

170 FERC ¶ 61,228
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Mountain Breeze Wind, LLC

Docket No. TX19-1-000

FINAL ORDER DIRECTING THE PROVISION OF INTERCONNECTION AND
TRANSMISSION SERVICES AND ACCEPTING AGREEMENTS FOR FILING

(Issued March 19, 2020)

1. In this order, we grant Mountain Breeze Wind, LLC's (Mountain Breeze) request under sections 210, 211, and 212 of the Federal Power Act (FPA)¹ and direct Cedar Creek Wind Energy, LLC (Cedar Creek) and Cedar Creek II, LLC (Cedar Creek II) (collectively, the Cedar Creek Entities) to provide interconnection service to Mountain Breeze's generating facilities and to provide transmission services necessary for Mountain Breeze to deliver power into the Public Service Company of Colorado (PSCo) grid at the point of interconnection with Mountain Breeze, as discussed below. We also accept the Firm Point-to-Point Transmission Service Agreement (TSA) and Large Generator Interconnection Agreement (LGIA) (collectively, Agreements) among the Cedar Creek Entities and Mountain Breeze (collectively, Parties), effective the date of this order.

I. Background

2. On December 28, 2018, Mountain Breeze filed an application requesting a proposed order from the Commission directing the Cedar Creek Entities to provide interconnection service under section 210 and transmission services under section 211 of the FPA to the Mountain Breeze Project, a 170-megawatt (MW) wind-powered generation project in Weld County, Colorado, over the Cedar Creek Entities' shared generator tie line. The generator tie line is an approximately 72-mile portion of a 76-mile, 230-kilovolt (kV) line that connects the Cedar Creek and Cedar Creek II respective generation facilities from the Junction Switchyard to the transmission network owned and operated by PSCo at Keenesburg Switching Station (Keenesburg).

¹ 16 U.S.C. §§ 824i, 824j, and 824k (2018).

3. On March 21, 2019, the Commission issued a Proposed Order directing the provision of interconnection and transmission services and ordering the Parties to negotiate rates, terms and conditions of the interconnection and transmission services requested by Mountain Breeze.² On November 27, 2019, in response to the Proposed Order, the Parties jointly filed the Agreements.

4. The Parties state that they have in good faith negotiated the rates, terms and conditions of the requested transmission and interconnection services, with the assistance of the Commission's Alternative Dispute Resolution Service, and that the Agreements resolve all issues raised in prior pleadings. Accordingly, the Parties request that the Commission accept the Agreements without modification or condition, effective upon the date of issuance of this order.

5. The Agreements provide for the rates, terms and conditions that will govern interconnection of the Mountain Breeze Project to the generator tie line and transmission service of the power generated by the Mountain Breeze Project over the generator tie line. The TSA, among other items, provides: (1) specifications for long-term firm point-to-point transmission service including a description of the capacity and energy to be transmitted, the point of receipt, the point of delivery, and the maximum amount of capacity and energy to be transmitted and the transmission charges;³ (2) a Metering and Billing Procedures Agreement;⁴ and (3) allocation examples. The LGIA, among other items, provides for: (1) the scope of service; (2) interconnection facilities engineering, procurement and construction; (3) testing and inspection; (4) metering; (5) communications; and (6) operations and maintenance.

II. Notice of Filing

6. Notice of the Parties' filing of the Agreements was published in the Federal Register on December 3, 2019, 84 Fed. Reg. 67,443-02 (2019), with comments due on or before December 18, 2019. None was filed.

² *Mountain Breeze Wind, LLC*, 166 FERC ¶ 61,200 (2019) (Proposed Order).

³ TSA at Schedule 1.

⁴ *Id.* at Appendix C.

III. Discussion

A. Statutory Requirements

7. Sections 210, 211, 212 and 213 of the FPA outline specific requirements for a Commission order that directs interconnection and/or transmission. Below, we discuss the relevant requirements of each section.

B. Jurisdiction

8. Pursuant to section 210(a), any “electric utility” may request an order requiring physical interconnection of its facilities with “the transmission facilities of any electric utility.”⁵ Pursuant to section 211(a), any “electric utility” may request an order requiring a “transmitting utility to provide transmission services.”⁶ An “electric utility” is defined under the FPA, in relevant part, as a “person or Federal or State agency . . . that sells electric energy.”⁷ A “transmitting utility” is defined in the FPA as an entity that “owns, operates, or controls facilities used for the transmission of electric energy — (A) in interstate commerce; (B) for the sale of electric energy at wholesale.”⁸

9. As discussed in the Proposed Order, we continue to find that Mountain Breeze is an “electric utility” eligible to request an order requiring interconnection and transmission services pursuant to sections 210 and 211.⁹

10. Further, we continue to find that the Cedar Creek Entities are “transmitting utilities” for purposes of section 211 because they both sell power at wholesale from their respective projects and own the generator tie line, which they use to transmit electric energy to the interstate grid for the purpose of making wholesale sales of energy. Accordingly, the Commission has jurisdiction under sections 210 and 211 to issue an order requiring the Cedar Creek Entities to interconnect with the Mountain Breeze Project and to provide transmission service.

⁵ 16 U.S.C. § 824i(a)(1)(A).

⁶ 16 U.S.C. § 824j.

⁷ 16 U.S.C. § 796(22)(A) (2018).

⁸ 16 U.S.C. § 796(23).

⁹ Proposed Order, 166 FERC ¶ 61,200 at P 41 (citing, e.g., *Wheatridge Wind Energy, LLC*, 162 FERC ¶ 61,045 (2018); *Southern Cross Transmission LLC*, 137 FERC ¶ 61,206 (2011)).

C. Good Faith Request

11. Section 211(a) provides that no order may be issued unless the applicant has made a request for transmission service to the transmitting utility that would be the subject of such an order at least 60 days prior to its filing of an application for such order.¹⁰

12. We found in the Proposed Order that Mountain Breeze submitted a good faith request to the Cedar Creek Entities for transmission service on October 17, 2017, 60 days prior to filing its application, as required by section 211 and that Mountain Breeze's good faith request included all components required by section 2.20 of the Commission's regulations.¹¹

D. Public Interest

13. Sections 210(c) and 211(a) provide that the Commission may issue an order directing interconnection or transmission service if the order meets the requirements of section 212 and would otherwise be in the public interest. In *Kiowa Power Partners, LLC*,¹² the Commission found that “[n]ew interconnections generally meet the public interest test by making transmission service available to new generators and, thus, increasing the supply of electricity and improving competition.”¹³ Further, the Commission has previously determined that, “as a general matter, the availability of transmission service enhances competition in power markets by increasing power supply options of buyers and sales options of sellers, and that this should result in lower costs to consumers.”¹⁴ The same principles apply here. Accordingly, as explained in the Proposed Order, we find that the public interest will be served by directing the Cedar Creek Entities to provide the requested interconnection and transmission service to Mountain Breeze.

¹⁰ 16 U.S.C. § 824j.

¹¹ Proposed Order, 166 FERC ¶ 61,200 at P 44 (referring to 18 C.F.R. § 2.20 (2019)).

¹² *Kiowa Power Partners, LLC*, 99 FERC ¶ 61,251 (2002).

¹³ *Id.* P 36.

¹⁴ *Nevada Power*, 110 FERC ¶ 61,029, at P 17 (2005) (citing *Fla. Municipal Power Agency v. Fla. Power & Light Co.*, 65 FERC ¶ 61,125, *reh'g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *order on reh'g*, 74 FERC ¶ 61,006 (1996), *aff'd*, 315 F.3d 362 (D.C. Cir. 2003)).

E. Efficiency of Use of Facilities

14. Section 210(c)(2) precludes the Commission from issuing an order unless the Commission determines such order would either encourage overall conservation of energy or capital; optimize the efficiency of the use of facilities and resources; or improve the reliability of an electric utility system to which the order applies. As noted in the Proposed Order, Mountain Breeze states that interconnection service will encourage conservation of capital and more efficient use of facilities because it would be redundant and inefficient to require construction of separate interconnection facilities to Keenesburg when there is excess capacity currently available on the generator tie line.¹⁵ Mountain Breeze also states that directing the Cedar Creek Entities to provide interconnection service on the generator tie line will more fully utilize the line's capacity and therefore optimize efficient use of the generator tie line.¹⁶ Accordingly, we continue to find that section 210(c)(2) does not preclude an order for interconnection and transmission service in this case.

F. Reliability

15. Section 211(b) precludes the Commission from issuing an order that would unreasonably impair the continued reliability of the affected electric systems. The TSA states that PSCo has, at the request of Mountain Breeze, performed a System Impact Study that evaluated the reliability impact of the Mountain Breeze Project on the PSCo transmission network and identified no adverse reliability impact from the addition of the Mountain Breeze Project.¹⁷ The TSA also states that Mountain Breeze has provided the Cedar Creek Entities with engineering design work, technical analyses, and studies demonstrating that, with the exception of upgrades identified in the LGIA, the Mountain Breeze Project can be interconnected and the transmission provider¹⁸ can provide the requested transmission service across the generator tie line and Keenesburg without the need to expand the line or the PSCo transmission network.¹⁹ Therefore, we find that ordering the requested interconnection and transmission service will not unreasonably impair the continued reliability of the affected electric systems.

¹⁵ Proposed Order, 166 FERC ¶ 61,200 at P 47.

¹⁶ Mountain Breeze Application at 11-12.

¹⁷ TSA § 5.1 (Studies).

¹⁸ The TSA defines the transmission customer as Mountain Breeze and the transmission provider as the Cedar Creek Entities.

¹⁹ TSA at 2 (Recitals).

G. Effect on Contracts or Rate Schedule

16. Section 211(c) provides that no order may be issued under section 211 if it would replace electric energy provided to the applicant under a contract with the transmitting utility or a rate schedule on file with the Commission. The Agreements do not replace electric energy provided to the applicant under a contract with the transmitting utility or a rate schedule on file with the Commission. Furthermore, the Agreements do not contemplate Mountain Breeze purchasing in the future any electricity from the Cedar Creek Entities. Rather, Mountain Breeze seeks to interconnect to the generator tie line and to receive transmission service over the generator tie line to Keenesburg and thereby interconnect to the PSCo-owned and operated transmission system.²⁰ Therefore, we find that section 211(c) does not preclude an order for interconnection and transmission service in this case.

H. Rates, Terms and Conditions

17. In the Proposed Order, the Commission directed the Parties to negotiate rates, terms and conditions of service, and noted that, if the Parties were able to reach agreement, the Commission would issue a final order on the agreed-upon terms and conditions, if the Commission finds them acceptable. The Parties have agreed to the rates, terms and conditions under which the physical interconnection of their facilities will be established so as to permit the transmission of power from the Mountain Breeze Project to the Transmission System. The rates, terms and conditions of interconnection and transmission services are specified in the LGIA and TSA provided in this docket and we accept them, effective the date of this order.

18. Rates for service are provided in Schedule 1A of the TSA and include annual service charges, an Operation and Maintenance tracker and a provision mandating the transmission customer to reimburse the transmission provider for the actual amount of the Commission's annual charges.²¹ The TSA specifies that the agreement shall continue for an initial term of 25 years after the date of first commercial deliveries under Mountain Breeze's Power Purchase Agreement with PSCo, and includes an option to extend the term of the TSA. The LGIA tracks the Commission's *pro forma* LGIA.

19. Section 212(a) requires that the transmitting utility subject to an order under section 211 provide wholesale transmission services at rates, charges, terms and conditions which permit the recovery by such utility of all the costs incurred in connection with the transmission services and necessary associated services. Section 212(a) further provides, to the extent practicable, for recovery of such costs from the applicant for

²⁰ *Id.* § 2.0 (Service Being Provided).

²¹ *Id.* at Schedule 1A (Transmission Charges).

such order and not from the transmitting utility's existing wholesale, retail and transmission customers.²²

20. We find that the Agreements do not shift costs to other customers because transmission and interconnection costs are assigned among the Parties, and as such, the requirements of section 212(a) are satisfied.

21. Section 212(g) prohibits the issuance of an order which is inconsistent with any State law which governs the retail marketing areas of electric utilities.²³ Section 212(h) provides that no order under the FPA may require transmission of electric energy: (1) directly to an ultimate consumer, or (2) to, or for the benefit of, an entity if such electric energy would be sold directly to an ultimate consumer, unless such entity is a "Federal power marketing agency, . . . a State or any political subdivision of a State . . . a person having an obligation arising under State or local law (exclusive of an obligation arising solely from a contract entered into by such person) to provide electric service to the public" This order does not compel any transaction prohibited by section 212(g) and (h).

IV. Jurisdiction

22. Compliance with this order shall not independently make Cedar Creek, Cedar Creek II, Mountain Breeze, or any other entity a "public utility" as that term is defined by section 201 of the FPA²⁴ and subject to the jurisdiction of the Commission, where jurisdiction has not already been conferred, for any purpose other than for the purpose of carrying out the provisions of sections 210, 211, and 212.

The Commission orders:

(A) The Cedar Creek Entities are hereby directed, pursuant to sections 210, 211, and 212 of the FPA, to provide interconnection and transmission services to Mountain Breeze, as discussed in the body of this order.

(B) The Agreements are hereby accepted for filing, effective the date of this order, as discussed in the body of this order.

²² 16 U.S.C. § 824k(a).

²³ 16 U.S.C. § 824k(g).

(C) This order is a final order, effective upon the date of issuance.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.