

153 FERC ¶ 61,193
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

City of Alexandria, Louisiana

Docket No. TS15-1-000

ORDER GRANTING REQUEST FOR WAIVERS

(Issued November 19, 2015)

1. In this order, we grant a request by the City of Alexandria, Louisiana (City) for waiver of the requirements to file an Open Access Transmission Tariff (OATT), to establish and maintain an Open Access Same Time Information System (OASIS), and to comply with the Commission's Standards of Conduct.

I. Background

2. On December 31, 2014, the City filed a request that the Commission grant waiver of the requirements to file an OATT, to establish and maintain an OASIS, and

to comply with the Commission's Standards of Conduct found in Order Nos. 888,¹ 889,² 890,³ 2004,⁴ and 717⁵ and Part 358⁶ of the Commission's regulations.

¹ *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 v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

² *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁴ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

⁵ *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

⁶ 18 C.F.R. pt. 358 (2015).

3. The City states that it is a home rule charter municipality organized under the Constitution and the statutes of the State of Louisiana as a municipal corporation in the Parish of Rapides with a population of approximately 48,000. The City states that it owns and operates a not-for-profit electric utility system consisting of approximately 130 MW of city-owned generating capacity at the City's D.G. Hunter Generating Station and it also owns Bayou Cove Unit No. 1, a nominally-rated, 75 MW combustion turbine-generator located in Jennings, Louisiana. The City states that it purchases capacity and energy from Cleco Power, LLC (Cleco), the Louisiana Energy and Power Authority, and the Southwestern Power Administration. The City also states that its 2012 annual peak demand was 189 MW and it sold only 706,668 MWh of electric energy in the past year.⁷

4. The City states that it owns limited and discrete transmission facilities embedded within and interconnected to the surrounding Cleco transmission system. The City states that its transmission facilities consist of approximately 16 miles of looped 138 kV transmission lines running from the substation at the City's D.G. Hunter Generating Station to six other distribution substations located in and around the City as well as 1-mile 138 kV transmission line running from Cleco's Pineville Substation to the D.G. Hunter Substation.⁸

5. Additionally, the City states that, on December 13, 2013, its transmission system became integrated with Midcontinent Independent Transmission System Operator, Inc. (MISO), and all transmission service over the City facilities is now granted by MISO under terms of the MISO OATT and all transmission facilities owned by the City are now included in the Cleco Pricing Zone (MISO Pricing Zone 32).⁹

6. The City argues that, as a municipal entity of the State of Louisiana, it is not a public utility and therefore is not subject to the Commission's plenary authority under the Federal Power Act and not subject to Standards of Conduct imposed on jurisdictional entities under Part 358 of the Commission's regulations. Nevertheless, it requests waiver of the OATT, OASIS, and Standards of Conduct requirements for reciprocity purposes.¹⁰

⁷ City of Alexandria Transmittal at 3.

⁸ *Id.*

⁹ *Id.* at 4.

¹⁰ *Id.* at 5.

7. The City argues that a waiver is warranted because the Commission considers requests for waiver by a non-public utility of all or part of the reciprocity provision using the same criteria used to determine whether to grant a waiver to a public utility, and the City meets those criteria.¹¹ The City relies on Commission precedent to argue it qualifies for the requested waiver because: (1) it owns only the limited and discrete transmission facilities described herein; (2) it meets the definition of small public utility because it only made sales of 706,668 MWh of electric energy in the past year and has always reported below the Commission's four million MWh threshold; and (3) no other circumstances are present that would indicate that a waiver is not justified.¹²

8. In support of its waiver request of Order Nos. 888 and 890 and section 35.28 of the Commission's regulations,¹³ the City argues that it owns discrete transmission, specifically 17 miles of transmission lines that do not constitute an integrated grid.¹⁴

9. Furthermore, the City argues that any OATT obligations on the City arising under Order Nos. 888 and 890 are met through the MISO OATT. The City argues that it has turned over functional control of its transmission facilities to MISO and all transmission service over the City's facilities is provided in accordance with the MISO OATT.¹⁵

10. The City states that under section 358.1(c) of the Commission's regulations, when a public utility transmission owner participates in a Commission-approved independent system operator (ISO) or regional transmission organization (RTO), the Commission will grant a waiver of the Standards of Conduct if the utility: (1) has turned over operation or control of its transmission system to the ISO/RTO; (2) has no access to information concerning the operation of the transmission facilities it has turned over to the ISO/RTO; and (3) obtains information about such matters only by viewing the ISO/RTO's pertinent OASIS postings.¹⁶ The City asserts that it meets the requirements for waiver of the Commission's Standards of Conduct because it has turned over functional control of its

¹¹ *Id.* at 5-6 (citing *Central Minnesota Municipal Power Agency, et al.*, 79 FERC ¶ 61,260, at 62,127 & n.15 (1997)).

¹² *Id.* at 6 (citing *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at P 3 (2011)).

¹³ 18 C.F.R. § 35.28 (2015).

¹⁴ City of Alexandria Transmittal at 5.

¹⁵ *Id.* at 5-6.

¹⁶ *Id.* at 6 (citing *Black Hills Power, Inc.*, 135 FERC ¶ 61,058 at P 2).

transmission facilities to MISO and it has no access to non-public information concerning the operation of the MISO transmission system.¹⁷ However, the City acknowledges that it does have access to its own non-public information and any communications and instructions it may receive from MISO.¹⁸

11. The City also asserts that it qualifies for waiver of the Commission's OASIS requirements because it is a small utility. Alternatively, the City requests that the Commission find that its OASIS requirements are satisfied through its participation in MISO to the extent that MISO provides the necessary OASIS functions for the City's transmission facilities.

II. Notice

12. Notice of the City's filing was published in the *Federal Register*, 80 Fed. Reg. 16,662 (2015), with interventions and protests due on or before April 14, 2015.¹⁹ None was filed.

III. Discussion

13. Order Nos. 888 and 890 require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT prior to providing transmission service. Order No. 889 and Part 37 of the Commission's regulations²⁰ require public utilities to establish an OASIS. Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.²¹ In prior orders, the Commission has enunciated the standards for waiver of, or exemption from, some or all of the requirements of Order Nos. 888 and 889.²² The Commission has stated that the criteria

¹⁷ *Id.* at 5-6.

¹⁸ *Id.* at 6-7.

¹⁹ 80 Fed. Reg. 16,662 (Mar. 30, 2015).

²⁰ 18 C.F.R. pt. 37 (2015).

²¹ Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 16; Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 313; 18 C.F.R. pt. 358 (2015).

²² See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005).

for waiver of the requirements of Order No. 890 and 2004 have not changed from those used to evaluate requests for waiver under Order Nos. 888 and 889.²³ Order No. 717 did not change those criteria.²⁴

14. The Commission may grant requests for waiver of Order Nos. 888 and 890 to 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), until such time as the public utility receives a request for transmission service. Should the public utility receive such a request, the Commission has determined that the public utility must file with the Commission a *pro forma* tariff within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request.²⁵

15. The Commission has determined that waiver of the requirement to establish an OASIS and abide by the Standards of Conduct would be appropriate for a public utility if the applicant: (1) owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) is a small public utility that owns, operates, or controls an integrated transmission grid, unless other circumstances are present that indicate that a waiver would not be justified.²⁶ The Commission has held that waiver of the Commission's OASIS and Standards of Conduct requirements will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for OASIS waivers) or an entity complains that the

²³ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

²⁴ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

²⁵ *Black Creek*, 77 FERC at 61,941.

²⁶ *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058 at PP 2-3 (*Black Hills*), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Moreover, *Black Hills* did not affect waivers based on a public utility disposing of no more than four million megawatt-hours annually.

public utility has unfairly used its access to transmission information to benefit the utility of its affiliate (for Standards of Conduct waivers).²⁷

16. We find that the City's transmission facilities are limited and discrete and do not constitute an integrated transmission system. Accordingly, we will grant the City's request for waiver of the requirements in Order Nos. 888 and 890 to have an OATT on file.²⁸

17. Also, because the City's transmission facilities qualify as limited and discrete, we will grant the City's waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to OASIS and Order Nos. 889, 2004, and 717 and Part 358 with respect to the Standards of Conduct. We note that the City's waiver of the requirement to establish an OASIS will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.²⁹ Likewise, the City's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that the City has unfairly used its access to information to unfairly benefit itself or its affiliates.³⁰

²⁷ *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 23 (2005) (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998)).

²⁸ *Black Creek*, 77 FERC at 61,941.

²⁹ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

³⁰ The City 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. *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).

The Commission orders:

The City's request for waiver of the Commission's requirements to file an OATT, to establish and maintain an OASIS, and to comply with the Standards of Conduct is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.