

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. TS06-11-000

ORDER ON REQUEST FOR EXEMPTION FROM STANDARDS OF CONDUCT
REQUIREMENTS UNDER ORDER NO. 2004

(Issued October 19, 2006)

1. On November 25, 2003, the Commission issued a Final Rule Adopting Standards of Conduct for Transmission Providers (Order No. 2004).¹ The Standards of Conduct govern the relationships between Transmission Providers and their Marketing and Energy Affiliates. Under section 358.1(c) of the Commission's regulation's,² a public utility transmission owner may request an exemption from Part 358 of the Commission's regulations³ if it participates in a Commission-approved ISO or regional transmission organization, does not operate or control its transmission facilities, and has no access to transmission, customer or market information covered by section 358.5(b).⁴

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, FERC Stats. & Regs. ¶ 31,161 (2004), 107 FERC ¶ 61,032 (2004), *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166 (2004), 108 FERC ¶ 61,118 (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), *appeal pending sub nom. National Fuel Gas Supply Corp. v. FERC*, (U.S.C.A., D.C. Circuit, Docket Nos. 04-1178, *et al.*) (Order No. 2004).

² 18 C.F.R. § 358.1(c) (2006).

³ 18 C.F.R. Part 358 (2006).

⁴ Section 358.5(b), 18 C.F.R. § 358.5(b) (2006), covers and limits the disclosure of information concerning the transmission system of the Transmission Provider or the transmission system of another (including, but not limited to, information received from non-affiliates or information about available transmission capability, price, curtailments,

(continued...)

2. On July 26, 2006, Wabash Valley Power Association (Wabash Valley) filed a request for exemption from Part 358 of the Commission's regulations in which it stated, among other things, that it does not have access to transmission, customer or market information covered by section 358.5(b). This order directs Wabash Valley to explain that statement in light of a September 20, 2006 filing it made for approval of two transmission/sales agreements because those agreements appear to give it access to transmission and customer information covered by section 358.5(b).

Background

3. Wabash Valley is a non-profit generation and transmission cooperative, organized and operating under the laws of the State of Indiana. Wabash Valley owns transmission facilities⁵ 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 members⁶ for resale. 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 2005.⁷ 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 states that its affiliate, Wabash Valley Energy Marketing Inc. (Energy Marketing), is not a public utility at this time as it does

storage, ancillary services, balancing, maintenance activity, capacity expansion plans, or similar information) through non-public communications conducted off the OASIS or Internet web site, through access to information not posted on the OASIS or Internet web site that is not contemporaneously available to the public, or through information on the OASIS or Internet web site that is not at the same time publicly available.

⁵ Wabash Valley owns transmission facilities jointly with Duke Energy and the Indiana Municipal Power Agency.

⁶ 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.

⁷ Citizens Cooperative Corp. became a member of Wabash Valley in 2006 adding approximately 225 MW to Wabash Valley's members' peak load.

not engage in wholesale transactions and does not own jurisdictional facilities; however, Wabash Valley states that Energy Marketing will apply for a market-based tariff simultaneously or shortly after Wabash Valley files for exemption from the Standards of Conduct.

Request for Exemption

4. Wabash Valley seeks exemption from the requirements of Order No. 2004 on the basis that it qualifies for such relief under section 358.1(c) of the Commission's regulations.⁸ Wabash Valley states that it is a participating member of the Midwest ISO and that it does not operate or control its transmission facilities. 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. In addition, Wabash Valley states that it does not have access to transmission or market information covered under section 358.5(b) of the Commission's regulations,⁹ and that the Standards of Conduct filed by the Midwest ISO recognizes and reflects Wabash Valley's lack of access to transmission, customer and market information.¹⁰

Public Notice

5. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 47,800 (2006), with interventions and protests due on or before August 25, 2006. The Midwest ISO filed a motion to intervene. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

Discussion

6. Section 358.1(c) of the Commission's regulations provides that a public utility transmission owner may request an exemption from Part 358 if it: (i) participates in a Commission-approved ISO or regional transmission organization; (ii) does not operate or

⁸ 18 C.F.R. § 358.1(c) (2006).

⁹ 18 C.F.R. § 358.5(b) (2006).

¹⁰ Request for Exemption at 5 (citing *Midwest Indep. Trans. Sys. Operator, Inc.*, 84 FERC ¶ 61,231 (1998), *order on reconsideration*, 85 FERC ¶ 61,250 (1998), *order on reh'g* 85 FERC ¶ 61,372 (1998).

control its transmission facilities; and (iii) has no access to transmission, customer or market information covered by section 358.5(b).¹¹ However, on September 20, 2006, in Docket No. ER06-1507-000, Wabash Valley submitted two agreements for transmission and electric service between Wabash and Midwest Energy Cooperative and Jasper County REMS (two of its industrial members). Consequently, the Commission does not understand Wabash's claim that it does not have information covered by section 358.3(b) when the negotiation of transmission contracts gives it access to customer information. Therefore, Wabash is directed, within 30 days of the date of this order, to explain its claim that it does not have access to customer information.

The Commission orders:

As discussed herein, within 30 days of the date of this order, Wabash Valley must explain why it does not have access to customer information that would preclude an exemption from the Standards of Conduct under section 358.1(c) of the Commission's regulations.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹¹ See *American Transmission Co. LLC*, 109 FERC ¶ 61,082, at P 34 (2004) (in which the Commission found that Old Dominion Electric Cooperative qualified for exemption from the Standards of Conduct under section 358.1(c)).