

142 FERC ¶ 61,183
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc. and
Bangor Hydro Electric Company

Docket No. ER13-741-000

ORDER CONDITIONALLY ACCEPTING LARGE GENERATOR
INTERCONNECTION AGREEMENT

(Issued March 11, 2013)

1. On January 10, 2013, ISO New England, Inc. (ISO-NE) and Bangor Hydro Electric Company (Bangor) (collectively, ISO-NE/Bangor) jointly submitted for filing an unexecuted Large Generator Interconnection Agreement by and among ISO-NE, as the System Operator, Bangor, as the Interconnecting Transmission Owner and Evergreen Wind Power II, LLC (Evergreen Wind) as the interconnection customer (Oakfield LGIA). In this order, we conditionally accept the Oakfield LGIA to become effective on March 2, 2013, as requested, subject to a further compliance filing.

I. Background

2. Pursuant to section 205 of the Federal Power Act,¹ Part 35 of the Commission's regulations,² and Order No. 2003,³ ISO-NE/Bangor submitted the unexecuted Oakfield

¹ 16 U.S.C. § 824d (2006).

² 18 C.F.R. Part 35 (2012).

³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs.

(continued...)

LGIA. The Oakfield LGIA governs the proposed interconnection of Evergreen Wind's generating facility at Bangor's 345 kV Keene Road Substation. The facility will be comprised of 48 wind turbine generators in a wind farm totaling 147.6 MW, and will be located in northern Maine, specifically Oakfield, Maine.⁴ While the Oakfield LGIA is not executed, ISO-NE/Bangor state that it otherwise fully conforms to the Commission-approved *pro-forma* Large Generator Interconnection Agreement contained in Appendix 6 of Schedule 22 of the ISO-NE's Open Access Transmission Tariff (OATT).

3. ISO-NE/Bangor explain that the Oakfield LGIA is not fully executed due to a pending matter before the Maine Public Utilities Commission (MPUC). Specifically, they note that the MPUC in Docket No. 2011-170 has prohibited certain practices between Bangor and its affiliates.⁵ Bangor and First Wind Holdings, LLC have sought clarification of the decision or approval of certain affiliate transactions, by the MPUC, but presently are awaiting a ruling. Bangor does not expect to receive any such clarifications or approvals until later this year.

4. Notwithstanding the above, ISO-NE/Bangor state that, since the Oakfield LGIA is subject to the Commission's jurisdiction, they submit it for approval so that it can become effective and not delay Evergreen Wind's ability to proceed with its proposed interconnection and also to not cause a delay that could undermine Evergreen Wind's financing.

II. Notice of Filing and Responsive Pleadings

5. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 4141 (2013), with interventions and protests due on or before January 31, 2013. On January 31, 2013, Northern Maine Independent System Administrator, Inc. (NMISA)

¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

⁴ The facility will be directly interconnected to the ISO-NE-administered transmission system at Bangor's 345 kV Keene Road Substation (located in Lincoln, Maine) through a 59-mile, 115 kV transmission line from the facility to the substation. Oakfield LGIA at Appendix A.

⁵ First Wind Holdings, LLC (First Wind) and Bangor's parent company, Emera Incorporated, are joint owners, through subsidiaries, of Evergreen Wind. First Wind and all of its subsidiaries are considered affiliates. Oakfield LGIA at 4, (citing MPUC Docket No. 2011-170).

filed a motion to intervene and a protest to the filing. On February 15, 2013, ISO-NE/Bangor filed a joint answer and Evergreen Wind filed a motion to intervene out-of-time and an answer. Subsequently, on February 21, 2013, NMISA filed an answer to the answers.

NMISA'S Protest

6. NMISA requests that the Commission reject ISO-NE/Bangor's filing without prejudice. NMISA suggests that ISO-NE/Bangor can resubmit the filing once Bangor and Evergreen Wind have complied with the requirements of NMISA's tariff and Market Rule 8, permitting NMISA to determine whether the proposed facilities will have an adverse impact on the ability of the Northern Maine Transmission System (NMTS) to meet the reliability standards contained in section 8.9 of its Market Rule 8.⁶ NMISA adds that no application or information has been submitted to NMISA.

7. In sum, NMISA objects to the approval of the Oakfield LGIA because Bangor and Evergreen Wind have not complied with the requirements of its tariff and Market Rule 8 which require the submittal of information and materials by a "Connection Applicant" under section 8.2.1 of Market Rule 8.⁷ NMISA maintains that it has not been afforded the opportunity to evaluate the impact on reliability (and other factors) that NMISA is obligated to consider under section 8.2.2 of Market Rule 8.

8. NMISA explains that section 4.21(a) of its tariff provides that "[n]o entity shall connect any new facility to the Northern Maine Transmission System if such action is disapproved by the ISA."⁸ Moreover, it notes that the "connection of a new facility," as defined in section 4.21(b) of its tariff, includes, "the addition or removal of any transmission facility located in Northern Maine and rated 69 kV or above, whether or not the transmission facility is or will be part of the Northern Maine Transmission System[.]"⁹ NMISA also notes that section 8.1 of Market Rule 8 contains substantively identical language and section 8.2 of Market Rule 8 requires any applicant seeking to connect a new facility to submit specific information to NMISA for its review and approval.

⁶ NMISA Protest at 1.

⁷ *Id.* at 4.

⁸ *Id.*

⁹ *Id.* (quoting NMISA tariff section 4.21(b)(iii)).

9. Observing that the Oakfield LGIA covers the construction of a 59-mile 115 kV transmission line from Evergreen Wind's generating facility to Bangor's Keene Road substation, a line that is physically located in northern Maine, NMISA maintains that the entities seeking to construct these facilities must first submit the proposal to NMISA for assessment, and, to date, Bangor and Evergreen Wind have not made the required submittal.¹⁰

10. NMISA contends that, if the Commission accepts the Oakfield LGIA, it would countenance a circumvention and clear violation of Bangor Hydro's and Evergreen Wind's obligation under the NMISA Tariff and Market rules[;]...deny...NMISA the ability to conduct the analyses necessary to discharge its responsibilities under Section 8.2.2....[and] create a dangerous precedent of submitting such agreements to the Commission before the reliability implications of the proposed facilities have been determined by the relevant regional authority.[¹¹]

ISO-NE/Bangor's Answer

11. ISO-NE/Bangor request that the Commission reject the protest.¹² ISO-NE/Bangor raise three arguments in support of their request. Namely, (1) the Oakfield LGIA is a just and reasonable agreement that is fully consistent with the Commission-approved standard form of service agreement contained in Schedule 22 of ISO-NE's OATT; (2) the Oakfield LGIA involves the interconnection of a generating unit to the ISO-NE-administered transmission system and does not involve the addition or removal of any transmission facility that is connecting to, or disconnecting from, the NMTS; and (3) the facilities associated with the Oakfield LGIA will not be connected to the NMTS and thus, NMISA's tariff and Market Rules are not applicable.

12. Moreover, the transmission system in Northeastern Maine overseen by NMISA interconnects only with the New Brunswick System Operator and *not* with the ISO-NE-administered transmission system to which the Evergreen Wind facility will be interconnected.¹³ Next, ISO-NE/Bangor observe that the protest asks for relief as though

¹⁰ *Id.* at 4-5.

¹¹ *Id.* at 5.

¹² ISO-NE/Bangor Answer at 3.

¹³ *Id.*

NMISA was the Transmission Provider to which the Oakfield LGIA is connecting. Since this is not the case, ISO-NE/Bangor contend that the prerequisite condition advocated by NMISA is not applicable and is inconsistent with Order No. 2003.¹⁴ Specifically, they note that “[p]ursuant to Order No. 2003, a proposed interconnection is subject to the procedures of the interconnecting transmission provider, and potential impacts of a proposed interconnection on neighboring systems are coordinated through those procedures.”¹⁵ Nevertheless, even though the ISO-NE did not identify the NMTS as an “Affected System,” for completeness, ISO-NE identified, albeit unlikely, the New Brunswick System Operator, which is connected with the ISO-NE-administered system, as a potential “Affected System.” The New Brunswick System Operator conducted a review of the reports of the Interconnection Studies and found no adverse system impacts.¹⁶ Given that the NMTS was not identified as an “Affected System” and the New Brunswick System Operator confirmed the absence of adverse system impacts, ISO-NE/Bangor urges the Commission to reject the protest not only for its potential to hinder future wind generation interconnections, but because it is also contrary to goals established in Order No. 2003.

13. Finally, ISO-NE/Bangor maintain that neither the NMISA tariff nor the NMISA Market Rules are applicable to the Oakfield LGIA. They submit that contrary to NMISA’s contention, the Oakfield LGIA does not involve the addition or removal of any transmission facility that is connecting to or disconnecting from the NMTS.¹⁷ They note that NMISA’s tariff section 8.2.1 provides for a connection assessment when an entity wishes to connect a new facility to the NMTS; in the instant case, neither the generating unit nor the transmission facilities will connect to the NMTS. Thus, ISO-NE/Bangor assert that, absent a proposed connection to the NMTS, the provisions cited to and relied upon by NMISA are not applicable to Evergreen Wind’s interconnection to the ISO-NE-administered transmission system.¹⁸ ISO-NE/Bangor opine that a fairer reading of NMISA’s tariff sections 4.21(a) and 4.21(b)(i), together, results in the conclusion that a NMISA connection assessment for a generator connection is required only where the connection is to the NMTS.¹⁹ ISO-NE/Bangor conclude that the Commission’s

¹⁴ *Id.* at 7-8.

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 9-10.

¹⁷ *Id.* at 11.

¹⁸ *Id.*

¹⁹ *Id.* at 12.

acceptance of the Oakfield LGIA does not circumvent NMISA's tariff or Market Rules, simply because those provisions are not applicable to the proposal.²⁰

Evergreen Wind's Answer

14. Evergreen Wind fully supports ISO-NE/Bangor's response²¹ and basically echoes the argument proffered by ISO-NE/Bangor that the NMISA tariff and Market Rule provisions relied on by NMISA in its protest, are not applicable to the Oakfield LGIA.²²

NMISA's Answer

15. NMISA maintains that its tariff and Market Rules "unequivocally authorize and mandate that the NMISA make a determination with respect to the reliability implications of any proposed addition of a 69-kV or above transmission facility to be located in Northern Maine" and that "Order No. 2003 in no way limits or modifies this mandate."²³ It also contends that the suggestion that compliance with its requirements would hinder the development of wind generation is baseless.²⁴ It again urges the Commission to reject the Oakfield LGIA without prejudice, given Evergreen Wind's failure to comply with the explicit requirements of its tariff and Market Rules. It is NMISA's opinion that, if the Commission accepts the Oakfield LGIA filing, it would authorize action that would violate and directly conflict with its tariff and Market Rules.

16. NMISA asserts that its tariff and Market Rules are clear -- that an entity seeking to locate any 69-kV or above transmission facility in northern Maine must submit the proposal to NMISA for evaluation regardless of whether the transmission facility will or will not be part of the NMTS.²⁵ Countering ISO-NE/Bangor's and Evergreen Wind's interpretation of its tariff, NMISA points out that,

²⁰ *Id.* They also observe that the Commission's acceptance of the Oakfield LGIA would be consistent with the Commission's prior acceptance of the Stetson I LGIA and Stetson II LGIA in Docket No. ER09-1588-000. *Id.*

²¹ Evergreen Wind Answer at 2.

²² *Id.* at 2-4.

²³ NMISA Answer at 2.

²⁴ *Id.*

²⁵ *Id.* at 3.

Section 4.21 contains separate requirements for analyzing generating-unit connections and transmission facility additions. To the extent a proposal involves both the connection of a generating unit to the NTMS *and* the addition of transmission facilities located in Northern Maine, the NMISA must evaluate both aspects of the proposal. While a generating unit must be physically connected to the NMTS to be subject to the evaluation requirement, a transmission facility need only be located in Northern Maine. Accordingly, because the transmission facilities governed by the Oakfield LGIA will be located in Northern Maine (but the generating unit will not be connected to the NMTS) the proposal is subject to evaluation under NMISA Tariff Section 4.21 (b)(iii).[²⁶]

17. Further, with regard to ISO-NE/Bangor's reference to the Commission's prior acceptance of the Stetson projects, NMISA counters that the proposed projects were presented to and evaluated by NMISA, which determined that they would not have an adverse reliability impact on the NMTS.

18. NMISA also maintains that any suggestion that the 59-mile 115 kV line associated with the Oakfield LGIA does not constitute a "transmission line" should be rejected as inconsistent with Commission precedent. Further, NMISA contends that, while responding parties assert that the Commission has accepted similar generator interconnection agreements without challenge by NMISA, the fact that NMISA may have declined to analyze or challenge those similar proposals does not serve as a basis for their contradictory interpretation of NMISA's tariff and Market Rules.

19. Next, NMISA asserts that to accept ISO-NE/Bangor's argument that its filing is consistent with Order No. 2003 would "create an irreconcilable conflict."²⁷ That is, NMISA contends that "if the Commission were to accept the Oakfield LGIA, it would become a binding Commission-filed rate schedule pursuant to which the parties would be both authorized and obligated to perform. That obligation to perform – which would include the construction of the subject transmission facilities in Northern Maine – would directly contradict the requirement of the NMISA Tariff and Market Rules to first submit the facility construction proposal to the NMISA for a determination as to the impact of such facility on the reliability of the NMTS."²⁸ To resolve this conflict, NMISA urges the Commission to reject the Oakfield LGIA.

²⁶ *Id.* at 4 (emphasis in original).

²⁷ *Id.* at 6.

²⁸ *Id.*

20. NMISA also maintains that Order No. 2003 is irrelevant to evaluating its tariff and Market Rules as applied to the Oakfield LGIA filing. It points out that its tariff and Market Rules “became effective in 2006 – long *after* the issuance of Order No. 2003... [and] [h]ad the Commission considered the NMISA Tariff and Market Rules to be inconsistent with the requirements of Order No. 2003, it presumably would have either rejected the relevant provisions or required the NMISA to change them; instead, it accepted them without condition.”²⁹

21. Finally, NMISA discounts ISO-NE/Bangor’s and Evergreen Wind’s assertion that compliance with its tariff and Market Rules will hinder the development of wind generation.³⁰ NMISA asserts that this contention is baseless in that to the extent a particular proposal will have no reliability impact on NMTS, the review period will likely be brief and NMISA’s decision will likely be issued promptly, as was the case when NMISA reviewed the proposals for the Stetson Wind projects.³¹

III. Discussion

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

23. Rule 213 (a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213 (a)(2) (2012), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We are persuaded to accept ISO-NE/Bangor’s, Evergreen Wind’s, and NMISA’s answers because they have assisted us in our decision-making process.

B. Commission Determination

24. The Oakfield LGIA conforms to the *pro forma* LGIA contained in ISO-NE’s OATT, and ISO-NE/Bangor submitted the unexecuted Oakfield LGIA consistent with the

²⁹ *Id.* at 7. It also notes that Maine Public Service Company, which like Bangor is wholly owned by Emera, is the primary transmission provider in Northern Maine and a member of the NMISA board, never objected to or proposed a change to the relevant provisions.

³⁰ *Id.* at 8.

³¹ *Id.*

dictates of Order No. 2003. Accordingly, we will conditionally accept the filing, as discussed below.

25. ISO-NE/Bangor conducted the necessary analysis to identify any Affected System. According to ISO-NE/Bangor, the analysis concluded that there were no Affected Systems, but as described above, for completeness, they conducted an assessment of the impact of the Evergreen Wind facility in coordination with the New Brunswick System Operator (with which the ISO-NE-administered system is connected). This additional assessment, which went beyond the requirements of its procedures and Order No. 2003, concluded that the Oakfield LGIA had no adverse impact on other systems. NMISA does not make any argument that this analysis was flawed, or that its system is in fact impacted by the facilities at issue here.

26. NMISA suggests that the juxtaposition of the Order No. 2003-compliant filing of ISO-NE/Bangor and Evergreen Wind with the provisions of the NMISA tariff and Market Rules would create an irreconcilable conflict. We disagree. The pertinent procedures for the interconnection of a facility must, as a practical matter, be those for the transmission system to which the entity will interconnect, in this instance, the ISO-NE-administered system. Since the facilities at issue will not interconnect with the NMTS, and NMISA is not an Affected System pursuant to ISO-NE's analysis, the inquiry ends there. Thus, notwithstanding NMISA's objection, its reliance on its tariff and Market Rules as the basis for review of the Oakfield LGIA is misplaced.

27. Moreover, our reading of NMISA's tariff and Market Rules does not lead to the outcome sought by NMISA. Section 8.1.1 of NMISA's Market Rules provides that no entity shall connect any new facility to, or deactivate, disconnect, retire or remove an existing facility from, the *NMTS* unless it complies with certain dictates. And the facilities at issue here will not connect to the NMTS. Section 8.1.2 does seem to provide that a transmission facility physically located in northern Maine constitutes a "connection of a facility." Nevertheless, in section 8.2, the "connection assessment process" section, the delineation of the necessary action in the case of such a transmission facility, provides that the Connection Applicant shall submit an application to the directly-affected transmission owner, with a copy to NMISA. In the matter at hand, the proposed transmission line does not directly affect a transmission owner governed by NMISA's Market Rule. It is unreasonable – and we believe a strained reading of the Market Rule - to expect ISO-NE/Bangor and Evergreen Wind or any other similarly-situated entity to submit an application when it will not be connecting to a transmission owner whose system is part of the NMTS. The requirement to submit certain information is reasonable only within the context of a Connection Applicant actually connecting a facility to a transmission owner's system located in NMTS. Physical location does not equate to

electrical relevance.³² Only when the transmission facility is actually to be interconnected to the NMTS, need a Connection Applicant submit the prerequisite application to NMISA.

28. Notwithstanding the above, the Oakfield LGIA is unexecuted pending clarification of certain affiliate transaction restrictions imposed by the MPUC. Without such MPUC approval or clarification of its orders, the facilities contemplated by this application may not be constructed. In light of this, the Commission accepts the Oakfield LGIA as filed, subject to ISO-NE/Bangor submitting a compliance filing within 30 days of the MPUC's action resolving the affiliate transaction prohibition, describing the outcome of that proceeding and, as necessary, including an executed Oakfield LGIA.

The Commission orders:

(A) The Commission hereby conditionally accepts the Oakfield LGIA to become effective March 2, 2013, as discussed in the body of this order.

(B) ISO-NE/Bangor are hereby directed to submit a compliance filing as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³² *E.g., Blue Summit Wind, LLC*, 142 FERC ¶ 61,031 (2013) (facilities physically located in the Eastern Interconnection but, as relevant here, electrically connected to ERCOT, were considered to be in ERCOT and therefore largely non-jurisdictional); *Cottonwood Energy Co., LP*, 118 FERC ¶ 61,198 (2007) (same).