

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Soyland Power Cooperative, Inc.

Docket No. ER03-367-001

ORDER GRANTING REHEARING

(Issued September 15, 2003)

1. This order grants the request for rehearing by Soyland Power Cooperative, Inc. (Soyland) of the Commission's order issued in this proceeding on February 28, 2003,<sup>1</sup> and allows Soyland continued waiver of Order No. 888.<sup>2</sup>

**Background**

2. Soyland is a member-owned, not-for-profit generation and transmission cooperative currently providing all-requirements wholesale electric service to its 12 rural electric cooperative members in central and southern Illinois, who provide retail electric service to approximately 87,000 metered retail member-consumers within their local service territories.

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<sup>1</sup> Soyland Power Cooperative, Inc., 102 FERC ¶ 61,244 (2003) (February 28 Order).

<sup>2</sup> 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, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. and Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. and Regs. ¶ 31,048 (1997), 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, remanded in part on other grounds sub nom. Transmission Access Policy Study Group, et al. v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

3. On January 31, 1997, the Commission granted Soyland's request for waiver of Order Nos. 888 and 889, relying on Soyland's statement that no eligible entity has or is likely to request transmission service from Soyland.<sup>3</sup>

4. On December 31, 2002, Soyland filed a bilateral agreement (Agreement) with MJM Electric Cooperative, Inc. (MJM), pursuant to which Soyland would provide MJM access to Soyland's lines and substations for the delivery of power to MJM loads. Soyland explained that MJM had been a member of Soyland, but withdrew effective December 31, 2002. Soyland explained that it entered into the Agreement with MJM because MJM would no longer be a member of Soyland and thus no longer be covered by Soyland's network service agreements, but that the Soyland facilities were still needed to serve MJM's load. Soyland stated its belief that, despite the Agreement with MJM, Soyland was still eligible for waiver of Order Nos. 888 and 889.

5. In the February 28 Order, the Commission accepted the Agreement for filing, but denied Soyland's request for continued waiver of Order No. 888, and directed Soyland to file an open access transmission tariff (OATT).

### **Soyland's Request for Rehearing**

6. On March 31, 2003, Soyland filed a request for rehearing.<sup>4</sup> Soyland argues that the Agreement was not for a new service but, instead, a continuation of the current use of distribution-level facilities under a pre-existing contract (although certain services to MJM ceased when MJM's membership terminated). Soyland further argues that the factors on which the Commission relied in the Waiver Order, *i.e.*, that Soyland is a small, not-for-profit cooperative, that it does not possess an interstate transmission grid, that it must rely on others for control area services, and that it owns, operates, or controls only limited and discrete transmission facilities, are still applicable.<sup>5</sup> Soyland also contends that the Commission determination that no eligible entity has or is likely to request transmission service from Soyland is still true.

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<sup>3</sup> Soyland Power Cooperative, Inc., *et al.*, 78 FERC ¶ 61,095 at 61,340 (1997) (Waiver Order).

<sup>4</sup> Soyland also requests clarification that the February 28 Order only intended to deny Soyland a continued waiver of Order No. 888 and not also of Order No. 889. As the February 28 Order never stated nor implied that Soyland's waiver of Order No. 889 was rescinded, we do not feel that clarification is necessary.

<sup>5</sup> Waiver Order at 61,340.

**Discussion**

7. Upon reflection, we will grant rehearing. The transmission service Soyland provides to MJM is eligible transmission service subject to the requirements of Order No. 888 for open transmission service. Thus, the Commission was incorrect in accepting the Agreement in the February 28 Order. Rather, the Commission should have rejected the Agreement, and required that the transmission service be provided to MJM pursuant to the OATT that the Commission, in the February 28 Order, directed Soyland to file. However, in these unique circumstances, as the Commission already has accepted the Agreement, we will not revoke our waiver of Order No. 888 and will not now require Soyland to file an OATT with the Commission. Nonetheless, if Soyland receives any future requests for transmission, it will be required to file an OATT with the Commission within 60 days of the date of the request for service.

**The Commission orders:**

Soyland's request for rehearing of the February 28 Order is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.