

127 FERC ¶ 61,248  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Golden Spread Electric Cooperative, Inc.

Docket No. OA09-15-000

ORDER GRANTING REQUESTS FOR CONTINUED WAIVER OF ORDER NOS.  
888 AND 889, WAIVER OF ORDER NOS. 890 AND 2003, AND WAIVER OF  
STANDARDS OF CONDUCT

(Issued June 18, 2009)

1. On December 31, 2008, Golden Spread Electric Cooperative, Inc. (Golden Spread) filed requests for waivers of Order Nos. 717,<sup>1</sup> 888,<sup>2</sup> 889,<sup>3</sup> 890,<sup>4</sup> 2003,<sup>5</sup> 2004,<sup>6</sup> section

---

<sup>1</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, 73 Fed. Reg. 63,796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008).

<sup>2</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group, et al. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>3</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 (1997), *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

<sup>4</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).

35.28,<sup>7</sup> Part 37<sup>8</sup> and Part 358<sup>9</sup> of the Commission's Rules and Regulations. In this order, we grant Golden Spread's requests for waivers as discussed below.

## **I. Background**

2. Golden Spread is a non-profit electric generation and transmission cooperative organized under Texas law. It supplies wholesale electric power and energy to its eleven members.<sup>10</sup> Golden Spread has operated under a waiver of Order Nos. 888 and 889 since

---

<sup>5</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

<sup>6</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*, 373 U.S. App. D.C. 351, 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*, Order No. 717, 73 Fed. Reg. 63,796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008), *reh'g pending*.

<sup>7</sup> 18 C.F.R. § 35.28 (2008).

<sup>8</sup> 18 C.F.R. Part 37 (2008).

<sup>9</sup> 18 C.F.R. Part 358 (2008).

<sup>10</sup> Golden Spread's members are as follows: Bailey County Electric Cooperative Association; Big Country Electric Cooperative, Inc. (Big Country); Deaf Smith Electric Cooperative, Inc.; Greenbelt Electric Cooperative, Inc. (Greenbelt); Lamb County Electric Cooperative, Inc.; Lighthouse Electric Cooperative, Inc.; North Plains Electric Cooperative, Inc.; Rita Blanca Electric Cooperative, Inc.; South Plains Electric Cooperative, Inc. (South Plains); Swisher Electric Cooperative, Inc.; and Tri-County Electric Cooperative, Inc.

1996, as granted by the Commission in Docket No. OA96-143-000.<sup>11</sup> Additionally, in 2004, when Golden Spread acquired approximately 110 miles of existing radial facilities from its member South Plains, the Commission granted Golden Spread continued waiver of Order Nos. 888 and 889.<sup>12</sup>

## II. Details of Filing

3. Golden Spread states that it has recently acquired approximately 54.53 miles of additional existing radial facilities from one of its non-jurisdictional distribution cooperative members, Big Country, and has constructed an approximately 18.4 mile radial line for dedicated use by another member, Greenbelt. Golden Spread states that all of the facilities are located within the Southwest Power Pool. Golden Spread states that the transfer and/or construction of the subject facilities were done pursuant to Special Facilities Agreements between the respective parties that have been accepted for filing by the Commission.<sup>13</sup>

4. Golden Spread states that it will use the newly acquired or constructed facilities to serve Big Country and Greenbelt over their respective facilities in the same operational manner as their current use. Big Country and Greenbelt will continue to operate and maintain their respective facilities to receive bundled wholesale service under existing wholesale power contracts with Golden Spread. Golden Spread adds that the subject facilities have been used only by Big Country and Greenbelt to serve their respective retail electric loads; no requests for wheeling have been received by either member. Golden Spread states that if a third party makes a good faith request for transmission service, it will make appropriate filings with the Commission. Golden Spread further states that power on all of the assets it owns flows in one direction, from Southwestern Public Service Company's (Southwestern) transmission system to the distribution facilities of Big Country, Greenbelt, and South Plains. Golden Spread adds that there are no third-party wholesale generators situated on those facilities, or within Big Country's, Greenbelt's or South Plains' respective service areas and that power sold by Golden Spread to Big Country, Greenbelt and South Plains does not, and cannot flow back onto

---

<sup>11</sup> See *Northern States Power Co., et al.*, 76 FERC ¶ 61,250 (1996) (Waiver Order).

<sup>12</sup> See *Golden Spread Elec. Coop., Inc.*, 106 FERC ¶ 61,151 (2004) (Continuing Waiver Order).

<sup>13</sup> See Golden Spread Filing at 3 (*citing Golden Spread*, Docket No. ER08-1383-000 (Oct. 2, 2008) (unpublished letter order) (Big Country); *Golden Spread*, Docket No. ER08-916-000 (June 26, 2008) (unpublished letter order) (Greenbelt)).

the Southwestern system, as those facilities are governed by circuit breakers controlled by Southwestern.

5. In support for its requests for continuing waiver of Order Nos. 888 and 889 and waiver of Order No. 890, Golden Spread states the Commission has consistently granted such waivers to “public utilities that can show that they own, operate, or control only limited and discrete transmission facilities; that is, facilities that do not form an integrated grid until such time as the public utility receives a request for transmission service.”<sup>14</sup> Golden Spread asserts that continued waivers are justified because the facilities it has acquired or constructed are (1) not an integrated component of any electricity grid, and (2) designed solely to provide service to Big Country and Greenbelt. Golden Spread explains that the facilities are operated radially, and except for the Midwest line,<sup>15</sup> the assets are not directly connected to each other or to lines previously acquired or constructed by Golden Spread.

6. Golden Spread states that although the factual circumstances have changed, the basis of the Commission’s granting waiver continues. Golden States requests continued waiver of Order No. 888 and 889, and waiver of Order No. 890 until such time that it receives a third party request for transmission service. Additionally, Golden Spread states that Order No. 2003 provides that the Commission will apply the waiver standards of Order Nos. 888 and 889 to evaluate requests for Order No. 2003 exemptions.<sup>16</sup>

7. Additionally, Golden Spread states that good cause exists for the Commission to grant it waiver of the Standards of Conduct, as adopted in Order No. 2004, modified by Order No. 717, and codified in Part 358 of the Commission’s regulations. Golden Spread states that the Commission will grant requests for waiver of the Standards of Conduct requirement to (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

---

<sup>14</sup> *Id.* at 9 (citing Continuing Waiver Order at P 7; *Black Creek Hydro Inc., et al.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*)).

<sup>15</sup> Big Country acquired the Midwest line in 1993 when Midwest Electric Cooperative and Stamford Electric Cooperative merged to form Big Country. The Midwest line was initially subject of a Special Facilities Agreement between Golden Spread and Midwest and subject to the Commission waiver issued in Docket No. OA96-143-000. That Special Facilities Agreement was superseded by the Special Facilities Agreement accepted on October 2, 2008 in Docket No. ER08-1383-000.

<sup>16</sup> See Golden Spread Filing at 11 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 830).

a tight power pool, or unwarranted by other circumstances.<sup>17</sup> Golden Spread states that it falls into the first category for receiving a waiver because, including the facilities that Golden Spread has acquired from or constructed for Big Country and Greenbelt, the Golden Spread facilities are limited and discrete radial facilities that do not form a part of an integrated electricity grid. Golden Spread adds that the transmission lines are only used to provide bundled wholesale service to affected members and power flows in only one direction on these lines. Golden Spread asserts that on the basis of these facts, good cause exists for the Commission to grant it continued waiver of the requirements of Order No. 2004, Part 358 of the Commission's regulations and waiver from the requirements of Order No. 717.

### **III. Notice of Filing**

8. Notice of Golden Spread's filing was published in the *Federal Register*, 74 Fed. Reg. 1669 (2009) with comments, protests, or interventions due on or before January 21, 2009. None was filed.

### **IV. Discussion**

9. Order Nos. 888 and 890 require public utilities to file an open access transmission tariff (OATT) prior to providing transmission service. Order No. 889 requires public utilities to establish an open access same-time information system (OASIS) and abide by certain standards of conduct. In prior orders, the Commission has enunciated the standards for waiver of, or exemption from, some or all of the requirements of Order Nos. 888 and 889.<sup>18</sup> The Commission has stated that it will apply the waiver standards of Order No. 888 to evaluate requests for waiver of Order No. 2003 on a case-by-case basis.<sup>19</sup> The Commission also has stated that the criteria for waiver of the requirements of Order Nos. 890 and 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.<sup>20</sup> Order No. 717 did not change those criteria.

---

<sup>17</sup> Golden Spread Filing at 12 (citing *Peetz Logan Interconnection, LLC*, 122 FERC ¶ 61,086, at P 18 (2008)).

<sup>18</sup> See, e.g., *Black Creek*, 77 FERC at 61,941; *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228 at P 22 (2005) (*Entergy*).

<sup>19</sup> Order No. 2003, FERC Stats. & Regs. ¶31,146 at P 830.

<sup>20</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).

10. The Commission may grant requests for waiver of Order Nos. 888 to public utilities that can show that they own, operate, or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service. Should the public utility receive such a request, the Commission has determined that the public utility must file with the Commission a *pro forma* tariff within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request.<sup>21</sup>

11. The Commission also has determined that waiver of Order No. 889 would be appropriate for a public utility (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) if the applicant is a small public utility<sup>22</sup> 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 should not be justified.<sup>23</sup>

12. In addition, the Commission requires any public utility that has received a waiver of Order No. 889 or the Standards of Conduct to notify the Commission if there has been a material change in facts that may affect the public utility's waiver.<sup>24</sup> A material change would include that the utility no longer meets the sales threshold applied to determine eligibility for the waiver or if the facilities owned, operated, or controlled by the public utility are no longer "limited and discrete." Upon receipt of the notice of the change of facts, the Commission may reevaluate continued eligibility for the waiver. Utilities that are granted a waiver have 30 days from the date of the change to submit a notification. A previously-granted waiver will remain in effect until the Commission acts on such filing,<sup>25</sup> or takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get information necessary to complete its

---

<sup>21</sup> See *Black Creek*, 77 FERC at 61,941.

<sup>22</sup> To qualify as a small public utility, an applicant must be a public utility that disposes of no more than 4 million MWh annually. *Wolverine Power Supply Coop.*, 127 FERC ¶ 61,159, at P 15 (2009) (*Wolverine*).

<sup>23</sup> See *Black Creek*, 77 FERC at 61,941; see also *Midwest Energy, Inc., et al.*, 77 FERC ¶ 61,208, at 61,854 (1996) (describing tight power pool exception).

<sup>24</sup> See *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) (*Guidance Order*).

<sup>25</sup> *Id.*

evaluation (for OASIS waivers) or an entity complains that the public utility has used its access to information about transmission to unfairly benefit the utility or its affiliate (for Standards of Conduct waivers).<sup>26</sup>

13. We find that Golden Spread has demonstrated that it qualifies for continued waivers of the requirement to file an OATT under Order No. 888 and the OASIS requirements of Order No. 889. The transmission facilities Golden Spread owns, including the facilities that it has acquired from or constructed for Big Country and Greenbelt, are limited and discrete radial facilities that do not form a part of an integrated electricity grid. Further, according to Golden Spread the transmission lines are only used to provide bundled wholesale service to the affected Golden Spread members and power flows in one direction. Accordingly, we find good cause to grant Golden Spread continued waiver of Order Nos. 888 and 889, as well as waiver of Order Nos. 717, 890, 2003, and 2004, the OATT requirements of Part 35.28 of the Commission's regulations, the OASIS requirements of Part 37 of the Commission's regulations, and the Standards of Conduct requirements of Part 358 of the Commission's regulations.<sup>27</sup>

---

<sup>26</sup> See *Easton Utilities Comm'n, et al.*, 83 FERC ¶ 61,334, at 62,343 (1998); *Central Minnesota Municipal Power Agency, et al.*, 79 FERC ¶ 61,260, at 62,127 (1997).

<sup>27</sup> Consistent with *Black Creek*, Golden Spread must file, within 60 days of its facility's receiving a request for transmission or interconnection service, a *pro forma* OATT in compliance with Order Nos. 888, 890, and 2003, and any additional requirements that are in effect on the date of the request. In addition, 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 from Golden Spread information necessary to complete its evaluation. 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 Golden Spread has used its access to transmission information to unfairly benefit its own sales, or an affiliate's sales. In addition, as noted above, Golden Spread must notify the Commission if there is a material change in facts that affect OASIS and Standards of Conduct waivers, within 30 days of the date of such change. *Guidance Order*, 127 FERC ¶ 61,141 at P 5; see also *Wolverine*, 127 FERC ¶ 61,159 at n.21.

The Commission orders:

Golden Spread's requests for waivers are hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.