

149 FERC ¶ 61,237  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

Evergreen Gen Lead, LLC

Docket No. ER15-203-000

ORDER ACCEPTING RATE SCHEDULE FOR FILING  
AND GRANTING IN PART AND DENYING IN PART REQUESTS FOR WAIVERS

(Issued December 18, 2014)

1. In this order, the Commission accepts for filing a rate schedule submitted by Evergreen Gen Lead, LLC (Evergreen Gen Lead), between its affiliates, Evergreen Wind Power III, LLC (EWP III), Stetson Holdings, LLC (Stetson Holdings), Stetson Wind II, LLC (Stetson II), and Champlain Wind, LLC (Champlain) (collectively, the Members). The rate schedule is accepted effective December 28, 2014, as requested. This order also grants in part and denies in part Evergreen Gen Lead's request for waiver of certain filing and reporting requirements, as discussed in the body of this order.

## I. Background

2. On March 18, 2010,<sup>1</sup> the Commission granted waiver of Order Nos. 888,<sup>2</sup> 889,<sup>3</sup> 890<sup>4</sup> and of section 35.28 and Parts 37 and 358 of the Commission regulations<sup>5</sup> to specific subsidiaries of First Wind Holdings, LLC.<sup>6</sup>

3. Evergreen Gen Lead<sup>7</sup> states that it “is directly owned by the Members” and that it owns and operates the EGL Interconnection Line, a “115kV, 38-mile generator lead line

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<sup>1</sup> *Evergreen Wind Power V, LLC*, 130 FERC ¶ 61,186, at PP 18-19 (2010) (Open Access Waiver Order).

<sup>2</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>3</sup> *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).

<sup>4</sup> *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 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>5</sup> 18 C.F.R. § 35.28 (2014); *id.* parts. 37, 358.

<sup>6</sup> The Commission specifically granted waiver of the open access transmission requirements to Evergreen Wind Power V, LLC, EWP III, Stetson II, Champlain, Evergreen Gen Lead, Canandaigua Power Partners, LLC, and Canandaigua Power Partners II, LLC. *See* Open Access Waiver Order, 130 FERC ¶ 61,186 at PP 18-19.

<sup>7</sup> Transmittal at 2. Evergreen Gen Lead states that its “operations are funded solely through the Members’ equity contributions in accordance with the Amended and Restated Limited Liability Company Agreement of Evergreen Gen Lead.” *Id.* at 3 n.6.

and related relay protection equipment that begins at the Stetson Mountain substation in Washington County, Maine and continues to the Keene Road Substation,” which is located in the Town of Chester, Penobscot County, Maine.<sup>8</sup> The EGL Interconnection Line interconnects the following: (1) a 60 MW wind-powered generation facility that is located in Penobscot County, Maine and owned and operated by EWP III; (2) a 57 MW wind-powered generation facility that is located in Washington and Penobscot Counties, Maine and owned and operated by Stetson Holdings; (3) a 25.5 MW wind-powered generation facility that is located near Danforth, Maine and is owned and operated by Stetson II; (4) and an approximately 48 MW wind-powered generation facility that is under development by Champlain to be located in Washington and Penobscot Counties, Maine (collectively, the Interconnected Projects).<sup>9</sup>

4. Evergreen Gen Lead explains that the EGL Interconnection Line was initially owned and operated by Stetson Holdings (formerly known as Evergreen Wind Power V, LLC).<sup>10</sup> Evergreen Gen Lead states that the EGL Interconnection Line was designed to interconnect each of the Interconnected Projects to ISO New England, Inc. and that each of the Members owns Evergreen Gen Lead in proportion to that Member’s ownership of the total generating capacity of the Interconnected Projects and that each Member has “the right to use an undivided interest in the generator lead line to deliver energy produced by its respective” Interconnected Project.<sup>11</sup>

## II. Filing

5. On October 28, 2014, Evergreen Gen Lead filed with the Commission the instant rate schedule between the Members. Evergreen Gen Lead states that the rate schedule will be designated as Evergreen Gen Lead’s FERC Electric Rate schedule No. 1, and requests that the Commission accept the rate schedule for filing, without modifications, to become effective December 28, 2014.<sup>12</sup>

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<sup>8</sup> *Id.* at 1 & n.3. Evergreen Gen Lead states that the Keene Road Substation is owned by Emera Maine and is under the operational control of ISO New England Inc. *Id.*

<sup>9</sup> *Id.* at 2.

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

<sup>11</sup> *Id.* at 2 & n.4 (citing Open Access Waiver Order, 130 FERC ¶ 61,186 at 7).

<sup>12</sup> Evergreen Gen Lead, LLC, Rate Schedules and Tariffs, Facilities Use Agreement, FERC Electric Rate Schedule No. 1, 1.0.0.

6. Evergreen Gen Lead states that the rate schedule specifies the rights of the Members to access and use the EGL Interconnection Line and related relay protection equipment.<sup>13</sup>

7. Evergreen Gen Lead also requests that the Commission waive the requirements of Parts 41, 101, and 141 (with the exception of sections 141.14 and 141.15) of the Commission's regulations.<sup>14</sup>

**A. Rate Schedule**

8. Evergreen Gen Lead states that the rate schedule assesses no charges and that it “documents each Member’s right to access and use the EGL Interconnection Line . . . . up to the percentage of capacity of the EGL Interconnection Line proportionate to its Membership Interest.”<sup>15</sup>

9. According to Evergreen Gen Lead, the Commission did not require that a separate line loss allocation agreement among the Members be filed separately under section 205 of the Federal Power Act.<sup>16</sup> However, for completeness, Evergreen Gen Lead states that it has filed a line loss agreement, together with the proposed rate schedule in this proceeding, providing that “losses are allocated to each Interconnected Project based on

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<sup>13</sup> Transmittal at 1.

<sup>14</sup> 18 C.F.R. pts. 41, 101, 141 (2014). Part 41 of the Commission’s regulations addresses “Accounts, Records, Memoranda and Disposition of Contested Audit Findings and Proposed Remedies,” Part 101 of the Commission’s regulations addresses the “Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act,” and Part 141 of the Commission’s regulations addresses “Statements and Reports (Schedules).” Section 141.14 of the Commission’s regulations addresses Form No. 80, the Licensed Hydropower Development Recreation Report, and section 141.15 addresses the Annual Conveyance Report applicable to hydropower licensees.

<sup>15</sup> Transmittal at 3. According to Evergreen Gen Lead, each Member owns the following percentages of Evergreen Gen Lead and would thus be entitled to the same percentage of capacity on the EGL Interconnection Line: Stetson Holdings: 30.4 percent; EWP III: 32.0 percent; Stetson II: 13.6 percent; and Champlain: 24.0 percent.

<sup>16</sup> *Id.* (citing Open Access Waiver Order, 130 FERC ¶ 61,186 at P 20).

the incremental losses incurred upon each Interconnected Project's commercial operations date."<sup>17</sup>

10. Evergreen Gen Lead argues that the terms and conditions of the rate schedule "are comparable to those in other agreements accepted by the Commission in which a company is formed to own a generator lead line that will be used by affiliates that are developing, owning, and operating generation facilities."<sup>18</sup>

11. Evergreen Gen Lead states that the EGL Interconnection Line has been owned and operated by Evergreen Gen Lead since January 25, 2010. Evergreen Gen Lead argues that, to the extent that the Commission deems the instant rate schedule a late filing, no late-filing penalties would apply because Evergreen Gen Lead has assessed no charges on any entity.<sup>19</sup> Evergreen Gen Lead states that it is submitting the instant rate schedule "after completing a compliance review, and [it] has reported this matter to the Commission's Office of Enforcement."<sup>20</sup> Therefore, Evergreen Gen Lead requests that the Commission accept the rate schedule for filing, to become effective on December 28, 2014.<sup>21</sup>

#### **B. Waiver Request**

12. Evergreen Gen Lead requests waiver of Parts 41, 101, and 141 of the Commission's regulations (except sections 141.14 and 141.15).<sup>22</sup> Evergreen Gen Lead asserts that the Commission has granted similar waivers and authorizations to owners of limited interconnection facilities, market-based rate sellers, and qualifying facilities

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<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.* (referencing *Bishop Hill Interconnection LLC*, 138 FERC ¶ 61,159, at PP 7-10, 22 (2012); *Invenergy Wind Development Michigan LLC*, 136 FERC ¶ 61,209, at PP 6-7, 13 (2011); *Peetz Logan Interconnect, LLC*, 122 FERC ¶ 61,086, at PP 4, 9 (2008); *Wolverine Creek Goshen Interconnection LLC*, Docket No. ER06-267-000 (Jan. 13, 2006) (unpublished letter order) (*Wolverine Creek Goshen Letter Order*), *errata* (Jan. 27, 2006)).

<sup>19</sup> Transmittal at 4 n.9.

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

<sup>21</sup> *Id.* at 4.

<sup>22</sup> *Id.* at 5.

selling at avoided cost rates because the primary purpose of such regulations is to assist the Commission in determining a public utility's cost-of-service in order to determine whether its rates are just and reasonable cost-based rates, but, where an entity is not subject to traditional cost-based regulation by the Commission, these filing requirements are not applicable.<sup>23</sup> Evergreen Gen Lead states that the Commission previously granted to Evergreen Gen Lead waiver of the open access transmission tariff requirements of Order Nos. 888, 889, and 890, and of the requirements of section 35.28 and Parts 37 and 358 of the Commission's regulations.<sup>24</sup>

13. Evergreen Gen Lead contends that the logic underlying the Commission's prior waiving of these requirements for market-based rate sellers and other companies owning discrete interconnection facilities applies to Evergreen Gen Lead. Evergreen Gen Lead argues that no regulatory purpose would be served by subjecting Evergreen Gen Lead to the significant expense of maintaining its accounts in accordance with the Uniform System of Accounts and denying it the more flexible reporting requirements and authorizations that are afforded to other companies, including companies owning limited and discrete interconnection facilities, that do not provide services under traditional cost-based rates.<sup>25</sup>

### **III. Notice of Filing**

14. Notice of Evergreen Gen Lead's filing was published in the *Federal Register*, 79 Fed. Reg. 65,389 (2014), with interventions or protests due on or before November 18, 2014. None were filed.

### **IV. Discussion**

#### **A. Rate Schedule**

15. The rate schedule appears to be just and reasonable, and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept the rate schedule for filing, to become effective on

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<sup>23</sup> *Id.* at 5 (referencing *Wolverine Creek Goshen* Letter Order; *Bishop Hill Interconnection LLC*, 138 FERC ¶ 61,159, at PP 28-29 (2012); *Invenergy Wind Development Michigan LLC*, 136 FERC ¶ 61,209, at PP 20-21 (2011)).

<sup>24</sup> *Id.* at 5 (citing Open Access Waiver Order, 130 FERC ¶ 61,186 at PP 18-19).

<sup>25</sup> *Id.* at 5 (citing *Wolverine Creek Goshen* Letter Order; *Entergy La., Inc.*, 110 FERC ¶ 61,300 (2005); *Res. Recovery (Dade County), Inc.*, 20 FERC ¶ 61,138 (1982)).

December 28, 2014, as requested.<sup>26</sup> As discussed below, we also will grant Evergreen Gen Lead's request for waiver of Parts 101 and Part 141 (with the exception of sections 141.14 and 141.15) of the Commission's regulations. We will also grant waiver of the requirements of sections 41.10 through 41.12 of the Commission's regulations, but we will deny waiver of the balance of the requirements of Part 41.

### **B. Waivers, Approvals and Authorizations**

16. Evergreen Gen Lead requests waiver of: the requirements of Part 41 (Accounts, Records, Memoranda and Disposition of Contested Audit Findings and Proposed Remedies), Part 101 (Uniform System of Accounts Prescribed for Public Utilities and Licensees subject to the Provisions of the Federal Power Act) and Part 141 (Statements and Reports (Schedules), except for sections 141.14 (Licensed Hydropower Development Recreation Report) and 141.15 (Annual Conveyance Report).

17. Consistent with the Commission's precedent in *Energia Sierra Juarez* and *Maine GenLead*,<sup>27</sup> we will grant in part and deny in part Evergreen Gen Lead's requested waivers of the Commission's filing and reporting requirements, which have been granted to owners of limited, discrete transmission facilities (*Maine GenLead*) and to sellers authorized to sell electricity at market-based rates (*Energia*). We find the circumstances the Commission relied upon to reach its determination in *Energia* and *Maine GenLead* similar to the circumstances presented in this proceeding.

18. Based on the statements in Evergreen Gen Lead's filing regarding the EGL Interconnection Line, a 38-mile, 115 kV line generator lead line and related relay protection equipment that was constructed for the purpose of delivering energy to the ISO New England Inc. transmission system from Evergreen Gen Lead's Members' generation facilities, we find that the EGL Interconnection Line qualifies as limited and discrete. Because Evergreen Gen Lead's Members whose generation facilities have been

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<sup>26</sup> Contrary to the requirements of section 35.3 of the Commission's regulations, 18 C.F.R. § 35.3(a) (2014), Evergreen Gen Lead failed to file the rate schedule in a timely manner (i.e., within 120 days of commencing service on the EGL Interconnection Line on January 25, 2010). Because Evergreen Gen Lead has reported its failure to file to the Office of Enforcement and Evergreen Gen Lead represents that no charges have been assessed to any entity under the rate schedule, no refunds or penalties are required. The Commission reminds Evergreen Gen Lead that it must submit required filings on a timely basis, or face possible enforcement action by the Commission.

<sup>27</sup> *Energia Sierra Juarez U.S. Transmission, LLC*, 149 FERC ¶ 61,052, at P 20 (2014); *Me. GenLead, LLC*, 146 FERC ¶ 61,223, at PP 17-18 (2014).

constructed use Evergreen Gen Lead's EGL Interconnection line to deliver power into the ISO New England Inc. markets and the Members whose generation facilities have been constructed have market-based rate authority,<sup>28</sup> it appears they have no captive, non-affiliate customers and they do not sell at cost-based rates. Thus, we will grant Evergreen Gen Lead's request for waiver of Part 141 (except for, as requested, sections 141.14 and 141.15), including the Form No. 1 filing requirement. Likewise, we will also grant waiver of Part 101, which governs the Uniform System of Accounts. Should any of the information upon which the Commission has relied change, Evergreen Gen Lead must notify the Commission within thirty (30) days of such change.

19. Notwithstanding the waiver of the accounting requirements of Part 101, however, we expect Evergreen Gen Lead to keep its accounting records in accordance with accounting principles generally accepted in the United States (U.S. GAAP). As to Evergreen Gen Lead's request for waiver of Part 41, we will grant its request for waiver of sections 41.10 through 41.12, because those sections pertain to Form No. 1 filing requirements in Part 141, which we also waive, as discussed above. We will, however, deny Evergreen Gen Lead's request for waiver of the balance of the requirements of Part 41. These requirements pertain to the Commission's audit process, which remains applicable in this instance. This finding is consistent with the Commission's established policy of denying waiver of Part 41 to transmission providers.<sup>29</sup> Consistent with our previous orders, we find that it is appropriate to deny waiver of these provisions to facilitate regulatory oversight.

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<sup>28</sup> See Evergreen Wind Power III, LLC/Market-Based Rate Tariff of Evergreen Wind Power III, LLC, [Market-Based Rate Tariff, FERC Electric Tariff Volume No. 1, 3.1.0](#) (effective Dec. 19, 2013); Stetson Holdings, LLC/Evergreen Wind Power V MBR Baseline, [FERC Electric Tariff, Market-Based Rate Wholesale Power Sale Tariff, 2.0.0](#) (effective Dec. 19, 2013); Stetson Wind II, LLC/Stetson Wind II MBR, [Market Based Rate Tariff, FERC Electric Tariff Volume No. 1, 2.1.0](#) (effective Dec. 19, 2013); *cf. First Wind Holdings, LLC*, 127 FERC ¶ 62,012 (2009) (stating Evergreen Gen Lead's representation that its Members do not sell power to captive retail customers). The Champlain generation facility has not yet been constructed and does not yet have market-based rate authority.

<sup>29</sup> See *Rock Island Clean Line LLC*, 139 FERC ¶ 61,142, at P 47 (2012); *Ne. Utils. Serv. Co.*, 98 FERC ¶ 61,310, at 62,331 (2002); *TransEnergie U.S. Ltd.*, 98 FERC ¶ 61,147, at 61,502 (2002); *TransEnergie U.S. Ltd.*, 98 FERC ¶ 61,144, at 61,457 (2002).

The Commission orders:

(A) Evergreen Gen Lead's proposed rate schedule is hereby accepted for filing, effective December 28, 2014, as discussed in the body of this order.

(B) Evergreen Gen Lead's request for waiver of the requirements of Part 101 of the Commission's regulations is hereby granted, as discussed in the body of this order.

(C) Evergreen Gen Lead's request for waiver of Part 41 of the Commission's regulations is hereby granted in part and denied in part, as discussed in the body of this order.

(D) Evergreen Gen Lead's request for waiver of Part 141 of the Commission's regulations, with the exception of sections 141.14 and 141.15, is hereby granted, as discussed in the body of this order.

(E) Evergreen Gen Lead must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in granting waiver within thirty (30) days of such change.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.