

131 FERC ¶ 61,132
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Crystal Lake Wind II, LLC
Crystal Lake Wind, LLC

Docket No. OA10-3-000

ORDER GRANTING REQUESTS FOR WAIVER

(Issued May 10, 2010)

1. This order grants requests by Crystal Lake Wind, LLC (Crystal Lake I) and Crystal Lake Wind II, LLC (Crystal Lake II) (collectively, Applicants) for waiver of Order Nos. 888,¹ 889,² and 890,³ and Part 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).

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 and clarification*, 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, pt. 37, pt. 358 (2009). *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

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I. Background

2. Crystal Lake I, and its affiliates, Crystal Lake II and Crystal Lake Wind III, LLC (Crystal Lake III) are wholly-owned direct subsidiaries of NextEra Energy Resources, LLC. Crystal Lake I owns and operates a 150 MW wind-powered electric generating facility located in Hancock County, Iowa. Crystal Lake II owns and operates a 200 MW wind-powered electric generating facility located in Winnebago County, Iowa. Crystal Lake III owns and operates a 66 MW wind-powered electric generating facility that is located adjacent to Crystal Lake II's facility.

3. Crystal Lake I and Crystal Lake II are parties to a Shared Facilities Agreement that provides Crystal Lake II the right to access and utilize Crystal Lake I's facilities to transmit energy generated by Crystal Lake II's wind projects to the electric grid at an interconnection point owned by ITC Midwest, LLC (ITC Midwest).⁵ On June 2, 2009, the Commission granted Crystal Lake I's request for waiver of Order Nos. 888, 889, 890 and of the Standards of Conduct requirements of Part 358 of the Commission's regulations in connection with its shared facilities.⁶

4. Crystal Lake I, Crystal Lake II, and Crystal Lake III are parties to an Amended and Restated Shared Facilities Agreement that provides Crystal Lake II and Crystal Lake III the right to access and utilize Crystal Lake I's facilities to transmit energy generated by Crystal Lake II and Crystal Lake III's wind projects to the electric grid at an interconnection point owned by ITC Midwest, LLC (ITC Midwest).⁷ These facilities

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); *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), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297 (2009), *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009).

⁵ The Shared Facilities Agreement is designated as Crystal Lake Wind, LLC Electric Rate Schedule FERC No. 1. *See Crystal Lake Wind, LLC*, Docket No. ER09-339-000 (Feb. 10, 2009) (unpublished letter order).

⁶ *Crystal Lake Wind, LLC*, 127 FERC ¶ 61,213 (2009).

⁷ The Amended and Restated Shared Facilities Agreement is designated as Crystal Lake Wind, LLC First Revised Electric Rate Schedule FERC No. 1. *See Crystal Lake Wind, LLC*, Docket Nos. ER10-421-000 & ER10-421-001 (March 5, 2010) (unpublished (continued...))

include a 38-mile 161-kV transmission line that connects to the ITC Midwest grid, and a 5-mile 161-kV transmission line that connects with the Crystal Lake II facilities.

5. Crystal Lake II and Crystal Lake III are parties to a Common Facilities Agreement that provides Crystal Lake III the right to access and utilize Crystal Lake II's facilities to transmit energy generated by Crystal Lake III's wind projects to the electric grid at the interconnection point owned by ITC Midwest.⁸ These facilities consist of the collection substation owned by Crystal Lake II, including a 161-kV transformer and associated equipment, and the various easements, permits and approvals (including the right-of-way permits and conditional use permits) owned by Crystal Lake II that Crystal Lake III must use to connect to the electric grid.⁹

6. On January 5, 2010, Crystal Lake Wind II filed a request for waiver of Order Nos. 888, 889, and 890, and the Standards of Conduct requirements of Part 358. Subsequently, on April, 5, 2010, Crystal Lake I filed an amendment to Crystal Lake II's January 5, 2010 filing requesting that the waiver it was previously granted of the requirements of Order Nos. 888, 889 and 890, and of the Standards of Conduct requirements of Part 358 regarding the transmission service it provides to Crystal Lake II be expanded to include Crystal Lake III. In support of its respective waiver requests, each Applicant explains that it owns, operates and controls limited and discrete transmission facilities, which are not an integrated component of any electricity grid and were designed solely to provide interconnection services to generating facilities. Consequently, each Applicant asserts that it would be a waste of resources for it to file an open access transmission tariff (OATT) or establish an Open-Access Same Time Information System (OASIS) when it is, at most, only providing a form of transmission service to a few customers. Additionally, Applicants state that the Commission has granted such requests in cases when a generator provides use of its interconnection facilities to another generator.¹⁰ Moreover, Applicants state that it is the Commission's practice to grant these waivers to small utilities (4 million MWh annually). Crystal Lake II contends that it satisfies this requirement because the maximum amount of energy it could transmit over its facility each year is approximately 2.3 million MWh, based on

letter order).

⁸ The Common Facilities Agreement is designated as Crystal Lake Wind II, LLC, Electric Rate Schedule FERC No. 1. *See Crystal Lake Wind II, LLC*, Docket No. ER10-420-000 (March 5, 2010) (unpublished letter order).

⁹ Crystal Lake Wind II, LLC, Electric Rate Schedule FERC No. 1, Original Sheet No. 8.

¹⁰ *See FPL Energy Oliver Wind, LLC*, 123 FERC ¶ 61,246, at P 11-15 (2008).

266 MW nameplate capacity multiplied by 8,760 hours (based on an assumption of 100% capacity factor for both generating facilities). Crystal Lake I states that were Crystal Lake I, Crystal Lake II, and Crystal Lake III jointly to generate 416 MW of energy each hour of the year, which it explains is an unlikely outcome for wind generating facilities, they would still fall short of reaching 4 million MWh.

7. Each Applicant states that, through the sharing of certain of its facilities with its affiliates, it may potentially be deemed a provider of transmission services and thus could be a “Transmission Provider” under section 358.3(k)(1) of the Commission’s regulations.¹¹ Therefore, pursuant to section 358.1(d)¹² of the Commission’s regulations, Applicants request waivers of the Standards of Conduct requirements in Part 358 of the Commission’s regulations. Applicants argue that good cause exists to grant each a complete waiver of Part 358 because of the limited and discrete nature of their facilities. Moreover, Applicants state that no purpose would be served by requiring either to follow the Standards of Conduct as a transmission provider given the limited scope of operations of Crystal Lake I, Crystal Lake II, and Crystal Lake III’s generating facilities. Applicants further contend that no harm will follow to wholesale energy markets or any market participants by granting these requests.

8. Notice of Crystal Lake II’s filing was published in the *Federal Register*, 75 Fed. Reg. 2530 (2010), with protests or motions to intervene due on or before January 26, 2010. Notice of Crystal Lake I’s filing was published in the *Federal Register*, 75 Fed. Reg. 19,633 with protests or motions to intervene due on or before April 15, 2010. No interventions, protests, or comments were filed.

II. Discussion

9. Applicants seek waiver of applicable requirements under Order Nos. 888, 889, and 890, and the Standards of Conduct requirements of Part 358. 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. Order No. 889 also required transmission providers to comply with the Standards of Conduct requirements which, under Order No. 717, have been revised and recodified at Part 358.¹³

¹¹ 18 C.F.R. § 358.3(k)(1) (2009).

¹² 18 C.F.R. § 358.1(d) (2009).

¹³ 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, 889, and 890, and Part 358 of the Commission’s regulations. *See, e.g., Alcoa Power Generating Inc.*,

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10. 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 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.¹⁴

11. The Commission has also determined that waiver of Order No. 889 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 it is a member of a tight power pool, or other circumstances are present that indicate that a waiver would not be justified.¹⁵ The Commission grants waivers to small public utilities based on the threshold of whether they dispose of no more than 4 million MWh annually.¹⁶ 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).¹⁷

120 FERC ¶ 61,035, at P 3 (2007), *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005), *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996); *see also 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), *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009).

¹⁴ *Black Creek*, 77 FERC at 61,941.

¹⁵ *Id.*

¹⁶ *See Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009) (*Wolverine*).

¹⁷ *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).

12. Based on the statements in Applicants' filings, we find that their facilities are limited and discrete. The only transmission service Crystal Lake II's facilities provide is to itself and Crystal Lake III, and the only transmission service Crystal Lake I's facilities provide is to itself, and its two affiliates. Accordingly, we will grant Applicants waiver of the requirements of Order Nos. 888 and 890 and of the requirement to have an OATT on file.¹⁸ In addition, each Applicant meets the Commission's definition of a small public utility because each has annual electric sales of no more than 4 million MWh.¹⁹ Accordingly, we will grant Applicants waiver of the requirements in Order No. 889, and the Standards of Conduct requirements of Part 358.²⁰

The Commission orders:

Applicants' requests for waiver of the requirements of Order Nos. 888, 889, and 890, and the Standards of Conduct requirements of Part 358 of the Commission's regulations, are hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁸ Consistent with *Black Creek*, Applicants must file, within 60 days of its receiving a request for transmission service, a *pro forma* OATT and any additional requirements in compliance with Order Nos. 888 and 890.

¹⁹ See *Wolverine*, 127 FERC ¶ 61,159 at P 15.

²⁰ A waiver of the requirement to establish and maintain an information system (i.e., an OASIS) 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 from Crystal Lake I or Crystal Lake II, information necessary 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 that Crystal Lake I or Crystal Lake II has used its access to transmission information to unfairly benefit Crystal Lake I or Crystal Lake II's own sales, or an affiliate's sales. In addition, Crystal Lake I and Crystal Lake II 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); see also *Wolverine*, 127 FERC ¶ 61,159 at n.21.