

149 FERC ¶ 61,131
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

FPL Energy Oklahoma Wind, LLC

Docket No. OA14-3-000

ORDER GRANTING REQUEST FOR WAIVERS

(Issued November 20, 2014)

1. In this order, we grant the request of FPL Energy Oklahoma Wind, LLC (Oklahoma Wind) for waiver of the obligations to file an Open Access Transmission Tariff (OATT), establish and maintain an Open Access Same-Time Information System (OASIS), and comply with the Commission's Standards of Conduct.

I. Background

2. On July 16, 2014, Oklahoma Wind filed the instant request that the Commission grant waiver of the obligations to file an OATT, establish and maintain an OASIS, and comply with the Commission's Standards of Conduct found in Order Nos. 888,¹ 889,²

¹ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

² *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

890³ and of section 35.28 and Parts 37 and 358 of the Commission's regulations.⁴ In support, Oklahoma Wind states that it is a subsidiary of NextEra Energy Resources, LLC, and that it leases and operates a 51 MW aggregate renewable wind generating facility located in Oklahoma.⁵ Oklahoma Wind also states that it owns a collector substation and a 12.5-mile, 138 kV transmission line that connects its facilities to Oklahoma Gas and Electric Company's (Oklahoma G&E) system. Oklahoma Wind further states that a shared facilities agreement between Oklahoma Wind and its affiliate FPL Energy Sooner Wind, LLC (Sooner Wind) enables Sooner Wind to transmit the output of its facility to the point of interconnection with Oklahoma G&E.⁶

3. Oklahoma Wind argues that there is good cause to grant its waiver request because its facilities were built exclusively for the purpose of delivering the output of the Oklahoma Wind and Sooner Wind facilities to the Oklahoma G&E transmission system, and that Oklahoma Wind and Sooner Wind are the sole users of these facilities.⁷ Oklahoma Wind further argues that the facilities it shares with Sooner Wind are not an integrated component of any electricity grid but rather solely enable Oklahoma Wind and Sooner Wind to transmit the power from their wind generating facilities to the transmission grid.⁸

4. Oklahoma Wind also argues that it would be burdensome for Oklahoma Wind or Sooner Wind to file an OATT or to establish an OASIS for a situation such as this where they are the sole users of their interconnection facilities and where an affiliated generator may, or may not, share a portion of their interconnection facilities in the future. Oklahoma Wind next argues that the shared facilities controlled by Oklahoma Wind are

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (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).

⁴ 18 C.F.R. § 35.28 and Parts 37 and 358 (2014).

⁵ Oklahoma Wind Waiver Request at 2.

⁶ *Id.* Oklahoma Wind states that the shared facilities agreement was accepted in a letter order in Docket No. ER05-628-000 issued on March 23, 2005. *Id.* n.6.

⁷ *Id.* at 4.

⁸ *Id.*

limited and discrete. Additionally, Oklahoma Wind argues that the Commission's practice is to grant a waiver to small utilities (4 million MWh annually) and that Oklahoma Wind satisfies this criterion. Finally, Oklahoma Wind requests an effective date for its waiver of July 17, 2014, one day after the date on which it submitted its waiver request.⁹

II. Notice of Filing

5. Notice of Oklahoma Wind's filing was published in the *Federal Register*, 79 Fed. Reg. 43,743 (2014), with motions to intervene, comments, and protests due on or before August 6, 2014. None was filed.

III. Discussion

6. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT prior to providing transmission service. Order No. 889 and Part 37 of the Commission's regulations require public utilities to establish and maintain an OASIS. Order Nos. 889, 2004,¹⁰ and 717,¹¹ and Part 358 of the Commission's regulations require public utilities to abide by certain standards of conduct. In prior orders, the Commission has enunciated the standards for waiver of, or exemption from, some or all of the requirements of Order Nos. 888 and

⁹ *Id.*

¹⁰ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006). *See Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007).

¹¹ *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).

889.¹² The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹³ Order No. 717 did not change those criteria.¹⁴

7. The Commission may grant requests for waiver of the obligation to file an OATT to public utilities that can show that they own, operate, or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service. Should the public utility receive such a request, the Commission has determined that the public utility must file an OATT with the Commission within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request.¹⁵

8. The Commission has also determined that waiver of the requirements to establish an OASIS and abide by the Standards of Conduct would be appropriate for a public utility (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid), or (2) if the applicant is a small public utility that owns, operates, or controls an integrated transmission grid, unless other circumstances are present that indicate that waiver would not be justified.¹⁶

9. The Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the Commission alleging that

¹² See, e.g., *Black Creek Hydro, Inc., et al.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

¹³ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

¹⁴ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 54.

¹⁵ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

¹⁶ *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 2-3 (2011) (*Black Hills*), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Moreover, *Black Hills* did not affect waivers based on a public utility disposing of no more than four million MWh annually.

an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for OASIS waivers) or until the Commission takes action on a complaint alleging that the public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).¹⁷

10. Based on the statements in Oklahoma Wind's filing, we find that Oklahoma Wind's facilities and the facilities it shares with Sooner Wind are limited and discrete and do not constitute an integrated transmission system for purposes of the waiver analysis considered in this order. Oklahoma Wind built its transmission facilities to provide transmission service to itself and its affiliate, Sooner Wind. The only transmission service to be provided is to deliver the output of the generating facilities of Oklahoma Wind and its affiliate, Sooner Wind, to the Oklahoma G&E grid. Accordingly, we will grant Oklahoma Wind's request for waiver of the requirements set forth in Order Nos. 888 and 890, and in section 35.28 of the Commission's regulations to have an OATT on file. However, if Oklahoma Wind receives a request for transmission service, it must file with the Commission a *pro forma* OATT within 60 days of the date of the request.¹⁸

11. The Commission will also grant Oklahoma Wind waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to the requirement to establish and maintain an OASIS and of the requirements of Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations with respect to abiding by the Standards of Conduct. We note that Oklahoma Wind's waiver of the requirement to establish an OASIS will remain in effect until the Commission takes action in response to a complaint to the Commission alleging that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.¹⁹ Likewise, Oklahoma Wind's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity alleging that

¹⁷ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997) (*Central Minnesota*); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998) (*Easton*)).

¹⁸ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

¹⁹ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota*, 79 FERC ¶ 61,260 at 62,127; *Easton*, 83 FERC ¶ 61,334 at 62,343).

Oklahoma Wind has unfairly used its access to information to unfairly benefit itself or its affiliate.²⁰

The Commission orders:

Oklahoma Wind's request for waiver of the Commission's requirements to file an OATT, establish and maintain an OASIS, and comply with the Standards of Conduct is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁰ *Id.* Oklahoma Wind must notify the Commission if there is a material change in facts that affect its waiver, within 30 days of the date of such change. *Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations*, 127 FERC ¶ 61,141, at P 5 (2009).