

123 FERC ¶ 61,193
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.

Wabash Valley Power Association

Docket No. TS06-11-001

ORDER GRANTING WAIVER

(Issued May 21, 2008)

1. On November 17, 2006 and on July 3, 2007, Wabash Valley Power Association (Wabash Valley) provided supplemental information on why it believes it meets the criteria for an exemption from the Standards of Conduct under Order No. 2004.¹ Wabash Valley provided this information in response to the Commission's October 19, 2006 order² regarding Wabash Valley's July 26, 2006 claim that it qualifies for an exemption from the Standards of Conduct under section 358.1(c) of the Commission's regulations.³

¹ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161 (2004), *order on reh'g*, Order No. 2004-B, 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 Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, 72 Fed. Reg. 2,427 (Jan. 19, 2007), FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, 72 Fed. Reg. 14,235 (Mar. 27, 2007), FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, 72 Fed. Reg. 3,958 (Jan. 29, 2007), FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, 73 Fed. Reg. 16, 228 (Mar. 27, 2008) FERC Stats. & Regs. ¶ 32,630 (2008).

² *Wabash Valley Power Ass'n.*, 117 FERC ¶ 61,062 (2006) (October 19 Order).

³ 18 C.F.R. § 358.1(c) (2007).

In the alternative, Wabash Valley claims that it qualifies for a waiver because it has limited and discrete transmission facilities and because it is a small public utility that does not own an integrated transmission grid.⁴ In this order, the Commission grants Wabash Valley's request for waiver due to the limited and discrete nature of its transmission facilities.

Background

2. Wabash Valley, a non-profit generation and transmission cooperative (G&T), owns transmission facilities located in the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) control area and is subject to the Commission's jurisdiction as a public utility supplying capacity and energy to its members⁵ for resale. Wabash Valley jointly owns the transmission facilities with Duke Energy (Duke) and the Indiana Municipal Power Agency (IMPA). According to Wabash Valley, it owns certain discrete segments of the jointly-owned transmission system and its investment in the transmission facilities was approximately 10.4 percent at year end 2005. Wabash Valley states that over fifty percent of its member load is located in the footprint of the Midwest ISO and that its members had a peak load of approximately 1424 MW in 2005.⁶ Wabash Valley also states that it is responsible for meeting all of its members' power requirements under long-term wholesale power contracts and that it makes no sales to retail customers. In addition, Wabash Valley purchases capacity and energy to meet its peak load requirements, which results in excess during non-peak periods. Wabash Valley states that it makes sales of this excess capacity and energy to non-members, under its market-based rate tariff.⁷

⁴ See *Black Creek Hydro Inc.*, 77 FERC ¶ 61,232 (1996).

⁵ Wabash Valley's members include J. Aron (which Wabash Valley describes as a power marketer, not a retail load-serving entity), Wabash Valley Energy Marketing, Inc. (a subsidiary of Wabash Valley), and twenty-eight not-for-profit cooperatives providing retail service to their members in Indiana, Michigan, Illinois and Missouri.

⁶ Citizens Cooperative Corp. became a member of Wabash Valley in 2006 adding approximately 225 MW to Wabash Valley's members' peak load. Citizens Cooperative Corp. owns approximately 210 miles of transmission lines.

⁷ The Alliance for Cooperative Energy Services (ACES) Power Marketing, an entity that provides power marketing services to G&Ts, arranges for Wabash's sales. ACES is owned by fifteen G&Ts including Wabash Valley, which has a 6.66 percent ownership interest.

3. Wabash Valley states that it meets the requirements for exemption under section 358.1(c) of the Commission's regulations⁸ because it is a participating member of the Midwest ISO, it does not operate or control its transmission facilities and it does not have access to transmission, customer or market information covered by section 358.5(b) of the Commission's regulations.⁹ Wabash Valley also states that the Midwest ISO operates and controls the subject transmission facilities and that prior to Wabash Valley's participation in the Midwest ISO, Public Service of Indiana, Inc. (Duke Energy's predecessor), not Wabash Valley, operated and controlled the transmission facilities.

4. Meanwhile, on September 20, 2006, in Docket No. ER06-1507-000, Wabash Valley submitted two service agreements, each entitled "Special Agreement for Transmission and Electric Service," between Wabash Valley and two of its industrial members (Midwest Energy Cooperative and Jasper County REMS). Wabash Valley stated that it was filing the service agreements to implement Schedule Industrial 2 of its Formula Rate Tariff¹⁰ and that, except for the addition of transmission facilities charges and substation charges that were negotiated in accordance with Schedule Industrial 2,¹¹ each service agreements provides for terms of service in accordance with Schedule Industrial 1 of Wabash Valley's Formula Rate Tariff. In addition, Wabash Valley stated that Midwest Energy Cooperative and Jasper County REMC requested it to construct, maintain and operate certain transmission and substation facilities dedicated to the delivery of electric power and energy to each customer's respective ethanol production plant.¹² The September 20, 2006 filed service agreements were accepted for filing on October 13, 2006.¹³

5. In the October 19 Order, the Commission stated that it did not understand Wabash Valley's claim that it does not have access to customer information covered by section 358.5(b) of the Commission's regulations when the negotiation of transmission contracts gives it access to customer information. Accordingly, the Commission required Wabash

⁸ 18 C.F.R. § 358.1(c) (2007).

⁹ 18 C.F.R. § 358.5(b) (2007).

¹⁰ Wabash Valley FERC Electric Tariff, Original Volume No. 1.

¹¹ Wabash Valley September 22, 2006 Filing at 6.

¹² *Id.* at 7.

¹³ *See* Wabash Valley Power Ass'n., Docket No. ER06-1507-000 (Oct. 13, 2006) (unpublished letter order).

Valley to explain why it does not have access to customer information that would preclude an exemption from the Standards of Conduct.

6. On November 17, 2006, Wabash Valley filed a response stating that it does not have access to information covered by section 358.5(b) because the agreements filed in Docket No. ER06-1507-000 concern distribution facilities, Wabash Valley has no transmission system information, and Midwest and Jasper REMC are not transmission customers of Wabash Valley. In the alternative, Wabash claims that good cause exists for the Commission to grant Wabash Valley waiver on the basis that it only owns discrete transmission facilities that do not form an integrated transmission grid or on the basis that it is a small public utility that does not own integrated transmission and is not a part of a tight power pool.¹⁴ To support its argument, on July 3, 2007 Wabash Valley filed additional information including a scaled map showing the transmission lines it owns, a list of its transmission line segments and detailed information on the investment reconciliation procedure among Duke, IMPA and Wabash Valley for the jointly-owned transmission facilities.

Public Notice

7. Notices of the Wabash Valley's supplemental filings were published in the *Federal Register*, 72 Fed. Reg. 27,111 (2007) and 72 Fed. Reg. 57,922 (2007), with interventions and protests due on or before May 15, 2007 and October 9, 2007, respectively. None was filed.

Discussion

8. The Commission finds that regardless of whether Wabash Valley has demonstrated that it meets the requirements for exemption under section 358.1(c) of the Commission's regulations, good cause exists to grant Wabash Valley's alternative request for waiver because it only owns discrete transmission facilities that do not form an integrated transmission grid. Accordingly, for the reasons discussed below, we grant Wabash Valley a waiver from the Commission's Standards of Conduct.

¹⁴ Wabash Valley November 17, 2006 Response at 14 (*citing High Island Offshore System LLC*, 116 FERC ¶ 61,047, at P 74 (2006); *Elkem Metals Co. - Alloy, L.P.*, 114 FERC ¶ 61,181 (2005) (*citing Cent. N.Y. Oil & Gas Co.*, 109 FERC ¶ 61,231, at P 26-27 (2004)); *Alcoa Power Generating, Inc., et al.*, 108 FERC ¶ 61,243, at P 27 (2004) (*citing Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 (1996))).

9. The Standards of Conduct, adopted in Order No. 2004 and codified in Part 358 of the Commission's regulations,¹⁵ govern the relationships between transmission providers and their marketing and energy affiliates. Under section 358.1(c) of the Commission's regulations,¹⁶ a public utility transmission owner may request an exemption from Part 358 of the Commission's regulations if it participates in a Commission-approved ISO or regional transmission organization (RTO), does not operate or control its transmission facilities, and has no access to transmission, customer or market information covered by section 358.5(b) of the Commission's regulations. The Commission finds that Wabash Valley has demonstrated that it participates in a Commission-approved RTO (i.e., the Midwest ISO) and that it does not operate or control its transmission facilities. However, based on our review of Wabash Valley's filings, it is unclear whether Wabash Valley has access to the type of customer information defined under section 358.5(b)(2) of the Commission's regulations when it negotiates agreements such as those it filed in Docket No. ER06-1507-000. Nevertheless, because we find that Wabash Valley qualifies for waiver from the Standards of Conduct in accordance with *Black Creek Hydro, Inc.*,¹⁷ we need not decide whether or not Wabash Valley has access to customer information under section 358.5(b)(2) of the Commission's regulations.

10. The Commission will grant waivers of the Standards of Conduct requirements upon request to certain entities: (1) a utility that owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) a small public utility that owns, operates, or controls an integrated transmission grid unless it is a part of a tight power pool, or unwarranted by other circumstances.¹⁸ Here, Wabash Valley has provided information, including a detailed map and list of transmission line segments, demonstrating that it owns only limited and discrete transmission facilities that, while part of the Midwest ISO operated transmission grid, do not themselves form

¹⁵ 18 C.F.R. Part 358 (2007).

¹⁶ 18 C.F.R. § 358.1(c) (2007).

¹⁷ 77 FERC ¶ 61,232 (1996).

¹⁸ *Peetz Logan Interconnect, LLC*, 122 FERC ¶ 61,086 (2008); *see also Alcoa Power Generating, Inc.*, 108 FERC ¶ 61,243, at P 27 (2004) (citing *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*)). A waiver from the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Wabash Valley has used its access to transmission information to unfairly benefit Wabash Valley's own sales, or an affiliate's sales. *See Peetz Logan Interconnect, LLC*, 122 FERC ¶ 61,086, at n.22.

an integrated transmission grid. Consequently, we find good cause to grant Wabash Valley waiver from the requirements of Part 358 of the Commission's regulations, as long as the circumstances warranting the waiver remain unchanged.¹⁹

11. Accordingly, we grant Wabash Valley waiver from the requirements of Part 358 of the Commission's regulations. If material circumstances change that affect Wabash Valley's continued qualification for waiver, Wabash Valley must report this to the Commission.

The Commission orders:

Wabash Valley's request for waiver of the requirements of Part 358 of the Commission's regulations is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁹ Additionally, as noted before, on March 21, 2008, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing a series of reforms to the Standards of Conduct. While the NOPR proposes to make certain revisions to the information sharing prohibitions of section 358.5(b) of the Commission's regulations, the fundamental principle prohibiting a transmission provider's transmission function employees from disclosing non-public transmission information (which includes customer information) to marketing function employees is retained. *See* NOPR, 73 Fed. Reg. 16,228 at proposed section 358.6. The reforms proposed in the NOPR, even if adopted as a Final Rule, do not appear to affect either Wabash's need for the waiver requested herein or the Commission's decision. We note that Wabash Valley, like other transmission providers, will have to comply with any new or revised requirements that may be adopted under a final rule.