

134 FERC ¶ 61,109
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Alta Wind I, LLC
Alta Wind II, LLC
Alta Wind III, LLC
Alta Wind IV, LLC
Alta Wind V, LLC
Alta Wind VI, LLC
Alta Wind VII, LLC
Alta Wind VIII, LLC
Alta Windpower Development, LLC
TGP Development Company, LLC

Docket No. EL10-62-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued February 17, 2011)

1. On April 23, 2010, Alta Wind I, LLC (Alta I), Alta Wind II, LLC (Alta II), Alta Wind III, LLC (Alta III), Alta Wind IV, LLC (Alta IV), Alta Wind V, LLC (Alta V), Alta Wind VI, LLC (Alta VI), Alta Wind VII, LLC (Alta VII), Alta Wind VIII, LLC (Alta VIII), Alta Windpower Development LLC (AWD), and TGP Development Company, LLC (TGP) (collectively, Petitioners) filed a petition for declaratory order (Petition) requesting that the Commission confirm Petitioners' priority firm transmission rights to the capacity of three transmission lines (Transmission Lines I, II, and III) used to interconnect Petitioners' planned wind and solar generation projects to the integrated transmission grid. Petitioners also seek waivers of certain Open Access Transmission Tariff (OATT), Open Access Same-Time Information System (OASIS), and Standards of Conduct requirements applicable to transmission providers under Order Nos. 888, 889,

and 890 and of section 35.28 and Parts 37 and 358 of the Commission's regulations.¹ For the reasons discussed below, we will grant the Petition.

I. Background

2. Petitioners are direct and indirect subsidiaries of Terra-Gen Power, LLC (Terra-Gen Power). Petitioners state that Terra-Gen Power specializes in the development, acquisition, operation, and management of renewable independent power generation and currently owns, through its subsidiaries, non-passive interests in approximately 21 operating wind, solar, and geothermal generation facilities in Nevada, California, Colorado, Minnesota, Wyoming, and Texas.

3. Petitioners state that they are developing wind and solar generating projects near Mojave, California in multiple phases that together will comprise the Alta Wind Energy Center and Alta Solar Energy Center. Petitioners explain that, because development of large scale wind and solar power projects is a complex, expensive, and time-consuming process, which often requires as much as five years from conception to completion, Petitioners and their upstream owners have phased the development of the projects.²

¹ Petition at 21. *See 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); *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); *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); *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); 18 C.F.R. § 35.28, 18 C.F.R. Part 37, and 18 C.F.R. Part 358 (2010).

² The generation projects of Alta I-Alta VI and Alta VIII will begin commercial operation in the first half of 2011 through early 2012. These seven projects are expected to use an aggregated total line capacity of 1,320 MW, i.e., 300 MW of Transmission Line I, 600 MW of Transmission Line II (which includes 300 MW from Transmission Line I),

(continued...)

4. Development of the Alta Wind Energy Center and Alta Solar Energy Center includes the construction of Transmission Lines I, II, and III, which will be used to interconnect Petitioners' planned generating projects to the transmission grid operated by the California Independent System Operator Corporation (CAISO). Petitioners explain that Transmission Lines I, II, and III are currently under construction.

5. Specifically, Petitioners describe Transmission Line I as an approximately 4.4 mile long, 230 kV radial generator tie-line, with a maximum design capacity of 305 MW.³ Alta I and Alta VI seek to confirm their priority firm transmission rights in the full 305 MW capacity to interconnect their planned wind generation projects, each with a projected net nameplate capacity of 150 MW.⁴ Petitioners state that AWD, either alone or together with an affiliate, is developing additional generating facilities with a projected net nameplate capacity exceeding the 5 MW remaining capacity on the line.⁵

6. According to Petitioners, Transmission Line II is an approximately 1.8 mile long, 230 kV radial generator tie-line, with a maximum design capacity of 807 MW. Alta I, Alta II, Alta III, Alta VI, AWD, and TGP seek to confirm their priority firm transmission rights in the full 807 MW capacity to interconnect their planned wind and solar generation projects.⁶ The projected net nameplate capacities for the planned generating projects are as follows: (1) Alta I, Alta II, and Alta III will each own 150 MW facilities;

and 420 MW of Transmission Line III. Additional wind and solar projects, which will utilize the remaining 687 MW capacity, are being developed by AWD, TGP, and potentially other affiliates and are planned to be phased in through 2016. *See* Petition at 13, 20, n.24.

³ According to Petitioners, Transmission Line I connects with Transmission Line II. Petition at 9.

⁴ Petition at 2, 10. Petitioners also note that, because all of the projects described in the Petition are not yet operational, the generating capacity provided reflects the anticipated output of each facility. Petition at n.19.

⁵ Petition at 9. Petitioners explain that Alta I, Alta II, Alta III, Alta IV, Alta V, Alta VI, Alta VII, Alta VIII, AWD, and Terra-Gen Operating Company, LLC have entered into an agreement that sets forth their respective rights and obligations regarding, *inter alia*, the joint development, construction, ownership, and use of certain shared transmission facilities, including Transmission Lines I, II, and III (Shared Facilities Agreement). Under the Shared Facilities Agreement, AWD has rights to all excess capacity in Transmission Lines I, II, and III and is charged with developing additional projects that will require access to the transmission capacity it holds. Petition at 11-12.

⁶ Petition at 2.

(2) Alta VI, alone or together with affiliates, is developing 150 MW facilities; and
(3) AWD and TGP, alone or together with affiliates, are developing facilities exceeding the 207 MW remaining capacity on the line.⁷

7. Petitioners state that Transmission Line III is an approximately 5.6 mile long, 230 kV radial generator tie-line, with maximum design capacity of 895 MW. Alta IV, Alta V, Alta VII, Alta VIII, AWD, and TGP seek to confirm their priority firm transmission rights in the full 895 MW capacity to interconnect their planned wind and solar generation projects.⁸ The projected net nameplate capacities for the planned generating projects are as follows: (1) Alta IV will own 102 MW facilities; (2) Alta V will own 168 MW facilities; (3) Alta VIII, alone or together with affiliates, is developing 150 MW facilities; and (4) AWD and TGP, alone or together with affiliates, are developing facilities exceeding the 475 MW remaining capacity on the line.⁹

8. Petitioners state that, under the Shared Facilities Agreement, the percentage interest of each entity in Transmission Lines I, II, and III is based on the planned nameplate capacity of its respective project (out of a current total of 1,320 MW) that will interconnect using Transmission Lines I, II, and III.¹⁰ Petitioners further explain that each co-tenant's use of Transmission Lines I, II, and III will be an amount in proportion to its relative segment interest vis-à-vis the interests of the co-tenants.¹¹ Finally, Petitioners state that AWD will hold transitory rights to excess transmission capacity in Transmission Lines I, II, and III and will assign such rights to individual project companies, including those of TGP, as facilities become ready for commercial operation.

II. The Instant Filing

9. Petitioners assert that, based on the Commission's precedent established in *Aero Energy, LLC (Aero)* and *Milford Wind Corridor, LLC (Milford)* and the specific development plans that they are diligently pursuing, Petitioners are entitled to priority

⁷ Petition at 10.

⁸ Petition at 2-3.

⁹ Petition at 10-11.

¹⁰ Petitioners state that Transmission Line I, II, and III will be jointly owned, respectively, by: (1) Alta I, Alta VI, and AWD; (2) Alta I, Alta II, Alta III, Alta VI, and AWD; and (3) Alta IV, Alta V, Alta VIII, and AWD. Petition at 9-10.

¹¹ In other words, a co-tenant does not have rights to use more than its relative ownership share in the Transmission Lines. Petition at 11-12.

firm transmission rights to the capacity of Transmission Lines I, II, and III to interconnect the full planned capacity of their planned wind and solar generation projects to, and obtain transmission service on, CAISO's integrated transmission grid.¹²

10. Petitioners claim that they have made material progress towards meeting the milestones for developing and constructing their planned wind and solar generation projects.¹³ Petitioners have also signed Large Generator Interconnection Agreements (LGIA) with Southern California Edison Company (SoCal Edison) and CAISO to secure interconnection rights for their respective projects.¹⁴ Further, Petitioners represent that AWD has executed a power purchase agreement for 1,550 MW, pursuant to which Alta I - Alta VI have signed project-specific power purchase agreements to sell the output of their generation facilities; turbine supply contracts have been executed for the 1,170 MW of wind turbines required by Alta I - Alta VIII; balance-of-plant construction contracts have been executed for Alta I - Alta V; and Alta I - Alta VI have ensured that they have control over the land required to install their wind projects.¹⁵

11. Further, Petitioners state that they are developing additional wind and solar projects¹⁶ that will utilize the remaining 687 MW of transmission capacity.¹⁷ These projects are planned to be phased in through 2016. According to Petitioners, confidential

¹² Petition at 3-4 (citing *Aero*, 115 FERC ¶ 61,128, *order granting modification*, 116 FERC ¶ 61,149 (2006), *final order directing interconnection and transmission service*, 118 FERC ¶ 61,204, *order denying reh'g*, 120 FERC ¶ 61,188 (2007), *Milford*, 129 FERC ¶ 61,149 (2009)).

¹³ Petitioners have requested confidential treatment for this evidence.

¹⁴ According to Petitioners, two LGIAs with SoCal Edison and CAISO have been entered into with: (1) Alta I, II, III, VI, and Alta Interconnection Management, LLC, and (2) Alta IV, Alta V, Alta VIII, AWD, and Alta Interconnection Management II, LLC. Petition at 9-10.

¹⁵ Petition at 18-19.

¹⁶ Petitioners state that, Terra-Gen Power, TGP, and AWD are concurrently developing multiple projects that could interconnect with Transmission Lines I, II, and III. Petition at 20.

¹⁷ I.e., remaining capacity of 5 MW in Transmission Line I, 207 MW in Transmission Line II, and 475 MW in Transmission Line III. *See* Petition at 20.

Exhibit A of the Petition shows that development of these projects is underway and is at varying stages of completion, with anticipated dates of completion noted.¹⁸

12. Petitioners state they have invested significant time and capital to develop their planned wind and solar generation projects, having spent more than \$350 million to acquire and develop renewable resources that depend on access to the capacity of Transmission Lines I, II, and III. Petitioners forecast spending approximately \$10 million per year to bring the remaining projects on line. Further, they argue that the successful completion of their future generation projects is dependent on access to transmission and interconnection to Transmission Lines I, II, and III and would be materially impacted without confirmation of their priority transmission rights.

13. Petitioners request waiver of Order Nos. 888 and 890 and section 35.28 of the Commission's regulations, arguing that Transmission Lines I, II, and III are limited and discrete transmission facilities because they are radial generator-tie lines designed and constructed solely for the purpose of interconnecting Petitioners' generating projects with the transmission system; are not designed to serve other customers; and do not constitute an integrated transmission system. Petitioners state that, should they receive a valid, bona fide request for transmission service, they will file with the Commission a *pro forma* OATT within 60 days after the date of the request, and will comply with any additional requirements that are effective on the date of the request in compliance with Order Nos. 888 and 890. Additionally, because Petitioners assert that Transmission Lines I, II, and III are limited and discrete transmission facilities, they also request waiver of the OASIS requirements of Order No. 889 and Part 37 of the Commission's regulations and the Standards of Conduct requirements of Part 358 of the Commission's regulations.

III. Notice of Filing and Responsive Pleading

14. Notice of Petitioners' filing was published in the *Federal Register*, 75 Fed. Reg. 23,263 (2010), with interventions and comments due on or before May 24, 2010. PacifiCorp filed a timely motion to intervene.

IV. Discussion

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), PacifiCorp's timely, unopposed motion to intervene serves to make PacifiCorp a party to this proceeding.

¹⁸ Petitioners note that because of the nature of the developmental process, these dates will likely vary as development activities continue. Petition at 18.

16. Under the standard determined by the Commission in *Aero* and applied in *Milford*, where transmission owners have specific, pre-existing generation expansion plans with milestones for construction of generation and have made material progress toward meeting those milestones, they may have firm priority rights on their transmission lines.¹⁹ Further, affiliates of current transmission owners, which are developing their own generation projects, may also obtain firm priority rights on a transmission line to the extent that they use the line to serve their own load or demonstrate specific generation expansion plans with milestones to use the line in the future, provided that the plans include a future transfer of ownership to such affiliates.²⁰

17. We find that Petitioners have shown the existence of specific, pre-existing plans, with definite dates and milestones, for phased development of generation that will ultimately employ the full capacity of Transmission Lines I, II, and III. According to Petitioners' submitted evidence, significant progress has already been made in completing the generation projects of Alta I, Alta II, Alta III, Alta IV, Alta V, Alta VI, and Alta VIII, which will use an aggregated total line capacity of 1,320 MW. These projects are planned to begin commercial operation as soon as 2011-2012. Petitioners have signed a power purchase agreement, under which the Alta I, Alta II, Alta III, Alta IV, Alta V, and Alta VI projects (representing 870 MW of capacity) will sell their output. Further, Petitioners represent that they have executed LGIAs to interconnect these projects on the CAISO grid; that they have entered into supply contracts for the Alta I-Alta VIII projects; and that they have entered into balance of plant construction contracts for the Alta I-Alta V projects. These factors provide strong evidence of Petitioners' specific plans to construct generation plants that will interconnect to and use 1,320 MW of capacity of Transmission Lines I, II, and III. Petitioners have also provided evidence that they intend to construct additional generation projects that will use the remaining 687 MW of capacity on the lines, including specific milestones for construction, as well as a demonstration of progress in completing these milestones.

18. In addition, Petitioners explain that certain of the Petitioners will initially own Transmission Lines I, II, and III²¹ and that, pursuant to the Shared Facilities Agreement, AWD will hold transitory rights to excess transmission capacity and will assign

¹⁹ *Aero*, 116 FERC ¶ 61,149 at P 28; *Milford*, 129 FERC ¶ 61,149 at P 22.

²⁰ See *Milford*, 129 FERC ¶ 61,149 at P 5; *Sunzia Transmission, LLC*, 131 FERC ¶ 61,162, at P 37 & n.38 (2010).

²¹ See *supra* note 10.

additional ownership interests to affiliates with generation projects that will use the lines in the future, as their generation projects become ready for commercial operation.²² Thus, we find that Petitioners have sufficiently demonstrated that there will be a future transfer of ownership interests in Transmission Lines I, II, and III to affiliates that are not currently owners of the lines but that are developing their own generation projects and will use the lines in the future.

19. Accordingly, based on the submitted specific plans and milestones for construction; demonstration of material progress towards meeting those milestones; and demonstration of future transfer of ownership in Transmission Lines I, II, and III, we will grant Petitioners' request for firm priority rights for the full 305 MW, 807 MW, and 895 MW capacity in Transmission Lines I, II, and III, respectively. We note that, while we are granting Petitioners' request for priority firm transmission rights for the full capacity, we will require Petitioners to offer service on these transmission lines to the extent Petitioners are not using such capacity, as well as to expand these transmission lines if a third party requests capacity and there is no capacity available to meet that request.²³

20. The Commission has granted requests by owners of transmission lines such as Transmission Lines I, II, and III for waiver of the OATT requirement unless and until they receive a request for transmission service.²⁴ 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 (i.e., facilities that do not form

²² Petitioners explain that the percentage ownership interest for each entity in Transmission Lines I, II, and III is determined based on the planned nameplate capacity of its respective generation project out of the total planned nameplate capacity of all projects that will interconnect using the lines. *See supra* P 8.

²³ *See Milford*, 129 FERC ¶ 61,149 at P 23 (rejecting requests to establish a "safe harbor" period of firm transmission rights as inconsistent with the Commission's precedent granting waiver of open access requirements unless and until the owner receives a request for transmission service).

²⁴ *See PSEG/Cross Hudson LLC*, 123 FERC ¶ 61,001, at P 20, 25-29 (2008) (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) (*Black Creek*); *Jersey Central Power & Light Co.*, 87 FERC ¶ 61,014, at 61,042 (1999)), *reh'g denied*, 128 FERC ¶ 61,212 (2009).

an integrated transmission grid), unless and until such time as the public utility receives a request for transmission service. In determining whether a request for service is sufficient to trigger the obligation to file an OATT, in *Sagebrush II*, we stated that a request would be sufficient if it satisfies the requirements of *pro forma* OATT section 17.2 for firm point-to-point service, *pro forma* OATT section 18.2 for non-firm service, or *pro forma* OATT section 29.3 for network service, depending upon which type of service is requested.²⁵

21. The Commission has also determined that waiver of Order No. 889 and the Standards of Conduct requirements 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.²⁶ The Commission grants waivers to small public utilities based on the threshold finding that they dispose of no more than four million MWh annually.²⁷ 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).²⁸

22. Based on the statements in the Petition, we find that Transmission Lines I, II, and III are limited and discrete transmission facilities. Transmission Line I, II, and III are radial in nature and will be used to move renewable energy from the Alta Wind Energy Center and Alta Solar Energy Center to the integrated transmission system. The only

²⁵ *Sagebrush, a California Partnership*, 132 FERC ¶ 61,234 (2010) (*Sagebrush II*).

²⁶ See *Black Creek*, 77 FERC at 61,941; *Peetz Logan Interconnect, LLC*, 122 FERC ¶ 61,086 (2008) (*Peetz*); *Red Shield Acquisition, LLC*, 128 FERC ¶ 61,090 (2009).

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

²⁸ 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).

transmission service Transmission Lines I, II, and III will provide is to Petitioners. In addition, the size of Transmission Lines I, II, and III are consistent with that of projects for which we have granted waivers in the past.²⁹ Accordingly, we will grant Petitioners waiver of the OATT requirements in Order Nos. 888 and 890 and section 35.28 for Transmission Lines I, II, and III. However, should Petitioners receive a request for transmission service, they 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 890.³⁰ In addition, because Transmission Lines I, II, and III are limited and discrete facilities, we will also grant Petitioners waiver of the OASIS requirements of Order No. 889 and Part 37, as well as the Standards of Conduct requirements of Part 358 for Transmission Lines I, II, and III.³¹

The Commission orders:

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

²⁹ See *Peetz*, 122 FERC ¶ 61,086; *PSEG/Cross Hudson LLC*, 123 FERC ¶ 61,001; *Entergy*, 112 FERC ¶ 61,228; *NewCorp Resources Electric Coop., Inc.*, 123 FERC ¶ 61,120 (2008); *Golden Spread Electric Coop., Inc.*, 127 FERC ¶ 61,248 (2009); *Golden Spread Electric Coop., Inc.*, 106 FERC ¶ 61,151 (2004).

³⁰ See *Terra-Gen Dixie Valley, LLC.*, 132 FERC ¶ 61,215, at P 47 (2010), *order on reh'g*, 134 FERC ¶ 61,021 (2011) (citing *Milford*, 129 FERC ¶ 61,149 at P 24); *Black Creek*, 77 FERC at 61,941. Upon filing such an OATT, Petitioners will also be subject to the OATT obligation to expand the Transmission Lines I, II, and III if there is insufficient capacity available. 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 Transmission Line I, II, and III's available capacity will be responsible for costs (such as the system impact study and upgrades to the line) associated with any capacity increase on Transmission Lines I, II, and III. *Pro Forma* Tariff, sections 19 and 27.

³¹ Petitioners 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.

(B) Petitioners are hereby granted waiver of the requirements of Order Nos. 888, 889, and 890 and of section 35.28 and Parts 37 and 358 of the Commission's regulations for Transmission Lines I, II, and III, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.