

145 FERC ¶ 61,180  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Prairie Power, Inc.

Docket No. OA13-7-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued November 27, 2013)

1. In this order, the Commission grants a request by Prairie Power, Inc. (Prairie Power) for waiver of the Commission's Standards of Conduct and the requirement to establish and maintain an Open Access Same-Time Information System (OASIS). We also find that Prairie Power's obligation to file an Open Access Transmission Tariff (OATT) is satisfied because Prairie Power is a transmission owning member of the Midcontinent Independent System Operator, Inc. (MISO).

**I. Background**

2. In 1997, Soyland Power Cooperative, Inc. (Soyland), Prairie Power's predecessor in interest, secured waivers of Commission Order Nos. 888<sup>1</sup> and 889<sup>2</sup> after it became

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<sup>1</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, *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).

<sup>2</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).

Commission jurisdictional for a period of time following completed repayment of its Rural Utilities Service debt.<sup>3</sup> The Commission granted the waivers because Soyland operated only limited and discrete transmission facilities.<sup>4</sup> Following the Energy Policy Act of 2005 (EPAct 2005) amendments to the Federal Power Act (FPA), the Commission accepted Soyland's withdrawal of its rate schedule on file with the Commission, as Soyland sold less than four million MWh of electricity per year and was thus no longer subject to the Commission's jurisdiction.<sup>5</sup>

3. On September 4, 2013, Prairie Power filed an application for continued waiver of the OATT, OASIS, and Standards of Conduct obligations. Prairie Power explains that, on June 1, 2013, it became a transmission owning (TO) member in MISO. Prairie Power recognizes that certain regulatory responsibilities may arise due to its decision to join MISO. Accordingly, Prairie Power requests confirmation of the continued applicability of its previously granted waivers, notwithstanding changed circumstances.

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<sup>3</sup> *Soyland Power Cooperative, Inc., et al.*, 78 FERC ¶ 61,095, at 61,341 (1997) (*Soyland Power*). In 2003, the Commission accepted an agreement under which Soyland would provide MJM Electric Cooperative, Inc. (MJM) access to certain of Soyland's lines and substations for the delivery of power to MJM loads. The Commission denied continued waiver of Order No. 888 and directed Soyland to file an OATT because the agreement represented a request from MJM for Soyland to provide transmission service. The Commission allowed the agreement to be designated as a stand-alone rate schedule because no parties had requested that service under the agreement be converted to service under Soyland's OATT. *Soyland Power Cooperative, Inc.*, 102 FERC ¶ 61,244, at P 15 (2003). On rehearing, the Commission reversed its decision. The Commission stated that it should have rejected the agreement and instead required that transmission service be provided to MJM pursuant to the OATT that the Commission previously directed Soyland to file. However, as the Commission had already accepted the agreement in its previous order, the Commission reversed its revocation of the Order No. 888 waiver and did not require Soyland to file an OATT. Nevertheless, the Commission stated that if Soyland receives any further requests for transmission, it will be required to file an OATT within 60 days of the date of the request for service. *Soyland Power Cooperative, Inc.*, 104 FERC ¶ 61,288, at P 7 (2003).

<sup>4</sup> *Soyland Power*, 78 FERC at 61,340.

<sup>5</sup> *Soyland Power Cooperative, Inc.*, Docket No. ER06-51-000 (Nov. 22, 2005) (delegated letter order). A four million MWh annual sales threshold for Commission jurisdiction over electric cooperatives was added to the FPA through amendments enacted as part of EPAct 2005.

4. Prairie Power identifies itself as a member-owned, not-for-profit rural electric generation and transmission cooperative consisting of 10 rural electric distribution member cooperatives located in central Illinois. Prairie Power states that it owns and operates 141 MW of generating capacity, 573 miles of transmission lines at 138 kV and 69 kV, six miles of transmission line at 34.5 kV, and 78 substations. Prairie Power also states that it has a peak load of 360 MW and total 2012 electricity sales of approximately 1,700,000 MWh. Prairie Power claims that it is an exempt, non-jurisdictional electric cooperative because its annual sales fall below the four million MWh threshold set forth in section 201(f) of the FPA.<sup>6</sup>

5. Prairie Power asks the Commission to confirm that a waiver of the requirements in Order Nos. 888 and 890<sup>7</sup> is still appropriate, or alternatively, that any obligations arising under Order Nos. 888 and 890 are met through MISO's OATT. Prairie Power states that such relief is warranted because its networked transmission facilities have been transferred to MISO's functional control and service over those facilities is provided by MISO under MISO's OATT. Prairie Power further states that the Commission has previously accepted withdrawals of safe harbor tariffs when non-public utilities have joined MISO because transmission service over their facilities would be provided under MISO's OATT. Although it has not filed a safe harbor tariff, Prairie Power argues that these cases illustrate that there is no need for Prairie Power to file a separate OATT in light of Prairie Power becoming a TO member in MISO.

6. Prairie Power also requests a waiver from Order No. 889, the Standards of Conduct,<sup>8</sup> and Part 358 of the Commission's regulations.<sup>9</sup> Prairie Power states that such

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<sup>6</sup> 16 U.S.C. § 824(f) (2012).

<sup>7</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>8</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). *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. &

(continued...)

waiver is appropriate under 18 C.F.R. § 358.1(c) because Prairie Power transferred control over its networked transmission facilities to MISO, MISO provides transmission service over the transferred Prairie Power facilities, and Prairie Power has read-only access to transmission service requests submitted to MISO. Additionally, Prairie Power asserts that its marketing function employees have no access to information related to Prairie Power's transferred transmission facilities or operations, and Prairie Power conducts no transmission services over its transferred facilities now that MISO performs such functions.

7. Prairie Power further contends that, in addition to eligibility for waiver due to its MISO membership, Prairie Power's status as an exempt, non-Commission jurisdictional electric cooperative provides independent good cause for a continued waiver of Order No. 889 and the Standards of Conduct. Prairie Power notes that its sales in 2012 totaled approximately 1,700,000 MWh, well under the statutory sales threshold of four million MWh per year.

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

8. Notice of Prairie Power's filing was published in the *Federal Register*, 78 Fed. Reg. 56,686 (2013), with interventions and protests due on or before September 25, 2013. None was filed.

## **III. Discussion**

9. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations<sup>10</sup> 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 regulations<sup>11</sup> require public utilities to establish an OASIS. Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of

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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).

<sup>9</sup> 18 C.F.R. Part 358 (2013).

<sup>10</sup> 18 C.F.R. § 35.28 (2013).

<sup>11</sup> 18 C.F.R. Part 37 (2013).

Conduct.<sup>12</sup> 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.<sup>13</sup> The Commission has stated that the criteria for waiver of the requirements of Order Nos. 890 and 2004 have not changed from those used to evaluate requests for waiver under Order Nos. 888 and 889.<sup>14</sup> Order No. 717 did not change those criteria.<sup>15</sup>

10. The Commission may grant requests for waiver of the obligation to file an OATT 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* OATT 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>16</sup>

11. 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.<sup>17</sup> The Commission grants

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<sup>12</sup> 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.

<sup>13</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>14</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>15</sup> See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

<sup>16</sup> *Black Creek*, 77 FERC at 61,941.

<sup>17</sup> *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 Power, Inc.*, 135 FERC ¶ 61,058, at PP 2-3 (2011) (*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. Moreover, *Black Hills* did not affect waivers based on a public utility meeting the Small Business Administration's definition of a small public utility.

waivers to small public utilities based on the threshold of whether they dispose of no more than four million MWh annually.<sup>18</sup> 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).<sup>19</sup> 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.<sup>20</sup>

12. Based on the statements in Prairie Power's application, we find that any obligations arising under Order Nos. 888 and 890 and section 35.28 of the Commission's regulations are met through MISO's OATT. Prairie Power joined MISO as a TO member and transferred functional control over its networked transmission facilities to MISO. MISO provides transmission service over the transferred Prairie Power facilities and Prairie Power will transfer functional control of any similar networked transmission facilities that it may construct in the future to MISO, upon MISO approval. As long as service over any Prairie Power-owned networked transmission facilities is provided by MISO pursuant to MISO's OATT, Prairie Power's OATT obligations are met.<sup>21</sup>

13. Based on Prairie Power's representations, we find that waiver of the Standards of Conduct and Part 358 of the Commission's regulations is appropriate because Prairie Power qualifies as a small utility under the four million MWh eligibility threshold. We also find that Prairie Power qualifies for a waiver of the OASIS requirements because it meets the definition of a small utility. Additionally, we note that Prairie Power's OASIS

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<sup>18</sup> See *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009).

<sup>19</sup> *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 ¶ 61,334, at 62,343 (1998)).

<sup>20</sup> E.g., *Kansas City, Kansas, Board of Pub. Utils.*, 140 FERC ¶ 61,113, at P 11 (2012) (*Kansas City*).

<sup>21</sup> We find that continuation of the previous waiver of OATT requirements under Order No. 888 and section 35.28 of the Commission's regulations is no longer appropriate under the changed circumstances described by Prairie Power because Prairie Power has networked facilities that are integrated with the MISO transmission system.

requirements may also be satisfied through its participation in MISO to the extent MISO provides the necessary OASIS functions.

14. Although we will grant the requested waiver from the Standards of Conduct on the above grounds, we also note that Prairie Power does not meet the separate requirements of section 358.1(c) of the Commission's regulations. Under that section, the Commission allows a public utility transmission owner that participates in a Commission-approved ISO/RTO to request a waiver if it: (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 OASIS postings.<sup>22</sup> Prairie Power explains that its staff engaging in marketing activities will have no access to information regarding the control of Prairie Power's transferred transmission facilities and may only obtain information regarding operation of the facilities through review of relevant MISO OASIS postings. However, Prairie Power states that its transmission function employees may attend and receive communications related to MISO's Transmission Owners Committee Meetings, and concedes that transmission-related information may be shared at these meetings. The exact nature of this shared information is unclear; however, these meetings provide the potential for release of information concerning the operation of Prairie Power's transferred network transmission facilities to Prairie Power's employees. Therefore, Prairie Power may not rely upon section 358.1(c) of the Commission's regulations to request a waiver of the Standards of Conduct.<sup>23</sup>

15. We note that Prairie Power'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.<sup>24</sup> Likewise, Prairie Power's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a

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<sup>22</sup> *Bangor Hydro Electric Co.*, 136 FERC ¶ 61,182, at P 11 (2011) (citing *Black Hills*, 135 FERC ¶ 61,058 at PP 2, 7).

<sup>23</sup> Prairie Power's assertion that it would prevent its marketing function employees from accessing this information is irrelevant, as the regulatory language under section 358.1(c) requires that Prairie Power have no access to such transmission function information.

<sup>24</sup> *Kansas City*, 140 FERC ¶ 61,113 at P 13.

complaint by an entity that Prairie Power has unfairly used its access to information to unfairly benefit itself or its affiliate.<sup>25</sup>

The Commission orders:

Prairie Power's request for 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.

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<sup>25</sup> *Id.* Prairie Power 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 in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations*, 127 FERC ¶ 61,141, at P 1 (2009).