

131 FERC ¶ 61,121  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Renewable Energy Systems Americas Inc. and PEAK Wind Development, LLC      Docket Nos. EL08-86-000  
EL08-86-002

v.

Otter Tail Power Company and Minnkota Power  
Cooperative, Inc.

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued May 6, 2010)

1. On January 14, 2010, the following parties filed a Joint Offer of Settlement and Settlement Agreement (Settlement) in this proceeding: Renewable Energy Systems Americas Inc. (RES Americas) and PEAK Wind Development, LLC (PEAK Wind) (collectively, Complainants) on behalf of themselves and their affiliate, Glacier Ridge Wind, LLC (Glacier Ridge); Otter Tail Power Company (Otter Tail); Minnkota Power Cooperative, Inc. (Minnkota) (collectively, Respondents); and NextEra Energy Resources, LLC (NextEra), on behalf of itself and its affiliates (collectively, Settling Parties). The Settlement resolves all issues set for hearing in Docket No. EL08-86-000 and any claims relating to allegations, circumstances or contentions raised by any party in this docket.<sup>1</sup>

2. On February 3, 2010, Trial Staff filed initial comments in support of the Settlement. No other comments were filed. On February 4, 2010, the Presiding Settlement Judge certified the Settlement to the Commission as uncontested.<sup>2</sup> Trial Staff

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<sup>1</sup> In addition, the Settlement states that it resolves all claims relating to allegations, circumstances or contentions raised by any party in Docket Nos. RS09-8-000 and OA97-139-001. This order does not address these other proceedings.

<sup>2</sup> *Renewable Energy Systems Americas Inc., et al.*, 130 FERC ¶ 63,006 (2010).

remark that the Settlement will save the Settling Parties time and money. In addition, Trial Staff note that the Settlement is of great benefit to the public because it enables new wind generation to be developed and marketed more quickly than would otherwise occur.

3. The Settlement arose out of Complainants' allegation that Respondents had unlawfully extended a preference to themselves and to others with respect to the interconnection of certain wind generation capacity (Existing Projects) to a newly constructed sixty mile 230 kV line (the Pillsbury I Line). Complainants contended that they and a wind generation project they are developing through their affiliate Glacier Ridge (the Glacier Ridge project) were harmed as a result of this preference. NextEra<sup>3</sup> is developing several wind generation projects, two of which are joint projects with Otter Tail (Existing Projects), and a third which is an independent project (Ashtabula III).

4. On December 19, 2008, the Commission issued an order on the complaint establishing hearing and settlement judge procedures.<sup>4</sup> Subsequently, Otter Tail and NextEra filed requests for rehearing of that order.

5. The Settlement resolves the matters set for hearing and provides an orderly process for the interconnection of specific generation projects to the Minnkota transmission system. Specifically, Paragraph 1 states that all capacity on the Pillsbury 1 Line associated with the interconnection of the Existing Projects is unaffected by the Settlement. Paragraph 2 sets out the terms for Minnkota to conduct studies for the interconnection of the Glacier Ridge II project and the Ashtabula III project (New Projects), and it provides certain queue positions for purposes of conducting interconnection studies. Paragraph 3 designates the costs for completing interconnection studies. Paragraph 4 discusses costs in the event that Complainants or NextEra request an Advance Study.

6. Paragraphs 5 through 8 of the Settlement deal with the parties' rights to any excess capacity on the Pillsbury I Line, the portion thereof (Final Excess Capacity) that might require the addition of certain upgrades (including, specifically, a static VAR compensator), and the respective cost responsibility for the use of existing capacity, excess capacity, and Final Excess Capacity.

7. Paragraph 9 discusses the impact of Complainants' installing turbines other than those originally indicated in their interconnection request, including costs for stability requirements that may be required. Paragraph 10 provides that Complainants' and NextEra's interconnection requests will be deemed to hold the same position in

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<sup>3</sup> NextEra was previously named FPL Energy, LLC.

<sup>4</sup> *Renewable Energy Systems Americas Inc., et al.*, 125 FERC ¶ 61,336 (2008).

Minnkota's interconnection queue for purposes of conducting any interconnection studies or any allocation of capacity. It also provides that Minnkota will modify Complainants' interconnection in certain ways upon the occurrence of certain specific events.

8. Paragraph 11 provides that Complainants and NextEra will enter into a Reciprocal Agreement laying out actions that they will take with respect to each other upon approval of the Settlement by the Commission. Paragraph 12 provides that RES Americas and the President of PEAK Wind, on behalf of PEAK Wind, will send a letter to PEAK Wind members containing certain information about the Settlement and subsequent events. Paragraph 13 discusses steps that Complainants and NextEra will take with respect to transmission lines crossing each others' project sites, including what will happen if it is determined that a proposed transmission line will interfere with the development, construction and/or operation of the others' wind projects. Paragraph 14 deals with positions that Complainants and NextEra will take in public meetings concerning public right-of-ways necessary to secure transmission corridors for the others' projects.

9. Paragraph 15 of the Settlement discusses cost responsibility for upgrades that may be required for the interconnection of the Glacier Ridge I project to Otter Tail's Buffalo substation, and contains reimbursement obligations in the event that Complainants transfer the Glacier Ridge I project or the related interconnection request to Minnkota, NextEra, and/or Otter Tail. Paragraph 15 also provides that neither Complainant will have any cost responsibility for certain specified studies, upgrades and other costs.

10. Paragraph 16 provides that, unless otherwise expressly modified in the Settlement, at such time as Complainants and/or NextEra sign a Large Generator Interconnection Agreement (LGIA) for interconnection via the Pillsbury I Line or Pillsbury II Line, the terms of their respective LGIAs shall govern such interconnections; provided that in the event of any conflict between the terms of such LGIA(s) and the Settlement, unless otherwise mutually agreed to by all affected parties, the applicable terms of the Settlement will control.

11. Paragraphs 17 to 30 of the Agreement contain various miscellaneous contractual provisions. In particular, Paragraph 21 provides that the applicable standard of review for a modification of the Settlement will be the "Mobile-Sierra" public interest standard of review. Paragraph 21 also provides that the standard of review for any modification to the Settlement applicable to the Commission acting on its own motion or on a third-party's request will be the public interest standard of review or, if that standard is held not to be applicable, then the most stringent standard permissible under applicable law. Paragraph 23 provides that, within fifteen days after the Commission approves the Settlement without modification or condition and provided no party timely asserts its disagreement as allowed in the Agreement, applicable parties will withdraw the complaint, the rehearing requests, and related pleadings in Docket Nos. EL08-86-000 and EL08-86-002.

12. The Settlement is fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding, except to the limited extent expressly provided in the Settlement.

13. Given that the Parties intend this Settlement to be a full and final settlement of the issues in this proceeding, this order terminates Docket Nos. EL08-86-000 and EL08-86-002.

The Commission orders:

The Settlement is hereby approved, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.