

169 FERC ¶ 61,256
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Basin Electric Power Cooperative

Docket No. ER19-2473-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued December 30, 2019)

1. On July 26, 2019, as amended on November 6, 2019 (Amendment), Basin Electric Power Cooperative (Basin) on behalf of its members Central Power Electric Cooperative (Central Power), Upper Missouri Power Cooperative (Upper Missouri), and Cam Wal Electric Cooperative (Cam Wal) (collectively, the Member Cooperatives) filed a request for a one-time waiver of the compliance deadlines contained in the formula rate protocols (Protocols) in Attachment O to the Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) and any applicable Commission requirements. Specifically, Basin requests a one-time waiver of the deadlines in certain provisions in the Protocols related to the Annual Update, Information Exchange, Challenge Procedures, and Informational Filing for the 2017-2019 Rate Years in which a Member Cooperative did not properly follow them. Basin states that such Member Cooperative will include the applicable prior years' information in its 2020 Annual Update. In this order, we grant Basin's request for waiver.

I. Background

2. Basin states that it is a consumer-owned rural electric generation and transmission cooperative headquartered in Bismarck, North Dakota. Basin states that it is not a public utility as that term is defined in section 201(e) of the Federal Power Act (FPA) by virtue of section 201(f) of the FPA,¹ and is a market participant and transmission owning member of Southwest Power Pool, Inc. (SPP) with its facilities located in the SPP Pricing Zone 19.² Basin adds that it leases certain transmission facilities from its Member

¹ 16 U.S.C. §§ 824(e), (f) (2018).

² *Basin Elec. Power Coop.*, 169 FERC ¶ 61,158, at PP 2, 5 (2019). On September 30, 2019 and October 1, 2019, as amended on October 31, 2019, Basin filed agreements with the Commission because it anticipated becoming subject to the

Cooperatives and serves as the Transmission Customer on their behalf in MISO.³ As such, Basin explains that for these facilities Basin qualifies for a crediting arrangement under Section 30.9 of the Tariff (30.9 Credits), which provides a billing credit or some other mechanism to network customers that demonstrate their transmission facilities are integrated into the plans or operations of MISO and serve MISO's power and transmission customers.⁴

3. Basin states that Central Power is a borrower from the Rural Utilities Service (RUS) and, as a result, is not a public utility as that term is defined in section 201(e) of the FPA. Basin states that Central Power supplies the bulk power needs of its six members through its transmission system, which is interconnected with the Western Area Power Administration (WAPA), Basin, and three investor-owned utilities, including Montana Dakota Utilities Company (MDU) and Otter Tail Power Company (Otter Tail).⁵ Basin states that Upper Missouri provides service to 11 electric distribution cooperatives in eastern Montana and in western North Dakota. Basin adds that Upper Missouri sources power from two major power suppliers, i.e., WAPA and Basin.⁶ Basin states that Cam Wal is a borrower from the RUS, and, as a result, is not a public utility as that term is defined in section 201(e) of the FPA. Basin adds that Cam Wal owns and operates a 230 kV substation that connects with a transmission line owned by MDU.⁷

4. Basin explains that the MDU Power Company Network Customers Section 30.9 Credits Calculation Procedures and the Otter Tail Power Company Network Customers Section 30.9 Credits Calculations Procedures (collectively, 30.9 Procedures) specify the procedures through which Basin and the Member Cooperatives receive credits in the MDU and Otter Tail Pricing Zones under section 30.9 of the MISO Tariff. Basin further explains that the Member Cooperatives receive these credits for facilities they lease to Basin in the MDU and Otter Tail Pricing Zones. Basin states that the Member

Commission's jurisdiction on the earlier of the date on which: (1) Basin admits a member that does not qualify under section 201(f) of the FPA for exemption from Commission regulation; or (2) an existing member ceases to qualify for such exemption. The Commission rejected, without prejudice, the agreements filed by Basin as patently deficient.

³ Request for Waiver at 1-2.

⁴ *Id.* at 3.

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Id.* at 3.

Cooperatives became eligible to receive revenue credits under section 30.9 of the MISO Tariff on April 4, 2016 in the MDU Pricing Zone and on May 7, 2017 in the Otter Tail Pricing Zone. Specifically, Basin states that Central Power began receiving 30.9 Credits from MDU and Otter Tail effective May 1, 2017, Upper Missouri began receiving 30.9 Credits from MDU effective June 1, 2017, and Cam Wal began receiving 30.9 Credits from MDU effective November 1, 2017.⁸

5. Basin states that it acts as the Transmission Customer in MISO on behalf of its Member Cooperatives, and that, under the 30.9 Procedures, on or before May 1 of each year, the “NITS customer” is required to provide MISO and the appropriate MISO Transmission Owner (MDU or Otter Tail) with a completed RUS form 12, audited Financial Statements, and a completed Attachment O template based on integrated transmission facilities located in that Transmission Owner’s Pricing Zone and in-service as of December 31 of the previous year. Basin adds that MISO posts that information on its website, and that the 30.9 Procedures also provide that the “NITS customer shall follow the Annual Update, Information Exchange, and Challenge Procedures as provided in the Formula Rate Protocols.”⁹ MISO then includes the 30.9 Credits in the zonal revenue requirement for the applicable Pricing Zone.¹⁰

II. Request for Waiver and Amendment

6. Basin states that it requests a one-time waiver of Attachment O to the MISO Tariff, effective April 4, 2016, because it and its Member Cooperatives have not fully complied with the Protocols with respect to the facilities for which the Member Cooperatives are receiving 30.9 Credits. Specifically, Basin requests waivers of the compliance deadlines in sections II.G/H (Annual Meeting),¹¹ III (Information Exchange

⁸ *Id.*

⁹ Basin notes that it uses the terms Transmission Customer, NITS customer, and Network Customer interchangeably because they all appear in the MISO Tariff and various attachments. *Id.* at 2 n.2.

¹⁰ *Id.* at 4.

¹¹ For section II.G/H, Central Power held its Annual Meeting three days after the deadline for the 2017-2018 Rate Year and did not hold an Annual Meeting for the 2018-2019 Rate Year. Cam Wal did not hold Annual Meetings for either the 2017 or 2018 Rate Years. *Id.* at 7-8 & Table 1.

Procedures),¹² IV (Challenge Procedures),¹³ and VI (Annual Informational Report)¹⁴ of the Protocols.

7. Basin states that, in considering requests for waiver of tariff provisions, the Commission generally requires that: (1) the applicant acted in good faith; (2) the requested waiver is limited in scope; (3) the waiver addresses a concrete problem that needs to be remedied; and (4) the waiver does not have undesirable consequences, such as harming third parties. Basin asserts that its request satisfies the standard for waiver and should be granted.¹⁵

8. First, Basin asserts that it acted in good faith when it failed to follow the Protocols related to the Annual Update, Information Exchange, and Challenge Procedures. Basin argues that it, the Member Cooperatives, and MISO did not adequately communicate with each other regarding how to follow the 30.9 Procedures which require them to follow the Protocols of Attachment O. As a result, Basin argues that there was confusion concerning whether the responsibility for following these Protocols was with the Member Cooperative, Basin, or the Pricing Zone Transmission Owner. Basin alleges that it mistakenly assumed that the Member Cooperatives were following the Protocols because they were complying with the other requirements under the 30.9 Procedures, and the Member Cooperatives were either unaware of the requirement to comply with these Protocols or under the misconception that the Transmission Owners addressed the 30.9 Credits through their own Annual Update, Information Exchange, and Informal

¹² For section III, Central Power did not provide Information Exchange Procedures for the 2018-2019 Rate Year. Cam Wal did not provide Information Exchange Procedures for the 2017 or 2018 Rate Years. *Id.*

¹³ For section IV, Central Power did not provide Challenge Procedures for the 2018-2019 Rate Year. Cam Wal did not provide Challenge Procedures for the 2017 or 2018 Rate Years. *Id.*

¹⁴ For section VI, Central Power and Upper Missouri did not submit an Informational Filing for the 2017-2018 Rate Year. Cam Wal did not submit an Informational Filing for the 2017 or 2018 Rate Years. Basin states that it is submitting, for Central Power and Upper Missouri, Informational Filings on a delayed basis for the 2018-2019 Rate Year. Basin states that Cam Wal submitted its Informational Filing for the 2019 Rate Year on March 28, 2019, two weeks after the deadline. *Id.*

¹⁵ *Id.* at 4, 9.

Challenge Procedures. Basin asserts that it began working with MISO and the Member Cooperatives to address the issue when Basin became aware of the error.¹⁶

9. Second, Basin states that its request is limited in scope because it applies only to Basin's and the Member Cooperatives' compliance with the Annual Update, Information Exchange, and Informal Challenge Procedures provisions in the Protocols as required by the 30.9 Procedures for a period of less than three years. In support of its request, Basin states that, during that time frame, the Member Cooperatives provided MISO and the Transmission Owners with their Attachment O materials on an annual basis and responded to questions concerning the materials. Basin asserts that, by doing so, the Member Cooperatives completed several of the activities required under the Protocols.¹⁷

10. Third, according to Basin, the waiver will remedy a concrete problem. Basin states that, because of the confusion associated with compliance with the Protocols, Basin and the Member Cooperatives did not complete some of the activities required under the Protocols. Basin explains that, with this waiver request and the concurrent Informational Filings, Basin seeks to remedy that mistake.¹⁸

11. Fourth, Basin claims that its request for waiver will not have undesirable consequences or harm third parties. In support of its request, Basin notes that the Member Cooperatives' Attachment O annual transmission revenue requirements for the facilities receiving 30.9 Credits have been shared with MISO and the Transmission Owners and posted to the MISO website in compliance with the 30.9 Procedures. Therefore, Basin argues that interested parties have had access to all relevant information through the MISO website. In addition, Basin contends that the waiver will not affect interested parties' ability to participate in an annual update process going forward.¹⁹

12. In its Amendment, Basin requests that the Commission only waive the compliance deadlines in the Protocols. Basin asserts that this will ensure that its request for waiver

¹⁶ *Id.* at 4-5.

¹⁷ *Id.* at 5-6.

¹⁸ *Id.* at 6. Basin asserts that it and the Member Cooperatives have made or are in the process of making the necessary Informational Filings. Specifically, Basin states that it will be submitting the Annual Update Informational Filings for Central Power and Upper Missouri in a separate docket. Basin adds that Cam Wal submitted its 2019 Annual Update Filing on March 28, 2019 in Docket No. ER19-1462-000, and Basin has included Cam Wal's 2017, 2018, 2019 Annual Update materials in the Annual Update Filings submitted by Basin.

¹⁹ *Id.*

will not have undesirable consequences or harm third parties. In this regard, Basin clarifies that, for any prior year in which a Member Cooperative did not properly follow the Protocols related to the Annual Update, Information Exchange, and Challenge Procedures, such Member Cooperative will include the applicable prior years' information in its 2020 Annual Update. Basin explains that this will provide all interested parties with an opportunity to engage in the Information Exchange and Challenge Procedures provided for under the Protocols for any prior year in which the Member Cooperative did not fully comply with the Protocols. Basin states that, for example, Central Power did not hold an Annual Update Customer Meeting in 2018 for its 2018-2019 Rate Year Annual Update, and as a result, interested parties may not have been aware of their ability to engage in Information Exchange Procedures or follow the Challenge Procedures. Therefore, Basin states that, besides providing the information underlying its 2019-2020 Rate Year as part of its 2020 Annual Update, Central Power will provide the information underlying its 2018-2019 Rate Year. Basin adds that Central Power will provide interested parties with the opportunity to review the 2018-2019 Rate Year information, ask questions through the information exchange procedures, and raise any challenges that are warranted.²⁰

III. Notice and Responsive Pleadings

13. Notice of Basin's filing was published in the *Federal Register*, 84 Fed. Reg. 37,862 (2019), with interventions and protests due on or before August 16, 2019. Upper Missouri filed a motion to intervene.

14. Notice of Basin's Amendment was published in the *Federal Register*, 84 Fed. Reg. 63,873 (2019), with interventions and protests due on or before November 27, 2019. None was filed.

IV. Discussion

A. Procedural Matters

15. As a Member Cooperative of Basin, on whose behalf Basin filed,²¹ Upper Missouri already has party status.

²⁰ Amendment at 2-3.

²¹ Transmittal at 1.

B. Substantive Matters

16. We grant Basin's request for one-time waiver of the compliance deadlines in the Protocols relating to the Annual Update, Information Exchange, and Challenge Procedures.

17. The Commission has granted waiver of tariff provisions where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.²² As discussed below, we find that Basin's request for waiver satisfies these criteria.

18. First, we find that the underlying error was made in good faith. Basin states that it requested the waiver when it realized that it failed to follow the Protocols related to the Annual Update, Information Exchange, and Challenge Procedures. In this regard, Basin states that it mistakenly assumed that the Member Cooperatives were following the Protocols because they were complying with the other requirements under the 30.9 Procedures, and the Member Cooperatives were either unaware of the requirement to comply with the Protocols or under the misconception that the Transmission Owners addressed the 30.9 Credits through their own Annual Update, Information Exchange, and Informal Challenge Procedures. Basin also states that, when it became aware of the failure to follow the requirements of the 30.9 Procedures and Protocols, Basin began working with MISO and the Member Cooperatives to address this issue.

19. Second, we find that the requested waiver is limited in scope. The waiver only applies to Basin's and the Member Cooperatives' compliance with the Annual Update, Information Exchange, and Informal Challenge Procedures requirements under the 30.9 Procedures and the Protocols for a discrete time period. In addition, we note that Basin states that, during that time frame, the Member Cooperatives provided MISO and the Transmission Owners with their Attachment O materials on an annual basis and responded to questions concerning the materials. Therefore, the Member Cooperatives have completed several of the activities required under the Protocols. In addition, Basin's request for waiver only applies to the compliance deadlines in the Protocols and does not affect any other provision.

²² See, e.g., *New Brunswick Energy Mktg. Corp.*, 167 FERC ¶ 61,252, at P 12 (2019); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

20. Third, we find that Basin's request for waiver addresses a concrete problem. As Basin explains, because of the confusion associated with compliance with the Protocols, Basin and the Member Cooperatives did not complete some of the activities required under the Protocols. We find that granting Basin's request for waiver of the filing deadlines will correct this error and allow Basin to provide the full review period for customers as required under the Protocols.

21. Fourth, we find that the waiver will not have undesirable consequences, such as harming third parties. The requested waiver will not preclude Basin's customers from having the full review periods to review and comment required under the Protocols. In this regard, we note that in its Amendment, Basin states that, for any prior year in which a Member Cooperative did not properly follow the Protocols related to the Annual Update, Information Exchange, and Challenge Procedures, such Member Cooperative will include the applicable prior years' information in its 2020 Annual Update. Consequently, interested parties will have the opportunity to review the prior years' information, ask questions through the information exchange procedures, and raise any challenges that are warranted.

The Commission orders:

Basin's request for waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.