

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Northern States Power Company and
Northern States Power Company (Wisconsin)

Docket No. TS04-281-000

ORDER ON WAIVER FROM THE STANDARDS OF CONDUCT

(Issued May 1, 2007)

1. In this order, the Commission is granting Northern States Power Company (NSP) and Northern States Power Company (Wisconsin) (NSPW) (collectively, NSP Companies) partial waivers from the Standards of Conduct.

Background

2. On November 25, 2003, the Commission issued a Final Rule Adopting Standards of Conduct for Transmission Providers (Order No. 2004 or Final Rule).¹ Under Order No. 2004, the Standards of Conduct govern the relationships between electric Transmission Providers and all of their Marketing and Energy Affiliates. Order No. 2004

¹ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, III FERC Stats. & Regs. ¶ 31,161 (2004), *order on reh'g*, Order No. 2004-B, III FERC Stats. & Regs. ¶ 31,166 (2004), *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated in part, sub. nom. National Fuel Gas Supply Corporation v. FERC*, 468 F.3d 831 (D.C. Cir. 2006). *See also Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237 (2007) (Interim Rule); *Standards of Conduct for Transmission Providers*, FERC Stats. & Regs ¶ 32,611 (2007) (Notice of Proposed Rulemaking).

states that Transmission Providers may request waivers or exemptions from all or some of the requirements of Part 358 for good cause. *See* 18 C.F.R. § 358.1(d).²

3. On September 7, 2004, NSP Companies³ filed a request for clarification or, in the alternative, a limited exemption from the separation of functions requirements and the information sharing requirements in the Order No. 2004 Standards of Conduct for service provided to certain NSP and NSPW retail customers, as discussed in more detail in the following sections of this order.⁴ According to NSP Companies, NSPW provides limited “unbundled” service for certain retail customers in Michigan, which accounts for less than four percent of NSPW’s total retail customers. NSP provides limited special transmission services to three discrete retail customers in Minnesota, North Dakota and South Dakota.⁵

4. NSP Companies are members of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) regional transmission organization (RTO). NSP Companies state that they operate as a single integrated electric system and NERC-certified control area. NSP Companies explain, further, that their transmission operations are performed under Midwest ISO’s regional oversight and that Midwest ISO is the regional reliability coordinator for the NSP Companies System.

5. NSP Companies, on behalf of NSP and NSPW, request that the Commission either (1) clarify that the services at issue are considered “bundled” retail service subject to exemption under section 358.3(e)(2) of the Standards of Conduct regulations, or (2) find that NSP’s and NSPW’s retail sales functions remain eligible for exemption under section 358.3(e)(2), despite the fact that they perform the limited unbundled services that are the subject of this request for waiver. NSP Companies state that NSP and NSPW will

² *See, e.g., Bear Creek Storage Co.*, 108 FERC ¶ 61,011 (2004); *Black Marlin Pipeline Co.*, 108 FERC ¶ 61,184 (2004); and *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243 (2004).

³ NSP Companies state that NSP and NSPW are wholly-owned utility operating company subsidiaries of Xcel Energy, Inc. Xcel Energy Services Inc. (Service Company) is the service company for the Xcel Energy Inc.

⁴ NSP Companies also requested an extension of time which the Commission granted pending action on outstanding requests for waiver or exemption from the Standards of Conduct for Transmission Providers on September 22, 2004.

⁵ NSP Companies characterize this “unbundled” service as service that effectively remains bundled.

comply with all of the other provisions of Order No. 2004, including ensuring that NSP's, NSPW's and Service Company's retail sales employees who receive transmission information observe the no-conduit rule and will not transmit transmission information to any wholesale marketing or sales function employees or employees of any Energy Affiliates.

Public Notice, Interventions and Protests

6. Notice of NSP Companies' filing was published in the *Federal Register*, 71 Fed. Reg. 35,639 (2006), with motions to intervene and protests due on or before June 21, 2006. None was filed.

Discussion

7. Section 358.3(e) defines market, sales or brokering as "a sale for resale of natural gas or electric energy in interstate commerce." As relevant, a sales and marketing employee or unit includes a public utility Transmission Provider's energy sales unit, unless such unit engages solely in bundled retail sales. *See* 18 C.F.R. § 358.3(e).

8. NSP Companies express concern that a strict reading of section 358.3(e) could require NSP's and NSPW's entire retail sales operations and the Service Company's retail sales function personnel to be treated as marketing and sales units subject to the Standards of Conduct as a result of the entities' limited "unbundled" retail sales arrangements. We discuss each service below.

A. NSPW -- Upper Peninsula Services

9. NSP Companies explain that NSPW provides bundled retail electric service to approximately 225,000 retail electric customers in western Wisconsin (96 percent of the total customers served by NSPW) with a peak demand in 2003 of approximately 1250 MW. According to NSP Companies, NSPW also provides retail electric service to approximately 9,000 customers in the Upper Peninsula of Michigan (less than four percent of NSPW's total customers) which customers accounted for only three percent of all NSPW sales in 2003. NSP Companies state that, even though Michigan state law required it to unbundle its retail electric tariffs in Michigan, all of NSPW's retail customers continue to purchase the same total cost-based, regulated services they had prior to retail unbundling.

10. NSP Companies point out that NSPW's unbundled service in Michigan represents a small percentage of its overall retail sales and that all of NSPW's retail employees are separated from its transmission employees. NSP Companies argue that NSPW's service has not effectively been "unbundled," that no competitive market exists, and that the retail sales function cannot take competitive advantage of any transmission information

obtained from the NSPW transmission function because the customers did not choose another utility to provide retail sales service. NSP Companies, therefore, request a partial exemption of the Standards of Conduct to continue to serve these limited retail customers.

11. The Commission will grant the requested waiver to allow NSPW to retain the retail exemption of section 358.3(e)(2), despite the fact that its retail function employees are also performing *de minimis* unbundled services. NSPW's transmission personnel are separated from its retail employees, and the unbundled services are a very small percentage of its business. NSPW will observe the no-conduit rule regarding the transmission information it obtains from these unbundled retail customers. In addition, NSP Companies and its retail function employees must observe the no-conduit rule with respect to all transmission and customer information. As a result, and subject to the no-conduit rule condition, it does not appear NSPW's marketing and energy affiliates will obtain a competitive advantage from the described services. NSP Companies are directed to notify the Commission if the circumstances presented in this case change.

B. NSP -- University of North Dakota and South Dakota State Penitentiary

12. NSP Companies state that NSP provides transmission-only service under rate schedules on file with the Commission to serve a portion of the retail requirements of the University of North Dakota and the South Dakota State Penitentiary. The total transmission service revenues from these customers under two transmission rate schedules was \$60,000 in 2003. NSP Companies notes that, by federal statute, these two agencies purchase "baseload" wholesale supplies from the Western Area Power Administration (WAPA) that are delivered to the NSP transmission system and transmitted over NSP's distribution facilities to the two customers. According to NSP Companies, NSP provides bundled retail service for the remainder of the customers' electric loads pursuant to regulated electric tariffs on file with the North Dakota Public Service Commission and the South Dakota Public Utilities Commission.⁶ NSP Companies explain that the transmission service to these customers for the WAPA-generated power is administered by Service Company employees in the transmission function of NSP in Minneapolis, and the residual bundled retail electric services are

⁶ This figure is compared to NSP's total retail sales revenues of \$2.05 billion. The annual transmission revenue from the Penitentiary is approximately \$11,500; the annual transmission revenue from the University is approximately \$48,500. NSP Companies explains that the transmission service rates are less than the comparable full OATT rate because the University and the Penitentiary are located near the WAPA transmission system and each customer potentially could construct a physical bypass of the NSP transmission system to deliver their WAPA allocation power.

managed by NSP or Service Company employees in the retail customer service function for NSP in Grand Forks and Sioux Falls, North Dakota. The Commission finds that because this service to these two entities is primarily pursuant to a federal program administered by WAPA, these customers are not similar to traditional unbundled retail customers, *i.e.*, but for the WAPA transactions, they would be bundled retail customers. Therefore, there does not appear to be competition to serve these customers' needs. Accordingly, even if there was information shared, there would be no harm to competition.

13. Accordingly, the Commission will grant a waiver to allow NSP to perform the described unbundled retail services without losing its section 358.3(e)(2) exemption. The Commission agrees with the NSP Companies that the NSP retail sales function cannot gain a competitive advantage because the transmission services provided to the University of North Dakota and the South Dakota State Penitentiary are regulated, cost-based services available only to those two specific state agencies pursuant to statute, there is no competition for such service, and the service is *de minimis* (the customers pay approximately \$60,000 in annual transmission service revenues). NSP Companies are directed to notify the Commission if the circumstances presented in this case change.

C. NSP -- Flint Hills Resources Refinery

14. NSP Companies state that NSP provides a form of “unbundled” retail service to the Flint Hills Resources Refinery (Flint Hills) near Rosemount, Minnesota. According to NSP Companies, the refinery's load is approximately 115 MW. NSP Companies state that, under a 1999 agreement, NSP makes unbundled sales of energy to Flint Hills pursuant to state statute and that the refinery is located in the NSP's exclusive retail electric service area. Under the agreement, which was approved by the Minnesota Public Utilities Commission, NSP serves Flint Hills as a retail customer in the same manner as other retail requirements customers.

15. NSP Companies state that Flint Hills is the only unbundled customer out of more than one million of NSP's Michigan retail electric customers. NSP Companies, therefore, request a limited exemption to allow the retail function employees to also serve the single unbundled customer, Flint Hills.

16. The Commission will grant a waiver so that NSP's retail function employees may serve Flint Hills while maintaining its section 358.3(e)(2) retail exemption. Due to Flint Hills' unique status and the *de minimis* amount of retail sales involved, the Commission will grant the waiver based on the facts presented in this case. NSP Companies are directed to notify the Commission if the circumstances presented in this case change.

The Commission orders:

NSP Companies' request for partial waiver of the Standards of Conduct is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Philis J. Posey,
Deputy Secretary.