

135 FERC ¶ 61,003  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Willmar Municipal Utilities

Docket No. OA11-4-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued April 4, 2011)

1. On January 20, 2011, Willmar Municipal Utilities (Willmar) filed a request for waiver of the requirement under Order Nos. 889<sup>1</sup> and 890<sup>2</sup> to establish and maintain an Open Access Same-Time Information System (OASIS) and the requirement under Order Nos. 889, 2004,<sup>3</sup> and 717<sup>4</sup> to comply with the Standards of Conduct. For the reasons discussed below, we will grant Willmar's request.

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<sup>1</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>2</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>3</sup> *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, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *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 and remanded as it applies to natural gas pipelines 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, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

## I. Background and Filing

2. Willmar states that it is a transmission-dependent municipal corporation located in Willmar, Minnesota. According to Willmar, it owns and operates an electrical generation and distribution system and is responsible for meeting the electric energy requirements of approximately 9,000 customers in and around Willmar. Willmar states that its transmission assets consist of approximately 36 miles of lines, including eight 69 kV lines, one 230 kV line, and eight substation facilities operating at between 69 kV to 231 kV.

3. Willmar states that it recently became a network customer of Midwest Independent Transmission System Operator, Inc. (Midwest ISO), and that it largely receives power from long-term, pre-existing contracts which are accompanied by grandfathered transmission arrangements with Great River Energy (Great River).<sup>5</sup> Willmar states that its transmission facilities are all under the operation and control of Midwest ISO.

4. Willmar states that it is not a public utility and, as a result, is not directly subject to the open access requirements and related obligations of Order Nos. 888 and 889. Willmar is concerned, however, that it is possible that Willmar could become subject to the OASIS and Standards of Conduct requirements by virtue of the fact that it is required to provide reciprocal transmission service as a requirement of taking transmission service.<sup>6</sup> Willmar notes that the Commission has recognized that the costs of complying with certain reciprocity-based obligations—in particular, the requirements to create or participate in an OASIS and to abide by the Standards of Conduct—can be unduly burdensome for a small utility like Willmar. Willmar states that although, as a non-jurisdictional entity, it may not be necessary for it to do so, Willmar asks that the Commission waive these aspects of Willmar's reciprocity obligation.

5. Willmar argues that it meets the criteria for waiver because it disposes of no more than four million MWh of electricity annually. Specifically, Willmar states that it disposes of roughly 300,000 MWh of electricity per year and notes that it disposed of just 294,528 MWh and 303,689 MWh of electricity in 2009 and 2010, respectively. Willmar

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<sup>4</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010).

<sup>5</sup> *See Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,042, at P 421-422 (2005).

<sup>6</sup> Filing at 5.

further states that it is not a member of a tight power pool, and that no other circumstances exist that might justify denying its request for waiver. Willmar asserts that it has only two or three employees who work on transmission functions, none of whom work exclusively on transmission functions. Willmar states that requiring Willmar to comply with the Standards of Conduct would impose additional costs on Willmar without creating any public benefit. Consistent with Commission precedent, Willmar commits to notifying the Commission within 30 days of any material changes in facts affecting the basis for the waiver.<sup>7</sup>

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

6. Notice of Willmar's filing was published in the *Federal Register*, 76 Fed. Reg. 5573 (2011), with interventions and protests due on or before February 10, 2011. None was filed.

## **III. Discussion**

7. Order Nos. 888 and 890 require public utilities that own, control, or operate facilities used for the transmission of electric energy in interstate commerce to file an open access transmission tariff.<sup>8</sup> Order Nos. 889 and 890 require public utilities to establish and maintain an OASIS and Order Nos. 889, 2004, and 717 require public utilities to abide by certain standards of conduct.<sup>9</sup>

8. In Order No. 888, the Commission conditioned non-public utilities' use of public utility open access services on an agreement to offer comparable transmission services in return. Thus, if a public utility seeks transmission service from a non-public utility to which it provides open access transmission service, the non-public utility that owns, controls, or operates transmission facilities must provide comparable transmission service that it is capable of providing on its own system. In Order No. 888-A, the Commission clarified that, under the reciprocity condition, a non-public utility must also comply with the OASIS and Standards of Conduct requirements, or obtain waiver of them.<sup>10</sup>

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<sup>7</sup>*Id.* at 6-7.

<sup>8</sup> Order No. 888, FERC Stats. & Regs. at 31,635; Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 135-136.

<sup>9</sup> Order No. 889, FERC Stats. & Regs. at 31,590; Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 16; Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 313.

<sup>10</sup> Order No. 888-A, FERC Stats. & Regs. at 30,180, 30,286.

9. In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.<sup>11</sup> The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.<sup>12</sup> Order No. 717 did not change those criteria.<sup>13</sup>

10. The Commission has determined that waiver of the requirements of Order No. 889 and the Standards of Conduct would be appropriate for a public utility if the applicant: (1) owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) is a small public utility that owns, operates, or controls an integrated transmission grid, unless it is a member of a tight power pool, or other circumstances are present that indicate that a waiver would not be justified.<sup>14</sup> The Commission grants waivers to small public utilities based on the threshold finding that they dispose of no more than four million MWh annually.<sup>15</sup> The Commission has held that a waiver of the requirement to establish and maintain an information system (i.e., an OASIS) remains effective until the Commission takes action in response to any complaint by an entity alleging that, in evaluating its transmission needs, the entity could not obtain the information necessary to complete its evaluation.<sup>16</sup> A waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that the public utility has unfairly used its access to information to unfairly benefit the utility or its affiliate.<sup>17</sup>

11. Based on the statements in Willmar's filing, we find that Willmar disposes of no more than four million MWh annually. Therefore, we find that Willmar qualifies for

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<sup>11</sup> See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

<sup>12</sup> See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

<sup>13</sup> See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 284.

<sup>14</sup> *Black Creek*, 77 FERC at 61,941. As noted above, under the reciprocity condition, a non-public utility must also comply with the OASIS and Standards of Conduct requirements, or obtain waiver of them.

<sup>15</sup> *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009).

<sup>16</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23.

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

waiver of the OASIS and Standards of Conduct requirements and will grant Willmar's request for waiver.<sup>18</sup>

The Commission orders:

Willmar's request for waiver of the OASIS and Standards of Conduct requirements is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>18</sup> Willmar must notify the Commission if there is a material change in facts that affect its waiver, within 30 days of such change. A material change would include the fact that it no longer meets the sales threshold applied to determine eligibility for the waiver. *Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations*, 127 FERC ¶ 61,141, at P 5 (2009).