

143 FERC ¶ 61,235
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Valley Electric Association, Inc.

Docket No. TS13-1-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued June 14, 2013)

1. In this order, the Commission grants a request by Valley Electric Association, Inc. (Valley) for continuation of a previously granted waiver¹ of the Commission's Standards of Conduct,² notwithstanding changed circumstances. The Commission also grants Valley's request for a waiver of the Commission's requirement to maintain an open access same-time information system (OASIS) site, to the extent such waiver is necessary.

I. Background and Waiver Request

2. Valley identifies itself as a rural electric distribution corporation based in Pahrump, Nevada, that serves a largely residential load, and is not a "public utility" under the Federal Power Act. Valley states that, historically, it was a Rural Utilities Service (RUS) borrower and subject to RUS, rather than Commission, jurisdiction. In 1997, upon payment of its RUS loans, Valley recognized that it could potentially become subject to Commission jurisdiction and, therefore, filed a request for waiver of the

¹ *Easton Utils. Comm'n*, 83 FERC ¶ 61,334 (1998) (*Easton Utils. Comm'n*).

² 18 C.F.R. Part 358 (2012); *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, 129 FERC ¶ 61,043, *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).

requirements of Order Nos. 888³ and 889⁴ to establish and maintain an OASIS site and to abide by certain Standards of Conduct.⁵ In 1998, the Commission granted the waiver, finding that Valley owned only limited and discrete transmission facilities.⁶

3. In January 2013, Valley became a participating transmission owner and load serving entity in the California Independent System Operator Corporation (CAISO). At the time of its transition into CAISO, Valley owned and operated 267 miles of 138 kV and 230 kV transmission facilities, in addition to its local distribution lines. As part of its transition into CAISO, Valley energized approximately 80 miles of new 230 kV line to address reliability needs and to unlock location-constrained renewable resources under development within Valley's service territory. Valley turned operational control of its transmission facilities over to CAISO. Valley posits that its participation in CAISO could result in participation in open-access transmission markets with Commission-jurisdictional entities. As a result, Valley asserts that it may need to rely on its previously granted waiver.⁷

4. Valley notes that, absent a material change in the facts underlying a waiver of the Standards of Conduct or the requirement to maintain an OASIS site, a utility may continue to rely on a previously granted waiver of these responsibilities.⁸ Valley reports

³ *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, *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 v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁴ *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).

⁵ Valley February 1, 2013 Waiver Request at 2-3 (Waiver Request).

⁶ *Easton Utils. Comm'n*, 83 FERC at 62,346.

⁷ Waiver Request at 3-4.

⁸ *Id.* at 4 (citing *Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations*, 127 FERC ¶ 61,141, at P 1 (2009) (*Material Changes*)).

that its recent transmission expansion and participation in CAISO may constitute a material change in circumstances, but argues that this change is not material to the primary basis upon which the Commission relied in granting the previous waiver. Valley contends that it remains a small utility by the Commission's definition because its sales of power for each of the past three years have averaged 439,426 MWh, a figure far below the Commission's 4 million MWh threshold for waiver eligibility. Valley also argues that its transmission facilities remain limited and discrete despite the recent changes in circumstances because these facilities are still used primarily to serve Valley's native load. Valley contends that requiring it to comply with the Standards of Conduct would be unduly burdensome, given its small size, and would create no public benefit.⁹

5. Valley also argues that it meets the Commission's OASIS requirements through Valley's participation in CAISO. Valley notes that the Commission has determined that, when an independent system operator (ISO) or regional transmission organization (RTO) maintains a central OASIS site on behalf of all its members, that arrangement should cover any potential waivers for small utilities that participate in the ISO or RTO.¹⁰ Valley confirms that all scheduling of its transmission facilities is done by CAISO through CAISO's central OASIS site. To the extent that Valley does not meet the Commission's OASIS requirements through its participation in CAISO, Valley requests waiver of these requirements on the basis that Valley is a small utility that disposes of fewer than 4 million MWh per year.¹¹

II. Notice and Responsive Pleadings

6. Notice of Valley's filing was published in the *Federal Register*, 78 Fed. Reg. 9686 (2013), with interventions and protests due on or before February 22, 2013. None was filed.

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 7 (citing *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at P 7, n.12 (2011) (*Black Hills*)).

¹¹ *Id.*

III. Discussion

7. Order Nos. 888 and 890¹² and section 35.28 of the Commission's regulations¹³ require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT prior to providing transmission service. Order No. 889 and Part 37 of the Commission's regulations¹⁴ require public utilities to establish an OASIS. Order Nos. 889, 2004,¹⁵ and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain standards of conduct.¹⁶ 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, 889, and 890.¹⁷ The Commission has stated that the criteria for waiver of the requirements of Order No. 890

¹² *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).

¹³ 18 C.F.R. § 35.28 (2012).

¹⁴ 18 C.F.R. Part 37 (2012).

¹⁵ *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*, 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).

¹⁶ Order No. 889, FERC Stats. & Regs. ¶ 31,035 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.

¹⁷ *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*).

and Order No. 2004 have not changed from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹⁸ Order No. 717 did not change those criteria.¹⁹

8. The Commission has determined that waiver of the requirements to establish an OASIS and abide by 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 other circumstances are present that indicate that waiver would not be justified.²⁰ The Commission grants waivers to small public utilities based on the threshold of whether they dispose of no more than 4 million MWh annually.²¹ Moreover, the Commission has held that waiver of Order No. 889 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 (for OASIS waivers) or an entity complains that the public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).²² The Commission has also explained that it evaluates requests by non-public utilities for Standards of Conduct waivers using the same criteria used to determine whether to grant waiver to a public utility.²³

¹⁸ 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).

¹⁹ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

²⁰ *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills*, the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. *Black Hills*, 135 FERC ¶ 61,058 at PP 2, 3. Additionally, size is not relevant to whether waivers are granted to public utilities because they participate in a Commission-approved Independent System Operator or Regional Transmission Organization. See 18 C.F.R. § 358.1(c) (2012).

²¹ See *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009).

²² *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utils. Comm'n*, 83 FERC ¶ at 62,343).

²³ *E.g.*, *Kansas City, Kansas, Board of Pub. Utils.*, 140 FERC ¶ 61,113, at P 8 (2012).

9. Based on Valley's representations, we find that continuation of the previously granted waiver of the Standards of Conduct is appropriate because Valley continues to qualify as a small utility under the 4 million MWh eligibility threshold. Also, we find that Valley qualifies for a waiver of the OASIS requirements because it meets the definition of a small utility. We note that Valley's OASIS requirements may be satisfied through its participation in CAISO to the extent CAISO provides the necessary OASIS functions.

10. We note that Valley's waiver of the requirement to establish an OASIS 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.²⁴ Likewise, Valley's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Valley has unfairly used its access to information to unfairly benefit itself or its affiliate.²⁵

The Commission orders:

Valley's request for continuation of waiver of the Commission's Standards of Conduct and OASIS 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.

²⁴ See *supra* note 23.

²⁵ *Id.* Valley must notify the Commission if there is a material change in facts that affect its waiver, within 30 days of the date of such change. *Material Changes*, 127 FERC ¶ 61,141 at P 5.