

166 FERC ¶ 61,200  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Mountain Breeze Wind, LLC

Docket No. TX19-1-000

PROPOSED ORDER DIRECTING THE PROVISION OF INTERCONNECTION AND  
TRANSMISSION SERVICES

(Issued March 21, 2019)

1. In this proposed order, we grant Mountain Breeze Wind, LLC's (Mountain Breeze) request for an order under sections 210 and 211 of the Federal Power Act (FPA)<sup>1</sup> directing Cedar Creek Wind Energy, LLC (Cedar Creek) and Cedar Creek II, LLC (Cedar Creek II) (collectively, Cedar Creek Entities) to interconnect with Mountain Breeze's proposed wind generation project (Mountain Breeze Project) and to provide transmission service to the Public Service Company of Colorado (PSCo) transmission system. We also order further procedures to establish the rates, terms and conditions of the services.

**I. Background**

2. On December 28, 2018, Mountain Breeze filed an application requesting a proposed order from the Commission within 75 days of its application, directing the Cedar Creek Entities to provide interconnection service under section 210 and transmission services under section 211 to the Mountain Breeze Project, a proposed 170-megawatt (MW) wind-powered generation project, over the Cedar Creek Entities' shared interconnection customer interconnection facilities (ICIF). Mountain Breeze further requested, if the parties are unable to agree to rates, terms and conditions within

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<sup>1</sup> 16 U.S.C. §§ 824i, 824j (2012).

45 days from the date of the proposed order, that the Commission issue a final order within 150 days of the date of its application directing interconnection and transmission services and establishing the compensation, terms and conditions of such services.<sup>2</sup>

3. Mountain Breeze states that, prior to generating power from the Mountain Breeze Project, it intends to submit to the Commission an exempt wholesale generator self-certification and an application for market-based rate authority, and then interconnect the Mountain Breeze Project to the ICIF and receive transmission service over the ICIF to PSCo's Keenesburg Switching Station (Keenesburg).<sup>3</sup>

4. Mountain Breeze explains that Cedar Creek owns and operates a 300-MW wind generation facility in Weld County, Colorado (the Cedar Creek Project) which achieved commercial operation in 2007. Mountain Breeze states that Cedar Creek sells the entire output of the Cedar Creek Project to PSCo. According to Mountain Breeze, Cedar Creek II owns and operates a 250-MW wind generation facility in Weld County, Colorado (Cedar Creek II Project) which achieved commercial operation in 2011. Cedar Creek II also sells the entire output of the Cedar Creek II Project to PSCo.<sup>4</sup>

5. Mountain Breeze states that the Cedar Creek Entities own a 72-mile portion of the 76-mile, 230-kilovolt ICIF - a radial generator tie line that interconnects the Cedar Creek Entities' projects with PSCo's transmission system at Keenesburg. Mountain Breeze states that the Cedar Creek Entities own the ICIF as tenants in common pursuant to a co-tenancy, common facilities and easement agreement (Co-Tenancy Agreement) and that they share the costs of managing, operating and maintaining the ICIF, as provided therein.<sup>5</sup>

6. Mountain Breeze states that there is sufficient excess capacity available on the ICIF to accommodate the Mountain Breeze Project without the need to expand the ICIF, and that it is not aware of any other request for service over the ICIF.<sup>6</sup>

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<sup>2</sup> Mountain Breeze Application at 1-2.

<sup>3</sup> *Id.* at 5.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.*

7. Mountain Breeze states that the Mountain Breeze Project is in the advanced stages of development and, as such, Mountain Breeze submitted a good faith request for transmission service over the ICIF to the Cedar Creek Entities in October 2017. Mountain Breeze states it received the concurrence of Cedar Creek in its request for service, but not from Cedar Creek II.<sup>7</sup>

8. Mountain Breeze states that it sent the Cedar Creek Entities a renewed good faith request for interconnection and transmission service over the ICIF in June 2018 updating certain details, documenting certain technical information and providing additional analyses and documentation. However, Mountain Breeze states that it did not receive in response a formal “detailed written explanation, with specific reference to the facts and circumstances of the request, stating (1) the transmitting utility’s basis for the proposed rates, charges, terms, and conditions for such services, and (2) its analysis of any physical or other constraints affecting the provision of such services” as required by section 213 of the FPA<sup>8</sup> or the good faith response to a good faith request required by Rule 2.20 of the Commission’s regulations.<sup>9</sup>

9. Mountain Breeze requests firm point-to-point transmission service on the ICIF for a 40-year term beginning on October 30, 2020.<sup>10</sup>

10. Mountain Breeze states that its request meets the requirements of sections 210, 211, and 212 of the FPA.<sup>11</sup> In support, Mountain Breeze argues that it is eligible to request interconnection and transmission services as an electric utility, since it intends to construct

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<sup>7</sup> *Id.* at 5. According to Mountain Breeze, Cedar Creek is a wholly-owned, direct subsidiary of Commodore US Holding Corporation, which is an indirectly-owned investment entity of OMERS Administration Corporation. Mountain Breeze is a subsidiary of Leeward Renewable Energy, LLC, which is an indirect subsidiary of OMERS. Therefore, Mountain Breeze and Cedar Creek are affiliates. *Id.* at 3.

<sup>8</sup> 16 U.S.C. § 824l (2012).

<sup>9</sup> Mountain Breeze Application at 6 (citing 18 C.F.R. § 2.20 (2018)).

<sup>10</sup> *Id.* at 10.

<sup>11</sup> 16 U.S.C. § 824k (2012).

the Mountain Breeze Project in order to engage in wholesale sales of electric energy, and asserts that the Cedar Creek Entities are both transmitting utilities and electric utilities.<sup>12</sup>

11. Mountain Breeze further states that it meets the requirements of section 212(c), because it requests a proposed order, and after a reasonable period for parties to agree to term and conditions, a final order requiring the Cedar Creek Entities to provide interconnection and transmission service to the Mountain Breeze Project over the ICIF.<sup>13</sup>

12. Mountain Breeze states that it meets the requirements of section 210, first, because its request for interconnection service is in the public interest by increasing power supply options and improving competition. Mountain Breeze states, second, 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 ICIF. Third, Mountain Breeze states that directing the Cedar Creek Entities to provide interconnection service on the ICIF will more fully utilize the ICIF's capacity and therefore optimize efficient use of the ICIF.<sup>14</sup>

13. Mountain Breeze also states that its application satisfies the requirements of section 211. In support, Mountain Breeze states that it submitted a good faith request for transmission service on October 17, 2017, 60 days prior to filing its application as required by Rule 2.20. According to Mountain Breeze, the good faith request included

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<sup>12</sup> Mountain Breeze Application at 9 (citing 16 U.S.C. § 796(22)(A) (“The term ‘electric utility’ means a person or Federal or State agency (including an entity described in section 824(f) of this title) that sells electric energy”); 16 U.S.C. § 796 (23) (The term “transmitting utility” means an entity (including an entity described in section 824(f) of this title) 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”); and *Southern Cross Transmission LLC*, 137 FERC ¶ 61,206, at P 25 (2011) (*Southern Cross*) (“Applicants state that they intend to engage in the sale of electric energy when the Project enters service. Thus, we find that Applicants qualify as ‘electric utilities’ eligible to request an order requiring interconnection and transmission services pursuant to sections 210 and 211 of the FPA”), *final order*, 147 FERC ¶ 61,113 (2014)).

<sup>13</sup> *Id.* at 12.

<sup>14</sup> *Id.* at 11-12.

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all necessary components.<sup>15</sup> Mountain Breeze states that it submitted to the Cedar Creek Entities a supplement to its good faith request on June 5, 2018.<sup>16</sup>

14. Mountain Breeze asserts that its request for transmissions service is also in the public interest. Mountain Breeze states, as noted previously, that the Commission has repeatedly found new interconnections and transmission service generally meet the public interest by increasing power supply options and improving competition.<sup>17</sup> Thus, Mountain Breeze argues that an order directing the requested transmission service would make new transmission service available and enhance competition.

15. Mountain Breeze states that its request would not impair the reliability of the affected electric systems. In support, Mountain Breeze notes that PSCo has completed its System Impact Study, which evaluated the reliability impact of the Mountain Breeze Project on the PSCo transmission system, and identified no adverse reliability impact from the addition of the Mountain Breeze Project. Thus, Mountain Breeze asserts that the requested transmission service will not impair the reliability of the PSCo transmission

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<sup>15</sup> *Id.* at 13. Mountain Breeze's good faith request included: (1) the contact information for Mountain Breeze; (2) affirmation that Mountain Breeze is, or will be upon commencement of service, eligible to request transmission service; (3) confirmation that the letter constitutes a request for transmission services and is not a request for prohibited retail wheeling; (4) a description of the requested transmission service; (5) the names of other parties likely to provide transmission service; (6) the proposed dates for initiating and terminating transmission service; (7) the total amount of transmission capacity being requested; (8) a description of the expected transaction profile; (9) a request for firm transmission service; (10) confirmation that the request is not being made in response to a solicitation; and (11) proposed rates, terms and conditions for the transmission service.

<sup>16</sup> *Id.* The June 5, 2018 supplement to the October 17, 2017 good faith request modified the requested service start date, transmission capacity, and expected transaction profile. It also supplemented the request by including a one-line diagram for the Mountain Breeze Project, an electrical plan, a T-line conductor ratings summary and a loss study; and provided additional analyses and documentation, including a voltage schedule study, a reactive compensation study, and a proposed agreement to govern ownership and access to the ICIF (i.e., a proposed revised version (i.e., a markup) of the Co-Tenancy Agreement already in place between the Cedar Creek Entities.

<sup>17</sup> *Id.* at 14 (citing *Southern Cross*, 137 FERC ¶ 61,206 at P 31).

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system.<sup>18</sup> Mountain Breeze also asserts that it seeks transmission service utilizing only the excess capacity on the ICIF and has prepared and provided the Cedar Creek Entities the relevant engineering design work, technical analyses and studies demonstrating that the Mountain Breeze Project can be interconnected to and take transmission service on the ICIF without undue impact.<sup>19</sup>

16. Mountain Breeze states that its request will not have an impact on contracts or rate schedules, as prohibited under section 211(c). In support, Mountain Breeze states that it does not purchase and will not in the future purchase any electricity from the Cedar Creek Entities.<sup>20</sup> Mountain Breeze also states that it will not sell power directly to retail/end-use customers, and so, as required by sections 212(g) and (h), Mountain Breeze's request is not inconsistent with any state law governing the retail marketing area of electric utilities and does not involve any retail wheeling or constitute a sham wholesale transaction. Also, Mountain Breeze's request does not involve the Tennessee Valley Authority, Bonneville Power Administration, an Electric Reliability Council of Texas utility or a territory-restricted electric system.<sup>21</sup>

17. Mountain Breeze states that there is no safe harbor for priority rights on the ICIF, as ordered in Commission Order No. 807, applicable to this case.<sup>22</sup> Mountain Breeze states that, in Order No. 807, the Commission found "at the end of the five year safe harbor period, if there were to be an application under sections 210 and 211, the ICIF owner would need to show it has plans to use any remaining capacity on the ICIF and is

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<sup>18</sup> Mountain Breeze submitted an interconnection request to PSCo to interconnect the Mountain Breeze Project to the ICIF and to receive transmission service over the ICIF to Keenesburg. The interconnection request is currently in the Facility Study stage of the interconnection process. *Id.* at 5.

<sup>19</sup> *Id.* at 15. Mountain Breeze further states that it has continued to commission analyses of the Mountain Breeze Project's impact on the ICIF since submitting its supplement to the request, and remains willing to undertake reasonable analyses of that impact and potential mitigation of that impact. *Id.*

<sup>20</sup> *Id.* at 16.

<sup>21</sup> *Id.* (citing sections 212(f) – (k)).

<sup>22</sup> *Id.* (citing *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities* (Order No. 807) 150 FERC ¶ 61,211, at P 138 (Order No. 807), *order on reh'g*, Order No. 807-A, 153 FERC ¶ 61,047 (2015)).

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making progress to completing those plans.”<sup>23</sup> Mountain Breeze argues that, here, the safe harbor period has expired, and so, to preclude this application, Cedar Creek II would have to demonstrate that it has definitive plans to use any remaining capacity on the ICIF and is making progress to complete those plans. According to Mountain Breeze, Cedar Creek II has not done so.<sup>24</sup>

18. Finally, Mountain Breeze proposes to pay the Cedar Creek Entities just and reasonable incremental costs and to be subject to just and reasonable terms and conditions for interconnection and transmission services on the ICIF.<sup>25</sup>

## **II. Notice, Intervention and Responsive Pleadings**

19. Notice of Mountain Breeze’s filing was issued by the Commission, with interventions and protests due on or before January 18, 2019.

20. On January 9, 2019, Cedar Creek filed a motion to intervene and comments. On January 18, 2019, Xcel Energy Services, Inc. (Xcel), PSCo’s parent company, filed a motion to intervene and comments. On January 18, 2019, Cedar Creek II filed a response and motion to dismiss Mountain Breeze’s application.<sup>26</sup> On February 4, 2019, Mountain Breeze filed an answer to the response and motion to dismiss of Cedar Creek II (Mountain Breeze Answer). On February 19, 2019, Cedar Creek II filed a Motion for Leave to Answer and Answer (Cedar Creek II Answer). On February 25, 2019, Mountain Breeze filed a response to the Cedar Creek II Answer (Mountain Breeze Response).

### **A. Cedar Creek Comments in Support**

21. Cedar Creek states that it does not oppose Mountain Breeze’s request for interconnection and transmission services over the ICIF, first, because there is sufficient excess capacity currently available over the ICIF to accommodate the Mountain Breeze Project without the need to expand the ICIF; and, second, because Cedar Creek anticipated increased utilization of the ICIF, and sharing expenses as proposed by

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<sup>23</sup> Order No. 807, 150 FERC ¶ 61,211 at P 152.

<sup>24</sup> Mountain Breeze Application at 17.

<sup>25</sup> *Id.* at 18.

<sup>26</sup> As the subject of Mountain Breeze’s application, Cedar Creek II is a party to this proceeding under Rule 102(c)(2) of the Commission’s Rules of Practice and Procedure. 18 C.F.R. § 385.102(c)(2) (2018); *see also, e.g., Jacumba Solar, LLC*, 157 FERC ¶ 61,132, at P 8 (2016).

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Mountain Breeze will benefit those currently utilizing the line.<sup>27</sup> Cedar Creek also states that, although it believes the parties will reach an informal agreement, Mountain Breeze's application under sections 210 and 211 will help provide concrete deadlines beneficial to ensuring the process is completed in a timely manner. Finally, Cedar Creek requests that the Commission issue an order on Mountain Breeze's request as soon as practicable.<sup>28</sup>

**B. Xcel Comments**

22. Xcel states that it and PSCo support Mountain Breeze's request for the Commission to facilitate resolution of Mountain Breeze's request for interconnection and transmission service within 150 days of Mountain Breeze's application.<sup>29</sup> While taking no position on the rates or terms and conditions established in the case, Xcel submits comments to support the need for prompt resolution of Mountain Breeze's application and requests that the Commission establish timelines that will help focus the efforts of the parties, since timely resolution is important to provide the Mountain Breeze Project access over the ICIF.<sup>30</sup>

**C. Cedar Creek II Response and Motion to Dismiss**

23. Cedar Creek II asks the Commission to dismiss Mountain Breeze's application stating that, rather than seeking service, Mountain Breeze is seeking an ownership interest in the common facilities, and the Commission cannot direct Cedar Creek II to transfer an ownership interest under sections 210 and 211.<sup>31</sup> Cedar Creek II states that, because Mountain Breeze's application is actually a request for an ownership interest in the ICIF, it takes issue with Mountain Breeze's allegation that Cedar Creek II failed to respond to the good faith letter, as required by Commission rules.<sup>32</sup>

24. Citing to Mountain Breeze's proposed amended and restated co-tenancy, common facilities and easement agreement, Cedar Creek II reiterates that Mountain Breeze seeks

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<sup>27</sup> Cedar Creek Comments at 3.

<sup>28</sup> *Id.* at 3-4.

<sup>29</sup> Xcel Comments at 1.

<sup>30</sup> *Id.* at 4.

<sup>31</sup> Cedar Creek II Motion to Dismiss at 1. Cedar Creek II defines the common facilities as the ICIF under the Cedar Creek Entities' LGIA with PSCo. *Id.* n.8.

<sup>32</sup> *Id.* at 3.

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an undivided ownership interest in the common facilities from the Cedar Creek Entities.<sup>33</sup> Cedar Creek II references conversations among the parties and Mountain Breeze's confidential proposed amendments to Section 2.2 of the Co-Tenancy Agreement to support its claim. Cedar Creek II also alleges that Mountain Breeze is improperly using a regulatory process to gain leverage over Cedar Creek II with respect to a joint ownership arrangement.<sup>34</sup>

25. Cedar Creek II asserts that transfers in ownership of jurisdictional facilities invoke sections 205 and 203 of the FPA,<sup>35</sup> but not sections 210 and 211. Cedar Creek II asserts that it did not fail to comply with Rule 2.20 because no response to Mountain Breeze's good faith letter was required.<sup>36</sup>

26. Cedar Creek II states that, while not relevant to a Commission determination that the application should be rejected as legally and procedurally flawed, Cedar Creek II rebuts Mountain Breeze's innuendos that it has been nonresponsive to Mountain Breeze's request to become a joint owner of the common facilities. Cedar Creek II also discusses the timeline of communications with Mountain Breeze to analyze related technical studies and commercial documents, and to demonstrate Mountain Breeze's slowness in providing documents to Cedar Creek.<sup>37</sup> Cedar Creek II states that Mountain Breeze's application interrupted what were cordial negotiations aimed at resolving technical issues relevant to the interconnection and delivery of additional capacity over the ICIF and transactional issues related to a transfer in ownership to Mountain Breeze.<sup>38</sup>

27. Cedar Creek II seeks to set the record straight regarding the timeline of negotiations, stating that Mountain Breeze, in its June 2018 supplement to its October 2017 request, submitted reports on the Voltage Schedule Study and Reactive Compensation Study which changed major aspects of Mountain Breeze's generation project.<sup>39</sup> According to Cedar Creek II, Mountain Breeze did not provide the PSCo

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<sup>33</sup> *Id.* at 4-5.

<sup>34</sup> *Id.* at 5-6.

<sup>35</sup> 16 U.S.C. §§ 824d, 824b (2012).

<sup>36</sup> Cedar Creek II Motion to Dismiss at 7-8.

<sup>37</sup> *Id.* at 9-14.

<sup>38</sup> *Id.* at 9-10.

<sup>39</sup> *Id.* at 11.

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System Impact Study until October 2018, a new line loss study in November 2018, and an additional study as recently as December 24, 2018.<sup>40</sup>

28. Cedar Creek II further notes that Mountain Breeze took even longer to respond on commercial issues. Cedar Creek II states that it proposed to evaluate the commercial documents and technical analysis concurrently. Cedar Creek II states that, despite repeated requests, Mountain Breeze did not provide a revised Co-Tenancy Agreement until December 24, 2018 – three business days before Mountain Breeze filed its application.<sup>41</sup>

29. Additionally, Cedar Creek II argues that certain statements in Mountain Breeze's application were inaccurate, including that discussions with Cedar Creek II were inconclusive and that only Cedar Creek expended capital on the common facilities. According to Cedar Creek II, both of these assertions are false and that, in fact, Cedar Creek II has acted in good faith.<sup>42</sup>

#### **D. Mountain Breeze Answer to Cedar Creek II**

30. Mountain Breeze urges the Commission to reject Cedar Creek II's motion to dismiss because it incorrectly characterizes Mountain Breeze's requests for interconnection and transmission service as seeking ownership of the facilities.<sup>43</sup> Mountain Breeze argues that the fatal flaw in Cedar Creek II's claim is that Mountain Breeze proposes to use the same commercial structure and set of agreements that Cedar Creek II itself utilized in 2011 to secure services over the ICIF from Cedar Creek.<sup>44</sup> Mountain Breeze relies on personnel recollection and confidential communications with Cedar Creek II to demonstrate that its objective has always been understood to be to interconnect with and transmit energy across the ICIF.<sup>45</sup>

31. Mountain Breeze offers its characterizations of Cedar Creek II's unresponsiveness to communications between the parties over the course of negotiations and alludes to a dispute over which documents are appropriate to effectuate the requested services, but

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 12.

<sup>42</sup> *Id.* at 20-22.

<sup>43</sup> Mountain Breeze Answer at 1.

<sup>44</sup> *Id.* at 2.

<sup>45</sup> *Id.* at 2-3.

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asserts that it did not view Cedar Creek II as having negotiated in bad faith.<sup>46</sup> However, Mountain Breeze states that it is not asking the Commission to resolve the disagreement over the relevant documents or to impose a specific rates construct at this time; rather, it is asking the Commission to employ the process it established in Order No. 807, and order Mountain Breeze to receive interconnection and transmission service, setting a deadline for the parties to come to agreement, or if no agreement is reached, invoking its requirement for a generator tie line owner to file an open access transmission tariff and regulated rates.<sup>47</sup>

**E. Cedar Creek II Answer to Mountain Breeze**

32. Cedar Creek II reiterates its request that the Commission dismiss Mountain Breeze's application, characterizing it as a request to mandate the transfer of an ownership interest in the ICIF which the Commission cannot direct under sections 210 and 211.<sup>48</sup> Cedar Creek II also requests that, if the Commission accepts Mountain Breeze's application, the Commission provide a period of 90 days for the parties to negotiate rates, terms and conditions of service, rather than the 45 days requested by Mountain Breeze.<sup>49</sup> Cedar Creek II notes that such a request would be distinctly different from the commercial discussions held to date and it would therefore need additional time to negotiate terms with the parties and obtain approvals from its lenders and partners.<sup>50</sup>

33. Cedar Creek II asserts that Mountain Breeze admits it is seeking a transfer of ownership by proposing in its answer to use the joint-ownership model.<sup>51</sup> Cedar Creek II also states that, contrary to Mountain Breeze's statement that Cedar Creek II never communicated that it believed Mountain Breeze's request related to interconnection and transmission service, Cedar Creek II immediately sought clarification that Mountain Breeze was seeking joint ownership. Cedar Creek II further states that all discussions since that point have been about Mountain Breeze taking a joint ownership interest in the

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<sup>46</sup> *Id.* at 4-6.

<sup>47</sup> *Id.* at 6.

<sup>48</sup> Cedar Creek II Answer at 1-2.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 9-10.

<sup>51</sup> *Id.* at 3 (citing Mountain Breeze Answer at 3).

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ICIF.<sup>52</sup> Cedar Creek II reiterates that certain important documents were provided to it as late as December 2018, and asserts that it must receive a complete proposal from Mountain Breeze before Cedar Creek II is in a position to respond and provide a counteroffer.<sup>53</sup> Finally, Cedar Creek II also reiterates that it remains willing to continue to work with Mountain Breeze towards reaching agreement on joint ownership once the Commission dismisses the application.

**F. Mountain Breeze Response to Cedar Creek II Answer**

34. Mountain Breeze purports to highlight points of explicit agreement between itself and Cedar Creek II in order to facilitate the Commission's granting of its application for interconnection and transmission service. Mountain Breeze highlights the following points of agreement: (1) the Commission cannot mandate the transfer of an ownership interest in the shared interconnection facilities of the Cedar Creek Entities; (2) the Commission could approve the same type of co-tenancy/joint ownership arrangement that it accepted for the Cedar Creek Entities for parties subject to sections 210 and 211; and (3) sections 210 and 211 and Order No. 807 provide a framework under which the Cedar Creek Entities and Mountain Breeze can negotiate rates, terms and conditions of service.<sup>54</sup> Mountain Breeze also states that Cedar Creek II did not deny several key assertions made in Mountain Breeze's answer, namely: (1) both Cedar Creek II and Mountain Breeze expressed a preference for negotiating service under the joint-ownership model Cedar Creek II used to secure service from Cedar Creek as opposed to an open access transmission tariff (OATT) and regulated rates; (2) Cedar Creek would be better off under the joint-ownership construct than under an OATT; and (3) deadlines are necessary to get consents from lenders in a timely manner.<sup>55</sup>

35. Mountain Breeze asserts that, if Cedar Creek II prefers to operate under an OATT with regulated rates, Mountain Breeze is willing to take service under an OATT at cost-of-service rates. Mountain Breeze states that Cedar Creek has informed Mountain Breeze that it is willing to offer Mountain Breeze the requested services under either the existing

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<sup>52</sup> *Id.* at 5.

<sup>53</sup> *Id.* at 7-8.

<sup>54</sup> Mountain Breeze Response at 1-2.

<sup>55</sup> *Id.* at 2-3.

(continued ...)

Co-tenancy Agreement or under an OATT, if Cedar Creek II is willing to shoulder the incremental costs and administrative burdens.<sup>56</sup>

36. Finally, Mountain Breeze agrees with Cedar Creek II's request for a 90-day period to negotiate rates, terms and conditions of service.<sup>57</sup>

### **III. Discussion**

#### **A. Procedural Matters**

37. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), Cedar Creek and Xcel's timely, unopposed motions to intervene serve to make them parties to this proceeding.

38. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by Mountain Breeze and Cedar Creek II because they provided information that assisted the Commission in its decision-making process.

#### **B. Statutory Requirements**

39. 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.

##### **1. Jurisdiction**

40. 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."<sup>58</sup> Pursuant to section 211(a), any "electric utility" may request an order requiring a "transmitting utility to provide transmission services."<sup>59</sup> An "electric utility" is defined under the FPA, in relevant part, as a "person or Federal or State agency ... that sells

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<sup>56</sup> *Id.* at 3.

<sup>57</sup> *Id.* at 3-4.

<sup>58</sup> 16 U.S.C. § 824i(a)(1)(A).

<sup>59</sup> 16 U.S.C. § 824j.

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electric energy.”<sup>60</sup> 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.”<sup>61</sup>

41. Mountain Breeze states that it intends to construct generation facilities to engage in sales of electric energy for resale.<sup>62</sup> As a result, we find that Mountain Breeze is an “electric utility” eligible to request an order requiring interconnection and transmission services pursuant to sections 210 and 211.<sup>63</sup>

42. 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 ICIF, 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.

## **2. Good Faith Request**

43. 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.<sup>64</sup>

44. We find 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 Rule 2.20. Specifically, Mountain Breeze included in its good faith request the following: (1) the contact information for Mountain Breeze; (2) affirmation that Mountain Breeze is, or will be upon commencement of service, eligible to request transmission service; (3) confirmation that the letter constitutes a request for transmission services and is not a request for prohibited retail wheeling; (4) a description of the requested transmission service; (5) the names of other parties likely to

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<sup>60</sup> 16 U.S.C. § 796(22)(A) (2012).

<sup>61</sup> 16 U.S.C. § 796(23).

<sup>62</sup> Mountain Breeze Application at 4-5.

<sup>63</sup> See, e.g., *Wheatridge Wind Energy, LLC*, 162 FERC ¶ 61,045 (2018); *Southern Cross*, 137 FERC ¶ 61,206.

<sup>64</sup> 16 U.S.C. § 824j.

(continued ...)

provide transmission service; (6) the proposed dates for initiating and terminating transmission service; (7) the total amount of transmission capacity being requested; (8) a description of the expected transaction profile; (9) a request for firm transmission service; (10) confirmation that the request is not being made in response to a solicitation; and (11) proposed rates, terms and conditions for the transmission service.<sup>65</sup>

45. We note that section 213 requires that, when a good faith request is submitted to a transmitting utility, the transmitting utility shall provide a detailed written explanation stating: (1) the transmitting utility's basis for the proposed rates, charges, terms, and conditions for such services; and (2) its analysis of any physical or other constraints affecting the provision of such services, within 60 days of receipt of the request.<sup>66</sup> Cedar Creek II did not provide such response, as Cedar Creek II states that it did not consider Mountain Breeze's October 17, 2017 letter a good faith request. However, as explained above, we find to the contrary that that letter was a good faith request.

### 3. Public Interest

46. 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*,<sup>67</sup> 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." 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."<sup>68</sup> The same principles apply here. Accordingly, 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.

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<sup>65</sup> Mountain Breeze Application, Exhibit A, "Mountain Breeze October 17, 2017 Good Faith Request for Interconnection and Transmission Service."

<sup>66</sup> 16 U.S.C. § 824l.

<sup>67</sup> 99 FERC ¶ 61,251, at P 36 (2002).

<sup>68</sup> *Nevada Power Co.*, 110 FERC ¶ 61,029, at P 17 (2005) (citing *Florida Municipal Power Agency v. Florida 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)).

(continued ...)

#### **4. Efficiency of Use of Facilities**

47. 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. 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 ICIF. Mountain Breeze also states that directing the Cedar Creek Entities to provide interconnection service on the ICIF will more fully utilize the ICIF's capacity and therefore optimize efficient use of the ICIF.<sup>69</sup> Accordingly, we find that section 210(c)(2) does not preclude an order for interconnection and transmission service in this case.

#### **5. Reliability**

48. Section 211(b) precludes the Commission from issuing an order that would unreasonably impair the continued reliability of the affected electric systems. Mountain Breeze states that PSCo has completed its System Impact Study, which evaluated the reliability impact of the Mountain Breeze Project on the PSCo transmission system, and identified no adverse reliability impact from the addition of the Mountain Breeze Project.<sup>70</sup> Cedar Creek II does not dispute this statement. Mountain Breeze also seeks transmission service from the Cedar Creek Entities utilizing excess capacity on the ICIF, and has prepared and provided the Cedar Creek Entities with engineering design work, technical analyses and studies demonstrating that the Mountain Breeze Project can be interconnected to and take transmission service on the ICIF without undue impact. Therefore, we find that ordering the requested interconnection and transmission service will not unreasonably impair the continued reliability of the affected electric systems.

#### **6. Effect on Contracts or Rate Schedules**

49. 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. Mountain Breeze notes that it does not purchase and will not in the future purchase any electricity from the Cedar Creek

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<sup>69</sup> Mountain Breeze Application at 11-12.

<sup>70</sup> *Id.* at 15.

Entities.<sup>71</sup> Rather, Mountain Breeze seeks to interconnect to the ICIF and to receive transmission service over the ICIF to Keenesburg and thereby interconnect to the PSCo-owned and operated transmission system.<sup>72</sup> Therefore, we find that section 211(c) does not preclude an order for interconnection and transmission service in this case.

## **7. Rates**

50. 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 such order and not from the transmitting utility's existing wholesale, retail and transmission customers. Mountain Breeze proposes to pay the Cedar Creek Entities just and reasonable incremental costs and to be subject to just and reasonable terms and conditions for interconnection and transmission services on the ICIF.<sup>73</sup> Mountain Breeze has also indicated its willingness to compensate the Cedar Creek Entities for costs associated with their provision of the requested interconnection and transmission services to Mountain Breeze, including compensation for any increased losses.<sup>74</sup> Because we are now directing the parties to negotiate terms and conditions of service, we will ensure that section 212(a) is satisfied when we issue a final order directing interconnection and transmission services.

## **8. Further Proceedings**

51. Section 212(c) provides that, before issuing an order under section 210, the Commission must first issue a proposed order and set a reasonable time for parties to the proposed interconnection or transmission order to agree to terms and conditions under which such order is to be carried out, including the apportionment of costs between them and the compensation or reimbursement reasonably due to any of them.<sup>75</sup>

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<sup>71</sup> *Id.* at 15-16.

<sup>72</sup> *Id.* at 5.

<sup>73</sup> Mountain Breeze Application at 18.

<sup>74</sup> *Id.*

<sup>75</sup> 16 U.S.C. § 824k(c)(1-2).

52. The Commission gives the parties 90 days from the date of this order to negotiate an interconnection agreement reflecting all issues upon which the parties have agreed, and to identify all issues upon which the parties have not agreed and to give their rationale for their final position on those issues on which the parties have not agreed. If the parties are able to agree within the allotted time, the Commission will issue a final order reflecting the agreed-upon terms and conditions in that agreement, if the Commission finds them acceptable. In the alternative, if the parties are unable to agree within the allotted time, the Commission will evaluate the positions of each party and prescribe the apportionment of costs, compensation and other terms and conditions of interconnection, as appropriate. After considering their respective rationales for their final positions, the Commission will issue a final order.

**C. Cedar Creek II's Motion to Dismiss**

53. We agree with Cedar Creek II that the Commission cannot direct a transfer of ownership under sections 210 and 211. As Mountain Breeze's application before the Commission was filed under sections 210 and 211, our proposed order concerns only Mountain Breeze's request for interconnection and transmission services. We further find that Cedar Creek II did not rebut any of the elements Mountain Breeze proposed to have met under sections 210 and 211, except to assert that Mountain Breeze's application was in fact a request for an ownership interest in the ICIF. We reject Cedar Creek II's motion to dismiss Mountain Breeze's application. However, we grant Cedar Creek II's request for a 90-day period to negotiate the rates, terms and conditions of service.

54. We emphasize that the Commission makes no finding in this order concerning ownership interests in the ICIF among or between Mountain Breeze and any of the Cedar Creek Entities.<sup>76</sup> Rather, consistent with our order herein, the parties are to attempt to reach agreement on the terms and conditions under which interconnection and transmission service to Mountain Breeze are to be provided.

**D. Commission Order No. 807**

55. Mountain Breeze appears to misunderstand the Commission's ruling in Order No. 807,<sup>77</sup> when it implies that Cedar Creek II must either offer Mountain Breeze

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<sup>76</sup> Section 203 of the FPA requires Commission approval for public utilities to sell, lease or otherwise dispose of facilities subject to the jurisdiction of the Commission with a value in excess of \$10 million.

<sup>77</sup> Order No. 807, 150 FERC ¶ 61,211.

*(continued ...)*

interconnection and transmission service pursuant to the Co-tenancy Agreement or through an OATT and regulated rates.<sup>78</sup>

56. In Order No. 807, the Commission proposed and adopted a blanket waiver of all OATT, Open Access Same-Time Information System and Standards of Conduct requirements for any public utility that is otherwise subject to such requirements solely because it owns, controls, or operates ICIF, in whole or in part, and sells electric energy from its generating facility.<sup>79</sup> The Commission also affirmed that granting access over ICIF via an existing agreement, such as a common facilities agreement or shared use agreement, does not affect an ICIF owner's eligibility for that blanket waiver.<sup>80</sup>

57. While the parties may voluntarily agree to an ownership arrangement, nothing in Order No. 807 requires an owner of an ICIF to either extend an ownership interest to a third-party requester or to generate an OATT.<sup>81</sup>

The Commission orders:

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

(B) Mountain Breeze and the Cedar Creek entities are hereby directed to follow the procedures discussed in the body of this order.

(C) Within 90 days of the date of this order, Mountain Breeze and the Cedar Creek Entities shall make a filing with the Commission setting forth terms and conditions for carrying out the order, including the apportionment of and compensation for costs, and addressing other matters, as discussed in the body of the order.

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<sup>78</sup> Mountain Breeze Response at 3.

<sup>79</sup> Order No. 807, 150 FERC ¶ 61,211 at P 44.

<sup>80</sup> *Id.* P 89.

<sup>81</sup> *Id.* at P 117 (“the availability of the process under sections 210 and 211 does not preclude the opportunity for an ICIF owner and an entity seeking service, including an affiliate, to mutually agree, outside of the process under sections 210 and 211, to an arrangement for service over the ICIF”).

(D) Cedar Creek II's Motion to Dismiss is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.