

153 FERC ¶ 61,333  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

City of Independence, Missouri

Docket No. TS15-2-000

ORDER GRANTING REQUEST FOR WAIVERS

(Issued December 22, 2015)

1. In this order, we grant a request by the City of Independence, Missouri (City) for waiver of the Standards of Conduct and Open Access Same Time Information System (OASIS) requirements for reciprocity purposes.

**I. Background**

2. On August 19, 2015, the City filed a request that the Commission grant waiver of the Standards of Conduct and OASIS requirements found in Order Nos. 889<sup>1</sup> and 717<sup>2</sup> of the Commission's regulations for reciprocity purposes.

3. In support, the City states that it owns and operates, through its Power & Light Department, a municipal electric system serving approximately 56,000 retail electric

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<sup>1</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>2</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. ¶ 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).

customers within the City. Additionally, the City states that it operates 11 generating units and owns 69 kV and 161 kV transmission lines, as well as distribution facilities.<sup>3</sup>

4. The City also states that it is a market participant in the Southwest Power Pool (SPP) Integrated Marketplace and that the City's transmission facilities are connected to the SPP transmission system, as well as the transmission system of Associated Electric Cooperative, Inc. The City further states that it has been taking network transmission service under the SPP Tariff since June 1, 2015.<sup>4</sup>

5. The City explains that, because it is not a Commission jurisdictional "public utility," it is not directly subject to the Commission's open access requirements and related obligations. Nevertheless, the City acknowledges that it is subject to a reciprocity obligation if it receives a request for reciprocal transmission service over the lines it owns, operates or controls, and concludes that it needs to seek a waiver of the Standards of Conduct and OASIS requirements.<sup>5</sup>

6. The City argues that a waiver is warranted because it is a small utility that disposes of no more than four million MWh annually, as it only made sales of 1,068,750 to 1,150,233 MWh of electric energy in the past four years and has always reported below the Commission's four million MWh threshold.<sup>6</sup>

7. The City asserts that no other circumstances are present that might justify denying the requested waiver. The City states 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. Additionally, the City states that, as a member of SPP, it has granted SPP functional control of its transmission and asserts that the City's staff is not involved with granting or denying requests for transmission service.<sup>7</sup>

8. The City also asserts that the additional costs associated with imposing a separation of functions would increase its costs without providing benefits.<sup>8</sup>

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<sup>3</sup> Transmittal at 2.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.* at 5.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

## II. Notice

9. Notice of the City's filing was published in the *Federal Register*, 80 Fed. Reg. 72,961 (2015), with interventions and protests due on or before December 8, 2015.<sup>9</sup> None was filed.

## III. Discussion

10. Order No. 889 and Part 37 of the Commission's regulations<sup>10</sup> require public utilities to establish an OASIS. Order Nos. 889, 2004,<sup>11</sup> and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of 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<sup>13</sup> and

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<sup>9</sup> 80 Fed. Reg. 16,662 (Mar. 30, 2015).

<sup>10</sup> 18 C.F.R. Pt. 37 (2015).

<sup>11</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); *see also Standard of Conduct for Transmission for Providers*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

<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; 18 C.F.R. Pt. 358 (2015).

<sup>13</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).

889.<sup>14</sup> The Commission has stated that the criteria for waiver of the requirements of Order No. 890<sup>15</sup> and 2004 have not changed from those used to evaluate requests for waiver under Order Nos. 888 and 889.<sup>16</sup> Order No. 717 did not change those criteria.<sup>17</sup>

11. 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>18</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 public utility has unfairly used its access to transmission information to benefit the utility of its affiliate (for Standards of Conduct waivers).<sup>19</sup>

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<sup>14</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>15</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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>16</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>17</sup> See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

<sup>18</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 four million megawatt-hours annually.

<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 Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998)).

12. Based on the statements in the City's filing, we find that the City meets the definition of a small public utility. Accordingly, we will grant the City's request for 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 the City'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>20</sup> Likewise, the City'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 the City has unfairly used its access to information to unfairly benefit itself or its affiliates.<sup>21</sup>

The Commission orders:

The City'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>20</sup> See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035 at P 3; *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

<sup>21</sup> The City must notify the Commission if there is a material change in facts that affects 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 5 (2009).