

154 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

South Central MCN LLC

Docket No. ER16-505-000

ORDER ACCEPTING WHOLESALE DISTRIBUTION SERVICE AND OPERATING
AGREEMENTS, SUBJECT TO CONDITION, AND GRANTING REQUEST FOR
WAIVERS

(Issued February 8, 2016)

1. On December 10, 2015, South Central MCN LLC (South Central) submitted, pursuant to section 205 of the Federal Power Act (FPA),¹ a Wholesale Distribution Service Agreement (Service Agreement) and Wholesale Distribution Operating Agreement (Operating Agreement) (together, Agreements) between South Central and Tri-County Electric Cooperative, Inc. (Tri-County). South Central also submitted a formula rate template and protocols (Formula Rate) under which the rates for wholesale distribution service will be determined. In this order, we accept, subject to condition, South Central's Agreements and accept, subject to condition and subject to the outcome of the ongoing hearing and settlement judge proceedings in Docket No. ER15-2594, South Central's Formula Rate, effective as of the date of the consummation of the transaction to acquire the Tri-County facilities (Transaction). In addition, we grant South Central's request for waiver of the Commission's requirements to file an Open Access Transmission Tariff (OATT), to establish and maintain an Open Access Same-Time Information System (OASIS), and to comply with the Commission's Standards of Conduct.

I. South Central's Filing

2. South Central states that it is a transmission-only company and public utility member of Southwest Power Pool, Inc. (SPP). South Central explains that it does not currently own or operate any wire facilities, and that on October 29, 2015 the

¹ 16 U.S.C. § 824d (2012).

Commission accepted a formula rate template and formula rate protocols, effective once the template and protocols are filed with the Commission to become part of the SPP Open Access Transmission Tariff (Tariff), to be used by South Central to recover the cost of facilities it will develop or acquire.²

3. South Central states that Tri-County is a non-jurisdictional, not-for-profit distribution cooperative that sells less than 4,000,000 megawatt hours of electricity per year, and as such, is excluded from the Commission's general authority under section 201(f) of the FPA.³ South Central explains that Tri-County purchases wholesale electricity from Southwestern Public Service Company (SPS) and Golden Spread Electric Cooperative, Inc. (Golden Spread).⁴

A. Background

4. South Central explains that wholesale distribution service will be provided to Tri-County using the Tri-County facilities to be acquired by South Central. South Central states that it sought Commission authorization to acquire the facilities in Docket No. EC15-206-000.⁵ South Central states that the facilities consist of 410 miles of lines operated at 115 kV and 69 kV, and substations, feeders, switches, transformers, and related assets. South Central states that, once it acquires the facilities, they will be the first electric delivery facilities owned or operated by South Central.⁶

² Transmittal at 2; *see South Central MCN LLC*, 153 FERC ¶ 61,099 (2015) (October 29 Order). In the October 29 Order, the Commission, among other things, accepted South Central's proposed formula rate template and protocols subject to a further compliance filing, and accepted South Central's proposed base return on equity for filing, suspended it for a nominal period, to be effective November 2, 2015, subject to refund, and set it for hearing and settlement judge procedures.

³ 16 U.S.C. § 824 (2012).

⁴ Transmittal at 2-3.

⁵ South Central's application in Docket. No. EC15-206-000, filed on September 14, 2015, is currently pending before the Commission.

⁶ Transmittal at 2-3.

5. South Central states that the Commission has found the Tri-County facilities to be primarily radial in character⁷ and that the facilities are currently not under the functional control of SPP or any other Regional Transmission Organization (RTO) or Independent System Operator.⁸ South Central states that Tri-County now uses the facilities, all of which operate at transmission voltages, to deliver to retail customers the wholesale electricity Tri-County purchases from SPS and Golden Spread. South Central states that, although the facilities operate at transmission voltage levels, once acquired by South Central, the facilities will initially be operated on a stand-alone basis to serve a single customer, Tri-County, and will not be under the functional control of SPP. South Central explains that it expected all of its assets to be under SPP's functional control and its formula rate template and protocols to be effective once it is filed with the Commission to become part of the SPP Tariff. However, South Central states that, according to SPP, SPP may not accept functional control of facilities not considered "Transmission Facilities" under the terms of Attachment AI of the SPP Tariff, and may not collect rates under Schedule 10 of its Tariff (Wholesale Distribution Service) if South Central does not yet have "Transmission Facilities" subject to SPP's control. South Central continues that the cost of the Tri-County facilities cannot be included in the Annual Transmission Revenue Requirement (ATRR) under the SPP Tariff.⁹

B. Wholesale Distribution Agreements

6. South Central states that, because the delivery service is subject to the Commission's jurisdiction, South Central is filing the Agreements as the mechanism to provide the delivery service to Tri-County. South Central states that SPS and Golden Spread use SPP Network Integration Transmission Service to deliver wholesale electricity to Tri-County under bundled power and delivery contracts. South Central explains that the Agreements are modeled after the SPP Network Integration Service Transmission Service Agreement and SPP Network Operating Agreement contained in Attachments F and G of the SPP Tariff. South Central further explains that, where those agreements reference provisions of the SPP Tariff, South Central has included the text from the relevant *pro forma* tariff provisions in the Agreements, and that the principal changes to the Agreements are deletions that reflect the fact that ancillary services and

⁷ *Id.* at 2 (citing *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,051 (2014) (Opinion No. 535)).

⁸ *Id.* at 3.

⁹ *Id.* at 2-3.

system control are handled by SPP as part of Network Integration Transmission Service to Golden Spread and SPS.¹⁰

7. South Central states that the Service Agreement provides for the provision of wholesale distribution service by South Central to Tri-County, and that under the Service Agreement, South Central will accept power and energy at designated receipt points, and deliver that power and energy to the designated local points of delivery. South Central states that Tri-County's load is located in the SPS transmission zone and that the rate will be determined based on the total annual cost of service as determined under the Formula Rate described below. South Central states that the Service Agreement will terminate upon the earlier of mutual written consent or nine years after service starts, and that, upon Tri-County's request any time after six years of service, South Central will file an OATT and enter into negotiations regarding a new service agreement for use under the OATT.¹¹

8. South Central states that the Operating Agreement sets forth the terms and conditions under which South Central and Tri-County will cooperate and operate their systems and specifies the equipment that will be installed and operated. In particular, the Operating Agreement addresses operating principles, planning and protection, maintenance of facilities, scheduling, metering, cost responsibility, billing and payments, and dispute resolution.¹²

C. Formula Rate

9. South Central states that the rates for service under the Service Agreement will be determined based on the total cost of service under Attachment 11 to the Formula Rate. South Central explains that the Commission had accepted a proposed formula rate template and formula rate protocols in the October 29 Order, but had conditioned their effectiveness upon a future filing by SPP to incorporate them as part of the SPP Tariff. South Central explains that the SPP Tariff contains provisions for wholesale distribution service, but those provisions apply only to service provided in conjunction with other transmission service under the SPP Tariff. South Central states that, because it will not own any facilities that qualify as Transmission Facilities under Attachment AI of the SPP Tariff at the time it begins wholesale distribution service to Tri-County, this service must

¹⁰ *Id.* at 3.

¹¹ *Id.* at 1, 4.

¹² *Id.* at 4.

be offered outside of the SPP Tariff. Thus, South Central submits the Formula Rate as part of the instant filing.¹³

10. South Central states that the Formula Rate is identical to the formula rate template and formula rate protocols that South Central submitted to comply with the October 29 Order, with two exceptions, and is therefore just and reasonable.¹⁴ South Central states that the first difference is that the 50 basis points RTO adder that the Commission authorized in the October 29 Order is not applied in the Formula Rate because the facilities used to provide wholesale distribution service “are not under the control of SPS [sic].”¹⁵ The second difference, South Central explains, is that it revised the formula rate protocols to reflect that wholesale distribution service is not provided under the SPP Tariff.

11. South Central states that the Service Agreement provides that the rate for wholesale distribution service will be determined by the distribution element of the wholesale distribution service provisions of the Formula Rate. South Central explains that, because the facilities used to provide the wholesale distribution service are configured so as to serve only a single customer, they are included in the distribution portion of Attachment 11. Accordingly, the Service Agreement provides that the total annual cost of providing wholesale distribution service will be directly assigned to Tri-County, with the annual charges to be trued-up pursuant to the procedures in the formula rate protocols.¹⁶

12. South Central notes that, because the Tri-County facilities are of transmission voltages, South Central will calculate depreciation expense for the assets used to provide wholesale distribution service using the depreciation rates for transmission facilities

¹³ *Id.*

¹⁴ *Id.* See South Central MCN LLC, Compliance Filing, Docket No. ER15-2594-003 (filed Nov. 30, 2015).

¹⁵ Transmittal at 4. Although South Central states that the 50 basis points RTO adder that the Commission authorized in the October 29 Order is not applied in the Formula Rate because the facilities used to provide wholesale distribution service “are not under the control of SPS[,]” SPS is not an RTO and the Commission awarded the 50 basis points adder for RTO participation. Therefore, our determination below is based on the understanding that South Central did not include the adder because the Tri-County facilities are not under SPP’s functional control.

¹⁶ *Id.*

in Attachment 10, which the Commission accepted in the October 29 Order.¹⁷ South Central also notes that the return on equity used in the Formula Rate is subject to the Commission's determination in Docket No. ER15-2594, and commits to make revisions to the Formula Rate required by future compliance directives from the Commission in Docket No. ER15-2594.¹⁸

D. Requests for Waivers

1. Cost of Service Requirement

13. South Central requests that the Commission find that the Formula Rate fully satisfies the requirement to file detailed cost of service schedules.¹⁹ Alternatively, South Central requests that the Commission waive the requirement to submit detailed cost of service schedules "because South Central's rates are formulary and will be based on actual costs incurred during the relevant time period as reflected in FERC Form No. 1 filings."²⁰ South Central explains that its initial rates will be based on the price South Central pays Tri-County for the Tri-County facilities and the rate of return approved by the Commission under the Formula Rate. South Central also states that the acquisition price has been agreed upon through arm's length negotiations based on the original cost of these facilities less depreciation, and that the adjusted purchase price at closing for the Tri-County facilities will be \$27,023,456.²¹

2. Notice Requirement

14. South Central requests that the Commission waive the 60-day prior notice requirement and make the Agreements effective January 1, 2016.²² South Central states

¹⁷ *Id.* at 1, 4-5.

¹⁸ *Id.* at 5.

¹⁹ *Id.* (citing 18 C.F.R. § 35.13 (2015)).

²⁰ *Id.* (citing *DATC Midwest Holdings, LLC*, 139 FERC ¶ 61,224, at PP 97-98 (2012); *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 94 (2007), *order on reh'g*, 122 FERC ¶ 61,037, *order on reh'g*, 124 FERC ¶ 61,231 (2008); *Oklahoma Gas & Electric Co.*, 122 FERC ¶ 61,071, at P 41 (2008); *RITELine Illinois, LLC*, 137 FERC ¶ 61,039, at P 134 (2011)).

²¹ *Id.*

²² *Id.* (citing 18 C.F.R. § 35.3(a) (2015)).

that it also requests an effective date for its Formula Rate of January 1, 2016, so that the tab for wholesale distribution service may be used to determine the charges for wholesale distribution service to Tri-County.²³

15. South Central states that good cause exists to grant the requested waiver because the mechanism by which the wholesale distribution service will be provided changed from South Central's initial expectation when it filed its formula rate template and formula rate protocols and its application to acquire the Tri-County facilities in September 2015. South Central explains that, at the time of those filings, South Central expected, and so stated in those filings, that the cost of service of the Tri-County facilities would be recovered under the formula rate template and formula rate protocols accepted in the October 29 Order, and collected by SPP through Schedule 10 of the SPP Tariff. However, South Central states that "subsequent discussions with SPP staff, which lasted well into October 2015, made clear that the [wholesale distribution service] could not be provided under the SPP Tariff and that SPP would not collect the associated revenues through Schedule 10 of its Tariff until SPP was otherwise collecting South Central's ATRR for SPP Transmission Facilities."²⁴ Therefore, South Central explains that it is required to provide wholesale distribution service to Tri-County under a stand-alone service agreement, which took substantially longer than anticipated to finalize. South Central states that no adverse impacts would result from granting of the requested waiver, given that the sole customer, Tri-County, is gaining other benefits and has agreed to the charges.²⁵

16. In addition, South Central explains that the acquisition of the Tri-County facilities is an important initial step in South Central's plan to provide its public power partners with a greater role in transmission planning and ownership in the SPP region. According to South Central, the expected December 31, 2015 closing date would allow that process to continue uninterrupted and assure South Central's investors that it will own the facilities before South Central begins to incur any significant expenses for planning future upgrades to the Tri-County facilities.

²³ *Id.* at 1.

²⁴ *Id.* at 6.

²⁵ *Id.*

3. OATT Requirement

17. South Central states that, once the Tri-County facilities are acquired, South Central will be a public utility owning transmission facilities, and as such, is obligated to file an OATT. However, South Central requests waiver of the OATT filing obligation, stating that it currently owns no other transmission facilities, and that the Tri-County facilities qualify for waiver of the OATT obligation. South Central acknowledges that in the event that it receives a request for transmission service, it must file an OATT with the Commission 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.²⁶

18. In support of its request for waiver of the OATT filing obligation, South Central argues that once it acquires the Tri-County facilities, the facilities will be the only facilities South Central owns, operates, or controls that are used for the transmission of electric energy in interstate commerce. South Central states that the Tri-County facilities are limited and discrete transmission facilities. In particular, South Central states that the Tri-County facilities consist of 410 miles of transmission voltage level lines operated at 115 kV and 69 kV and substations, feeders, switches, transformers, and related assets, and that the facilities are located in Oklahoma with the exception of a 1.05 mile 69 kV line that is located in Kansas. Further, South Central explains that the Tri-County facilities are interconnected only to SPS transmission facilities and Tri-County local distribution facilities, and “deliver wholesale electricity to Tri-County purchased from SPS and Golden Spread.”²⁷

19. South Central also states that, in Opinion No. 535, the Commission addressed the functional characteristics of the Tri-County facilities. South Central states that the Commission found that “Tri-County’s facilities are not ‘Transmission Facilities’ under Attachment AI or transmission facilities under the Commission’s seven factor test, and that none of Tri-County’s facilities therefore are eligible to be rolled into SPP’s Zone 11 ATRR.”²⁸ South Central argues that the Commission’s findings in Opinion No. 535 establish that the Tri-County facilities are limited and discrete transmission facilities, and therefore warrant waiver of an obligation to file an OATT.²⁹

²⁶ *Id.* at 9.

²⁷ *Id.* at 7.

²⁸ *Id.* (quoting Opinion No. 535, 149 FERC ¶ 61,051 at PP 16, 169).

²⁹ *Id.* at 8.

20. In addition, South Central states that the Tri-County facilities are similar to those of Golden Spread, for which the Commission has granted waivers of the OATT filing requirement since 1996, based on its findings that Golden Spread's transmission facilities are limited and discrete transmission facilities that do not form an integrated transmission grid.³⁰ South Central argues that the functional characteristics of the Tri-County facilities are comparable to those of Golden Spread, because they are connected to the SPS system, and all of Tri-County's facilities are radial and none serves more than one eligible customer.³¹

4. OASIS and Standards of Conduct Requirements

21. South Central requests waiver of the requirements to establish an OASIS and abide by the Standards of Conduct. South Central argues that, once it acquires the Tri-County facilities, it will own, operate, or control only limited and discrete transmission facilities, and therefore qualifies for waiver of the requirements to establish an OASIS and abide by the Standards of Conduct.³²

II. Notice of Filing and Responsive Pleadings

22. Notice of South Central's filing was published in the *Federal Register*, 80 Fed. Reg. 78,725 (2015), with interventions and protests due on or before December 31, 2015. Tri-County and Western Farmers Electric Cooperative filed timely motions to intervene. Sunflower Electric Power Corporation and Mid-Kansas Electric Power Company, LLC (Sunflower and Mid-Kansas) filed a timely motion to intervene and comments. On January 13, 2016, the Kansas Corporation Commission (Kansas Commission) submitted a motion to intervene out-of-time. On January 20, 2016, Xcel Energy Services Inc. (Xcel) submitted a motion to intervene out-of-time.

Comments

23. Sunflower and Mid-Kansas do not take issue with South Central's direct assignment to Tri-County of the wholesale distribution charge under the Service Agreement, which would allow South Central to recover its costs of facilities being acquired by South Central from Tri-County. Sunflower and Mid-Kansas agree that,

³⁰ *Id.* (citing *Northern States Power Co.*, 76 FERC ¶ 61,250, at 62,295, 62,296 (1996); *Golden Spread Elec. Coop., Inc.*, 106 FERC ¶ 61,151, at PP 4, 9-10 (2004); *Golden Spread Elec. Coop., Inc.*, 127 FERC ¶ 61,248, at PP 3-5, 13 (2009)).

³¹ *Id.* (citing Opinion No. 535, 149 FERC ¶ 61,051 at P 20).

³² *Id.* at 10.

because those facilities are not transmission facilities, and serve only Tri-County, the costs should be directly assigned to Tri-County. However, Sunflower and Mid-Kansas remain concerned that the costs are being recovered under a purportedly Commission-jurisdictional agreement without being fully vetted to ensure that the costs are prudently incurred and are just and reasonable. To the extent that South Central seeks to recover costs from other customers via the SPP Tariff or otherwise, Sunflower and Mid-Kansas state that customers and the Commission should have an opportunity to fully explore the costs to ensure that they are just and reasonable.³³

24. Sunflower and Mid-Kansas also do not take issue with South Central's request for waiver of the OATT filing obligation, but request clarification that the Commission's acceptance of South Central's filing and granting of the OATT waiver will not change the previously determined classification of the Tri-County facilities as distribution facilities. Sunflower and Mid-Kansas state that, because the Commission has previously determined that the Tri-County facilities are not transmission facilities, there would seem to be no need for waiver of the open-access obligations that apply to Commission jurisdictional transmission facilities.³⁴ Sunflower and Mid-Kansas state that any reclassification of the Tri-County facilities should be made only after customers and the Commission have an opportunity to fully reevaluate the facilities, and that such reevaluation would also apply to any attempted reclassification by South Central if another customer is served off the facilities being acquired by South Central from Tri-County. In this regard, Sunflower and Mid-Kansas state that the premise of section 3.0 of the Service Agreement is faulty; section 3.0 states that, if another customer requests service on the facilities, then the facilities would be eligible to be under SPP's control and SPP would be the Transmission Provider. Sunflower and Mid-Kansas assert that, before the facilities could be moved under the SPP Tariff, they would have to be reclassified.

III. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), the Commission will grant the late-filed motions to intervene of the Kansas Commission and Xcel given their

³³ Sunflower and Mid-Kansas Comments at 3.

³⁴ *Id.* at 4 (citing Opinion No. 535, 149 FERC ¶ 61,051 at PP 5, 79).

interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Commission Determination

1. Agreements

26. We will accept the Agreements for filing, subject to condition.³⁵ Because the rates at issue depend upon and are for service commencing with the closing of the Transaction that is pending in Docket No. EC15-206-000, our acceptance of the Agreements is subject to Commission authorization of the Transaction. In doing so, we note that acceptance of the Agreements for filing, subject to condition, is without prejudice to the determination of any issues related to South Central's request to acquire the Tri-County facilities in Docket No. EC15-206-000. South Central explains that it anticipated closing the Transaction to acquire the Tri-County facilities on December 31, 2015, and requests that the Agreements become effective January 1, 2016.³⁶ Although we cannot grant South Central's requested effective date because the Transaction under which it will acquire the Tri-County facilities that it will provide service over has not closed, we understand that South Central intends that the service and rates take effect upon South Central taking ownership and control of the Tri-County facilities. Therefore, we will accept South Central's Agreements, subject to South Central making a compliance filing notifying the Commission of the actual effective date within five business days of consummating the Transaction to acquire the Tri-County facilities. This will allow an effective date as of the date of the consummation of the Transaction to acquire the Tri-County facilities, to ensure that service is provided continuously and seamlessly.

2. Formula Rate

27. We also will accept South Central's Formula Rate, subject to condition and subject to the outcome of the ongoing hearing and settlement judge proceedings in Docket No. ER15-2594. South Central requests that the Commission accept the Formula

³⁵ The Commission can revise a proposal filed under section 205 of the FPA as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

³⁶ In accordance with the Commission's eTariff requirements, South Central should have requested an effective date of December 31, 9998 because the effective date was not certain at the time of filing. *See Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings at 10*, <https://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf>.

Rate effective January 1, 2016. However, as explained above, we cannot accept South Central's requested effective date because the Transaction under which it will acquire the Tri-County facilities that it will provide service over has not closed. Therefore, we will accept South Central's Formula Rate, subject to condition, effective as of the date of the consummation of the Transaction to acquire the Tri-County facilities. As noted above, we will also direct South Central to make a compliance filing notifying the Commission of the actual effective date within five business days of consummating the Transaction to acquire the Tri-County facilities.

28. South Central acknowledges that the return on equity used in the Formula Rate is subject to the Commission's determination on that issue in the ongoing hearing and settlement judge procedures in Docket No. ER15-2594. Additionally, South Central commits to make revisions to the Formula Rate as required by future compliance directives from the Commission in the ongoing compliance proceedings in Docket No. ER15-2594.³⁷ Therefore, we will accept South Central's Formula Rate, subject to the outcome of the ongoing hearing and settlement judge procedures in Docket No. ER15-2594, effective as of the date of the consummation of the Transaction to acquire the Tri-County facilities, and will direct South Central to submit a compliance filing amending its Formula Rate consistent with the Commission's directives in Docket No. ER15-2594, as applicable.

3. Request for Waivers

29. South Central seeks waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct with respect to the Tri-County facilities. In support, South Central represents that the Tri-County facilities are limited and discrete transmission facilities (i.e., facilities that do not form an integrated transmission grid).³⁸

³⁷ Transmittal at 5.

³⁸ *Id.* at 6-9 (citing Opinion No. 535, 149 FERC ¶ 61,051 (2014)).

30. Order Nos. 888³⁹ and 890⁴⁰ and section 35.28 of the Commission's regulations⁴¹ 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. 889⁴² and Part 37 of the Commission's regulations⁴³ require public

³⁹ *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).

⁴⁰ *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).

⁴¹ 18 C.F.R. § 35.28 (2015).

⁴² *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).

⁴³ 18 C.F.R. pt. 37 (2015).

utilities to establish an OASIS. Order Nos. 889, 2004,⁴⁴ and 717⁴⁵ and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.⁴⁶ 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 890.⁴⁷ 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 889.⁴⁸ Order No. 717 did not change those criteria.⁴⁹

31. 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

⁴⁴ *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*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

⁴⁵ *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).

⁴⁶ 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.

⁴⁷ *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*).

⁴⁸ *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).

⁴⁹ *See* Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

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.⁵⁰

32. 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.⁵¹

33. 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).⁵² 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.⁵³

34. Based on the statements in South Central's filing, and given that these facilities had been owned by Tri-County and now merely have a change in ownership so that they are owned by South Central but used solely to transmit for Tri-County, we find that the Tri-County facilities are limited and discrete and do not constitute an integrated transmission system for purposes of the waiver analysis considered in this order.

⁵⁰ *Black Creek*, 77 FERC at 61,941.

⁵¹ *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.

⁵² *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)).

⁵³ *See, e.g., Kansas City, Kansas, Board of Pub. Utils.*, 140 FERC ¶ 61,113, at P 11 (2012).

Accordingly, we will grant South Central's request for waiver of the requirements set forth in Order Nos. 888 and 890, and in section 35.28 of the Commission's regulations to have an OATT on file. However, if South Central receives a request for transmission service, it must file with the Commission a *pro forma* OATT within 60 days of the date of the request.⁵⁴

35. We will also grant South Central waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to the requirement to establish and maintain an OASIS and of the requirements of Order Nos. 889, 2004, and 717 and Part 358 with respect to abiding by the Standards of Conduct. We note that South Central'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 alleging that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.⁵⁵ Likewise, South Central's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity alleging that South Central has unfairly used its access to information to unfairly benefit itself or its affiliates.⁵⁶

36. South Central also requests that the Commission find that the Formula Rate satisfies the requirement to file detailed cost of service schedules, or waive the requirement because South Central's rates are formulary and will be based on actual costs incurred during the relevant time period as reflected in FERC Form No. 1 filings.⁵⁷ We will grant South Central's request for waiver of the 18 C.F.R. § 35.13 requirements, consistent with our prior approval of formula rates.⁵⁸

37. Finally, in response to the comments of Sunflower and Mid-Kansas, any change in the allocation of the costs of the Tri-County facilities that South Central seeks in the future would require a FPA section 205 filing with the Commission, which will allow

⁵⁴ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

⁵⁵ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota*, 79 FERC ¶ 61,260 at 62,127; *Easton*, 83 FERC ¶ 61,334 at 62,343).

⁵⁶ *Id.* South Central 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).

⁵⁷ Transmittal at 5.

⁵⁸ See October 29 Order, 153 FERC ¶ 61,099 at P 141.

interested parties an opportunity to raise issues about the proposed allocation in that future proceeding.⁵⁹ Additionally, with respect to section 3.0 of the Service Agreement, which provides that service under the Service Agreement is contingent upon the continued existence of the OATT waiver or the effectiveness of an OATT filed with the Commission, we note that South Central must make a FPA section 205 filing with the Commission to terminate the Agreements.

The Commission orders:

(A) South Central's Agreements are hereby accepted for filing, subject to condition, effective as of the date of the consummation of the Transaction to acquire the Tri-County facilities, as discussed in the body of this order.

(B) South Central's Formula Rate is hereby accepted for filing, subject to condition and subject to the outcome of the ongoing hearing, settlement judge, and compliance proceedings in Docket No. ER15-2594, effective as of the date of the consummation of the Transaction to acquire the Tri-County facilities, as discussed in the body of this order.

(C) South Central is hereby directed to submit a compliance filing notifying the Commission of the actual effective date of the Agreements and Formula Rate within five business days of consummating the Transaction to acquire the Tri-County facilities, as discussed in the body of this order.

⁵⁹ For instance, if in the future South Central becomes a transmission-owning member of SPP and seeks to reclassify the facilities as "Transmission Facilities" under Attachment AI of the SPP Tariff, an amendment to the SPP Tariff would be required to propose the pricing zone treatment for such facilities under the SPP Tariff.

(D) South Central's request for waiver of the requirements to file an OATT, to establish and maintain an OASIS, to comply with the Commission's Standards of Conduct, and of section 35.13 of our regulations is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.