

170 FERC ¶ 61,251  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

AMP Transmission, LLC

Docket No. TS19-1-000

ORDER ON WAIVER REQUEST

(Issued March 25, 2020)

1. In this order, we address AMP Transmission, LLC's (AMPT) request for waiver of the Commission's requirements to establish and maintain an Open Access Same-Time Information System (OASIS)<sup>1</sup> and to comply with the Commission's Standards of Conduct,<sup>2</sup> applicable to AMPT under the Commission's reciprocity rules set forth in Order No. 888.<sup>3</sup> As discussed below, we find that AMPT cannot qualify for waiver of

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<sup>1</sup> See 18 C.F.R. pt. 37 (2019) (OASIS Requirements); *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996) (cross-referenced at 75 FERC ¶ 61,078), *order on reh'g*, Order No. 889-A, FERC Stats & Regs. ¶ 31,049 (cross-referenced at 78 FERC ¶ 61,221), *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

<sup>2</sup> See 18 C.F.R. pt. 358 (2019) (Standards of Conduct); *Standards of Conduct for Transmission Providers*, Order No. 2004, 105 FERC ¶ 61,248 (2003), *order on reh'g*, Order No. 2004-A, 107 FERC ¶ 61,032, *order on reh'g*, Order No. 2004-B, 108 FERC ¶ 61,118, *order on reh'g*, Order No. 2004-C, 109 FERC ¶ 61,325 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as applied to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *Standards of Conduct for Transmission Providers*, Order No. 690, ¶ 118 FERC ¶ 61,102, *order on reh'g*, Order No. 690-A, 118 FERC ¶ 61,229 (2007); *Standards of Conduct for Transmission Providers*, Order No. 717, ¶ 125 FERC ¶ 61,064 (2008), *order on reh'g and clarification*, 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).

<sup>3</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) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A,

the Commission's OASIS, or Standards of Conduct requirements on the basis that its facilities are limited and discrete and, therefore, we deny AMPT's request for waiver.

## **I. Background**

2. AMPT states that it is a non-profit, single-member limited liability affiliate of American Municipal Power, Inc. (AMP),<sup>4</sup> created to own and operate the transmission facilities of AMP and AMP's members, and to ensure that these facilities comply with the obligations of the North American Electric Reliability Corporation (NERC) and requirements of applicable Regional Transmission Organizations (RTOs).<sup>5</sup> AMPT notes that it does not have employees. Rather, AMPT explains that, pursuant to a services agreement, AMP employees are responsible for performing AMPT's functions, including

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FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *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 Pol'y Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. N. Y. v. FERC*, 535 U.S. 1 (2002); *see also City Util. Comm'n of Owensboro*, 140 FERC ¶ 61,163, at P 3 (2012); *Kan. City Bd. of Pub. Utils.*, 140 FERC ¶ 61,113, at P 8 (2012).

<sup>4</sup> AMPT explains that AMP is a non-profit, multi-state public power entity that owns electric generating facilities and whose members comprise Middle Western municipal utilities and a State of Delaware subdivision. AMP schedules and dispatches its and its members' generation and makes power supply and transmission arrangements for its members with third parties. It also purchases wholesale electric power and energy that it then re-sells to its members. AMPT states that AMP is a minority owner of approximately 10 miles of networked transmission facilities (not operated by AMP) and owns and/or operates a total of approximately 38 miles of transmission lines, none of which are currently networked transmission facilities that interconnect AMP's generating facilities with the integrated transmission system. On June 16, 2018, AMP obtained waivers of the obligations to comply with the Commission's OASIS and Standards of Conduct requirements. *See Am. Mun. Power, Inc.*, 163 FERC ¶ 61,220 (2018) (AMP 2018 Order); AMPT Waiver Request at 2 & n.4.

<sup>5</sup> AMPT Waiver Request at 1. AMPT states that, initially, it will own only transmission facilities that qualify as Bulk Electric System (transmission elements operated at 100 kV or higher, excluding facilities used in local distribution) to relieve AMP members from the related NERC obligations. Going forward, AMPT states that it intends to own only transmission facilities that are eligible for revenue recovery under the applicable RTO transmission tariff. *See* AMPT Waiver Request at 5 n.8.

transmission planning, finance, management oversight, regulatory assistance, and legal review.<sup>6</sup>

3. AMPT states that it has purchased transmission facilities previously owned by the City of Napoleon, Ohio (Napoleon)<sup>7</sup> and has plans to purchase the transmission facilities currently owned by the City of Wadsworth, Ohio (Wadsworth). AMPT states that Napoleon and Wadsworth's transmission facilities consist of a single 138 kV ring bus with the current designation of ownership at the incoming structure via two tap lines, each less than 50 feet in length.<sup>8</sup> AMPT states that it also owns transmission facilities in the City of Amherst, Ohio (Amherst), which consist of 1.84-mile, 69 kV transmission line and two 69 kV station facilities, associated station bus work and one 69kV circuit breaker.<sup>9</sup>

4. AMPT claims that its facilities, both present and intended, are limited and discrete and therefore qualify for waiver of the OASIS and Standards of Conduct requirements. AMPT asserts that, although the facilities provide benefits to the transmission grid, they are located in geographically dispersed cities and thus do not form a contiguous network. AMPT adds that the transmission facilities are a part of PJM Interconnection, LLC's (PJM) transmission network and will be under the functional control of PJM and available to PJM to serve its power and transmission customers.<sup>10</sup>

5. AMPT states that, in June 2018, the Commission granted AMP's request for waiver of the Commission's OASIS and Standard of Conduct requirements on the basis that AMP owns and/or operates only limited and discrete transmission facilities.<sup>11</sup> AMPT also explains that, after the Commission granted AMP's waiver request, AMP modified its plans to acquire ownership and/or assume operational control of transmission facilities of its member cities and instead, formed AMPT.<sup>12</sup> AMPT asserts that, aside from this change, there has been no material change in the facts underlying

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<sup>6</sup> *Id.* at 2-3.

<sup>7</sup> *Id.* at 6. AMPT states that the acquisition of Napoleon's assets was completed on September 26, 2018.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> AMPT Data Request Response at 1.

<sup>10</sup> AMPT Waiver Request at 7.

<sup>11</sup> AMP 2018 Order, 163 FERC ¶ 61,220 (2018).

<sup>12</sup> AMPT Waiver Request at 1.

AMP's current waiver.<sup>13</sup> AMPT avers that AMP and AMPT's combined assets reflect the same facilities described in AMP's 2017 petition for waiver approved by the Commission and, therefore, AMPT's ownership of a portion of the same facilities satisfies the Commission's limited and discrete standard.

6. On October 12, 2018, AMPT filed its request for waiver in the instant proceeding. AMPT contends that its transmission function employees function independently from, and have no contact with, AMP's marketing function employees. AMPT states that it has contracted with Gridforce Energy Management, LLC (Gridforce) for the provision of NERC transmission compliance services for its transmission assets and that Gridforce's operation of AMPT's transmission assets furthers the Standards of Conduct's goal of separation of functions.<sup>14</sup> AMPT also notes that it has established processes and procedures with AMP to prevent any non-public data from being shared between transmission function and marketing function employees.

## **II. Notice and Responsive Pleadings**

7. Notice of AMPT's filing was published in the *Federal Register*, 83 Fed. Reg. 53,626 (Oct. 24, 2018), with interventions or protests due on or before November 2, 2018.

8. PJM, American Electric Power Service Corporation (AEP), Exelon Corporation (Exelon), FirstEnergy Service Company (FirstEnergy), PPL Electric Utilities Corporation (PPL), Public Service Electric and Gas Company, Duke Energy Corporation, ITC (ITC), and Dayton Power and Light Company (Dayton P&L) filed timely motions to intervene. Dominion Energy Services (Dominion) filed an out-of-time motion to intervene. PJM and Indicated PJM Transmission Owners (PJM Transmission Owners)<sup>15</sup> filed comments.

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<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at 5. AMPT states that Napoleon and Wadsworth own (or owned) facilities that fall within NERC's definition of Bulk Electric System Facilities, and that AMPT will take over Napoleon and Wadsworth's NERC obligations. *Id.* at 6. The Amherst facilities are not currently classified as Bulk Electric System Facilities and therefore are not subject to AMPT's contract with Gridforce. AMPT Data Request Response at 5, n.6.

<sup>15</sup> The Indicated PJM Transmission Owners are: AEP on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, AEP Indiana Michigan Transmission Company, AEP Kentucky Transmission Company, AEP Ohio Transmission Company, and AEP West Virginia Transmission Company; Dayton P&L; Dominion Energy Services, Inc., on behalf of Virginia Electric and Power Company

9. On November 9, 2018, AMPT filed an answer to PJM and PJM Transmission Owners' comments. On November 20, PJM Transmission Owners filed an answer to AMPT's answer. On November 30, 2018, AMPT filed a reply to PJM Transmission Owners' answer.

**A. Comments**

10. PJM and PJM Transmission Owners oppose waiving the Standards of Conduct, arguing that marketing affiliates of AMPT will obtain non-public transmission information through AMPT's participation in the PJM Transmission Owners Agreement-Administrative Committee (PJM Administrative Committee) and other committees where planning or operational transmission information is discussed.<sup>16</sup> PJM Transmission Owners are concerned that, with waiver of the Standards of Conduct, AMP will have the potential to exploit non-public information available to PJM transmission operators to benefit AMP's extensive merchant trading activities.<sup>17</sup> They state that the Standards of Conduct no-conduit rule was designed to address precisely this situation.<sup>18</sup>

11. PJM and PJM Transmission Owners argue that the limited nature of AMPT's transmission facilities does not, on its own, warrant waiver.<sup>19</sup> PJM argues that AMPT should demonstrate that its employees: (1) do not have access to non-public transmission function information covered by section 358.3(j) of the Commission's regulations,<sup>20</sup> and (2) do not engage in transmission functions or have access to transmission function

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d/b/a Dominion Energy Virginia; Exelon; FirstEnergy, American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Mid-Atlantic Interstate Transmission LLC, Trans-Allegheny Interstate Line Company, West Penn Power Company, Potomac Edison Company, Monongahela Power Company, Ohio Edison Company, Pennsylvania Power Company, Cleveland Electric Illuminating Company, Toledo Edison Company, Pennsylvania Electric Company, and Metropolitan Edison Company; ITC; and PPL.

<sup>16</sup> PJM Comments at 4-5.

<sup>17</sup> PJM Transmission Owners Comments at 7.

<sup>18</sup> *Id.*

<sup>19</sup> PJM Comments at 4; PJM Transmission Owners Comments at 7.

<sup>20</sup> 18 C.F.R. § 358.3(j).

information. According to PJM, if AMPT cannot so demonstrate, AMPT must explain how it continues to meet the criteria for waiver of the Standards of Conduct.<sup>21</sup>

12. PJM Transmission Owners argue that, if the Commission is inclined to grant waiver, it should prohibit AMPT from: (1) accessing non-public transmission function information related to the transmission operations and facilities of PJM and the PJM Transmission owners and; (2) participating in PJM activities and PJM Transmission Owner meetings in which non-public transmission information is disclosed or discussed.<sup>22</sup> PJM and PJM Transmission Owners note that Old Dominion Electric Cooperative (Old Dominion) voluntarily committed to similar conditions when it sought waivers from the Commission under similar circumstances.<sup>23</sup> Specifically, PJM Transmission Owners note that Old Dominion committed that it would not participate in closed sessions of the PJM Administrative Committee.<sup>24</sup> PJM Transmission Owners point out that AMPT has made no similar commitment.<sup>25</sup>

13. PJM Transmission Owners state that, if the Commission decides to grant AMPT's waiver request and declines to impose any conditions on the waiver, it should limit any waiver of the Standards of Conduct to the handling of non-public transmission function information associated solely with AMPT's own transmission facilities and deny waiver with respect to non-public transmission function information of PJM and unaffiliated entities.<sup>26</sup> PJM Transmission Owners also ask the Commission to direct that AMPT cannot disclose or otherwise use any non-public transmission function information of PJM and the other PJM Transmission Owners to gain a competitive advantage that it otherwise would not have or for purposes other than necessary to operate AMPT's transmission facilities.<sup>27</sup>

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<sup>21</sup> PJM Comments at 4.

<sup>22</sup> PJM Transmission Owners Comments at 2, 7.

<sup>23</sup> PJM Comments at 3-5; PJM Transmission Owners Comments at 6.

<sup>24</sup> *Id.* at 6 (citing *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 2, 7, 41, n.46 (2011) (*Black Hills*)).

<sup>25</sup> PJM Transmission Owners Comments at 6.

<sup>26</sup> *Id.* at 7.

<sup>27</sup> *Id.* at 8.

**B. Answers**

14. In its Answer, AMPT argues that its waiver request should not be subject to the same requirements as Old Dominion because the basis for Old Dominion's waiver request is distinct from the basis for AMPT's waiver request.<sup>28</sup> Specifically, AMPT notes that Old Dominion expressly requested waiver under section 358.1(c) of the Commission's regulations, which requires an applicant to prove that it has turned over operational control of its transmission facilities and that it has no access to transmission function information other than information available on OASIS, while AMPT's request for waiver relies on the "limited and discrete" standard, which does not require that waiver applicants meet the section 358.1(c) criteria.<sup>29</sup>

15. With regard to AMPT's participation in the closed session of the PJM Administrative Committee meetings, AMPT argues that it has executed two agreements that achieve the same ends as the Standards of Conduct.<sup>30</sup> AMPT states that it signed the same non-disclosure agreement that all members of the PJM Administrative Committee sign as a condition of attending the meetings.<sup>31</sup> AMPT adds that it is also a signatory to the Consolidated Transmission Owners Agreement, which obligates AMPT to treat as confidential, in accordance with the non-disclosure agreement, any information subject to the Standards of Conduct that AMPT may receive in the course of performing functions under the agreement.<sup>32</sup>

16. AMPT also states that it has "taken steps to abide by the spirit of the Standards of Conduct," explaining that its contract with Gridforce ensures that Gridforce's transmission function employees function independently from, and have no contact with, AMP's marketing function employees.<sup>33</sup> AMPT states that both AMP and AMPT have established processes to prevent any non-public data received at the PJM Administrative Committee meetings or elsewhere from being shared between transmission function and marketing function employees within AMP and that additional procedures are under development.

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<sup>28</sup> AMPT Answer at 4.

<sup>29</sup> *Id.* at 4-5 (internal citations omitted).

<sup>30</sup> *Id.* at 8.

<sup>31</sup> *Id.* at 7.

<sup>32</sup> *Id.* at 7-8.

<sup>33</sup> *Id.* at 9.

17. PJM Transmission Owners disagree with AMPT's assertion that its waiver request is justified by its ownership of limited and discrete facilities. PJM Transmission Owners argue that the fact that AMPT is seeking waiver under the limited and discrete standard and not section 358.1(c) is irrelevant because "[t]he evident reason for a waiver of the Standards of Conduct based on a transmission owner's limited and discrete facilities is that access to non-public transmission function information about limited and discrete transmission facilities will not normally give the owner's market[ing] function an unfair market advantage."<sup>34</sup> PJM Transmission Owners argue that this logic does not apply in this case because the information available to AMPT extends to the entire transmission system that PJM operates.

### C. Data Request

18. On September 6, 2019, the Commission issued a data request, asking AMPT to provide the following information: (1) identify the specific transmission facilities actually owned and operated, at present, by AMPT, including any facilities transferred from AMP to AMPT; (2) explain what entity's or entities' employees will have physical control, as opposed to operational responsibility, of AMPT's transmission assets; (3) identify the specific types of transmission functions, as defined in section 358.3(h) of the Commission regulations, that Gridforce, AMP, and any third-parties will be responsible for performing, respectively, as well as the manner in which AMPT's contract with Gridforce furthers the goal of separation of functions; (4) explain how AMPT and AMP employees participating on behalf of AMPT in PJM meetings plan to comply with the Commission's Independent Functioning rule, 18 C.F.R. § 358.5 (2019); (5) explain how AMP and AMP employees participating on behalf of AMPT in PJM meetings plan to comply with the Commission's no-conduit rule; (6) identify the measures established to prevent the disclosure of non-public transmission function information to marketing employees, and how such measures prevent disclosure; (7) provide additional explanation supporting the request to waive OASIS requirements; and (8) describe the procedures AMP will use to ensure that non-public transmission information is not disclosed to AMP's marketing affiliate.<sup>35</sup>

19. On October 7, 2019, AMPT responded to the data request. AMPT provided an updated description of the transmission facilities that form the basis of its waiver request, as well as detailed job descriptions for the AMP employees attending closed PJM Administrative Committee meetings on behalf of AMPT, including its General Counsel for Regulatory Affairs, who is responsible for reviewing AMP's contracts with its

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<sup>34</sup> PJM Transmission Owners Answer at 3.

<sup>35</sup> Data Request at 3-5.

members and third parties for the purchase and sale of energy.<sup>36</sup> AMPT admits that transmission function information is shared at PJM Administrative Committee meetings and stresses that its employees in attendance are aware of and abide by Standards of Conduct requirements while attending and reporting on the meetings.<sup>37</sup> AMPT adds that the employees have executed the non-disclosure agreement executed by all members of the PJM Administrative Committee, the terms of which prohibit AMPT representatives from disclosing any confidential or Critical Energy Infrastructure Information received during those meetings to employees with marketing responsibilities.<sup>38</sup> AMPT also provided: (1) affidavit testimony of AMPT's President and AMP's Executive Vice President of Power Supply and Generation; (2) the services contracts between AMPT and Amherst and Napoleon; (3) the services contract between AMPT and Gridforce; (4) a copy of AMP's voluntary Standards of Conduct training and testing materials; (5) a copy of AMP's Standard Operating Procedure for Standards of Conduct Implementation and Compliance Procedures; and (6) a form of protective order.

### **III. Discussion**

#### **A. Procedural Matters**

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

21. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant Dominion's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept AMPT's and PJM Transmission Owners' answers and AMPT's reply because they have provided information that assisted us in our decision-making process.

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<sup>36</sup> AMPT Data Request Response at 8.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

**B. Substantive Matters**

23. We deny AMPT's request for waiver. Order Nos. 888 and 890<sup>39</sup> and section 35.28 of the Commission's regulations<sup>40</sup> 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.<sup>41</sup> Order No. 889 and part 37 of the Commission's regulations<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup> The Commission has stated that the criteria for waiver of the requirements of Order Nos. 890 and 2004 have not changed from those used to evaluate requests for waiver under Order Nos. 888 and 889.<sup>45</sup> Order No. 717 did not change those criteria.<sup>46</sup>

24. The Commission has determined that waiver of the requirements 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

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<sup>39</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>40</sup> 18 C.F.R. § 35.28 (2019).

<sup>41</sup> AMPT did not seek waiver of the requirement to file an OATT with the Commission. AMPT currently has a Commission-approved OATT on file. *See PJM Interconnection, L.L.C.*, 166 FERC ¶ 61,216 (2019) (AMPT Formula Rate Order).

<sup>42</sup> 18 C.F.R. pt. 37 (2019).

<sup>43</sup> Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; Order No. 2004, 105 FERC ¶ 61,248 at P 16; Order No. 717, 125 FERC ¶ 61,064 at P 313.

<sup>44</sup> *See, e.g., Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Miss., Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

<sup>45</sup> *See Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

<sup>46</sup> *See* Order No. 717, 125 FERC ¶ 61,064 at PP 31-33.

owns, operates, or controls an integrated transmission grid, unless other circumstances are present that indicate that waiver would not be justified.<sup>47</sup> The Commission grants waivers to small public utilities based on the threshold of whether they dispose of no more than four million MWh annually.<sup>48</sup> Moreover, the Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint asserting 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 public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).<sup>49</sup> 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.<sup>50</sup>

25. The Commission has also determined that waiver of the requirements to abide by the Standards of Conduct would be appropriate for a public utility owner that participates in a Commission-approved Independent System Operator (ISO) or RTO if the applicant complies with the requirements of section 358.1(c) of the Commission's regulations.<sup>51</sup> Section 358.1(c) permits waiver of the Standards of Conduct to any public utility transmission owner that: (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.<sup>52</sup>

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<sup>47</sup> See *Black Creek*, 77 FERC ¶ 61,232 at 61,941. 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*, 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 meeting the Small Business Administration's definition of a small public utility. *Black Hills*, 135 FERC ¶ 61,058, at PP 2-3.

<sup>48</sup> See *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009).

<sup>49</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Cent. Minn. Mun. Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998)).

<sup>50</sup> E.g., *Kan. City, Kan., Bd. of Pub. Utils.*, 140 FERC ¶ 61,113, at P 11 (2012).

<sup>51</sup> 18 C.F.R. § 358.1(c).

<sup>52</sup> *Black Hills*, 135 FERC ¶ 61,058 at P 2-3.

26. Upon consideration of the issues raised in this proceeding, we find that an entity like AMPT that participates as a Transmission Owner in an RTO or ISO cannot qualify for waiver of the Commission's OASIS or Standards of Conduct requirements on the basis that its facilities are limited and discrete (i.e., rather than an integrated transmission grid).<sup>53</sup> Although AMPT's facilities are limited in size, AMPT's participation as a Transmission Owner in PJM qualifies its facilities as an integral part of the integrated PJM grid<sup>54</sup> and therefore AMPT's facilities cannot be considered as limited and discrete under our waiver precedent. Thus, we deny AMPT's request for waiver of OASIS and the Standards of Conduct on the basis that its facilities are limited and discrete.<sup>55</sup>

27. For these reasons, we deny the waiver request.

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<sup>53</sup> *See id.* at P 43.

<sup>54</sup> *See* AMPT Formula Rate Order, 166 FERC ¶ 61,216 at P 1 and Ordering Paragraph E (accepting AMPT's Template and Protocols for use in any PJM transmission zone and characterizing AMPT's facilities as integrated PJM facilities). *See also* November 1, 2018 PJM Interconnection, LLC and AMP Transmission System filing in Docket No. ER19-263-000 at 2 stating that AMPT's facilities "are integrated with the PJM Transmission System, are under PJM's functional control, and are used by PJM in providing service pursuant to the PJM OATT."

<sup>55</sup> We note that AMPT did not request a waiver of the OASIS or Standards of Conduct requirements on the basis that it is a small public utility that owns, operates, or controls an integrated transmission grid and there is insufficient evidence in the record that would support such a determination. Similarly, AMPT did not seek a waiver of the OASIS or Standards of Conduct requirements on the basis of section 358.1(c) of the Commission's regulations. The denial of the waiver request on the basis that the facilities are not limited and discrete is without prejudice to AMPT filing a request for waiver on other grounds. However, we note that, based on the representations in the record, it appears that AMPT would not currently meet the criteria for a waiver under section 358.1(c) because it has access to non-public transmission information.

The Commission orders:

AMPT's request for waiver of the requirements to establish and maintain an OASIS, and to comply with the Standards of Conduct for its facilities is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.