

152 FERC ¶ 61,111  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

Municipal Energy Agency of Nebraska

Docket No. TS14-2-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued August 4, 2015)

1. In this order, we grant a request by Municipal Energy Agency of Nebraska (MEAN) for a reciprocity-based waiver of the requirements to comply with the Commission's Standards of Conduct and Open Access Same-Time Transmission System (OASIS) requirements.

**I. Background**

2. On June 6, 2014, MEAN filed a request that the Commission grant waiver of the requirements to establish and maintain an OASIS and to comply with the Commission's Standards of Conduct<sup>1</sup> found in Order Nos. 889<sup>2</sup> and 717.<sup>3</sup>

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<sup>1</sup> Subsequent to the filing of this application, the Commission issued Order No. 807, which became effective on June 30, 2015. In Order No. 807, the Commission amended its regulations to waive the open access transmission tariff requirements of section 35.28, the OASIS requirements of Part 37, and the Standards of Conduct requirements of Part 358, under certain conditions, for entities that own interconnection facilities. *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367 (2015).

<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).

<sup>3</sup> *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.

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3. MEAN states that it is a joint action agency and political subdivision of the State of Nebraska authorized to generate, transmit, or distribute wholesale electric power and energy. MEAN supplies power and energy to its 69 participants, which are comprised of 40 municipalities and one public power district in Nebraska, 14 municipalities and one joint action agency in Colorado, three municipalities in Wyoming, and 10 municipalities in Iowa. MEAN states that, to serve its participants, it takes transmission service from the Midcontinent Independent System Operator, Inc. (MISO) and Southwest Power Pool, Inc. (SPP), as well as from transmission providers that are not part of a regional transmission organization.

4. MEAN states that certain of its generation ownership interests include interests in limited transmission assets primarily associated with transmitting the power produced by those generators to the grid. Specifically, it states that it wholly owns generation tie-in facilities associated with the Kimball Wind Project in Nebraska. MEAN also states that it has approximately 3 miles of 34.5 kV transmission that it uses to transmit wind power produced by the 10.5 MW Kimball Wind Project to the City of Kimball's 34.5 kV distribution system. MEAN also states that it has a 6.92 percent ownership interest in the 790 MW Iowa-based Walter Scott Jr. Energy Center Unit 4 (Walter Scott 4) and related 345, 161, and 69 kV transmission. It adds that MidAmerican Energy Company (MidAmerican), which is a transmission-owning member of MISO, is the sole operator and majority owner of these generation and transmission facilities, whose operations have been turned over to MISO.

5. MEAN also states that its members, Waverly Light and Power (Waverly) and Indianola Municipal Utilities (Indianola), have both assigned MEAN an interest in their respective transmission facilities, of which MEAN maintains operational control for purposes of section 30.9 (Network Customer Owned Transmission Facilities) of the MISO Tariff. MEAN further states that Waverly and Indianola both have local 69 kV facilities located in MISO that, while integrated with the MidAmerican transmission system, do not themselves form an integrated grid. MEAN adds that both have 69 kV lines that are internal to their systems, as well as connecting them to MidAmerican and the adjacent cooperative utility. MEAN also states that Waverly (like MEAN) has an ownership interest (0.4 percent) in Walter Scott 4 and the associated transmission facilities, operated by MidAmerican. MEAN states that Waverly additionally has an ownership interest of 1.1 percent in the 750 MW Louisa Generating Station, located in Iowa, as well as the associated 345 kV transmission line that enables power from that

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¶ 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).

station to reach the grid. MEAN adds that MidAmerican is sole operator and majority owner of the Louisa Generating Station and associated transmission facilities.

6. MEAN states that it is staffed by the Nebraska Municipal Power Pool (NMPP), which has a total staff of 55 employees. The total NMPP staff allocating time to MEAN currently amounts to some 37 full-time employees.

7. MEAN states that it is not a Commission-jurisdictional “public utility” and, consequently, is not directly subject to the open access requirements and related obligations that the Commission imposes on public utilities pursuant to Order Nos. 888,<sup>4</sup> 889, and subsequent orders. In addition, it states that, to date, no entity has requested transmission service from MEAN.

8. MEAN further states that, as it is subject to the Commission’s reciprocity requirements,<sup>5</sup> it seeks a waiver of the Standards of Conduct and OASIS requirements MEAN states that the Commission’s regulations provide that non-public utilities may file for waiver of all or part of the reciprocity conditions contained in a public utility open access tariff at any time.<sup>6</sup> MEAN argues that the Commission routinely grants waivers to

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<sup>4</sup> *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>5</sup> MEAN explains that Commission policy requires an open access transmission customer, including a non-public utility, to stand ready to provide reciprocal transmission service, if requested, over any facilities that it owns, operates, or controls to any public utility from which it takes open access transmission service. It adds that the Commission later expanded reciprocity to require “a customer . . . that takes service from an RTO or ISO to provide comparable service, to the extent it owns transmission facilities, . . . to the transmission-owning members of the RTO or ISO.” MEAN Waiver Request at n.12, citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,262 at P 37. Moreover, MEAN states that the Commission has stated that “absent a waiver, the obligation to provide reciprocal, non-discriminatory services necessarily commits the customer of open access service, even if not a public utility, to abide by the OASIS and standards of conduct requirements.” *Id.*, citing Order No. 889-A, FERC Stats. & Regs. ¶ 31,049 at 30,553.

<sup>6</sup> 18 C.F.R. § 35.28(e)(2) (2014).

small utilities based on the threshold of whether they dispose of no more than 4 million MWh annually.<sup>7</sup>

9. Finally, MEAN asserts that it qualifies for a waiver under the small utility standard as its annual sales have historically fallen below 4 million MWh. For example, MEAN states that, in 2013, it disposed of approximately 2.8 million MWh of electricity. In addition, it states that no other circumstances are present that might justify denying the requested waiver, adding that it has never been the subject of a complaint that it has improperly denied transmission service or acted in a manner that would violate the standards of conduct.

10. MEAN further argues that compliance with the requirement to separate functions would increase MEAN's costs without providing benefits to its customers. It argues that the Commission has recognized that the costs of complying with the requirements to create or participate in an OASIS and to separate transmission function employees from marketing function employees can be unduly burdensome for small utilities.<sup>8</sup>

## **II. Notice**

11. Notice of MEAN's filing was published in the *Federal Register*, 79 Fed. Reg. 32,936 (2014), with protests or interventions due on or before June 30, 2014. None was filed.

## **III. Discussion**

12. Order No. 889 and Part 37<sup>9</sup> of the Commission's regulations require public utilities to establish and maintain an OASIS. Order Nos. 889, 2004,<sup>10</sup> and 717 and

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<sup>7</sup> MEAN Waiver Request at 6.

<sup>8</sup> *Id.* at 7, citing *N. States Power Co.*, 76 FERC ¶ 61,250, at 62,292 (1996) (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,853), *modified sub nom. Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 (1996), *reh'g denied sub nom. Indianapolis Power & Light Co.*, 96 FERC ¶ 61,308 (2001).

<sup>9</sup> 18 C.F.R. pt. 37 (2014).

<sup>10</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*

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Part 358 of the Commission's regulations<sup>11</sup> require public utilities to abide by certain Standards of Conduct.<sup>12</sup> In prior orders, the Commission has enunciated the standards for 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 No. 890 and Order No. 2004 are unchanged 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>

13. The Commission has determined that waiver of the requirement 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 a waiver would not be justified.<sup>16</sup> The Commission has held that waiver of the Commission's OASIS and Standards of Conduct requirements 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

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*gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006).

<sup>11</sup> 18 C.F.R. pt. 358 (2014).

<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); *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> *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 disposing of no more than 4 million megawatt-hours annually.

public utility has unfairly used its access to transmission information to benefit the utility of its affiliate (for Standards of Conduct waivers).<sup>17</sup>

14. Based on the statements in MEAN's filing, we find that it meets the definition of a small utility and, thus, we will grant MEAN waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to OASIS and Order Nos. 889, 2004, and 717 and Part 358 with respect to the Standards of Conduct. We note that MEAN'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>18</sup> Likewise, MEAN'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 MEAN has unfairly used its access to information to unfairly benefit itself or its affiliates.<sup>19</sup>

The Commission orders:

MEAN's request for waiver of the Commission's requirements to establish and maintain an OASIS and to comply with the Standards of Conduct 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>17</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998)).

<sup>18</sup> *Supra* n.17.

<sup>19</sup> We accept MEAN's commitment to notify the Commission if there is a material change in facts that affects its waiver, within 30 days of the date of such change. Waiver request at n.17 (citing the Commission's precedent in *Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations*, 127 FERC ¶ 61,141 (2009)).