

140 FERC ¶ 61,163  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

City Utility Commission of Owensboro, Kentucky                      Docket No. TS11-2-000

Connecticut Transmission Municipal Electric Energy  
Cooperative    Docket No. TS11-4-000

Elk River Municipal Utilities    Docket No. TS11-7-000

Northern States Power Company, Minnesota                              Docket No. TS04-281-001  
Northern States Power Company, Wisconsin

ORDER ON REQUESTS FOR WAIVER OF THE COMMISSION'S OASIS AND  
STANDARDS OF CONDUCT REQUIREMENTS

(Issued August 30, 2012)

1. In this order, the Commission grants three separate requests for certain waivers of the Commission's Standards of Conduct requirements and denies a fourth request as moot.<sup>1</sup> Three of these waiver requests involve obligations to comply with the

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<sup>1</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 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).

(continued...)

Commission's Standards of Conduct requirements as they apply through the Commission's *pro forma* open access transmission tariff (OATT) reciprocity requirements.<sup>2</sup> Two applicants also request waiver of the Commission's requirements to establish and maintain an Open Access Same-Time Information System (OASIS), and we also grant these OASIS waiver requests in this order.<sup>3</sup>

2. The remaining waiver request involves a request to continue an existing waiver of the Commission's Standards of Conduct requirements, notwithstanding changed circumstances. We will dismiss this request as moot, as the applicant no longer needs a waiver (as it is no longer subject to the regulations).

## **I. Requests for New Waivers**

### **A. Waiver Standards for Small Electric Utilities under Reciprocity Obligations**

3. As we explained in *Kansas City Board of Public Utilities*, 140 FERC ¶ 61,113, at P 8 (2012) (Kansas City Board), when the Commission is deciding on waiver requests, it applies the same criteria to both waiver requests from public utilities and waiver requests from non-public utilities.<sup>4</sup> We also stated in *Black Hills* that the rationale used by the Commission to determine which small public utilities qualify for waivers of the Commission's OASIS, Standards of Conduct, and *pro forma* OATT requirements applies

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<sup>2</sup> See *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>3</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>4</sup> Citing *Central Minnesota Municipal Power Agency, et al.*, 79 FERC ¶ 61,260, at 62,127 & n.15 (1997); *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,763 (1996); and *Dakota Electric Association, et al.*, 78 FERC ¶ 61,117, at 61,452 (1997).

equally to small non-jurisdictional electric utilities that follow these requirements under their reciprocity obligations.<sup>5</sup>

4. In *Black Hills*, we also clarified that when an electric utility transmission owner or operator participates in a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO), membership in a tight power pool is not relevant to whether the Commission will grant or deny a waiver of the Standards of Conduct or OASIS requirements.<sup>6</sup> Rather, the utility is eligible for 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.

5. For small electric utilities that have not relinquished control over the operation of their transmission systems to an ISO/RTO, the Commission may also grant a waiver of the Commission's Standards of Conduct or OASIS requirements where the applicant demonstrates that (1) it is a small electric utility with energy sales below four million MWh, and (2) no other circumstances are present to indicate that a waiver is not justified.<sup>7</sup> Additionally, the Commission may also grant a waiver where an entity can demonstrate that its transmission facilities are limited, discrete, and do not form an integrated transmission grid.<sup>8</sup>

## **B. Docket No. TS11-2-000**

### **Background**

6. On March 18, 2011, the City Utility Commission of the City of Owensboro, Kentucky (Owensboro) filed a request for a waiver of the requirements to maintain and establish an OASIS and to comply with the Commission's Standards of Conduct for

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<sup>5</sup> *Kansas City Board*, 140 FERC ¶ 61,113 at P 11.

<sup>6</sup> *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 2, 8 & n.12 (2011) (*Black Hills*).

<sup>7</sup> *Kansas City Board*, 140 FERC ¶ 61,113 at P 10; *Black Hills*, 135 FERC ¶ 61,058 at P 8.

<sup>8</sup> *Black Hills*, 135 FERC ¶ 61,058 at P 7.

Transmission Providers as they apply to municipal electric systems through the reciprocity requirement of the Commission's *pro forma* OATT.<sup>9</sup>

7. Owensboro claims that because it is a municipal corporation, it is a non-public utility<sup>10</sup> and, thus, is not directly subject to the Commission's open access and related obligations;<sup>11</sup> however, Owensboro states that its transition to open access transmission service could give rise to such obligations as a matter of reciprocity. Accordingly, Owensboro contends that it qualifies for a waiver under the Commission's criteria for small public utilities that dispose of no more than four million MWh of electricity annually.<sup>12</sup> To support its request, Owensboro avers that it disposed of roughly 2.5 million MWh of electricity in each of the past two years.<sup>13</sup> Additionally, Owensboro commits to inform the Commission within 30 days of any material changes in fact that could affect its continued eligibility for the waiver.<sup>14</sup>

8. Notice of Owensboro's filing was published in the *Federal Register*, 76 Fed. Reg. 19,355 (2011), with comments due on or before April 18, 2011. Louisville Gas and Electric Company (Louisville Gas) filed a timely motion to intervene and protest. Owensboro filed a motion for leave to file an answer and an answer to Louisville Gas' protest and, in turn, Louisville Gas filed a motion for leave to file an answer and an answer in response.

### **Discussion**

9. As a preliminary matter, Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(a)(2) (2012), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by Owensboro and Louisville Gas, because they aided us in our decision-making process.

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<sup>9</sup> Owensboro Request at 1-2.

<sup>10</sup> Section 201(f) of the Federal Power Act (FPA), provides, in part, that no provision of Part II of the FPA applies to a state, [or] political subdivision of a state .... that sells less than 4,000,000 megawatt hours of electricity per year. 16 U.S.C. § 824f (2006).

<sup>11</sup> Owensboro Request at 5-6.

<sup>12</sup> *Id.* at 7.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

10. Turning to the merits of Owensboro's waiver request, Louisville Gas claims that other circumstances are present that warrant denying Owensboro's request for waiver of the Standards of Conduct requirements.<sup>15</sup> Louisville Gas believes that without the discipline required by the Standards of Conduct, Owensboro could use non-public information about generator or transmission outages to maximize sales opportunities and improperly influence the market. In its answer, Owensboro argues that (a) certain communications restrictions on its power marketer and transmission provider and (b) certain reliability agreements restrain its ability to share information, and should mitigate Louisville Gas's concerns.<sup>16</sup> Louisville Gas responds that such restraints do not provide adequate assurance that Owensboro will not use such information to benefit itself or its affiliates if the waiver request is granted.<sup>17</sup>

11. Having considered the representations in Owensboro's filing, the opposition thereto, and the subsequent answers, the Commission grants Owensboro's requests for waivers from both the requirement to maintain and establish an OASIS and the requirement to comply with the Standards of Conduct. As both parties note, the Commission generally grants waivers of its Standards of Conduct requirements to small electric utilities that have not relinquished control over the operation of their transmission systems to an ISO/RTO, which remain in effect unless and until the Commission takes

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<sup>15</sup> Louisville Gas Protest at 1-2.

<sup>16</sup> Owensboro Answer at 1-3. Owensboro adds that Big Rivers Electric Corporation (Big Rivers) has little incentive to share information with Owensboro because, even though Owensboro has hired Big Rivers to perform certain transmission-operation functions, Big Rivers is Owensboro's competitor. Owensboro Answer at 8-9. Owensboro also disputes that Big Rivers would use Owensboro as a conduit for sharing information with ACES Power Marketing (ACES). In this regard, Owensboro explains that Big Rivers is a member of ACES and, thus, it would have no need to use Owensboro as a conduit for such communications. Moreover, Big Rivers has adopted Standards of Conduct (filed with the Commission) that prohibit Big Rivers from providing non-public transmission information to ACES directly or from using anyone as a conduit to do so. *Id.* Owensboro also notes that Big Rivers represented to the Commission that it had already implemented measures with respect to its Transmission Function to guarantee that it is physically and functionally independent from activities associated with ACES and those measures are codified in its Standards of Conduct. *Id.* at 9-10.

<sup>17</sup> Louisville Gas Answer at 1-2.

action on a complaint claiming that the small public utility used its access to information to benefit itself or its affiliates.<sup>18</sup>

12. While Louisville Gas hypothesizes that such abuses are possible, it has not specifically alleged that Owensboro has in fact used its access to information to benefit itself or its affiliates. Absent such evidence, and consistent with our general policy, we shall grant Owensboro's waiver request because it meets the established criteria for a waiver.<sup>19</sup> If Louisville Gas believes that Owensboro misused non-public transmission or customer information, it may file a complaint with the Commission under 18 C.F.R. § 385.206, seeking appropriate relief.

13. Owensboro's Standards of Conduct and OASIS waivers will remain in effect unless the Commission subsequently rescinds them, for example, after hearing on a complaint that Owensboro has used its access to information to unfairly benefit itself or its affiliate.<sup>20</sup>

### C. Docket No. TS11-4-000

#### Background

14. On June 8, 2011, the Connecticut Transmission Municipal Electric Energy Cooperative (Connecticut Cooperative) filed a request for a waiver of the requirements to comply with the Commission's Standards of Conduct as applicable to non-public utilities through the reciprocity requirements of the Commission's *pro forma* OATT.<sup>21</sup> Connecticut Cooperative is a non-profit municipal joint action transmission agency formed by the Connecticut municipally-owned electric utilities. As a political

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<sup>18</sup> *E.g.*, *Black Hills*, 135 FERC ¶ 61,058 at P 40; *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) (Material Changes Order).

<sup>19</sup> Louisville Gas Answer at 5-6 (noting that the means for revoking a waiver can only provide "after-the-fact relief").

<sup>20</sup> Owensboro must notify the Commission if there is a material change in facts that affect the waiver, within 30 days of the date of such change. Material Changes Order, 127 FERC ¶ 61,141 at P 5.

<sup>21</sup> Connecticut Cooperative Request at 1. Notice of Connecticut Cooperative's filing was published in the *Federal Register*, 76 Fed. Reg. 37,809 (2011), with interventions and protests due on June 22, 2011. None was filed.

subdivision of Connecticut, Connecticut Cooperative argues that it falls within the jurisdictional exemption of FPA section 201(f). Connecticut Cooperative's transmission facilities consist of approximately 12 miles of 345 kV and 115 kV electric transmission facilities.

15. Connecticut Cooperative also argues that it has satisfied the three criteria for a waiver of the Standards of Conduct for electric utilities participating in a Commission approved RTO or ISO by (1) turning over operation and control of its transmission system to ISO New England, (2) relinquishing access to information concerning the operation of its facility to Connecticut Light and Power, and (3) committing to obtain information about the operational status of its facility solely through OASIS.<sup>22</sup>

### **Discussion**

16. Based on the representations in Connecticut Cooperative's filing, we grant Connecticut Cooperative's request for a waiver of the Commission's Standards of Conduct requirements because Connecticut Cooperative meets the three eligibility criteria for electric utilities operators participating in a Commission-approved ISO or RTO. Connecticut Cooperative's Standards of Conduct waiver will remain in effect unless and until the Commission takes action on a complaint by an entity that Connecticut Cooperative has used its access to information to unfairly benefit itself or its affiliate.<sup>23</sup>

#### **D. Docket No. TS11-7-000**

### **Background**

17. On July 15, 2011, Elk River Municipal Utilities (Elk River) filed a request for a waiver of the requirements to maintain and establish an OASIS and to comply with the Commission's Standards of Conduct for Transmission Providers as applicable to municipal electric systems through the reciprocity requirements of the Commission's *pro forma* OATT.<sup>24</sup> Elk River is a municipality that is primarily an electric distribution system and, under FPA section 201(f), not subject to Part II of the FPA. Elk River

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<sup>22</sup> *Id.* at 6-7.

<sup>23</sup> Connecticut Cooperative must notify the Commission if there is a material change in facts that affect the waiver within 30 days of the date of such change. Material Changes Order, 127 FERC ¶ 61,141 at P 5.

<sup>24</sup> Elk River Request at 1-2.

contends that its facilities qualify for a waiver because they are limited and discrete 69 kV substation equipment, such as breakers, switches, and transformers, located in individual substations in the Elk River area. Elk River adds that its transmission facilities have been subject to the functional operation and control of the Midwest Independent Transmission System Operator, to which all potential requests for transmission are directed. In the alternative, Elk River contends that it qualifies for a waiver because of its small size, as its facilities are minimal and its total sales for each of the past three years ranged from 220,000 to 250,000 MWhs, well below the Commission's criteria of 4,000,000 MWhs for a small utility.<sup>25</sup> Elk Hills also argues that imposing a separation of functions barrier would be an undue burden because of its limited staff, e.g., one employee for both transmission and sales duties.<sup>26</sup>

### **Discussion**

18. Based on the representations in its filing, we find that Elk River's transmission facilities qualify as limited and discrete, rather than as an integrated grid, and Elk River also meets the criteria for a small utility. Accordingly, we will grant Elk River's request for waiver of the requirements to comply with our Standards of Conduct and to maintain and establish an OASIS as they apply to municipal electric systems through the reciprocity requirements of the Commission's *pro forma* OATT.

19. The waiver of the requirement to establish an OASIS and the waiver of Standards of Conduct requirements will remain in effect absent subsequent action by the Commission as, for example, in response to a complaint that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.<sup>27</sup>

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<sup>25</sup> See *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009) (reaffirming that only utilities disposing of under 4,000,000 MWh of energy annually meet the Commission's definition of small utility). See also *Black Hills*, 135 FERC ¶ 61,058 at PP 4-7.

<sup>26</sup> *Id.* at 2.

<sup>27</sup> Elk River must notify the Commission if there is a material change in facts that affect the waiver within 30 days of the date of such change. Material Changes Order, 127 FERC ¶ 61,141 at P 5.

## II. Request for Continued Waiver Despite Material Change in Facts

### A. Docket No. TS04-281-001

#### Background

20. On May 1, 2007, the Commission granted a request by Northern States Power Company and Northern States Power Company, Wisconsin (collectively, the NSP Companies) for a partial waiver of the Commission's Standards of Conduct requirements based on, among other matters, three separate findings that the NSP Companies' operations at issue only involved a *de minimis* amount of sales.<sup>28</sup> The order directed the NSP Companies to notify the Commission if a material change in circumstances arose.<sup>29</sup>

21. On July 13, 2009, Xcel Energy Services Inc. (Xcel) on behalf of its affiliates (i.e., the NSP Companies) filed notice of a material change in facts and a request for a continued waiver.<sup>30</sup> Xcel reports that one of the NSP customers who previously received unbundled "provider of last resort" service now receives "bundled" electric retail service from the NSP Companies at rates regulated by the Minnesota Public Utilities Commission. Xcel adds that no other changes have occurred. Accordingly, Xcel asks the Commission to continue the remaining partial waivers that the Commission granted in the 2007 NSP Order.

#### Discussion

22. After the NSP Companies were granted their waivers in 2007, the Commission, in Order No. 717,<sup>31</sup> amended the definition of marketing function/affiliate, which was established in Order No. 2004. Specifically, under the new definition, "unbundled sales" by a provider of last resort are excluded from the definition of the marketing function.<sup>32</sup> This being the case, the NSP Companies no longer need a Standards of Conduct waiver because, absent changed circumstances, they are not subject to the requirements for which they have in the past obtained a waiver. Thus, we will dismiss the request for a

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<sup>28</sup> *Northern States Power Company and Northern States Power Company (Wisconsin)*, 119 FERC ¶ 61,103, PP 11, 13 & 16 (2007) (2007 NSP Order).

<sup>29</sup> *Id.* P 16.

<sup>30</sup> Xcel Notice at 1-2.

<sup>31</sup> *See supra* n.1.

<sup>32</sup> *See* 18 C.F.R. § 358.3(c)(1) (2012).

continued waiver, as moot. We note, however, that the NSP Companies are directed to notify the Commission within 30 days of the date of any material change in circumstance, if any such change occurs.<sup>33</sup>

The Commission orders:

(A) The requests by Owensboro, Connecticut Cooperative, and Elk River for waivers of the requirement to comply with the Commission's Standards of Conduct requirements are hereby granted, as discussed in the body of this order.

(B) The requests by Owensboro and Connecticut Cooperative for waivers of the requirement to establish and maintain an OASIS are hereby granted, as discussed in the body of this order.

(C) Xcel's motion for continuance of the NSP Companies' previously-granted waivers of the Commission's Standards of Conduct requirements is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>33</sup> Material Changes Order, 127 FERC ¶ 61,141 at P 5.