

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

Sulphur Springs Valley Electric Cooperative, Inc.

Docket No. EL04-128-000

ORDER GRANTING WAIVER REQUESTS

(Issued November 19, 2004)

1. Sulphur Springs Valley Electric Cooperative, Inc. (SSVE Cooperative) submitted a request for waiver of the requirements of Order Nos. 888,<sup>1</sup> 889,<sup>2</sup> and 2004.<sup>3</sup> SSVE Cooperative states that it is a small public utility that qualifies for waiver of each of the

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<sup>1</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, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles, January 1991-June 1996 ¶ 31,036 at 31,654, 31,729-30 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (March 4, 1997), FERC Stats. & Regs., Regulations Preambles, July 1996-December 2001 ¶ 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 sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2002), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>2</sup> Open Access Same-Time Information System (Formerly Real-Time Information Networks) and Standards of Conduct, Order No. 889, FERC Stats. & Regs., Regulations Preambles ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs., Regulations Preambles ¶ 31,049 (1997), *order on reh'g*, Order No. 889-B, 81 FERC ¶ 61,253 (1997), *order on reh'g*, Order No. 889-C, 82 FERC ¶ 61,046 (1998).

<sup>3</sup> Standards of Conduct for Transmission Providers, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, 107 FERC ¶ 61,032, Order No. 2004-B, 108 FERC ¶ 61,118 (2004), *reh'g pending*.

requirements. For the reasons stated below, we will grant SSVE Cooperative's requests for waiver. This order benefits customers by relieving a small utility of regulatory obligations.

## **BACKGROUND**

2. SSVE Cooperative, located in southeastern Arizona, describes itself as a not-for-profit, member-owned distribution cooperative that is a "small utility."<sup>4</sup> SSVE Cooperative states that it owns and operates 298 miles of 69 kilovolt transmission voltage lines and 3,597 miles of distribution voltage lines, that these facilities are primarily used to provide service to SSVE Cooperative's retail loads, and that its assets are not an integrated transmission grid. The primary purpose of SSVE Cooperative's facilities, it explains, is to provide retail distribution service to sparsely populated communities in southeastern Arizona. SSVE Cooperative also states that its wholesale power is provided under the provisions of a long-term, full-requirements contract by Arizona Electric Power Cooperative, Inc.

3. SSVE Cooperative explains that it became a jurisdictional public utility earlier this year, following retirement of all outstanding Rural Utilities Service debt. Shortly thereafter, SSVE Cooperative explains, the Commission issued an order accepting for filing two agreements under which SSVE Cooperative provides transmission service at no charge pursuant to two rate schedules.<sup>5</sup> SSVE Cooperative states that, under one of the agreements, it and Southwestern Transmission Cooperative, Inc., provide reciprocal stand-by backup service to Arizona Public Service Company in the event of specific outages of the transmission facilities of the parties. Under the second agreement, SSVE Cooperative explains that it allows Graham County Electric Cooperative the continued use of a 17 mile section of 69 kilovolt transmission voltage line that Graham County Electric Cooperative transferred to SSVE Cooperative.

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<sup>4</sup> The Small Business Administration defines a small utility as a firm that is "primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours." See 13 C.F.R. § 121.201 (2004).

<sup>5</sup> See *Sulphur Springs Valley Electric Cooperative, Inc.*, 107 FERC ¶ 61,284 (2004).

4. SSVE Cooperative states that as of the date of its latest filing, it had received no requests for transmission service over its distribution system, nor has it engaged in any other jurisdictional activities.

5. In light of the foregoing, SSVE Cooperative submits that compliance with Order Nos. 888, 889, and 2004 is not warranted. SSVE Cooperative asserts that the Commission's failure to grant the waivers would increase its cost of service and adversely affect retail customers, and that there is no indication that it has acted in a discriminatory manner regarding potential transmission or generation interconnection customers. If SSVE Cooperative receives a new request for transmission or large (greater than 20 megawatt) generation interconnection service, it states that it will comply with the Commission's waiver requirements and file an Open Access Transmission Tariff.

#### **NOTICE OF FILINGS AND RESPONSIVE PLEADINGS**

6. Notice of SSVE Cooperative's filing was published in the *Federal Register*, 69 Fed. Reg. 53,911 (2004) with comments, protests, and interventions due on or before September 10, 2004. None was filed. SSVE Cooperative filed corrections to its request for waiver on September 7, 2004.

#### **DISCUSSION**

7. In *Black Creek Hydro, Inc.*,<sup>6</sup> the Commission explained the standards it would apply in deciding whether to grant waiver from the requirements of Order Nos. 888 and 889. The Commission will grant requests for waiver of Order No. 888 by 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). If, however, such public utility receives a request for transmission service, then the utility must file with the Commission a *pro forma* tariff within 60 days of the date of the request.

8. The Commission will grant requests for waiver from Order No. 889 in similar circumstances. In addition, the Commission will grant requests for waiver from Order No. 889 to small public utilities that own, operate, or control an integrated transmission grid, unless the small public utility is a member of a tight power pool. Waiver of the requirement to establish and maintain an information system (*i.e.*, an Open Access Same-Time Information System (OASIS)) will be granted unless and until an entity evaluating its transmission needs complains that it could not get information necessary to complete its evaluation. Waiver of the standards of conduct will be granted unless and until an

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<sup>6</sup> 77 FERC ¶ 61,232 at 61,940-41 (1996) (*Black Creek*).

entity complains that a public utility has used its access to information about transmission to unfairly benefit the public utility's own or the public utility's affiliate's sales. Compliance must be made within 60 days of the complaint.

9. Based on the statements in SSVE Cooperative's request the Commission finds that, consistent with the standards in *Black Creek*, SSVE Cooperative qualifies for waiver of the requirements of Order Nos. 888 and 889 (excluding Order No. 889's standards of conduct provisions because these provisions have been superseded by Order No. 2004). This waiver is subject to the conditions discussed above and in reliance on the representations set forth in SSVE Cooperative's waiver requests.

10. The Commission will also apply the *Black Creek* criteria to determine whether an entity qualifies for a waiver of the standards of conduct requirements in Order No. 2004.<sup>7</sup> Based on the statements in SSVE Cooperative's request, the Commission finds that, consistent with the criteria in *Black Creek*, SSVE Cooperative is a small public utility that owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid). Therefore, the Commission will grant SSVE Cooperative's request for waiver of the standards of conduct requirements of Order No. 2004.

The Commission orders:

SSVE Cooperative's requests for waiver of the requirements of Order Nos. 888, 889, and 2004 are hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>7</sup> See, e.g., *Vermont Electric Cooperative, Inc.*, 108 FERC ¶ 61,150 at P 11 (2004).