

135 FERC ¶ 61,058  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Black Hills Power, Inc.	Docket Nos. TS10-2-000
Cross-Sound Cable Company, LLC	TS10-1-000
The Empire District Electric Company	OA97-93-001 TS04-178-001
Golden Spread Electric Cooperative, Inc.	OA11-1-000
Golden Spread Panhandle Wind Ranch, LLC	OA11-2-000
Muscatine Power & Water	TS09-7-000
Northern California Power Agency	TS09-10-000 OA98-7-001
Old Dominion Electric Cooperative	TS04-282-001
Otter Tail Power Company	TS09-8-000 OA97-139-001
City of Roseville, California	
City of Santa Clara, California	TS10-4-000
Southern California Edison Company	TS09-9-000 EL99-4-001
Wolverine Power Supply Cooperative, Inc.	TS07-3-001
Xcel Energy Services Inc.	OA08-116-001 TS04-268-000 TS04-268-001

## ORDER ON STANDARDS OF CONDUCT WAIVER REQUESTS

(Issued April 21, 2011)

1. In this order, we grant a request for waiver of the Commission's Standards of Conduct requirements, grant three motions for continuance of a waiver of those requirements, notwithstanding changed circumstances, and deny continuation of a waiver to two applicants that have not demonstrated compliance with the requirements of section 358.1 of the Commission's regulations. Additionally, we grant two requests for waiver of certain requirements (including Standards of Conduct requirements), including one under the reciprocity obligation, accept notification by four entities that they are relinquishing their previously-granted waivers, and deny rehearing of an order revoking waiver.
2. In doing so, the Commission clarifies that, when a public utility transmission owner/operator participates in a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO), the size of the utility is not relevant to whether the waiver request will be granted or denied. Instead, its eligibility for a waiver depends on whether (as provided in section 358.1(c)<sup>1</sup> of the Commission's regulations) 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 Open Access Same-Time Information System (OASIS) postings.
3. We further clarify that membership in a tight power pool no longer disqualifies an applicant from obtaining a waiver of the Commission's Standards of Conduct. Instead, waiver requests for public utilities will be decided based on whether the utility meets the requirements of section 358.1 of the Commission's regulations.<sup>2</sup> Thus, the Commission will continue to evaluate requests for waiver of the Commission's Standards of Conduct requirements made by small public utilities that have not relinquished control over the operation of their transmission system to an ISO/RTO as it has in the past, i.e., the request will be granted if the utility demonstrates that: (1) it is a small public utility, with energy sales below 4 million MWh; and (2) no other circumstances are present to indicate that a waiver is not justified. However, membership or non-membership in a tight pool will not be a factor in the determination. Finally, an entity that can demonstrate that its

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<sup>1</sup> 18 C.F.R § 358.1(c) (2010).

<sup>2</sup> *Id.* § 358.1.

transmission facilities are limited and discrete and do not form an integrated transmission grid will still qualify for waiver.

### **I. Clarification of Waiver Standard**

4. The Commission routinely granted waiver of Order No. 889<sup>3</sup> and Part 358<sup>4</sup> of the Commission's regulations where the applicant: (1) demonstrates that it owns, operates, or controls only limited and discrete transmission facilities, rather than an integrated transmission grid; or (2) where the applicant is a small public utility that disposes of no more than 4 million MWh of energy annually, unless it is a part of a tight power pool, or waiver is unwarranted by other circumstances.<sup>5</sup>

5. In *Midwest Energy, Inc.*,<sup>6</sup> the Commission denied Order No. 889 Standards of Conduct waiver requests to three small public utilities that owned, operated, or controlled interstate transmission grids on the grounds that, in a tight power pool, a waiver is not justified -- even for those who meet the definition of small public utility. The Commission found that allowing waivers to any members of a tight pool (including members that are small public utilities) that owned, operated or controlled an integrated transmission grid "would allow some pool members to operate grids that comprise part of the pool without adhering to the standards of conduct, while subjecting other pool members to a more stringent standard. The smaller power pool members might thus obtain the benefits of pool membership without meeting the same responsibilities as their competitors."<sup>7</sup> The Commission concluded this would be inequitable and denied the requested waivers.<sup>8</sup> Thus, since the issuance of *Midwest Energy* in 1996, small public utilities that are not members of a tight pool (and otherwise qualify for a waiver) have

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<sup>3</sup> *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035, *clarified*, 77 FERC ¶ 61,335 (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), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000).

<sup>4</sup> 18 C.F.R. Part 358 (2010).

<sup>5</sup> *See, e.g., New Harquahala Generating Company, LLC*, 131 FERC ¶ 61,051, at P 8 (2010); *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996).

<sup>6</sup> 77 FERC ¶ 61,208 (1996) (*Midwest Energy*).

<sup>7</sup> *Id.* at 61,854.

<sup>8</sup> *Id.*

been granted waivers of the Order No. 889 standards of conduct requirements, while small utilities that belong to a tight power pool have not been eligible for such waivers.

6. When the Commission adopted Order No. 2004,<sup>9</sup> it added a provision to the Commission's regulations, at section 358.1(c), that permits waiver of the Commission's standards of conduct requirements to any public utility transmission owner that: (1) participates in a Commission-approved ISO or RTO; (2) does not operate or control its transmission system; and (3) has no access to transmission function information.<sup>10</sup> In Order No. 717,<sup>11</sup> the Commission clarified the Standards of Conduct, so that section 358.1(c) now provides that, "[i]f a public utility transmission owner participates in a Commission-approved [ISO or RTO] and does not operate or control its transmission system and has no access to transmission function information, it may request a waiver from this part." However, the Commission did not modify the previously relied upon circumstances for granting waiver of the Standards of Conduct.

7. In light of Order Nos. 2004 and 717, we find that the historical policy of denying standard of conduct waivers to small utilities that are members of tight power pools is no longer appropriate; the rationale of the *Midwest Energy* case, which denied the waiver to members of a tight pool to ensure equal treatment among participating owner/operators, is no longer justification for denying waiver because all tight power pools are now located within an RTO or ISO and our regulations ensure the equal treatment of all participants in RTOs and ISOs. Thus, we clarify that standard of conduct waivers for public utilities that participate in ISOs or RTOs will not depend on the size of the utility, but rather on whether the utility meets the requirements of section 358.1. Nor should a determination of eligibility hinge on the public utility's membership in one of the traditional tight power pools. Instead, its eligibility for a waiver should depend on

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<sup>9</sup> See *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155, at P 16 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, at P 27 (2004), *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166 (2004), *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004).

<sup>10</sup> Since the issuance of Order No. 2004, the language of this provision has been somewhat revised to clarify that the section allows waiver requests, rather than simply giving an exemption from compliance. See also *Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on clarification*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007).

<sup>11</sup> *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 (2009), *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009).

whether (as provided in section 358.1(c)) it: (1) has turned over operation or control of its transmission system to the ISO/RTO; (2) has relinquished 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.<sup>12</sup>

8. Moreover, for small public utilities that have not relinquished control over the operation of their transmission systems to an ISO/RTO the Commission will continue its past practice of granting such waivers if the applicant demonstrates that: (1) it is a small public utility, with energy sales below 4 million MWh; and (2) no other circumstances are present to indicate that a waiver is not justified. However, as clarified above, membership or non-membership in a tight pool will not be a factor in the determination. Additionally, an entity that can demonstrate that its transmission facilities are limited and discrete and do not form an integrated transmission grid will also qualify for waiver.

## **II. Request for New Waiver**

### **Background**

#### **Docket No. TS09-7-000**

9. On June 25, 2009, the Board of Water, Electric and Communication Trustees for the City of Muscatine, Iowa (Muscatine) requested an exemption from the Commission's Standards of Conduct requirements, based on its representation that: (1) it is a small public utility, with energy sales below 4 million MWhs; (2) it is transferring operational control of its facilities to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO);<sup>13</sup> (3) its transmission facilities are limited and discrete and do not form

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<sup>12</sup> As to waivers of the requirement to maintain an OASIS, we will continue the current policy of allowing an ISO or RTO to maintain a central OASIS site on behalf of all its members should cover any potential waivers of the OASIS posting requirements for small public utilities that participate in an ISO or RTO. Small public utilities that do not participate in an ISO or RTO could continue to apply for a waiver of this requirement if they meet the criteria announced in earlier cases.

<sup>13</sup> Muscatine states that it is ready to complete the integration of its facilities into the Midwest ISO upon approval of this waiver request. Muscatine Waiver Request at 2.

an integrated transmission grid; and (4) it has no access to transmission function information.<sup>14</sup>

### **Discussion**

10. Based on the statements in Muscatine's filing, we will grant Muscatine's request for a waiver of the Commission's Standards of Conduct requirements set forth in Part 358 of the Commission's regulations, because Muscatine meets the criteria for waiver articulated in section 358.1 of the Commission's regulations. This waiver will remain in effect unless and until the Commission takes action on a complaint by an entity alleging that the transmission provider granted the waiver has used its access to transmission information to unfairly benefit its own sales, or an affiliate's sales.<sup>15</sup>

## **III. Material Changes in Circumstances**

### **Background**

#### **A. Docket No. OA97-93-001**

11. On May 29, 1997, the Commission granted a request by Empire District Electric Company (Empire District) for a waiver of the Commission's Standards of Conduct requirements based on its findings that: (1) Empire District meets the definition of a small public utility; (2) Empire District is not a member of a tight power pool; and (3) there are no other circumstances present to indicate that a waiver is not justified.<sup>16</sup>

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<sup>14</sup> Notice of Muscatine's filing was published in the Federal Register, 74 Fed. Reg. 36,190 (2009), with comments, protests, or interventions due on or before July 27, 2009. None was filed. On December 15, 2009, Muscatine renewed its request.

<sup>15</sup> As previously explained by the Commission, if there is a material change in facts that affects a transmission provider's Standards of Conduct waiver, it must notify the Commission within 30 days 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) (*Material Changes Order*).

<sup>16</sup> *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,130 (1997) (*Central Minnesota Waiver Order*).

12. On July 13, 2009, Empire District filed a notice of a material change in facts and a request for a continued waiver.<sup>17</sup> Alternatively, it asked for a 12 month extension before it is required to be fully compliant with Commission regulations so it would have time to hire and train staff. Empire District states that, while in 1997 it met the definition of a small public utility, its sales now exceed the 4 million MWh threshold; nevertheless, Empire District argues that this change is not material and that it should continue to be deemed a small public utility qualifying for a waiver of the requirements of Part 358. Alternatively, Empire District argues the Commission should look to the Small Business Administration (SBA) definition of a small public utility for waiver determinations.

13. Empire District also states that it is now a member of the Southwest Power Pool (SPP) and that its transmission facilities are all under the operational control of the SPP RTO. It further states that all requests for transmission that would use Empire District's transmission system are made through the SPP RTO and that Empire District has no role in granting or denying such requests.

**B. Docket Nos. TS09-9-000 & EL99-4-001**

14. On January 19, 1999, the Commission granted a request by the City of Santa Clara, California (Santa Clara) for a waiver of the Commission's Standards of Conduct requirements based on its findings that: (1) Santa Clara meets the definition of a small utility; (2) Santa Clara is not a member of a tight power pool; and (3) no other circumstances are present to indicate that a waiver is not justified.<sup>18</sup>

15. On July 13, 2009, Santa Clara filed a notice of a material change in facts and a request for a continued waiver.<sup>19</sup> Santa Clara reports that its sales have now increased to over 4 million MWh, if combined wholesale and retail sales are counted. Santa Clara maintains that it separately and independently qualifies for a waiver even if it exceeds the 4 million mark because its facilities are limited and discrete. It states it only has 5 miles of facilities above 100 kV and only 17 miles of 60 kV facilities and its system is surrounded by the Pacific Gas and Electric Company system (PG&E) and that its

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<sup>17</sup> Notice of Empire District's filing was published in the Federal Register, 74 Fed. Reg. 36,189 (2009), with comments, protests, or interventions due on or before August 03, 2009. None was filed.

<sup>18</sup> *M-S-R Public Power Agency*, 86 FERC ¶ 61,031, at 61,130-31 (1999).

<sup>19</sup> Notice of Santa Clara's filing was published in the Federal Register, 74 Fed. Reg. 37,700 (2009), with comments, protests, or interventions due on or before August 19, 2009. None was filed.

facilities do not form an integrated transmission system.<sup>20</sup> Finally, it states that it is dependent on PG&E to transmit power to its electric utility infrastructure and that its facilities are not part of the power grid operated by CAISO.<sup>21</sup>

**C. Docket Nos. TS09-10-000 & OA98-7-001**

16. On June 29, 1998, the Commission granted a request by Northern California Power Agency (NCPA) for a waiver of the Commission's Standards of Conduct requirements based on its findings that NCPA meets the definition of a small public utility, is not a member of a tight power pool, and no other circumstances are present to indicate that a waiver is not justified.<sup>22</sup>

17. On July 13, 2009, NCPA filed a letter with the Commission giving notice of a material change in facts that it does not believe alters its eligibility for a partial waiver of the Commission's Standards of Conduct requirements.<sup>23</sup> NCPA states that its membership has changed to add the Port of Oakland and to delete the City of Roseville (Roseville), based on Western Area Power Administration (WAPA) withdrawing from the California Independent System Operator Corporation (CAISO) Balancing Authority Area. It asserts that this change should not alter its waiver status, as NCPA still meets the definition of a small public utility. NCPA also notes that its transmission facilities are operated and controlled by the Transmission Agency of Northern California (TANC).<sup>24</sup> It also states that it has added a five mile long transmission line connecting NCPA member Plumas Sierra Rural Electric Cooperative with Sierra Pacific Power Company.

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<sup>20</sup> It cites *Vermont Electric*, 108 FERC ¶ 61,150, at P 11 (2004), *Sulphur Springs*, 109 FERC ¶ 61,181, at P 2 (2004), and *Peetz Logan*, 122 FERC ¶ 61,086, at P 2, 14 (2008).

<sup>21</sup> Santa Clara Waiver Request at 4.

<sup>22</sup> *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998).

<sup>23</sup> Notice of NCPA's filing was published in the Federal Register, 74 Fed. Reg. 39,693 (2009), with comments, protests, or interventions due on or before August 21, 2009. None was filed.

<sup>24</sup> On its website, TANC states that its primary purpose is to provide electric transmission to its member utilities and that it is responsible for the day-to-day operation and maintenance of its 340 mile 500-kV transmission line as well as upgrades to the line and future planning for new lines. See [www.tanc.us/about\\_tanc.html](http://www.tanc.us/about_tanc.html) (last visited on March 9, 2011).

NCPA further states that CAISO sets the available transmission capability for this line at zero. It asserts that this change likewise should not alter its waiver status.

**D. Docket Nos. TS04-282-000 and TS04-282-001**

18. On October 27, 2004, the Commission granted a request by Old Dominion Electric Cooperative (Old Dominion) for a waiver of the Commission's Standards of Conduct requirements based on its findings that Old Dominion: (1) participated in PJM Interconnection, LLC (PJM), a Commission-recognized RTO; (2) did not operate or control its transmission facilities; and (3) lacked access to transmission or market information covered by section 358.5(b) of the Commission's regulations.<sup>25</sup>

19. On December 18, 2008, Old Dominion filed a letter with the Commission notifying the Commission that it now owns certain 69 kV transmission facilities on the Delmarva Peninsula. Old Dominion argued that, despite this changed circumstance, the Commission should continue its waiver of the Commission's Standards of Conduct requirements.<sup>26</sup>

20. On July 2, 2009, in response to Old Dominion's request, the Commission issued a letter order deferring action and directing Old Dominion to provide additional information in support of its claims. On July 31, 2009, Old Dominion filed a response to the letter order stating that all of Old Dominion's transmission facilities are located within PJM and that it has relinquished control of all of these transmission facilities to PJM and contracted with third parties to operate and maintain them. Old Dominion states that the 100 miles of 69 kV transmission line that Old Dominion bought from Delmarva Power & Light Company (Delmarva) remains under Delmarva's day-to-day operational control and that the Old Dominion member in the area, A&N Electric Cooperative, serves as a contact to Delmarva to carry out PJM's instructions. Old Dominion states that it neither operates nor manages the operations of the transmission line, and does not have access to any transmission function information for its affiliate's transmission facilities.

**E. Docket No. TS10-1-000**

21. On September 20, 2004, the Commission granted a request by Cross-Sound Cable Company, LLC (Cross-Sound Cable) for a waiver of the Commission's Standards of

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<sup>25</sup> *American Transmission Company LLC*, 109 FERC ¶ 61,082, at P 38 (2004).

<sup>26</sup> Notice of Old Dominion's filing was published in the Federal Register, 74 Fed. Reg. 4957 (2009), with comments, protests, or interventions due on or before January 23, 2009. None was filed.

Conduct requirements based on its representation that the intertie is not an integrated transmission grid and does not share employees with its affiliates or have economic incentives for information sharing or granting preference to affiliates.<sup>27</sup> The waiver extended until such time as Cross-Sound Cable receives a written request for a specific transmission service.<sup>28</sup>

22. On December 18, 2009, Cross-Sound Cable Company, LLC (Cross-Sound Cable) filed a motion notifying the Commission of certain changed circumstances and requesting that its waiver of the Commission's Standards of Conduct requirements be continued notwithstanding these changed circumstances. Specifically, Cross-Sound Cable references two changed circumstances that might impact its waiver status. These are: (1) the Commission's issuance of Order No. 717, which modified the Commission's Standards of Conduct regulations; and (2) a change in Cross-Sound Cable's ownership structure.<sup>29</sup>

23. The change in ownership structure relates to the sale by Cross-Sound Cable of certain jurisdictional facilities in 2009.<sup>30</sup> Prior to the 2009 transaction, Cross-Sound Cable states that it was a wholly owned indirect subsidiary of Babcock & Brown Infrastructure Limited (B&B Infrastructure). Cross-Sound Cable further states that, in 2009, under section 203 of the Federal Power Act (FPA),<sup>31</sup> the Commission authorized the disposition of jurisdictional facilities associated with the acquisition of up to 48 percent of the issued and outstanding units of B&B Infrastructure by Burgundy Acquisition I Ltd. and Burgundy Infrastructure Acquisition II Ltd., Burgundy Infrastructure Acquisition II Ltd., Brookfield Infrastructure L.P., Brookfield Infrastructure Partners L.P., Brookfield Renewable Power Inc., and Brookfield Asset Management Inc. (2009 Applicants).<sup>32</sup> On November 30, 2009, the parties notified the

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<sup>27</sup> *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 28 (2004) (Alcoa Waiver Order).

<sup>28</sup> *Id.*, P 27.

<sup>29</sup> Notice of Cross-Sound Cable's filing was published in the Federal Register, 75 Fed. Reg. 30018 (2010), with comments, protests, or interventions due on or before June 4, 2010. None was filed.

<sup>30</sup> The Commission approved this sale in *Cross-Sound Cable Company, LLC*, 129 FERC ¶ 62,123 (2009).

<sup>31</sup> 16 U.S.C. 824b (2006).

<sup>32</sup> *Id.*

Commission that the transaction had been consummated.<sup>33</sup> Under this arrangement, Cross-Sound Cable remains the sole owner of the 24 mile transmission line, and remains a transmission provider under section 358.3(k) of the Commission's regulations, but the 2009 Applicants now hold a 48 percent ownership interest in Cross-Sound Cable.

24. Cross-Sound Cable acknowledges that, as a result of the 2009 transaction, the Commission could consider Brookfield Renewable Power to be an "affiliate" under the definition in section 358.3(a) and further acknowledges that Brookfield Renewable Power has several downstream subsidiaries that perform "marketing functions" as those terms are defined in the Commission's regulations at section 358.3(c). Cross-Sound Cable argues, however, that it nonetheless should be allowed to retain its Standards of Conduct waiver because Brookfield's investment in Cross-Sound Cable's parent companies, as described in the FPA section 203 application, does not change the factors that supported waiver in 2004.

25. Specifically, Cross-Sound Cable argues that its circumstances warrant a continuation of its Standards of Conduct waiver for three reasons. First, it points out that, while it owns the transmission line, it does not have any employees of its own and the day-to-day functions of the line are managed by CSC Operations LLC. It further states that these employees operate the line pursuant to power dispatch instructions from ISO-NE. Second, it states that firm transmission capacity over the Cross-Sound Cable remains fully subscribed by Long Island Power Authority (LIPA), a non-affiliate, and the only Cross-Sound Cable transmission capacity available to anyone other than LIPA is capacity that is released or unused by LIPA, which is made available on the Cross-Sound Cable OASIS pursuant to the rules of the ISO-NE tariff. Third, it argues that the 24 mile transmission line remains a limited and discrete transmission facility and does not form an integrated transmission grid.

#### **F. Docket Nos. OA11-1-000 and OA11-2-000**

26. On June 18, 2009, the Commission granted a request by Golden Spread Electric Cooperative, Inc. (Golden Spread), a non-profit generation and transmission cooperative, for a continuance of its waiver of the requirements of Order Nos. 888<sup>34</sup> and 889 as well

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<sup>33</sup> Cross-Sound Cable Waiver Request at 4.

<sup>34</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, 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*

as new waivers covering the requirements of Order Nos. 890<sup>35</sup> and 2003,<sup>36</sup> and waiver of the Commission's Standards of Conduct requirements.<sup>37</sup> This request was triggered by Golden Spread's acquisition of about 55 miles of additional existing radial transmission lines and its construction of an 18 mile long radial transmission line. The Commission granted Golden Spread's waiver requests, based on the representation that the transmission facilities were limited and discrete and did not constitute an integrated transmission system. The Commission also noted its reliance on Golden Spread's representation that the transmission lines were only used to provide bundled wholesale service to the affected Golden Spread members and that the power flowed in only one direction.

27. On August 11, 2010, the Commission accepted for filing an agreement between Wildorado Wind, LLC (Wilderado) and Wildorado Wind Two, LLC (Wilderado Two) (collectively, Wilderados) under which they would jointly own certain interconnection facilities as tenants in common.<sup>38</sup> In addition, the Commission granted the Wilderados a waiver of the Commission's Standards of Conduct requirements based on its findings that the Wilderados' transmission facilities are limited and discrete and do not constitute an integrated transmission system, nor will the Wilderados own, operate or control any transmission facilities other than the Common Facilities, and the facilities will serve no other generation or transmission functions. In addition, the Wilderados requested and

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*v. FERC*, 225 F.3d 667, 343 U.S. App. D.C. 151 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1, 122 S. Ct. 1012, 152 L. Ed. 2d 47 (2002).

<sup>35</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *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).

<sup>36</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277, 374 U.S. App. D.C. 406 (D.C. Cir. 2007).

<sup>37</sup> *Golden Spread Electric Cooperative, Inc.*, 127 FERC ¶ 61,248 (2009) (*Golden Spread*).

<sup>38</sup> *Wildorado Wind, LLC*, 132 FERC ¶ 61,116 (2010) (*Wildorado Wind*).

were granted waivers of the requirements of Order Nos. 888, 889, 890, 2003 and of the Commission's Standards of Conduct requirements.

28. On November 1, 2010, Golden Spread and Golden Spread Panhandle Wind ranch, LLC (Golden Panhandle, formerly Wilderado Two) filed a motion notifying the Commission of certain changed circumstances and requesting that their waivers be continued notwithstanding these changed circumstances. Specifically, they state that Golden Spread has acquired Golden Panhandle, which is now a fully-owned subsidiary of Golden Spread. They state that, other than the change in ownership, there are no material changes in facts that affect the previously-granted waivers; the combined transmission facilities of both Golden Spread and Golden Panhandle continue to be limited and discrete and do not constitute an integrated transmission system.

#### **G. Docket No. TS10-4-000**

29. As explained in NCPA's waiver request, Roseville switched from being a member of NCPA to being a participant in energy markets in the Western Electricity Coordinating Council's (WECC) region, including energy markets administered by the CAISO.

30. On September 13, 2010, Roseville filed request with the Commission for a continued waiver of the Commission's Standards of Conduct requirements.<sup>39</sup> It also seeks waiver of the requirements established in Order Nos. 888, 889, 890, 2003, 2004, and 717, as they apply to municipal electric systems through the reciprocity obligation. Roseville states that it filed this request when it realized that it would no longer be covered by the NCPA waiver.<sup>40</sup>

31. Roseville identifies itself as a non-public utility municipal electric system whose Commission obligations arise from the reciprocity obligation, originally set forth in Order No. 888, which requires a non-jurisdictional utility, such as Roseville, to satisfy the Commission's rules regarding open access if it takes transmission service from others pursuant to an open access tariff and if it receives a request from one of its transmission service providers to provide open access transmission service over its transmission facilities.<sup>41</sup>

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<sup>39</sup> Notice of Roseville's filing was published in the Federal Register, 75 Fed. Reg. 65,469 (2010), with comments, protests, or interventions due on or before November 4, 2010. None was filed.

<sup>40</sup> Roseville Waiver Request at 4.

<sup>41</sup> *Id.* at 6.

32. Roseville argues that it satisfies all the Commission's criteria for the various waivers it has requested.<sup>42</sup> It states that it does not own, operate, or control an integrated transmission network and that its facilities consist of limited, discrete pieces of equipment having a transmission-level voltage (i.e., breakers and transformers) that were installed for the purpose of interconnecting the Roseville distribution system to the transmission system owned, operated, and controlled by WAPA. Roseville states that these are limited, discrete facilities that do not "form an integrated transmission grid" and claims that its transformers are in place for the purpose of stepping down power received from the WAPA system to distribution-level voltages. Roseville further states that the only portion of its facilities that it operates itself are its internal generation facilities and a 60 kV distribution network; the balance of its facilities are operated by WAPA, which by contract operates breakers owned by Roseville and located at the points where Roseville interconnects with the WAPA system. Roseville argues that, based upon the facilities that it owns, operates, and controls, it satisfies the criteria established by the Commission for waivers under Order Nos. 888, 890, and 2003. Roseville also argues that it satisfies the SBA's definition of a small electric utility.

33. Roseville further argues that it does not participate in a "tight power pool;" rather it engages in purchase and sales transactions with entities in the WECC region. Further, Roseville states that, if it receives a request for transmission service over its electric system, it will comply with the Commission's reciprocity requirements by filing a reciprocity tariff with the Commission and complying with related obligations, to the extent that it is operationally feasible to do so. Roseville also states that no entity has requested that Roseville provide reciprocal transmission service to date. Finally, Roseville states that all the factors that led to its earlier waivers (while part of NCPA) still apply and are the same factors that apply to the additional waivers it is seeking in this proceeding.<sup>43</sup>

### **Discussion**

34. In the *Material Changes Order*, the Commission clarified that entities that have received waiver of Order No. 889 or the Standards of Conduct requirements 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. Recognizing that the Commission had not been clear that such notification was necessary, the Commission allowed all public utilities that

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<sup>42</sup> *Id.* at 8.

<sup>43</sup> *Id.* at 10.

previously had been granted a waiver 45 days from the date of the order to notify the Commission of any change in material facts.<sup>44</sup>

35. As a preliminary matter, we note that the waiver applications of Empire District, Santa Clara, and NCPA each reference the fact that the applicant is not part of a tight power pool. As we discussed above, however, this factor is no longer relevant to our determination of eligibility for waiver. Accordingly, we will not discuss that assertion.

36. Empire District reports that it has increased in size and no longer meets the Commission's waiver criterion for small utilities, but it also reports that its transmission facilities are under the operational control of SPP. In light of the Commission's adoption of section 358.1, when a public utility transmission owner/operator participates in a Commission-approved ISO or RTO, the size of the utility does not preclude waiver. Waiver may be granted so long as the utility meets the requirements of section 358.1(c), i.e., it: (1) has turned over operation or control of its transmission system to the ISO/RTO; (2) has relinquished 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.<sup>45</sup>

37. Although Empire District's transmission facilities are completely under the operational control of SPP, it has not presented any information demonstrating that it has relinquished access to information concerning the operation of the transmission facilities it has turned over to the ISO/RTO as required to obtain a waiver under section 358.1. Accordingly, we will deny Empire District's waiver request at this time, without prejudice, but would revisit this determination if Empire District brings forward information demonstrating that it meets this requirement. Empire District shall have 60 days to either (1) submit information demonstrating that it has relinquished access to information on the operation of transmission facilities or (2) begin compliance with the Commission's Standards of Conduct requirements.

38. Santa Clara reports that it no longer qualifies as small utility, but argues that it should nonetheless be allowed to retain its Standards of Conduct waiver because its transmission facilities remain limited and discrete. Santa Clara's waiver request states

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<sup>44</sup> *Material Changes Order*, 127 FERC ¶ 61,141 at P 5-6.

<sup>45</sup> We note, however, that a small public utility that participates in an ISO or RTO can meet its OASIS requirements by participating in a central OASIS, on behalf of the entire ISO/RTO, that covers its transactions and that small public utilities that do not participate in an ISO or RTO can apply for a waiver of the OASIS requirements based on their size.

that its facilities are surrounded by the transmission facilities of PG&E and that its facilities are not part of the power grid operated by CAISO. As Santa Clara has not turned over operation of its transmission facilities to an ISO or RTO, we will evaluate its waiver request based on our traditional waiver criteria (with the exception that we no longer will treat membership in a tight pool as a disqualifying factor). We will grant Santa Clara's motion for a continuance of its waiver of the Commission's Standards of Conduct requirements, notwithstanding changed circumstances, even though it no longer qualifies for a waiver as a small entity, based on the fact that its transmission facilities remain limited and discrete.

39. This waiver will remain in effect unless and until the Commission takes action on a complaint by an entity that Santa Clara has used its access to transmission information to unfairly benefit its own sales, or an affiliate's sales. In addition, Santa Clara must notify the Commission if there is a material change in facts that affect the Standards of Conduct waiver, within 30 days of the date of such change.

40. NCPA reports that there have been changes in its membership, but it also reports that it continues to meet the Commission's definition of a small utility entitled to a Standards of Conduct waiver. We will grant NCPA's motion for a continuance of its waiver of the Commission's Standards of Conduct requirements, notwithstanding changed circumstances, based on the fact that it continues to meet the Commission's criterion for granting Standards of Conduct waivers to small utilities. This waiver will remain in effect unless and until the Commission takes action on a complaint by an entity that NCPA has used its access to transmission information to unfairly benefit its own sales, or an affiliate's sales. In addition, NCPA must notify the Commission if there is a material change in facts that affect the Standards of Conduct waiver, within 30 days of the date of such change.

41. Old Dominion reports that it now owns a 100 mile transmission line. It argues, however, that it should be allowed to retain its Standards of Conduct waiver, notwithstanding this acquisition, because the line is operated by PJM. We will grant Old Dominion's request for a continuance of its waiver of the Commission's Standards of Conduct requirements, notwithstanding changed circumstances, based on the fact that it does not operate or control transmission facilities and because it lacks access to transmission or market information covered by section 358.5(b) of the Commission's regulations.<sup>46</sup> This waiver will remain in effect unless and until the Commission takes

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<sup>46</sup> As with Empire District, a review of Old Dominion's original waiver request, as well as the new material facts it has brought to our attention, we conclude that it does not engage in any transmission transactions with a marketing affiliate. Old Dominion must

(continued...)

action on a complaint by an entity that Old Dominion has used its access to transmission information to unfairly benefit its own sales, or an affiliate's sales. In addition, Old Dominion must notify the Commission if there is a material change in facts that affect the Standards of Conduct waiver, within 30 days of the date of such change.

42. When Cross-Sound Cable was granted its original waiver in 2004, the Commission's determination was based on several factors.<sup>47</sup> First, the Commission found that, while the Cross-Sound Cable is an intertie that connects the New England and New York markets, it is not an integrated transmission grid. Second, the Commission noted that Cross-Sound Cable provides transmission service under ISO-New England's open access transmission tariff and has contracted to sell 100 percent of its transmission rights for 20 years to Long Island Lighting Company (LIPA), a non-affiliate. Third, the Commission found that the employees handling Cross-Sound Cable's transmission functions worked for -- and were managed by -- Cross-Sound Cable's parent company, TransEnergie U.S. Ltd., and that these employees were not shared with any other Cross-Sound Cable affiliate.<sup>48</sup>

43. Cross-Sound Cable now reports that there has been a change in its ownership that is material to its Standards of Conduct waiver in light of the Commission's issuance of Order No. 717, but it also argues that its 24-mile transmission line continues not to form an integrated transmission grid. However, notwithstanding our statements in the *Alcoa Waiver Order*, the Cross-Sound Cable, an intertie that connects the New England and New York markets, *cannot* qualify as a limited and discrete facility that does not form an integrated transmission grid.

44. This being the case, Cross-Sound Cable's motion for a continuance of its waiver of the Commission's Standards of Conduct requirements, despite changed circumstances, turns on other factors (i.e., whether 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 Open Access Same-Time Information System (OASIS) postings).

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notify the Commission in writing within 30 days if it does, in fact, engage in any transmission transactions with a marketing affiliate.

<sup>47</sup> *Alcoa Waiver Order*, 108 FERC ¶ 61,243 at 62,342.

<sup>48</sup> *Id.*

45. A review of Cross-Sound Cable's waiver request shows that it has met the first of these criteria. However, while Cross-Sound Cable stated that released or unused transmission capacity is obtained through transactions conducted over its OASIS pursuant to ISO-NE's rules, its waiver request is silent as to whether it has access to information concerning the operation of the transmission facilities that is not available to other OASIS users. This being the case, we will deny Cross-Sound Cable's waiver request at this time, without prejudice, but would revisit this determination if Cross-Sound Cable brings forward information demonstrating that it meets this requirement. Cross-Sound Cable shall have 60 days to either (1) submit information demonstrating that it has relinquished access to information on the operation of transmission facilities or (2) begin compliance with the Commission's Standards of Conduct requirements.

46. Golden Spread reports that it has acquired Golden Panhandle and that its transmission facilities now encompass those formerly owned by Golden Panhandle. However, Golden Spread maintains that, even with these additions, its combined transmission facilities are limited and discrete and do not constitute an integrated transmission system. Golden Spread also requests continuance of Golden Panhandle's waivers of other Commission requirements.

47. As the Commission explained in the prior orders involving Golden Spread and Golden Panhandle, the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889 and that Order No. 717 did not change those criteria.<sup>49</sup> Accordingly, we will grant Golden Spread's motion for a continuance of the waivers granted to Golden Spread in June, 2009 and to Golden Panhandle in August, 2010, based on the fact that they continue to meet the Commission's criteria for granting these various waivers.

48. Consistent with our prior precedent, Golden Spread must file a *pro forma* OATT in compliance with Order Nos. 888, and any other applicable requirements, within 60 days of receipt of a request for a specific transmission service. Waiver of the requirement to establish and maintain an information system (i.e., an OASIS) remains effective until the Commission takes action in response to a complaint by an entity alleging that, in evaluating its transmission needs, the entity could not obtain from Golden Spread information necessary to complete its evaluation. A waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Golden Spread has used its access to transmission information to unfairly benefit its own sales, or an affiliate's sales. In addition, Golden Spread must notify the

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<sup>49</sup> *Wildorado Wind*, 132 FERC ¶ 61,116 at P 23; *Golden Spread*, 127 FERC ¶ 61,248 at P 9.

Commission if there is a material change in facts that affect OASIS and Standards of Conduct waivers, within 30 days of the date of such change.

49. Roseville has requested waiver of the requirements established in Order Nos. 888, 889, 890, 2003, 2004, and 717, as they apply to municipal electric systems through the reciprocity obligation.<sup>50</sup> Roseville argues that it meets all the criteria for a waiver of the reciprocity obligation because: (1) it meets the SBA's definition of a small electric utility; (2) it only owns and operates limited and discrete transmission facilities that are not part of the integrated transmission system; and (3) commits to file an open access tariff within 60 days of a request for transmission service. Because Roseville is a non-public utility and owns only limited and discrete transmission facilities, we will grant Roseville's waiver requests.<sup>51</sup>

#### **IV. Notices of Relinquished Waivers**

##### **Background**

##### **A. Docket No. TS10-2-000**

50. On November 26, 1996, the Commission granted a request by Black Hills Power, Inc. (Black Hills) for a waiver of the Commission's Standards of Conduct requirements.<sup>52</sup>

51. On December 31, 2009, Black Hills sent a letter to the Commission stating that it has completed its transition to full compliance with the Commission's Standards of

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<sup>50</sup> Roseville's waiver request differs from the other waiver requests addressed in this order because, in contrast to those other applications, Roseville is a non-public utility and its obligations arise under the reciprocity obligation established in Orders No. 888 and 889.

<sup>51</sup> We note that, by its terms, the Part 358 Standards of Conduct directly apply only to natural gas pipelines and public utilities and the waivers in sections 358.1(c) and (d) likewise directly apply only to natural gas pipelines and public utilities. The rules established in prior cases for waivers from the reciprocity obligation have not been modified by the adoption of Part 358. Moreover, Roseville has not relinquished control of its transmission facilities to an ISO/RTO. Thus, we evaluated Roseville's assorted waiver requests based on the precedent we established in prior cases, rather than by reference to sections 358.1(c) and (d).

<sup>52</sup> *Midwest Energy*, 77 FERC ¶ 61,208 at 61,854-55.

Conduct requirements and that it is surrendering its Standards of Conduct waiver granted in 1996, effective January 1, 2010.

**B. Docket No. TS07-3-001**

52. On June 11, 2007, the Commission granted a request by Southern California Edison Company (SoCal Edison) for a partial waiver of the Commission's Standards of Conduct requirements, based on the consent of SoCal Edison's non-affiliated customers, to the sharing of information with SoCal Edison's marketing affiliate employees.<sup>53</sup>

53. On July 14, 2009, SoCal Edison sent a letter to the Commission stating that it has completed its transition to full compliance with the Commission's Standards of Conduct requirements and that it is surrendering its waiver granted in 2007.

**C. Docket Nos. TS09-8-000 & OA97-139-001**

54. On May 29, 1997, the Commission granted a request by Otter Tail Power Company (Otter Tail) for a waiver of the Commission's Standards of Conduct requirements based on its findings that Otter Tail: (1) meets the definition of a small public utility; and (2) is a member of a loose power pool.<sup>54</sup>

55. On July 13, 2009, Otter Tail sent in a notice of a material change in facts relating to its Order No. 889 and Part 358 waivers.<sup>55</sup> It determined that, under *Wolverine*<sup>56</sup> and the *Material Changes Order*,<sup>57</sup> it no longer qualifies for a waiver of Part 358 as a small public utility, as its sales now exceed the 4 million MWh threshold. It requests an extension until November 1, 2009 to become fully compliant with Part 358 so it will have

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<sup>53</sup> *Southern California Edison Company*, 119 FERC ¶ 61,270, at P 8 (2007).

<sup>54</sup> *Central Minnesota Waiver Order*, 79 FERC at 62,130.

<sup>55</sup> Notice of Otter Tail's filing was published in the Federal Register, 74 Fed. Reg. 36,188 (2009), with comments, protests, or interventions due on or before August 03, 2009. In a separate proceeding, in Docket No. OA09-031-000, Otter Tail has requested, among other matters, a continuance of previously granted waivers from the requirements of Order Nos. 888 and 890. The Commission will address that waiver request in a separate order.

<sup>56</sup> *Wolverine Power Supply Cooperative, Inc.*, 127 FERC ¶ 61,159 (2009) (*Wolverine*).

<sup>57</sup> *Material Changes Order*, 127 FERC ¶ 61,141 at P 2, 5.

time to hire and train staff. It also states that it belongs to the Midwest ISO and has transferred control of all its transmission at 100 kV or larger to the ISO.

56. On August 3, 2009, Renewable Systems Americas Inc. and PEAK Wind development, LLC (collectively, RES/PEAK) filed a motion to intervene and conditional protest. RES/PEAK does not oppose Otter Tail's request for an extension of time to comply with Part 358, but requests that the Commission either: (1) make no determination in this proceeding as to whether Otter Tail should have terminated its waiver of Order No. 889 earlier than the July 13 Filing and continue to address that issue in Docket No. EL08-86-000<sup>58</sup> where the Commission set for hearing RES/PEAK's complaint that Otter Tail had engaged in discriminatory conduct; or (2) reject Otter Tail's argument that it was reasonable for it to continue to rely on the waiver in past periods based on an alleged ambiguity in the Commission's requirements for waiver.

57. On August 7, 2009, Otter Tail filed a motion for leave to file an answer to the RES/PEAK protest. On January 14, 2010, the parties filed uncontested settlement in Docket No. EL08-86-000. The Commission approved the settlement on May 6, 2010.<sup>59</sup>

#### **D. Docket Nos. TS04-268-000 & TS04-268-001**

58. On October 27, 2004, the Commission granted a request by WestGas Interstate, Inc. (WGI) for a limited waiver of the Commission's Standards of Conduct requirements as applied to the sharing of information between employees of two WGI affiliates (Public Service Company of Colorado and Xcel Energy Services Inc. (Xcel)), based on WGI's small size and lack of staff.<sup>60</sup>

59. On July 13, 2009, Xcel filed a letter with the Commission giving notice of a material change in facts relating to its Standards of Conduct waiver. Xcel states that,

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<sup>58</sup> On August 29, 2008, RES/PEAK filed a complaint with the Commission in Docket No. EL08-86-000 alleging that Otter Tail and other parties had discriminated against RES/PEAK and extended transmission preferences to themselves in violation of the FPA. The Commission set the Complaint for hearing to address, among other things, Otter Tail's qualifications for waiver of the requirements of Order No 889.

<sup>59</sup> *Renewable Energy Systems Americas Inc. and PEAK Wind Development, LLC v. Otter Tail Power Company and Minnkota Power Cooperative, Inc.*, 131 FERC ¶ 61,121 (2010).

<sup>60</sup> *American Transmission Company*, 109 FERC ¶ 61,082, at P 70-76 (2004) (2004 Xcel Waiver Order).

because of a change in ownership, WGI no longer conducts transmission transactions with an affiliate that engages in natural gas marketing functions. Xcel also states that WGI is not subject to the revised Standard of Conduct rules as promulgated under Order No. 717 because its marketing function employees should no longer be deemed to be engaged in the day-to-day transmission operations of WGI.<sup>61</sup> Thus, Xcel believes the waiver granted in the *2004 Xcel Waiver Order* is no longer needed by WGI.

### **Discussion**

60. We will accept for filing the notifications by the four applicants that, based on changed circumstances, they are relinquishing their waivers of the Commission's Standards of Conduct requirements. Accordingly, we will rescind these waivers.<sup>62</sup>

## **V. Request for Rehearing**

### **Background**

#### **Docket No. OA08-116-001**

61. On May 21, 2009, the Commission denied Wolverine Power Supply Cooperative, Inc.'s (Wolverine) request to renew its waiver of the Standards of Conduct.<sup>63</sup> The Commission held that, notwithstanding that the SBA has since changed its definition of a small public utility, "the Small Business Administration's definition of a small public utility at the time Order Nos. 888 and 889 were issued is still the appropriate threshold."<sup>64</sup>

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<sup>61</sup> Citing 18 C.F.R. § 358.1 (2010).

<sup>62</sup> Given the passage of time since the filing of its request, and the termination of the complaint proceeding in Docket No. EL08-86-000, Otter Tail's request for a time extension is now moot.

<sup>63</sup> The Commission granted waiver of the Standards of Conduct in *Wolverine Power Supply Cooperative, Inc.*, 81 FERC ¶ 61,369 (1997) (*Wolverine*) (waiver from the Standards of Conduct requirements was granted because: (1) Wolverine was a small public utility with sales of only 1.5 million MWh at the time (small public utility waiver criteria); (2) it was not part of a power pool; and (3) no other circumstances indicated that waiver was not justified).

<sup>64</sup> *Wolverine*, 127 FERC ¶ 61,159 at P 15.

62. On June 29, 2009, Wolverine filed a request for rehearing of *Wolverine* or, in the alternative, for authorization to implement a modified compliance plan. Wolverine also requests that the Commission grant it an extension of time to comply with the Standards of Conduct requirements. Wolverine does not challenge the Commission's continued reliance on the SBA's definition of a small public utility, or the denial of waiver on the ground that Wolverine exceeds the threshold of annual sales of more than 4 million MWh. Instead, Wolverine argues that the Commission failed to consider its "unique characteristics" that warrant approval of its waiver request, i.e., it is not materially engaged in the competitive wholesale marketing of energy because, as an electric cooperative organized to serve its members, it sells only small amounts of residual energy into Midwest ISO's spot market. Wolverine argues that these unique characteristics provide a basis, independent of size, for granting waiver or, at least, implementing a modified approach to compliance with the Standards of Conduct.<sup>65</sup> According to Wolverine:

The Standards of Conduct are intended to prevent undue preference in the transmission or sale of electricity. Because of its unique circumstances, Wolverine cannot grant any undue preference in transmission service. . . all transmission service requests for service over all of Wolverine's transmission facilities must be made through and are administered by the Midwest ISO. . . . Wolverine generates and purchases energy primarily to sell at wholesale to its members under long-term sales contracts and any excess energy available for sale is incidental . . . Moreover, Wolverine schedules all such sales as a price-taker into the Midwest ISO market. As such, Wolverine engages in *no* competitive wholesale marketing because it is exclusively a price-taker.<sup>[66]</sup>

63. In addition, Wolverine argues that it should not bear the cost of implementing the Standards of Conduct when there is no evidence that it ever granted itself or its members an undue preference.

64. If the Commission does not grant its request for rehearing and waive the Standards of Conduct, Wolverine requests that it be allowed to implement Order No. 717's "independent functioning" rule in such a way that it will not need to hire additional

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<sup>65</sup> Wolverine Rehearing Request at 7.

<sup>66</sup> *Id.* at 13-14 (citation to section 358.2(a) omitted) (emphasis in original).

staff.<sup>67</sup> Under Wolverine's proposal, during each weekday peak period, it would physically separate the power coordinator working on transmission functions from the power coordinator performing marketing functions so that they would not be able to share any information.<sup>68</sup> During off-peak periods, Wolverine would continue its existing practice of having only one power coordinator perform both functions.<sup>69</sup> Wolverine argues that concern about undue preference occurring during off-peak times is not realistic because it has no role in the granting or denying of transmission service. According to Wolverine, it cannot use any transmission information to its competitive advantage because it is exclusively a price-taker for all energy that it schedules or sells into Midwest ISO's market. Wolverine further commits to continue its practice of scheduling strictly as a price-taker.<sup>70</sup> Wolverine states that it expects to be able to implement this modified compliance plan within 30 days of the date that the Commission grants this request.<sup>71</sup>

65. Alternatively, Wolverine requests that the Commission grant it a longer extension of time to fully comply with the independent functioning rule. According to Wolverine, in order to fully comply with the independent functioning rule it must move four existing power coordinators into the transmission function and the three remaining power coordinators into the marketing functions. In addition, it must hire one new transmission function operator and two new market function operators. Wolverine expects the hiring process to take at least three months, with another six months minimum for training and NERC certification. Therefore, Wolverine requests that the Commission grant an extension of time for it to begin the hiring process after the date the Commission rules on the merits of its requests plus nine months from the date of a Commission order to fully

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<sup>67</sup> *Id.* at 15.

<sup>68</sup> Wolverine notes that it has seven power coordinators that rotate their schedules so that they each will eventually need to perform both functions. Wolverine states that it will try to maximize the period between when a power coordinator works the transmission function and when that power coordinator must work the marketing function. According to Wolverine, this should minimize, if not eliminate, the competitive value of information the power coordinator received during a transmission shift. *Id.* at 16-17.

<sup>69</sup> Wolverine Rehearing Request at 15.

<sup>70</sup> *Id.* at 16.

<sup>71</sup> *Id.* at 17.

comply with the independent functioning rule while this hiring, training, and certification process is unfolding.<sup>72</sup>

66. On June 26, 2009, Consumers Energy Company (Consumers Energy) filed an answer to Wolverine's Rehearing Request, addressing the alternative proposals contained in the rehearing request. On July 2, 2009, Wolverine filed an answer to Consumers Energy's answer.

### **Discussion**

67. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2010), prohibits answers to rehearing requests. Accordingly, we reject Consumers Energy's answer and Wolverine's answer to that answer.

68. Wolverine asserts that the Commission failed to consider the independent bases that it offered for granting waiver in *Wolverine*. These independent bases, Wolverine argues, are the following unique characteristics: (1) it is not materially engaged in the competitive wholesale marketing of energy; (2) it sells only small amounts of residual energy into Midwest ISO's spot market; (3) it schedules all sales as a price-taker; and (4) all of its transmission facilities are administered by Midwest ISO.

69. We did not and do not consider this argument persuasive. The Standards of Conduct are designed to prevent undue preference in the transmission or sale of electricity. Wolverine's asserted unique circumstances are not adequate for the Commission to provide a waiver for Wolverine. While Wolverine may not have functional control of its transmission facilities because of its membership in Midwest ISO, it does, in fact, have access to transmission information, and Wolverine acknowledges that it has a power coordinator who works the transmission function as well as the marketing function. Thus, the power coordinator can use this information to give Wolverine an unfair competitive advantage. In Order No. 717, the Commission prohibited transmission providers from permitting their marketing function employees to engage in transmission functions, or have access to the system control center or similar facilities used for transmission operations that differs in any way from the access available to other transmission customers.<sup>73</sup> Compliance with the Standards of Conduct requirement ensures same-time information sharing and adequate protections for other market participants.

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<sup>72</sup> *Id.* at 19.

<sup>73</sup> *See* Order No. 717 at P 159; Standards of Conduct 18 C.F.R. § 358.5 (Independent Functioning Rule).

70. We will also reject Wolverine's proposed modified compliance plan. This modified compliance plan was not included in the original filing to which interested parties were provided an opportunity to comment and the Commission to make a reasoned determination.<sup>74</sup> Thus, we will not consider Wolverine's modified compliance plan here.

71. On July 16, 2009, Wolverine was "granted an extension of time to comply with the Standards of Conduct requirements, until the Commission issues an order on the merits of Wolverine's rehearing request of the [*Wolverine*]." <sup>75</sup> We find that Wolverine's request for a nine-month extension is excessive. In Order 717, we stated:

The Commission determines that the new Standards shall be effective 30 days from the date of publication in the Federal Register, . . . The Commission further determines that transmission providers must be in full compliance with the Standards by that date, with the exception of the posting and training requirements, with which transmission providers must be in full compliance no later than 60 days from publication in the Federal Register, as set forth in that same section.<sup>76</sup>

72. Wolverine has had since May 21, 2009, the date its Standards of Conduct waiver request was denied, to begin to hire and train employees. The filing of a rehearing request does not stay the effectiveness of a Commission decision or order.<sup>77</sup> Wolverine should have commenced the hiring and training process immediately following the issuance of the *Wolverine*. Nevertheless, since the Commission granted an extension of time while the Commission took action the merits of Wolverine's rehearing request, the

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<sup>74</sup> See, e.g., *Koch Gateway Pipeline Co.*, 75 FERC ¶ 61,132, at 61,456 (1996).

<sup>75</sup> See Extension of Time Order at P 2.

<sup>76</sup> Order No. 717 at P 332. As the result of some parties requesting an extension of the deadline to comply with Order No. 717, the Commission, among other things, extended the time for a grace period until February 27, 2009 for training of new employees hired before January 30, 2009. See *Standards of Conduct for Transmission Providers, Order Granting an Extension of Time and Providing Notice of Change in Personnel*, 125 FERC ¶ 61,291 (2008) (Extension of Time Order).

<sup>77</sup> See 16 U.S.C. §§ 825h (2006), 18 C.F.R. § 358.714(e) (2010), and *City of Wadsworth, Ohio, et al.*, 123 FERC ¶ 61,272, at P 11 (2008).

Commission will grant an extension to allow Wolverine 60 days to comply with the Standards of Conduct from the date of this order.

The Commission orders:

(A) Muscatine's request for waiver of the Commission's Standards of Conduct requirements is hereby granted, as discussed in the body of this order.

(B) The motions by Old Dominion, Santa Clara, and NCPA for continuance of their previously-granted waivers of the Commission's Standards of Conduct requirements, notwithstanding changed circumstances, are hereby granted, as discussed in the body of this order.

(C) The motions by Empire District and Cross-Sound Cable for continuance of their previously-granted waivers the Commission's Standards of Conduct requirements, notwithstanding changed circumstances, are hereby denied without prejudice, as discussed in the body of this order. Empire District and Cross-Sound Cable shall each have 60 days to either (1) submit information demonstrating that they have relinquished access to information on the operation of transmission facilities or (2) begin compliance with the Commission's Standards of Conduct requirements.

(D) The motions by Roseville and Golden Spread, for continuance of their previously-granted waivers, notwithstanding changed circumstances, are hereby granted, as discussed in the body of this order.

(E) The notifications by Black Hills, Otter Tail, SoCal Edison, and Xcel that they voluntarily are relinquishing their previously-granted waivers of the Commission's Standards of Conduct requirements are hereby accepted for filing and these waivers are hereby rescinded, as discussed in the body of this order.

(F) Wolverine's rehearing request is hereby denied, as discussed in the body of this order.

(G) Wolverine is hereby directed to comply fully with the Standards of Conduct within 60 days of the date of issuance of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.