

140 FERC ¶ 61,245
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Prairie Rose Transmission, LLC

Docket No. ER12-2422-000

ORDER ACCEPTING TRANSMISSION SERVICE AGREEMENT AND GRANTING
REQUESTS FOR WAIVERS

(Issued September 27, 2012)

1. In this order, the Commission accepts the Transmission Service Agreement (Agreement)¹ filed by Prairie Rose Transmission, LLC (PR Transmission) between itself and its parent company Prairie Rose Wind, LLC (Prairie Rose), effective October 1, 2012, as requested. Also, as discussed below, we grant PR Transmission waiver of the requirement to file an Open Access Transmission Tariff (OATT), to comply with the Commission's Standards of Conduct, and to establish and maintain an Open Access Same-Time Information System (OASIS). We also grant PR Transmission's request for waiver of Part 101 of the Commission's regulations, Uniform System of Accounts.²

I. Filing

2. On August 8, 2012,³ pursuant to section 205 of the Federal Power Act (FPA),⁴ PR Transmission filed the Agreement. PR Transmission explains that it is a Minnesota

¹ Prairie Rose Transmission, LLC, FERC FPA Electric Tariff, Transmission Service Agreement, [TSA, Section 1, 1.0.0](#).

² 18 C.F.R. Part 101 (2012).

³ PR Transmission made a supplemental filing, on August 13, 2012, to ensure that the original August 8, 2012, filing was available through eLibrary.

⁴ 16 U.S.C. § 824d (2006).

limited liability company and a wholly-owned subsidiary of Prairie Rose,⁵ which will own and operate the 200 MW Prairie Rose Wind Project (Wind Project) located in Rock County, Minnesota. According to PR Transmission, it will own and operate limited, radial generator interconnection facilities, including a 115kV interconnection line, substation, and capacitor station (collectively, Interconnection Line), that will be used solely to interconnect the Wind Project to the integrated transmission grid controlled by the Midwest Independent Transmission System Operator, Inc. (MISO).⁶ PR Transmission states that its sole business is ownership and operation of the Interconnection Line and it will self-certify with the Commission as an exempt wholesale generator prior to energizing the Interconnection Line.

3. PR Transmission summarizes the key terms and conditions of the Agreement as follows: (1) PR Transmission will deliver up to 200 MW from the Wind Project to the point of change of ownership on a long-term basis and comply with the Generator Interconnection Agreement; (2) Prairie Rose will reimburse PR Transmission for all costs reasonably incurred in constructing, owning, operating, and maintaining the Interconnection Line; (3) Prairie Rose will pay for certain Reimbursable Costs; and (4) if a third party receives access to the Interconnection Line, Prairie Rose will be required to pay its *pro rata* capacity share of any Reimbursable Costs, with the exception that PR Transmission will not allocate costs to Prairie Rose to the extent that it is able to reasonably discern the costs were caused by another party.

4. PR Transmission explains that the Agreement only concerns what Prairie Rose will be required to pay PR Transmission, not what PR Transmission may charge a third party; the Interconnection Line is being constructed for the sole purpose of delivering the output of the Wind Project. Consequently, PR Transmission states, the Agreement

⁵ According to PR Transmission, 49 percent of Prairie Rose's membership interests are owned by Enel Kansas, LLC (Enel Kansas), a Delaware limited liability company. All membership interests in Enel Kansas are owned by Enel Green Power North America, Inc. (Enel NA), which is designated as the Manager of Prairie Rose. Enel NA is a Delaware corporation and a wholly-owned subsidiary of Enel Green Power International BV, a company organized under the laws of the Netherlands. Enel Green Power International BV is a wholly-owned subsidiary of Enel Green Power S.p.A., an Italian joint-stock company, which is a majority-owned subsidiary of Enel S.p.A., an Italian joint-stock company. Enel NA's principal business is owning, operating, and developing hydroelectric and renewable energy generation facilities throughout the United States and Canada. Fifty-one percent of Prairie Rose's membership interests are owned by EFS Prairie Rose, LLC, a Delaware limited liability company and an indirect, wholly-owned subsidiary of General Electric Company.

⁶ PR Transmission submits that Prairie Rose entered into a Generator Interconnection Agreement with MISO and Northern States Power Company.

preserves Prairie Rose's rights to firm deliveries of 200 MW at the point of change of ownership relative to a Prairie Rose affiliate's subsequent use of the Interconnection Line under a bilateral agreement, the terms of which would require Commission acceptance in the future. PR Transmission states that the Agreement does not apply to any third party who is not a Prairie Rose affiliate and who may receive transmission service over the Interconnection Line under an OATT.

5. PR Transmission requests waiver of the prior notice requirement in order to allow the Agreement to become effective October 1, 2012.⁷

6. PR Transmission states that the Interconnection Line is limited and discrete and requests that the Commission waive the requirements under Order Nos. 888⁸ and 890⁹ and section 35.28 of the Commission's regulations¹⁰ to file an OATT, the requirements under Order No. 889¹¹ and Part 37 of the Commission's regulations¹² to establish an OASIS, the requirements under Order No. 889 and Part 358 of the Commission's

⁷ PR Transmission represents that Prairie Rose plans to begin commissioning the Wind Project on October 1, 2012, and that date is necessary for Prairie Rose to maintain its contractual obligations and commissioning schedule.

⁸ *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 Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. N.Y. v. FERC*, 535 U.S. 1 (2002).

⁹ *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).

¹⁰ 18 C.F.R. § 35.28 (2012).

¹¹ *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).

¹² 18 C.F.R. Part 37 (2012).

regulations¹³ to comply with the Standards of Conduct, and the requirements under Part 101 of the Commission's regulations, Uniform System of Accounts.

II. Notice of Filing

7. Notice of PR Transmission's August 8, 2012, filing was published in the *Federal Register*, 77 Fed. Reg. 48,975 (2012), with interventions and comments due on or before August 29, 2012. None was filed.

III. Discussion

A. Transmission Service Agreement

8. We find the terms and conditions of the Agreement to be just and reasonable and not unduly discriminatory or preferential. Accordingly, we will accept the proposed Agreement, to become effective on October 1, 2012, as requested.

B. Waiver Requests

9. As noted above, PR Transmission seeks waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct with respect to the Interconnection Line.¹⁴ In support of its request for waiver, PR Transmission states that its sole business is ownership and operation of the Interconnection Line which is limited, discrete, and radial in nature and not an integrated component of any transmission grid. PR Transmission represents that the Interconnection Line is needed solely by Prairie Wind to transmit power from the Wind Project to MISO.

10. 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. Order No. 889 and Part 37 of the Commission's regulations require public utilities to establish and maintain an OASIS. Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations require

¹³ 18 C.F.R. Part 358 (2012).

¹⁴ A generator lead line is a transmission facility. See 16 U.S.C. §§ 796(23), 824(a)-(b) (2006). See *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149, at P 24 (2009) (noting that designation as a "generator lead line" does not render a line exempt from the Commission's regulation of transmission facilities). See also *Evergreen Wind Power III, LLC*, 135 FERC ¶ 61,030, at P 15 n.18 (2011).

public utilities to abide by certain standards of conduct.¹⁵ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.¹⁶ The criteria for waiver of these requirements are unchanged by Order Nos. 890, 2004, and 717.¹⁷

11. 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 with the Commission a *pro forma* OATT 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.¹⁸

12. The Commission has also determined that waiver of the requirement to establish an OASIS and abide by the Standards of Conduct would be appropriate for a public utility if the applicant: (1) owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) 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.¹⁹ 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

¹⁵ Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 16; Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 313.

¹⁶ 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*).

¹⁷ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

¹⁸ *Black Creek*, 77 FERC at 61,941.

¹⁹ *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), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Additionally, size is not relevant to whether waivers are granted to public utilities that participate in a Commission-approved Independent System Operator or Regional Transmission Organization. See 18 C.F.R. § 358.1(c) (2012).

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).²⁰

13. Based on the statements in PR Transmission's application, we find that PR Transmission's facilities qualify as limited and discrete. Accordingly, we will grant PR Transmission waiver of the requirements of Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to have an OATT on file. However, if PR Transmission 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.

14. The Commission will also grant PR Transmission waiver from the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to OASIS and Order No. 889 and Part 358 with respect to the Standards of Conduct. PR Transmission'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 that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.²¹ Likewise, PR Transmission's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that PR Transmission has unfairly used its access to information to unfairly benefit itself or its affiliate.²²

15. PR Transmission also requests waiver of Part 101 of the Commission's regulations, Uniform System of Accounts. We will grant waiver of Part 101 because PR Transmission's facilities are limited and discrete and only serve a merchant generation affiliate.²³ However, notwithstanding the waiver of the accounting requirements, we expect PR Transmission to keep its accounting records in accordance with generally accepted accounting principles.

²⁰ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998)).

²¹ *Id.*

²² *Id.* PR Transmission 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).

²³ *See Peetz Logan Interconnect, LLC*, 122 FERC ¶ 61,086 (2008).

The Commission orders:

(A) PR Transmission's Agreement is hereby accepted for filing, effective October 1, 2012, as requested, as discussed in the body of this order.

(B) PR Transmission is hereby granted waiver of the requirements under Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to file an OATT, the requirements under Order No. 889 and Part 37 of the Commission's regulations to establish and maintain an OASIS, the requirements under Order No. 889 and Part 358 of the Commission's regulations to comply with the Standards of Conduct, and the requirements under Part 101 regarding the Uniform System of Accounts, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.