

141 FERC ¶ 61,220
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Avalon Wind, LLC
Avalon Wind 2, LLC
Catalina Solar, LLC
Catalina Solar 2, LLC
Pacific Wind Lessee, LLC
Pacific Wind 2, LLC
Valentine Solar, LLC
EDF Renewables Development, Inc

Docket No. EL12-109-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued December 20, 2012)

1. In this order, the Commission grants a petition for declaratory order filed by a group of affiliated renewable power generation developers¹ and confirms Petitioners' priority firm transmission rights to the capacity of the Antelope Valley Line.² The Antelope Valley Line encompasses two 230 kV generation-tie lines that will be constructed and jointly owned by the Petitioners to interconnect the planned capacity of Petitioners' wind and solar generation projects to the California Independent System Operator Corporation (CAISO) integrated transmission grid via the Whirlwind Substation.³

¹ Avalon Wind, LLC (Avalon), Avalon Wind 2, LLC (Avalon 2), Catalina Solar, LLC (Catalina Solar), Catalina Solar 2, LLC (Catalina Solar 2), Pacific Wind Lessee, LLC (Pacific Wind Lessee), Pacific Wind 2, LLC (Pacific Wind 2), Valentine Solar, LLC (Valentine Solar), EDF Renewables Development, Inc (EDF) (collectively, Petitioners).

² Petitioners' September 27, 2012 Petition for Declaratory Order (Petition).

³ The facilities will include two separate electrical circuits that will share some common poles. One circuit will consist of a 10.5 mile long 400 MW capacity line, a segment of which is already energized, the other line is 14 miles long and projected to have 340 MW of capacity.

I. Background

2. Each of the Petitioners is a wholly-owned direct or indirect subsidiary of EDF and is a party to the Shared Transmission Facilities Agreement (SFA) for the Antelope Valley Line.⁴ Petitioners expect to continue development of a number of new wind and solar powered generation facilities located in the Antelope Valley of Kern County, California. Pursuant to the SFA, Petitioners will be co-owners of the Antelope Valley Line, and each Petitioner will be allocated a share of the construction costs of the generation-tie lines and related facilities, and a share of the operations and maintenance costs for the generation-tie lines and related facilities. These allocations will be based on each Petitioner's share of the capacity of the relevant segments of the generation-tie lines that it uses to interconnect its generation facility to the transmission grid.⁵

II. Instant Filing

3. Petitioners seek a declaratory order affirming their priority rights to the Antelope Valley Line. Petitioners contend that, based upon their pre-existing plans to expand their generation projects, they will develop 740 MW of wind and solar generation capacity, which is the same total capacity as the Antelope Valley Line.

4. Petitioners submit that Pacific Wind Lessee, pursuant to a structured lease financing arrangement, controls and operates a 140 MW wind-powered generation facility (Pacific Wind facility) that is interconnected via the Antelope Valley Line to the Whirlwind Substation owned by Southern California Edison Company within the balancing authority area of CAISO. Petitioners state that the Pacific Wind facility operated by Pacific Wind Lessee has an executed, long-term power purchase agreement for all of its output, has obtained all of its required certifications and permits, and began commercial operations on August 16, 2012.⁶ Petitioners also state that Pacific Wind Lessee has market-based rate authorization.⁷

5. Petitioners submit that Catalina Solar is developing a 110 MW solar energy generation facility and will share some of the generation interconnection facilities with the Pacific Wind facility. Petitioners state that Catalina Solar has filed and received

⁴ *Pacific Wind Lessee, LLC*, 141 FERC ¶ 61,122 (2012).

⁵ Petition at 3-4.

⁶ *Id.* at 4.

⁷ *Pacific Wind Lessee, LLC*, Docket No. ER12-1931-000 (July 3, 2012) (delegated letter order).

Commission approval for market-based rate authorization.⁸ According to Petitioners, Catalina Solar has an executed long-term power purchase agreement for all of its output. Petitioners state that the first phase of the Catalina Solar project is expected to be operational by December 31, 2012, and that the second phase is expected to be operational by June 30, 2013.⁹

6. Petitioners state that there are five other generation facilities: Avalon is developing a 140 MW wind facility, Avalon 2 is developing a 100 MW wind facility, Catalina 2 is developing a 40 MW solar facility, Pacific Wind 2 is developing a 110 MW wind facility, and Valentine Solar is developing a 100 MW solar facility. Petitioners assert that each of these projects has acquired land control with respect to at least half, and in some cases all, of the land necessary to construct the full generation capacity of the projects, and that each project is in the process of obtaining its required certifications and permits. Petitioners submit that these projects are expected to be completed in the 2014-2016 timeframe.¹⁰ Petitioners add that one-third of the total planned investment has already been spent.¹¹

7. Specifically, Petitioners provide the following details on the status of the five projects: (1) all major permitting is completed for one of the projects; (2) two projects are expected to have obtained all major permits by the end of this year; and (3) the remaining two projects are expected to have their major permitting completed by mid-2013. Petitioners state that all of the projects either have, or are expected in the next few weeks to have, executed Large Generator Interconnection Agreements. In addition, EDF has master supply agreements with two turbine manufacturers and multiple frame agreements for solar panels that could support all of the planned nameplate capacity of these projects, although specific turbines or solar panels have not yet been earmarked for each of these projects.¹²

8. Petitioners state that the existing projects combined with the projects under development total 740 MW of wind and solar capacity. Petitioners explain that while EDF is a party to the SFA as a joint owner, its ownership in the two generation-tie lines, if any, would only be residual capacity that remained after accounting for the

⁸ *Catalina Solar, LLC*, Docket No. ER12-2627-000 (November 2, 2012) (delegated letter order).

⁹ Petition at 5.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 8.

¹² *Id.* at 9.

transmission capacity allocated to all of the other project companies. Petitioners further explain that because EDF is in the process of developing additional wind or solar generation facilities in the Antelope Valley, its ownership of any residual capacity would be temporary and would terminate upon the formation of another project company that would own the residual capacity to transmit the output of its wind or solar generation facility.¹³

9. Petitioners state that the Antelope Valley Line is designed to be discrete radial lines with the sole purpose of interconnecting the Petitioners' generation facilities to the CAISO-controlled transmission grid for sales under long-term power purchase agreements. Petitioners do not anticipate that any third party will seek to use the generation-tie lines and related facilities for any purpose. Petitioners maintain that they have invested significant time and capital to develop their planned wind and solar generation projects that depend on access to the capacity of the Antelope Valley Line and it is anticipated that additional resources will be spent to bring these projects into production. Petitioners contend that the successful completion of these projects is dependent on access to the Antelope Valley Line to reach the point of interconnection and would be materially and adversely affected if denied confirmation of the Petitioners' priority rights to the capacity of the Antelope Valley Line.¹⁴

III. Notice of Filing and Responsive Pleading

10. Notice of the petition for declaratory order was published in the *Federal Register*, 77 Fed. Reg. 61,597 (2012), with interventions and comments due on or before October 29, 2012. None was filed.

IV. Discussion

11. Under the standard determined by the Commission in *Aero* and applied in *Milford*, where transmission owners have specific, pre-existing generation expansion plans with milestones for construction of generation and have made material progress toward meeting those milestones, they may have priority rights on their transmission lines.¹⁵ Further, affiliates of current transmission owners, which are developing their own generation projects, may also obtain firm priority rights on a transmission line to the

¹³ *Id.* at 6.

¹⁴ *Id.* at 10.

¹⁵ *Aero Energy LLC*, 116 FERC ¶ 61,149, at P 28, *order granting modification*, 116 FERC ¶ 61,149 (2006), *final order directing interconnection and transmission service*, 118 FERC ¶ 61,204, *order denying reh'g*, 120 FERC ¶ 61,188 (2007) (*Aero*); *Milford Wind Corridor*, 129 FERC ¶ 61,149, at P 22 (2009) (*Milford*).

extent that they use the line to serve their own load or demonstrate specific generation expansion plans with milestones to use the line in the future, provided that the plans include a future transfer of ownership to such affiliates.¹⁶

12. We find that the Petitioners have shown the existence of specific, pre-existing plans, with definite dates and milestones, for phased development of generation that will utilize the entire capacity of the Antelope Valley Line. Based on the record, we find that significant progress has already been made in completing the generation projects that together will use the total line capacity. We note 250 MW of capacity has already gone into service or will go into service. Specifically, the Pacific Wind (140 MW) facility has an executed, long-term power purchase agreement for all of its output, and began commercial operations on August 16, 2012. The Catalina Solar facility (110 MW), has an executed long-term power purchase agreement for all of its output with the first phase expected to be operational by December 31, 2012, and the second phase expected to be operational by June 30, 2013.¹⁷

13. We find that Petitioners provided sufficient evidence of material progress made in developing future phases that will use the remaining transmission capacity. Petitioners have provided information about specific plans to construct generation plants¹⁸ that will interconnect to and use the remaining capacity on the proposed Antelope Valley Line, including specific milestones for construction. Petitioners have acquired land control with respect to at least half of the land necessary to construct the full generation capacity of the following projects, and are in the process of obtaining required certifications and permits for the Avalon; Avalon 2; Catalina 2; Pacific Wind 2; and Valentine Solar facilities. These projects either have, or are expected to have in the next few weeks, executed large generator interconnection agreements. In addition, Petitioners have master supply agreements with two turbine manufacturers and multiple frame agreements for solar panels that could support the planned nameplate capacity of these projects.

14. We find that Petitioners have sufficiently demonstrated that there will be a future transfer of ownership interests in the Antelope Valley Line to affiliates that are not currently owners of the lines but that are developing their own generation projects that will utilize the lines in the future. Specifically, we note that while EDF is a party to the SFA, any residual ownership of capacity in the Antelope Valley Line that remains after the transmission capacity is allocated to the other project companies would be temporary

¹⁶ See *Milford*, 129 FERC ¶ 61,149 at P 5; *Sunzia Transmission, LLC*, 131 FERC ¶ 61,162, at P 37 & n.38 (2010).

¹⁷ Both entities have market-based rate tariffs on file with the Commission.

¹⁸ These plants are expected to be completed in the 2014-2016 timeframe.

and would terminate upon the formation of another project company.¹⁹ Petitioners do not anticipate that any third party will seek to use the Antelope Valley Line.

15. Accordingly, based on the submitted plans and milestones for construction, demonstration of material progress towards meeting those milestones, and demonstration of future transfer of ownership in the Antelope Valley Line, we grant Petitioners' request for firm priority rights for the full 740 MW capacity of the Antelope Valley Line. We note that, while we are granting Petitioners' request for priority firm transmission rights for the full capacity, we will require Petitioners to offer service on these transmission lines to the extent Petitioners are not using such capacity, as well as to expand these transmission lines if a third party requests capacity and there is no capacity available to meet that request.²⁰

The Commission orders:

Petitioners' petition for declaratory order is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁹ *Id.* at 6.

²⁰ *See Milford*, 129 FERC ¶ 61,149 at P 23 (rejecting requests to establish a "safe harbor" period of firm transmission rights as inconsistent with the Commission's precedent granting waiver of open access requirements unless and until the owner receives a request for transmission service).