

130 FERC ¶ 61,186
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Evergreen Wind Power V, LLC
Evergreen Wind Power III, LLC
Stetson Wind II, LLC
Champlain Wind, LLC
Evergreen Gen Lead, LLC
Canandaigua Power Partners, LLC
Canandaigua Power Partners II, LLC

Docket Nos. OA10-4-000

First Wind Energy Marketing, LLC

ER09-1549-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued March 18, 2010)

1. This order grants a request by Evergreen Wind Power V, LLC (Evergreen Wind V), Evergreen Wind Power III, LLC (Evergreen Wind III), Stetson Wind II, LLC (Stetson Wind II), Champlain Wind, LLC (Champlain Wind), Evergreen Gen Lead, LLC (Evergreen Gen Lead), Canandaigua Power Partners, LLC (Canandaigua Power Partners I), and Canandaigua Power Partners II, LLC (Canandaigua Power Partners II) (collectively, Applicants) for waiver of Order Nos. 888,¹ 889,² 890,³ and of section 35.28 and Parts 37 and 358 of the Commission's regulations.⁴

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).

Background

2. Each of the Applicants is a subsidiary of First Wind Holdings, LLC (First Wind Holdings). Applicants state that First Wind Holdings is an independent North American wind energy company focused exclusively on the development, ownership, and operation of utility-scale wind energy projects.

3. Regarding the instant request for waivers of the Commission's Open Access Transmission Tariff (OATT), Open Access Same-Time Information System (OASIS), and Standards of Conduct requirements, Applicants state that First Wind Holdings is developing a multiple-phase wind generating project located in Washington and Penobscot Counties, Maine (Maine Wind Project) and has developed a wind generating project located in Cohocton, New York (Cohocton Wind Project). Applicants maintain that the Maine Wind Project and the Cohocton Wind Project are both served by a generator lead line that is a radial line designed and constructed solely for the purpose of interconnecting generating facilities with the transmission system. Applicants assert that none of the generator lead lines in which any Applicant has an ownership interest constitutes an integrated transmission system and these facilities neither serve, nor are they designed to serve, other customers. Thus, Applicants request waivers of the

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).

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).

⁴ 18 C.F.R. § 35.28, 18 C.F.R. Part 37, and 18 C.F.R. Part 358 (2009). *See 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 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); *see also Standards of Conduct for Transmission Providers*, Order No. 717, 73 Fed. Reg. 63,796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008), *reh'g pending*.

Commission's OATT, OASIS, and Standards of Conduct requirements with respect to the generator lead lines associated with the Maine Wind Project and the Cohocton Wind Project.

4. In the *First Wind Energy Marketing Order*, the Commission conditioned its approval of market-base rate authority on the following: (1) First Wind Energy Marketing's, LLC (First Wind Energy Marketing) affiliates filing an OATT with the Commission with respect to transmission facilities they own, or (2) requesting a waiver of the obligation to file an OATT.⁵ Applicants state that First Wind Energy Marketing joins this application to the extent necessary to memorialize its and its affiliates' compliance with the *First Wind Energy Marketing Order* and to comply with the *First Wind Energy Marketing Order*.⁶ Applicants state that First Wind Energy Marketing, a subsidiary of First Wind Holdings, is a power marketer that does not own interests in the generator lead lines associated with the Maine Wind Project or the Cohocton Wind Project.⁷ However, Applicants assert that, because First Wind Energy Marketing does not own any interests in any transmission facilities, it is not seeking waivers on its own behalf.⁸

5. Applicants explain that the Maine Wind Project is a multiple-phase wind generating project that First Wind Holdings is developing. Applicants state that the first phase of the project, owned and operated by Evergreen Wind V, is a 57 MW (nameplate) wind-powered generating facility that commenced operations in 2009.⁹ Applicants contend that Stetson Wind II is developing a 25.5 MW (nameplate) wind-powered generating facility as part of the Maine Wind Project that will become operational in the near future. Two other subsidiaries of First Wind Holdings, Evergreen Wind Power III

⁵ *First Wind Energy Marketing, LLC, et al.*, Letter Order issued pursuant to delegated authority by the Director, Electric Power Regulation – West in Docket No. ER09-1549-000, *et al.* (December 1, 2009) (*First Wind Energy Marketing Order*).

⁶ Application at 2.

⁷ *Id.*

⁸ *Id.*

⁹ The Commission accepted for filing Evergreen Wind Power V's market-based rate power sales tariff and granted its application for authority to sell power at market-based rates in an unpublished letter order issued by the Director, Division of Tariffs and Market Development – West, under delegated authority in Docket Nos. ER09-174-000 and ER09-174-001 on January 15, 2009.

and Champlain Wind, according to Applicants, are developing wind-powered generating facilities that will be part of the Maine Wind Project, but neither has been built yet.

6. Applicants further state each of the generating facilities of the Maine Wind Project is or will be interconnected with the transmission system owned by the Bangor Hydro-Electric Company (Bangor Hydro), which is part of the ISO New England, Inc. (ISO-NE), a regional transmission organization. Applicants contend that the Maine Wind Project uses a 38-mile, 345 kV generator lead line that interconnects the Maine Wind Project with the Bangor Hydro transmission system. Applicants maintain that the Maine Wind Project generator lead line is designed, constructed, and used solely to interconnect the Maine Wind Project with the Bangor Hydro system. Applicants state that the generator lead line for this project is a radial facility that does not constitute an integrated transmission system and neither serves, nor is designed to serve, other customers.

7. Applicants explain that the Maine Wind Project generator lead line currently is owned and used by Evergreen Wind V, which owns the first phase of the Maine Wind Project to have become operational. Applicants assert that, prior to the commencement of operations of Stetson Wind II's wind generation facility, Evergreen Wind Power V will transfer the generator lead line to Evergreen Gen Lead. Applicants further assert that Evergreen Gen Lead will be owned by Evergreen Wind Power V, Stetson Wind II, Evergreen Wind Power III, and Champlain Wind each in proportion to its ownership of the total generating capacity of the Maine Wind Project. Applicants contend that their ownership of membership interests in Evergreen Gen Lead will provide Evergreen Wind Power V, Stetson Wind II, Evergreen Wind Power III and Champlain Wind with the right to use an undivided interest in the generator lead line to deliver energy produced by its respective generating facility to the Bangor Hydro transmission system. Applicants state that Evergreen Wind Power V, Stetson Wind II, Evergreen Wind Power III and Champlain Wind will not provide transmission service to each other or to any other party, and they will not pay fees to each other for transmission service.

8. Applicants state that the Cohocton Wind Project is a wind generating project developed by First Wind Holdings. Applicants explain that the Cohocton Wind Project is owned by Canandaigua Power Partners I, which owns wind-powered generating capacity of 87.5 MW (nameplate), and Canandaigua Power Partners II, which owns wind-powered generating facilities with a generating capacity of 37.5 MW (nameplate). Applicants state that the Cohocton Wind Project commenced operations in 2009.

9. Applicants maintain that the Cohocton Wind Project is interconnected with the transmission system owned by New York State Electric and Gas Corporation (NYSEG), which is part of the New York Independent System Operator, Inc. (NYISO), a regional transmission organization. Applicants assert that the Cohocton Wind Project uses a 9-

mile, 115 kV generator lead line¹⁰ that interconnects the Cohocton Wind Project with the NYSEG system. Applicants maintain that the Cohocton Wind Project generator lead line is designed, constructed, and used solely to interconnect the Cohocton Wind Project with the NYSEG system. Applicants state that the generator lead line is a radial facility that does not comprise an integrated transmission system and does not serve, and is not designed to serve, other customers.

10. Applicants explain Canandaigua Power Partners I and Canandaigua Power Partners II each owns an undivided interest in the Cohocton Wind Project generator lead line in proportion to its ownership of the total generating capacity of the Cohocton Wind Project. Applicants state that the undivided ownership interests in the generator lead line of Canandaigua Power Partners I and Canandaigua Power Partners II gives each of them the right to use the generator lead line to deliver energy to the NYSEG transmission system. Applicants maintain that Canandaigua Power Partners I and Canandaigua Power Partners II do not provide transmission service to each other, or to any other party, and they state that they do not pay fees to each other for transmission service.

11. On January 7, 2010, Applicants filed the request for waiver of Order Nos. 888, 889, and 890 and section 35.28 and Parts 37 and Part 358 of the Commission's regulations. Applicants explain that the Commission has routinely granted waiver where the applicant demonstrates that it owns, operates, or controls only limited and discrete transmission facilities, rather than an integrated transmission grid, or where the applicant is a small public utility that disposes of no more than 4 million MWH of energy annually. Applicants contend that they satisfy the waiver criteria in each instance.

12. Applicants state that the Cohocton Wind Project generator lead line is modest in size and is used by only two owners (Canandaigua Power Partners I and Canandaigua Power Partners II). The line is used to support a generating project constructed in one phase. Applicants note that Canandaigua Power Partners I and Canandaigua Power Partners II only participate in this waiver request (with regard to the Cohocton Wind Project generator lead line) out of an abundance of caution and despite the differences in their circumstances from those of the owners of Evergreen Gen Lead.

13. Three of the Applicants, Evergreen Wind III, Evergreen Wind V, and Stetson Wind II, provided a copy of a Line Loss Allocation Agreement among the respective parties describing the method of loss allocation between the parties. They do not believe that the Line Loss Allocation Agreement must be filed with the Commission as a rate schedule pursuant to section 205 of the Federal Power Act (FPA) and Part 35 of the

¹⁰ See Errata submitted by Applicants on January 15, 2010, regarding the voltage of the Cohocton Wind Project's generator lead line.

Commission's regulations. The parties to the Agreement state that they provided it for informational purposes as part of Applicants' request for waivers of the Commission's OATT, OASIS, and Standards of Conduct requirements.

14. Notice of the Applicant's filing was published in the *Federal Register*, 75 Fed. Reg. 3,458 (2010), with protests or interventions due on or before January 28, 2010. No interventions, protests, or comments were filed.

Discussion

15. Order Nos. 888 and 890 require public utilities that own, control, or operate facilities used for the transmission of electric energy in interstate commerce to file an OATT. Order No. 889 requires public utilities to establish an OASIS. 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 889.¹¹ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹²

16. 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. 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 request, and must comply with any additional requirements that are effective on the date of the request.¹³

17. The Commission has also determined that waiver of Order No. 889 would be appropriate for a public utility in these circumstances: (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.¹⁴ The

¹¹ See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

¹² See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007).

¹³ *Black Creek*, 77 FERC at 61,941.

¹⁴ *Id.*

Commission grants waivers to small public utilities based on the threshold of whether they dispose of no more than 4 million MWh annually.¹⁵ 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).¹⁶

18. Based on the statements in Applicants' filing, we find that the Applicants' transmission facilities are limited and discrete. Applicants' transmission facility in Maine, the Evergreen Gen Lead, was built exclusively to allow the Maine Wind Project to deliver its output to the transmission system of Bangor Hydro. In New York, the Cohocton Wind Project's transmission line was built exclusively to allow the Cohocton Wind Project to deliver its output to the transmission system of NYSEG. Accordingly, we will grant Applicants' waiver of the requirements in Order Nos. 888 and 890.¹⁷ In addition, we find that Applicants meet the Commission's definition of a small public utility because each Project has annual electric sales of no more than 4 million MWh.¹⁸

19. A waiver of the requirement to establish and maintain an OASIS site 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 information from Applicants that it needed 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 alleging that Applicants have used their access to transmission information to unfairly benefit Applicants' own sales, or an affiliate's sales. In addition, as the Commission recently explained in *Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations*, 127 FERC ¶ 61,141, at

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

¹⁶ *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).

¹⁷ Consistent with *Black Creek*, Applicants must file, within 60 days of its receiving a request for transmission service from a customer other than one of the First Wind companies addressed herein, a *pro forma* OATT and any additional requirements in compliance with Order Nos. 888 and 890.

¹⁸ See *Wolverine*, 127 FERC ¶ 61,159 at P 15.

P 5 (2009); *see also Wolverine*, 127 FERC ¶ 61,159, at n.21 (2009), Applicants must notify the Commission if there is a material change in facts that affects its waiver, within 30 days of the date of such change. In light of these circumstances, we will grant Applicants' waiver of the OASIS requirements of Order No. 889 and of the requirements of section 35.28 and Parts 37 and 358 of the Commission's regulations.

20. We also find that the Line Loss Agreement submitted by Evergreen Wind III, Evergreen Wind V, and Stetson Wind II, need not be filed pursuant to section 205 of the FPA and Part 35 of the Commission's regulations.

The Commission orders:

Applicants' request for waiver of the OATT requirements of Order Nos. 888, 889, 890, and of the requirements of section 35.28 and Parts 37 and 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.