson LLC*, 123 FERC ¶ 61,001, at P 26 (2008) (*PSEG/Cross Hudson*), *reh’g denied*, 128 FERC ¶ 61,212 (2009).

²² 16 U.S.C. § 824 (2006); *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.*

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the fact that the facilities tie a generator to the grid, that is, are so-called generator lead lines, eliminates the requirement to file an Open Access Transmission Tariff (OATT) and to provide open access transmission service. Rather, in such cases, the Commission has granted requests by owners of such lines for waiver of the OATT requirement unless and until they receive a request for transmission service.²³ In light of our determination to grant Milford's request for firm priority rights for the full 1,000 MW capacity of the Milford Line based on Milford's demonstration that it has specific plans for phased development of its generation leading ultimately to 1,000 MW of generation, as discussed below, we believe it is appropriate to grant Milford waiver of the requirements in Order Nos. 888, 889,²⁴ and 890, and the Standards of Conduct requirements of Part 358 of the Commission's regulations.²⁵

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

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); *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).

²³ See *PSEG/Cross Hudson LLC*, 123 FERC ¶ 61,001 at P 20, 25-29 (granting the owner of the Cross Hudson Project, an eight-mile, 345 kV interconnection between a new 345 kV substation in PJM and the New York ISO transmission system, waiver of the OATT requirement) (citing *WFEC GENCO LLC*, 113 FERC ¶ 61,049 (2005); *Termoelectrica U.S., LLC*, 105 FERC ¶ 61,087; *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 (1996); *Jersey Central Power & Light Co.*, 87 FERC ¶ 61,014, at 61,042 (1999)), *reh'g denied*, 128 FERC ¶ 61,212 (2009).

²⁴ *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).

²⁵ 18 C.F.R. Part 358 (2008); *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 (2009).

request, and must comply with any additional requirements that are effective on the date of the request.²⁶

26. The Commission has also determined that waiver of Order No. 889 would be appropriate for a public 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, unless it is a member of a tight power pool, or other circumstances are present that indicate that waiver would not be justified.²⁷ The Commission grants waivers to small public utilities based on the threshold finding that they dispose of no more than four million MWh annually.²⁸ 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).²⁹ Similar to the Order No. 889 waivers, waivers of the Standards of Conduct are granted to entities that: (1) own, operate or control only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) are 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.³⁰

27. Based on the statements in Milford's petition, we find that the Milford Line is a limited and discrete transmission facility. The Milford Line is radial in nature and will be used to move renewable energy from the Milford Wind Project to the transmission system. The only transmission service the Milford Line will provide is to Milford's affiliates. In addition, the size of the Milford Line is consistent with that of projects for

²⁶ *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 at 61,941.

²⁷ *Id.*

²⁸ *See Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009) (*Wolverine*).

²⁹ *See Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 23 (2005) (*Entergy*) (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)).

³⁰ *See Peetz Logan Interconnect, LLC*, 122 FERC ¶ 61,086 (2008) (*Peetz*); *Red Shield Acquisition, LLC*, 128 FERC ¶ 61,090 (2009).

which we have granted waivers in the past.³¹ Accordingly, we will grant Milford waiver of the OATT requirements in Order Nos. 888 and 890 for its Milford Line.³² However, should Milford receive 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 890.³³ In addition, because the Milford Line is a

³¹ See *Peetz*, 122 FERC ¶ 61,086 (granting waiver of the requirements of Order Nos. 888, 889 and 890 and the Standards of Conduct requirements of Part 358 to the owner and operator of an approximately 78-mile, 230 kV transmission line and related facilities in northeastern Colorado that connect wind generation projects owned by two of the owner's affiliates to the transmission grid of Public Service Company of Colorado); *PSEG/Cross Hudson LLC*, 123 FERC ¶ 61,001 (granting the owner of the Cross Hudson Project, an eight-mile, 345 kV interconnection between a new 345 kV substation in PJM and the New York ISO transmission system, waiver of the OATT requirement); *Entergy*, 112 FERC ¶ 61,228 (granting waiver of the requirements of Order Nos. 888 and 889 to the owner of a one-mile 500 kV transmission line). See also *NewCorp Resources Electric Coop., Inc.*, 123 FERC ¶ 61,120 (2008) (granting waiver of certain Order No. 890 requirements to the owner of a primarily radial transmission system that consists of approximately 305 miles of 138 kV transmission lines and 17 substations); *Golden Spread Electric Coop., Inc.*, 127 FERC ¶ 61,248 (2009) (granting waiver of the requirements of Order Nos. 888, 889 and 890 to the owner of approximately 54 miles of radial facilities and an 18.4-mile radial line); *Golden Spread Electric Coop., Inc.*, 106 FERC ¶ 61,151 (2004) (granting the owner of approximately 110 miles of radial facilities waiver of the requirements of Order Nos. 888 and 889).

³² On November 16, 2009, Milford I's request for market-based rate authorization was granted, and conditioned on the requirement that Milford I file an OATT or request waiver from doing so. *Milford Wind Corridor Phase I, LLC*, Docket Nos. ER09-1400-000, *et al.*, at 3 (Nov. 16, 2009) (unpublished letter order). Here, because we are granting Milford's request for firm priority rights for the full 1,000 MW capacity of the Milford Line, and no such firm priority rights were requested with respect to other Milford affiliate lines, we find it appropriate to grant Milford waiver of the requirements in Order Nos. 888, 889, and 890, and the Standards of Conduct requirements of Part 358 of the Commission's regulations for its Milford Line.

³³ Upon filing such an OATT, Milford will also be subject to the OATT obligation to expand the Milford Line if a third party requests transmission service and there is insufficient capacity available above 1,000 MW. Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at App. C, *Pro Forma* Tariff, section 19 (*Pro Forma* Tariff). The party seeking capacity beyond the Milford Line's available capacity will be responsible for costs (such as the system impact study and upgrades to the line) associated with any capacity

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limited and discrete facility, we will also grant Milford waiver of the OASIS requirements of Order No. 889 and the Standards of Conduct requirements of Part 358 for the Milford Line.³⁴

28. We will deny the request of RES Americas for clarification that a generator that builds a line for its own use, and wants to retain the full capacity of that line for its own use, can only recover its costs via electricity sales. We agree with Milford that this request is beyond the scope of this proceeding, and need not be addressed at this time. However, we will clarify, as requested by RES Americas that, if a generator subsequently determines that it wishes to sell a portion of its line's capacity, then that generator must announce the availability of the capacity via a public process so that any and all interested parties have the opportunity to bid for the capacity. If a generator wishes to sell a portion of its line's capacity, it will be subject to the Commission's open access requirements.

The Commission orders:

(A) Milford's petition for declaratory order is hereby granted, as discussed in the body of this order.

increase on the Milford Line. *Pro Forma* Tariff, sections 19 and 27.

³⁴ A waiver of the requirement to establish and maintain an information system (i.e., an OASIS) remains effective until the Commission takes action in response to any complaint by an entity alleging that, in evaluating its transmission needs, the entity could not obtain from Milford information necessary to complete its evaluation. A waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Milford has used its access to transmission information to unfairly benefit Milford's own sales, or an affiliate's sales. In addition, as the Commission recently explained, Milford must notify the Commission if there is a material change in facts that affect its waiver, within 30 days 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); *see also, Wolverine*, 127 FERC ¶ 61,159 at n.21 (2009).

(B) Milford is hereby granted waiver of the requirements of Order Nos. 888, 889 and 890, and the Standards of Conduct requirements of Part 358 of the Commission's regulations for the Milford Line, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.