

145 FERC ¶ 61,231
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Peetz Logan Interconnect, LLC	Docket Nos. ER13-109-000
Sagebrush, a California partnership	ER13-110-000
Sky River LLC	ER13-111-000

ORDER GRANTING WAIVERS OF ORDER NO. 1000

(Issued December 19, 2013)

1. On October 11, 2012, Peetz Logan Interconnect, LLC (Peetz Logan), Sagebrush, a California partnership (Sagebrush), and Sky River LLC (Sky River) (collectively, Applicants) submitted a joint request for waivers of the requirements of Order No. 1000.¹ This order grants Applicants' requested waivers of the requirements of Order No. 1000, as discussed below.

I. Background

2. In Order No. 1000, the Commission amended the transmission planning and cost allocation requirements of Order No. 890² to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. Order No. 1000's transmission planning reforms require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its Open Access Transmission Tariff (OATT) to describe procedures for the consideration of transmission needs driven by Public Policy Requirements established by

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

² *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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

local, state, or federal laws or regulations in the local and regional transmission planning processes; (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities; and (4) improve coordination between neighboring transmission planning regions for new interregional transmission facilities.

3. Order No. 1000 also requires that each public utility transmission provider must participate in a regional transmission planning process that has: (1) a regional cost allocation method for the cost of new transmission facilities selected in a regional transmission plan for purposes of cost allocation; and (2) an interregional cost allocation method for the cost of certain new transmission facilities that are located in two or more neighboring transmission planning regions and are jointly evaluated by the regions in the interregional transmission coordination procedures required by Order No. 1000.³

II. Description of Applicants

4. Peetz Logan is a wholly-owned indirect subsidiary of Northern Frontier Wind LLC, which is a direct subsidiary of Northern Frontier Wind Funding, LLC (Frontier Funding). Frontier Funding is, in turn, a wholly-owned indirect subsidiary of NextEra Energy Resources, LLC (NextEra Resources), which is a wholly-owned indirect subsidiary of NextEra Energy, Inc. (NextEra Energy). Peetz Logan owns and operates a 78.2-mile, 230 kV radial transmission line and related equipment and facilities (the Peetz Logan Facility) located in Logan, Morgan, and Washington counties in Colorado. The Peetz Logan Facility connects three wind generation projects owned by its indirect affiliates to Public Service Company of Colorado's Pawnee Substation.⁴

5. Applicants explain that in 2010, Peetz Logan received a request for interconnection and transmission service from Arion Energy. As a result, Peetz Logan filed an OATT with the Commission in February 2011 that was subsequently accepted for filing.⁵ Applicants note that, as of the date of their waiver requests, Arion Energy has not pursued any interconnection or transmission studies.⁶

6. Sagebrush is a partnership owned by a group of qualifying facilities (QF) and exempt wholesale generators (collectively, the Sagebrush Projects) who hold respective ownership interests in the Sagebrush Line. The Sagebrush Line is a radial 46-mile,

³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 9.

⁴ The Peetz Logan affiliates are Logan Wind Energy, LLC; Peetz Table Wind Energy, LLC; and Northern Colorado Wind Energy, LLC. Request for Waiver at 4-5.

⁵ *Id.* at 6.

⁶ *Id.*

230 kV transmission line built to deliver power from the Sagebrush Projects to the Vincent Substation owned by Southern California Edison Company (SoCal Edison). Applicants state that the Sagebrush Projects receive transmission service on the Sagebrush Line through rights granted under the Second Amended and Restated Sagebrush General Co-Ownership Agreement, which allocates an undivided share of the Sagebrush Line's capacity to each Sagebrush Project in proportion to the size of the project.⁷ Applicants also state that there is one third party user of the line. Applicants explain that the Commission previously directed Sagebrush to allow Windstar Energy, LLC (Windstar Energy) to interconnect its proposed generation facility with the Sagebrush Line and to provide transmission service.⁸ Applicants further state that Windstar Energy began commercial operation in 2012 and is contractually obligated to operate its facility as a QF, so as to not jeopardize the QF or exempt status of the Sagebrush Line or Sagebrush Projects.

7. Applicants state that on July 2, 2009, Sagebrush received a third party request for transmission service. As a result, on December 7, 2009, Sagebrush submitted an OATT for filing.⁹ On February 4, 2010, the Commission accepted the proposed OATT, subject to further compliance filings.¹⁰ However, Sagebrush states that the third party which submitted the request for transmission service never followed up on its initial letter requesting service. Therefore, Applicants state that Sagebrush currently does not provide service under its OATT to any unaffiliated third party.¹¹

8. Sky River is a wholly-owned indirect subsidiary of NextEra Resources, which is a wholly-owned indirect subsidiary of NextEra Energy. Sky River owns and operates a 77 MW wind generating facility (Sky River Wind Facility) located in Kern County, California. Sky River states that energy from the Sky River Wind Facility is transmitted

⁷ *Id.* at 8.

⁸ Windstar Energy was previously Aero Energy LLC. *See Aero Energy, LLC*, 115 FERC ¶ 61,128, *modified*, 116 FERC ¶ 61,149 (2006), *final order*, 118 FERC ¶ 61,204, *order on reh'g*, 120 FERC ¶ 61,188 (2007).

⁹ Request for Waiver at 9.

¹⁰ *Sagebrush, a California partnership*, 130 FERC ¶ 61,093 (2010), *order on reh'g*, 132 FERC ¶ 61,234 (2010).

¹¹ Request for Waiver at 9. As explained above, Windstar Energy, whose transmission service is based on a pre-OATT bilateral agreement, is the only third party that uses the Sagebrush Line.

over its radial generator tie-line, the Wilderness Line,¹² as well as over the Sagebrush Line, before being integrated into the transmission grid at SoCal Edison's Vincent Substation.¹³ The Wilderness Line is a 9-mile, 230 kV generator tie-line interconnecting the Tehachapi Substation to the Wilderness Substation. The Wilderness Line is owned by Sky River and several other entities through a Co-Tenancy Agreement executed in 1990. Pursuant to this agreement, Sky River owns transmission capacity on the generator tie-line sufficient for the output of the Sky River Wind Facility, as well as additional, unused capacity.¹⁴

9. According to Applicants, Sky River filed an OATT with the Commission after Windstar Energy, a non-affiliated generator, requested transmission service over Sky River's unused interest in the Wilderness Line to enable the output of Windstar Energy's wind generating facility to reach the point of interconnection with SoCal Edison.¹⁵ Until Windstar Energy commenced operations, the Wilderness Line was not used by any non-affiliated third party other than the Sagebrush Projects that are parties to the Co-Tenancy Agreement.¹⁶

III. Request for Waivers

10. Applicants each seek a waiver of the additional transmission planning requirements in Order No. 1000. Applicants state that but for each having received a request for transmission service over their respective facilities from unaffiliated third parties, they each meet the requirements for waivers set forth in Order Nos. 888 and 890.

¹² Sky River owns a separate transmission line that interconnects to the Wilderness Line at the Tehachapi Substation and is not subject to the Sky River OATT. The Sky River Line is an 18-mile, 230 kV generator tie-line that interconnects the Sky River Substation, which is closest to the Sky River Wind Facility, to Tehachapi Substation. Applicants state that, of Sky River's generator tie-lines, the request for waiver of Order No. 1000 applies only to the Wilderness Line because it is the only line subject to the Sky River OATT. *Id.* at 10-12.

¹³ Since the time of this filing the topology of the system has changed. The Sky River Wind Facility no longer connects to the Wilderness Line; rather, the output of the Sky River Wind Facility now travels to Sky River's Mandible Switchyard, and then over an 18-mile long, 230 kV radial generator tie-line that interconnects the Mandible Substation to SoCal Edison's Highwind Substation. *See Sky River, LLC*, 143 FERC ¶ 61,241, at P 5 (2013).

¹⁴ Request for Waiver at 11-12.

¹⁵ *Id.* at 12 (citing *Sky River LLC*, 136 FERC ¶ 61,162 (2011)).

¹⁶ *Id.*

Applicants also state that they were previously granted waivers from Order No. 889 Open Access Same-Time Information System (OASIS) and Standards of Conduct requirements because they are small utilities and their facilities are not part of the regional power grid.¹⁷ Applicants state that the Commission should grant waivers of Order No. 1000 because the relevant facilities: (1) are not an integrated component of any electricity grid; and (2) were designed solely to provide transmission service to certain wind generation facilities. Finally, Applicants state that they continue to be small utilities because they transmit fewer than 4 million MWh of sales annually.¹⁸

IV. Notice of Filing

11. Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 64,975 (2012), with interventions, comments and protests due on or before November 9, 2012. An extension of time for filing interventions, comments and protests was granted until November 26, 2012. The American Wind Energy Association (AWEA) filed a timely motion to intervene.

V. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), AWEA's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

13. In Order No. 1000, the Commission stated that the criteria for waiver of the requirements of the Final Rule are unchanged from those used to evaluate requests for waiver under Order Nos. 888, 889, and 890.¹⁹ The Commission subsequently clarified that it would "entertain requests for waiver of Order No. 1000 on a case-by-case basis."²⁰

¹⁷ *Peetz Logan Interconnect, LLC*, 136 FERC ¶ 61,075, at P 40 (2011); *Sagebrush, a California Partnership*, 132 FERC ¶ 61,234, at PP 38-40 (2010); *Sky River, LLC*, 134 FERC ¶ 61,064, at PP 12, 14 (2011).

¹⁸ Request for Waiver at 7, 9-10, 12-13.

¹⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 832.

²⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at P 753.

14. In *Black Creek Hydro, Inc.*,²¹ the Commission stated that it would grant requests for waiver of Order No. 888 by public utilities that could show that they own, operate, or control only limited and discrete transmission facilities (i.e., 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 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. The Commission also explained that waiver of Order No. 889 would be appropriate: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities; or (2) if the applicant is a small public utility²² that owns, operates, or controls an integrated transmission grid, unless other circumstances are present which indicate that a waiver would not be justified.²³

15. We note that Peetz Logan, Sagebrush and Sky River each received a request for transmission service over their respective transmission facilities and, as a result, each filed an OATT governing transmission service over their respective facilities.²⁴ Under the circumstances presented, we grant Applicants' requests for waiver of the requirements of Order No. 1000.²⁵

16. Specifically, we find that waivers of Order No. 1000's requirements are warranted based on the representations that the transmission facilities owned by Peetz Logan, Sagebrush and Sky River are limited and discrete. The transmission facilities are radial

²¹ 77 FERC ¶ 61,232, at 61,941 (1996).

²² The Commission stated that to qualify as a small public utility, the applicant must be a public utility that meets the Small Business Administration definition of a small electric utility, i.e., one that disposes of no more than 4 million MWh annually. *Id.*

²³ *Id.* Although the Commission originally precluded waiver of the requirements for the 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 no longer disqualifies an applicant from obtaining a waiver of the Commission's Standards of Conduct.

²⁴ Although Applicants each have an OATT on file, Peetz Logan and Sagebrush indicate that the third parties requesting service did not further pursue the transmission service. As a result, Peetz Logan and Sagebrush do not currently provide service under their OATTs to any unrelated third party. As explained above, Sky River provides transmission service over the Wilderness Line pursuant to Sky River's OATT.

²⁵ Applicants request a waiver only of the requirements of Order No. 1000, and not the underlying requirement to have an OATT on file, and therefore we act herein on the waiver as requested.

in nature and are not integrated components of an electric grid. Rather, these facilities are designed solely to transmit power produced by certain wind generating projects to the grid. Thus, while Applicants are public utilities with currently effective OATTs on file, we find the discrete nature and limited purpose of the respective transmission facilities supports granting the requested waivers. In light of these representations and the circumstances presented, we grant waiver of Order No. 1000's requirements for Peetz Logan, Sagebrush, and Sky River.²⁶ However, while we grant the requested waivers, this does not mean that Applicants are immune from the potential of being allocated costs of regional or interregional transmission facilities that are selected in the regional transmission plan for purposes of cost allocation. As noted in Order No. 1000-A, the public utility transmission providers in each transmission planning region, in consultation with their stakeholders, may consider proposals to allocate costs directly to entities (for example, generators or network customers) as beneficiaries that could be subject to regional or interregional cost allocation.²⁷

The Commission orders:

Applicants' requests for waiver of the Order No. 1000 requirements are hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁶ We note that the Commission has previously granted waiver of Order No. 1000 for similar reasons. *See Alcoa Power Generating, Inc.*, 143 FERC ¶ 61,038 (2013); *Lockhart Power Co.*, 143 FERC ¶ 61,040 (2013); *SU FERC, L.L.C.*, 143 FERC ¶ 61,139 (2013).

²⁷ Order No. 1000-A, 139 FERC ¶ 61,132 at P 680.