

144 FERC ¶ 61,074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Minnesota Municipal Power Agency

Docket No. TS13-2-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued July 30, 2013)

1. In this order, the Commission grants a request by the Minnesota Municipal Power Agency (MMPA) for a waiver, for reciprocity purposes, of the Commission's Standards of Conduct.¹

I. Background and Waiver Request

2. MMPA describes itself as a municipal power agency and Minnesota corporation organized pursuant to Minnesota law.² MMPA states that it consists of eleven member Minnesota distribution utilities and provides wholesale power and energy to these members. MMPA reports that in 2011, it had total sales for resale of 2,002,358 MWh, and that its sales for resale have never exceeded 2,078,744 MWh in any year since the introduction of the Midwest Independent Transmission System Operator, Inc.'s (MISO)³ Day 2 market.⁴

3. MMPA states that it currently owns approximately one half mile of 115 kV transmission line that connects MMPA's Minnesota River Station, a 43.6 MW nominal rating simple cycle power plant, to the transmission system of Northern States Power Company (NSP), a member of MISO. MMPA states that its transmission facilities

¹ 18 C.F.R. Pt. 358 (2012); *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, 129 FERC ¶ 61,043, *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) (Order No. 717).

² Minn. Stat. §§ 453.51 *et seq.* (2013).

³ Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

⁴ MMPA April 18, 2013 Waiver Request at 1-3 (Waiver Request).

are operated by NSP. MMPA became a transmission-owning member of MISO in February 2013 and is scheduled to turn over operational control of its transmission facilities to MISO in June 2013.⁵ MMPA notes that, after its integration into MISO, MMPA may still have access to transmission function information.⁶

4. MMPA asserts that it qualifies for a waiver of the Standards of Conduct as a small utility whose sales of energy for resale do not exceed 4 million MWh annually. MMPA argues that the ownership of a half mile of 115 kV transmission line does not generate enough work to engage a full-time employee devoted solely to transmission function activities. Thus, MMPA contends that compliance with the Standards of Conduct would impose a significant financial burden on MMPA with no appreciable furthering of the Commission's objectives.⁷

II. Notice and Responsive Pleadings

5. Notice of MMPA's filing was published in the *Federal Register*, 78 Fed. Reg. 25,434 (2013), with interventions and protests due on or before May 20, 2013. None was filed.

III. Discussion

6. Order Nos. 888⁸ and 890⁹ and section 35.28 of the Commission's regulations¹⁰ 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

⁵ *Id.* at 3.

⁶ *Id.* at 3, n.7.

⁷ *Id.* at 4-5.

⁸ *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).

⁹ *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).

¹⁰ 18 C.F.R. § 35.28 (2012).

service. Order Nos. 889,¹¹ 2004,¹² and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain standards of conduct.¹³ 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, 889, and 890.¹⁴ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 have not changed from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹⁵ Order No. 717 did not change those criteria.¹⁶

7. The Commission has determined that waiver of the requirements to 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 waiver would not be justified.¹⁷ The Commission grants waivers to small

¹¹ *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).

¹² *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* Order No. 717, FERC Stats. & Regs. ¶ 31,280.

¹³ 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.

¹⁴ *See, e.g., Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

¹⁵ *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).

¹⁶ *See* Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

¹⁷ *Id.* Although the Commission originally precluded waiver of 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 (2011), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Additionally, size is not relevant to whether waivers are granted to public utilities because they participate in a Commission-approved Independent

public utilities based on the threshold of whether they dispose of no more than 4 million MWh annually.¹⁸ Moreover, the Commission has held that waiver of the Standards of Conduct in Order No. 889 will remain in effect until an entity complains that the public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate.¹⁹ The Commission has also explained that it evaluates requests by non-public utilities for Standards of Conduct waivers using the same criteria used to determine whether to grant waiver to a public utility.²⁰

8. Based on MMPA's representations, we find that MMPA qualifies for waiver of the Standards of Conduct as a small utility under the 4 million MWh eligibility threshold. Therefore, the Commission will grant MMPA's request for waiver of the Standards of Conduct, which will remain in effect unless and until the Commission takes action on a complaint by an entity that MMPA has unfairly used its access to information to unfairly benefit itself or its affiliate.²¹

The Commission orders:

MMPA's request for waiver of the Commission's Standards of Conduct is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose
Secretary.

System Operator or Regional Transmission Organization. *See* 18 C.F.R. § 358.1(c) (2012).

¹⁸ *See Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009).

¹⁹ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998)).

²⁰ *E.g., Kansas City, Kansas, Board of Pub. Utils.*, 140 FERC ¶ 61,113, at P 8 (2012).

²¹ *Supra* note 20. MMPA must notify the Commission if there is a material change in facts that affect 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).