

140 FERC ¶ 61,113  
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.

Kansas City, Kansas, Board of Public Utilities

Docket No. TS12-1-000

ORDER GRANTING OASIS AND STANDARDS  
OF CONDUCT WAIVER REQUESTS

(Issued August 6, 2012)

1. In this order, the Commission grants a request by the Board of Public Utilities of Kansas City, Kansas (KC Board) for waivers of the requirements to establish and maintain an Open Access Same-Time Information System (OASIS)<sup>1</sup> and to comply with the Commission's Standards of Conduct for Transmission Providers,<sup>2</sup> which apply to

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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> *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, 373 U.S. App. D.C. 351 (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*, 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), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

municipal electric systems through the reciprocity requirements of the Commission's *pro forma* Open Access Transmission Tariff (OATT).<sup>3</sup>

## **I. Background**

2. KC Board identifies itself as an administrative agency that operates a municipally owned-electric and water utility organized under the laws of the State of Kansas and the ordinances of the Unified Government of Wyandotte County/Kansas City, Kansas.<sup>4</sup> To provide the electric power necessary to serve its retail loads, KC Board states that it owns and operates two electric generating stations with a combined generating capacity of 310 MW. KC Board also has four power purchase agreements for an additional 71 MW of capacity.<sup>5</sup> KC Board states that its total electric sales were less than three million MWh in each of the past ten years.

3. In addition, KC Board states that it owns and operates a 161 kV transmission line that interconnects with Westar Energy's transmission system at Westar's Edwardsville Substation. The line also interconnects with four 161 kV lines owned and operated by Kansas City Power & Light Company, which pass through KC Board's service territory.<sup>6</sup> KC Board claims that no other wholesale power customers or generators operate within KC Board's service territory, and that Westar and KCPL have numerous interconnections between them.

4. Finally, KC Board states that it operates as its own Balancing Authority and is a member of the Southwest Power Pool, a Regional Transmission Organization approved by the Commission.<sup>7</sup>

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<sup>3</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at PP 190-192, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at PP 28, 36-37 (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>4</sup> KC Board Request at 3.

<sup>5</sup> *Id.* at 3-4.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *See id.* at 5.

## II. Request for Waiver

5. On November 15, 2011, KC Board filed a request for a waiver of the requirements to (a) establish and maintain an OASIS and (b) to comply with the Commission's Standards of Conduct for Transmission Providers. KC Board claims that it qualifies for such waivers because it is a small electric utility with annual energy sales of less than four million MWh and because no other circumstances are present that would indicate that a waiver is not justified.<sup>8</sup>

6. In support of the waiver request, KC Board states that, as municipal entity of the State of Kansas, it is not a public utility subject to the Commission's general regulatory jurisdiction under the Federal Power Act or the Commission's Standards of Conduct found in Part 358 of our regulations.<sup>9</sup> Nevertheless, KC Board explains that the requirements to operate an OASIS and to adhere to the Commission's Standards of Conduct for Transmission Providers may apply to KC Board through the reciprocity obligations found in section 6 of the Commission's *pro forma* OATT.<sup>10</sup>

7. KC Board observes that the Commission routinely waives these requirements where the requesting utility (a) can demonstrate that it "owns, operates, or controls only limited and discrete transmission facilities" or (b) is a small public utility that disposes of no more than four million MWh of energy annually.<sup>11</sup> KC Board contends that it satisfies the latter criterion because it is a small electric utility that disposed of no more than three million MWh in each of the last ten years. Additionally, KC Board agrees to inform the Commission of any material change in fact that could affect its continued eligibility for the waiver.<sup>12</sup>

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<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 5.

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

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 7. Notice of KC Board's filing was published in the *Federal Register*, 76 Fed. Reg. 81,928 (2011), with comments due on or before Dec. 30, 2011. None was filed.

### III. Discussion

#### A. Waiver Standards for Small Electric Utilities under Reciprocity Obligations

8. In *Central Minnesota Municipal Power Agency, et al.*, 79 FERC ¶ 61,260 at 62,127 & n.15 (1997), the Commission explained that “it considers requests for waiver of all or a part of the reciprocity provision, by a non-public utility, using the same criteria used to determine whether to grant a waiver to a public utility.”<sup>13</sup> Additionally, in *Black Hills Power, Inc.*, the Commission clarified that, when a public utility transmission owner or operator participates in a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO), the size of the utility is not relevant to whether a waiver request will be granted or denied.<sup>14</sup> Instead, eligibility for a waiver depends on whether the utility: (1) has turned over operation or control of its transmission system to the ISO/RTO; (2) has no access to information concerning the operation of the transmission facilities it has turned over to the ISO/RTO; and (3) obtains information about such matters only by viewing the ISO/RTO’s pertinent Open Access Same-Time Information System postings.<sup>15</sup>

9. Moreover, for small public utilities that have not relinquished control over the operation of their transmission systems to an ISO/RTO, the Commission grants Standards of Conduct waivers if the applicant demonstrates that: (1) it is a small public utility, with energy sales below four million MWh; and (2) no other circumstances are present to indicate that a waiver is not justified.<sup>16</sup> Additionally, an entity that can demonstrate that its transmission facilities are limited, discrete, and do not form an integrated transmission grid will also qualify for waiver.<sup>17</sup> Membership in a tight power pool is not a factor in

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<sup>13</sup> *Citing Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,763 (1996); and *Dakota Electric Association, et al.*, 78 FERC ¶ 61,117, at 61,452 (1997).

<sup>14</sup> *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at P 2 (2011) (*Black Hills*).

<sup>15</sup> 18 C.F.R § 358.1(c) (2012).

<sup>16</sup> *Black Hills*, 135 FERC ¶ 61,058 at P 8.

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

determining waiver eligibility regardless of whether the small public utility participates in an ISO/RTO.<sup>18</sup>

10. In *Black Hills*, the Commission did not modify the criteria for seeking a waiver of the requirement to maintain an OASIS.<sup>19</sup> Moreover, in past cases, the Commission has held that the criteria for a small public utility to be eligible for an OASIS waiver are the same as those for a small public utility to be eligible for a Standards of Conduct waiver.<sup>20</sup> Accordingly, we clarify that for small public utilities that have not relinquished control over the operation of their transmission systems to an ISO/RTO, the Commission will continue its past practice of granting waivers of the requirement to establish an OASIS if the applicant demonstrates that (1) it is a small public utility, with energy sales below four million MWh; and (2) no other circumstances are present to indicate that a waiver is not justified.

11. Likewise, the Commission in *Black Hills* did not specify whether membership in a tight power pool may be a factor in determining eligibility for a Standards of Conduct waiver where the requirement applies through the reciprocity requirements of the *pro forma* OATT. Nevertheless, the rationale used by the Commission to determine which small public utilities qualify for waivers of the Commission's OASIS, Standards of Conduct, and *pro forma* OATT requirements applies equally to small non-jurisdictional electric utilities that follow these requirements under their reciprocity obligations. In *Black Hills*, we found that:

In light of Order Nos. 2004 and 717, . . . the historical policy of denying standard of conduct waivers to small utilities that are members of tight power pools is no longer appropriate; the rationale of the *Midwest Energy* case, which denied the waiver to members of a tight pool to ensure equal treatment among participating owner/operators, is no longer justification for denying waiver because all tight power pools are now located within an RTO or ISO and our regulations ensure the equal treatment of *all participants* in RTOs and ISOs.<sup>21</sup>

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<sup>18</sup> *Id.* P 7.

<sup>19</sup> *See id.*; *see n.1 supra.*

<sup>20</sup> *See, e.g., Evergreen Wind Power III, LLC*, 135 FERC ¶ 61,030, at P 23 (2011) (citing *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996)).

<sup>21</sup> *Black Hills*, 135 FERC ¶ 61,058 at P 7 (emphasis added).

Accordingly, we now clarify that eligibility for waivers of the requirements to maintain and establish an OASIS or to comply with the Standards of Conduct for non-jurisdictional small electric utilities that participate in ISOs or RTOs will not hinge on their membership in one of the traditional tight power pools. Rather, their eligibility for waiver of the OASIS and Standards of Conduct requirements will depend on the same factors applied to public utilities generally subject to the Commission's jurisdiction under the Federal Power Act.<sup>22</sup>

**B. Commission Finding**

12. Based on the representations in KC Board's filing, we will grant KC Board's request for a waiver of the Commission's requirement to establish and maintain an OASIS and to comply with the Commission's Standards of Conduct requirements because we find that KC Board meets the criteria for waiver of these requirements as a small electric utility that retains control over the operation of its transmission systems.

13. KC Board's OASIS waiver will remain in effect until the Commission takes action in response to a complaint to the commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation. Likewise, KC Board's Standards of Conduct waiver will remain in effect unless and until the Commission takes action on a complaint alleging that KC Board has unfairly used its access to information to unfairly benefit itself or an affiliate.

The Commission orders:

The KC Board's request for waiver of the Commission's OASIS and Standards of Conduct reciprocity requirements is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>22</sup> See 18 C.F.R § 358.1(c); *Black Hills*, 135 FERC ¶ 61,058 at PP 2-3.