

171 FERC ¶ 61,146
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

McKenzie Electric Cooperative, Inc.

Docket Nos. ER20-335-000
ER20-335-001
ER20-338-000

ORDER ACCEPTING FILING AND GRANTING WAIVERS

(Issued May 21, 2020)

1. On November 7, 2019, in Docket No. ER20-335-000, McKenzie Electric Cooperative, Inc. (McKenzie) filed a Generating Facility Interconnection Agreement (Interconnection Agreement) pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations.² In addition, on the same day, in Docket No. ER20-338-000, McKenzie requested waiver of the Commission's 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 (Waiver Request).³ As discussed below, we grant McKenzie's request for waivers, and accept the Interconnection Agreement for filing effective November 8, 2019.

I. Background and Filings

2. McKenzie is a rural electric cooperative with a service area that includes all or part of five counties in North Dakota and two counties in Montana, with approximately 70 substations and 4,386 miles of distribution and transmission line. McKenzie provides

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. pt. 35 (2019).

³ On December 20, 2019, McKenzie made a supplemental filing in Docket No. ER20-335-000 to include exhibits that it inadvertently omitted in its November 7, 2019 filing. On January 21, 2020, McKenzie requested that the Commission hold its Interconnection Agreement filing in abeyance pending a Commission order on its Waiver Request in Docket No. ER20-338-000.

retail electric service to approximately 4,400 member-customers, 70% of whom are residential or seasonal customers.⁴

3. McKenzie states that it has historically been exempt from the Commission's jurisdiction under Part II of the FPA, by virtue of section 201(f)⁵ because, although it does not receive financing from the Rural Utilities Service, it sold less than four million MWh of electric energy per year.⁶ McKenzie states that it expects to have sales of electric energy that exceed four million MWh per year before the end of the 2019 calendar year and therefore will cease to meet the criteria of FPA section 201(f) and will become a "public utility" subject to the Commission's jurisdiction under Part II of the FPA.⁷

A. **Request for Waivers of Open Access Requirements (Docket No. ER20-338-000)**

1. **November 7, 2019 Filing**

⁴ Waiver Request Transmittal at 3.

⁵ 16 U.S.C. § 824(f).

⁶ Waiver Request Transmittal at 4-5.

⁷ *Id.*

4. McKenzie seeks waiver of the requirements of Order Nos. 888,⁸ 889,⁹ 890,¹⁰ 2004,¹¹ and 717,¹² and Parts 37¹³ and 358¹⁴ of the Commission's Regulations, including

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

¹⁰ *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).

¹¹ *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 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, 118 FERC ¶ 61,012, *order on reh'g*, Order No. 690-A, 118 FERC ¶ 61,229 (2007).

¹² *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).

¹³ 18 C.F.R. pt. 37 (2019).

¹⁴ 18 C.F.R. pt. 358 (2019).

the requirement to file an OATT, the requirement to establish and maintain an OASIS, and the requirement to comply with the Standards of Conduct.

5. McKenzie states that its transmission and distribution system is not networked with the bulk electric system. McKenzie explains that its transmission-level facilities, operating at 115 kV, are used solely for the delivery of electric energy from the integrated transmission systems of Basin Electric Power Cooperative (Basin Electric) and the Western Area Power Administration (WAPA) to McKenzie's distribution system.

6. McKenzie asserts that its system is limited and discrete. McKenzie explains that it does not own any power generation assets, does not sell wholesale power in any market, and does not wheel power on an interstate basis. It states that it is a retail electric cooperative that receives its power supply through an all-requirements contract executed with a separate electric cooperative. McKenzie states that it receives an allocation of power from WAPA on behalf of two of its customers—Southwest Water Authority and Three Affiliated Tribes (the Mandan, Hidatsa, and Arikara Nations)—and effects the retail delivery of that power to those customers within McKenzie's service territory.¹⁵

7. McKenzie also states that it provides 150 MW of interconnection service to a gas-fired power plant owned and operated by Basin Electric (Basin Facility). McKenzie explains that the Basin Facility interconnects to the McKenzie system outside the Lonesome Creek switchyard and power is then delivered to WAPA's Watford City Substation, where a Southwest Power Pool, Inc. pricing node is located. McKenzie states that the Basin Facility is connected to the Watford City Substation delivery point using a 115 kV McKenzie-owned transmission line. McKenzie states that it receives no revenues for this interconnection service. McKenzie also states that, aside from this single, limited interconnection service, its 115 kV transmission facilities are otherwise solely used in the local distribution of electric energy to retail customers.¹⁶

8. McKenzie states that, once it is no longer exempt from the Commission's jurisdiction, it will be subject to obligations related to the open-access requirements requiring public utilities to file an OATT, establish an OASIS, and abide by the Standards of Conduct; therefore, McKenzie seeks waiver of these requirements.¹⁷ McKenzie notes that the Commission has granted waiver requests of the open access tariff requirements when the public utility can demonstrate that it owns, operates, or controls only "limited and discrete" transmission facilities. McKenzie asserts that its system is "limited and

¹⁵ Waiver Request Transmittal at 3-4.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 5.

discrete” and is similar to other systems that have been granted waivers. McKenzie states that the Commission granted waiver to Golden Spread Electric Cooperative based on representations that the utility’s system is operated radially and is not an integrated component of any electricity grid.¹⁸ McKenzie states that, similarly, the Commission granted DTE Electric Company waiver after representing that its interconnection facilities consisted of discrete, radial facilities used solely to interconnect a single facility and would not be shared by other generating facilities.¹⁹ McKenzie states that the Commission also granted waiver to Wells Rural Electric Cooperative because its system is primarily composed of low-voltage lines.²⁰

9. McKenzie asserts that its system is primarily comprised of nearly 4,000 miles of low-voltage distribution facilities used solely to provide retail service to its customers, and that it does own a limited amount of transmission-level substations and conductor which operate at no higher than 115 kV and are arranged in a radial manner in order to effect the local distribution of electric energy from McKenzie’s interconnection with the integrated transmission system to its retail customers. McKenzie states that its facilities thus do not form a part of the integrated transmission grid.

10. McKenzie argues that the interconnection service it provides to the Basin Facility should not by itself cause McKenzie to be considered ineligible for the waivers it requests. McKenzie states that the Commission has granted waiver of the open access tariff requirements where a utility provides limited jurisdictional interconnection services.²¹ McKenzie states that it provides interconnection service to a single generator, and that no other generating facilities share the same infrastructure. McKenzie further states that the facilities used to interconnect the Basin Facility are themselves limited and discrete and are not networked with the integrated transmission system.

11. McKenzie also submits that other circumstances justify the waivers. It states that it has operated for more than a half century under the exemption from Commission jurisdiction and 2019 is the first year in McKenzie’s existence that it will sell in excess of four million MWh of electricity. Moreover, McKenzie states that increased load is largely due to natural resource production in the Bakken Formation, and in the future that load may fluctuate and fall below the four million MWh threshold provided in FPA

¹⁸ *Id.* (citing *Golden Spread Elec. Coop., Inc.*, 127 FERC ¶ 61,248 (2009)).

¹⁹ *Id.* (citing *DTE Elec. Co.*, 150 FERC ¶ 61,168 (2015)).

²⁰ *Id.* (citing *Wells Rural Elec. Co.*, 90 FERC ¶ 61,013, at 61,029 (2000)).

²¹ Waiver Request Transmittal at 7 (citing *DTE Elec. Co.* 150 FERC ¶ 61,168 (2015)).

section 201(f). McKenzie also notes that the Commission has not explicitly stated whether the calculation of the four million MWh threshold under FPA section 201(f) is based on a single year or if it is based on an average of multiple years, but that McKenzie submits its filing out of an abundance of caution.²²

12. McKenzie further asserts that it has just 51 full-time employees who serve retail customer-members and are not engaged in the wholesale marketing of energy or in arranging interstate or wholesale transmission services. Therefore, McKenzie argues, it has no need or incentive to give itself an undue preference over others and the requirement to maintain an open access tariff and associated obligations would be unduly burdensome.

13. McKenzie states that it does not expect to receive a request for transmission service over its facilities, and understands that, if it does receive such a request, it will file, within 60 days of such a request, an OATT under which it will provide service. McKenzie also recognizes that a waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint that an entity evaluating its transmission needs could not get information necessary to complete its evaluation (for OASIS), or an entity complains that the public utility has used its access to information about transmission to unfairly benefit its own sales or those of an affiliate, related to the Standards of Conduct. McKenzie confirms that it will notify the Commission if there is a material change in facts that affect these waivers, within 30 days of the date of such change.²³

2. Supplemental Filings

14. On May 15, 2020, McKenzie filed a supplement to its request for waiver in Docket No. ER20-338-000, stating the following: its access to non-public information about other transmission systems is limited to that required for reliability and transmission planning purposes; its transmission system is configured for purposes of effecting deliveries to its retail customers, meaning that its transmission infrastructure is operated in a radial configuration that allows McKenzie to take delivery of power at retail receipt points with other utilities and deliver that power along radial transmission paths to its distribution system; and the interconnection service it provides to the Basin Facility is the only service that is jurisdictional to the Commission. McKenzie also provides a one-line diagram of its transmission system showing line voltages, ownership of facilities, and McKenzie's interconnections with other systems.

²² *Id.* at n.8.

²³ *Id.* at 8.

15. On May 19, 2020, Basin Electric filed limited comments responding to McKenzie's May 15, 2020 supplement. Basin Electric states that McKenzie incorrectly asserts that "McKenzie is an all-requirements customer of Basin Electric Power Cooperative." Basin Electric asserts that McKenzie has not entered into a wholesale power contract with Basin Electric; instead, the all-requirements contract under which McKenzie receives its power supply is with Upper Missouri.

B. Generating Facility Interconnection Agreement (Docket No. ER20-335-000)

1. November 7, 2019 Filing

16. McKenzie states that it is submitting for filing an Interconnection Agreement, dated December 10, 2013, by and between McKenzie and Basin Electric, for the interconnection of the Basin Facility with up to 150 MW of capacity owned by Basin Electric.²⁴ McKenzie explains that it is making this filing as a jurisdictional public utility, pursuant to the requirements of FPA section 205. McKenzie states that the Interconnection Agreement governs the interconnection service and operational interactions of Basin Electric's Facility and the McKenzie system to which it interconnects. McKenzie states that it collects no rates or other payments under the Interconnection Agreement.²⁵

17. McKenzie requests a waiver of the prior notice requirement of section 205 in order to allow for November 8, 2019 as the requested effective date for the Interconnection Agreement. McKenzie states that there is good cause for such waiver, as the Interconnection Agreement has been in place since 2013 and McKenzie does not collect any rate for interconnection services thereunder. McKenzie further states that it anticipates becoming subject to the Commission's jurisdiction prior to the end of 2019 and obtaining a waiver of the prior notice requirement will allow the Interconnection Agreement to be effective whenever that exemption ceases to exist.²⁶

²⁴ Because the Interconnection Agreement was executed on December 10, 2013, which was when McKenzie was exempt from the Commission's jurisdiction under FPA section 201(f) and was not required to have an OATT, the Interconnection Agreement does not conform to the Commission's *pro forma* Large Generator Interconnection Agreement.

²⁵ Interconnection Agreement Transmittal at 2.

²⁶ *Id.* at 3.

2. Supplemental Filing

18. On December 20, 2019, McKenzie filed a supplement to the Interconnection Agreement in Docket No. ER20-335-000, to include Exhibits A and D which were missing in its original filing. In addition, on January 31, 2020, McKenzie filed a request for the Commission hold its Interconnection Agreement filing in abeyance pending a Commission order on its Waiver Request. McKenzie states that it intends for the original proposed effective date of November 8, 2019 to be retained, and therefore re-filed the Interconnection Agreement without change and using 12/31/9998 in the metadata “effective date” field to enable the Commission to defer action.

II. Notice of Filing and Responsive Pleadings

19. Notice of McKenzie’s November 7, 2019 filing in Docket No. ER20-335-000 was published in the *Federal Register*, 84 Fed. Reg. 62,523 (Nov. 15, 2019), with interventions and protests due on or before November 29, 2019. Basin Electric, Roughrider Electric Cooperative, Inc. (Roughrider Electric), Slope Electric Cooperative, Inc. (Slope Electric), Upper Missouri Power Cooperative (Upper Missouri), and Mountrail-Williams Electric Cooperative (Mountrail-Williams) filed timely motions to intervene.

20. Notice of McKenzie’s December 20, 2019 filing in Docket No. ER20-335-000 was published in the *Federal Register*, 84 Fed. Reg. 72,350 (Dec.31, 2019), with interventions and protests due on or before January 10, 2020. None was filed.

21. Notice of McKenzie’s January 31, 2020 filing in Docket No. ER20-335-001 was published in the *Federal Register*, 85 Fed. Reg. 7544 (Feb. 10, 2020), with interventions and protests due on or before February 20, 2020. On February 20, 2020, Basin Electric filed a protest. On March 2, 2020 McKenzie filed an answer, and on March 12, 2020 Basin Electric filed an answer to McKenzie’s answer.

22. Notice of McKenzie’s November 7, 2019 filing in Docket No. ER20-338-000 filing was published in the *Federal Register*, 84 Fed. Reg. 62,523 (Nov. 15, 2019), with interventions and protests due on or before November 29, 2019. Basin, Roughrider Electric, Slope Electric, Upper Missouri, and Mountrail-Williams filed timely motions to intervene.

23. In its protest, Basin Electric argues that McKenzie did not provide any basis for the Commission to hold the Interconnection Agreement proceeding in abeyance. According to Basin Electric, the basis for McKenzie’s request to hold the Interconnection Agreement proceeding in abeyance is not to facilitate settlement discussions, allow completion of a stakeholder or state commission process, or to promote efficient litigation of similar issues, consistent with previous instances where the Commission has granted such requests. Basin Electric argues that regardless of McKenzie’s failure to

articulate any justification for its request to hold the Interconnection Agreement proceeding in abeyance, the Interconnection Agreement is not related to McKenzie's Waiver Request and can be independently resolved. Basin Electric requests that the Commission reject McKenzie's request.²⁷

24. In response, McKenzie responds that the Interconnection Agreement is related to the Waiver Request because the radial configuration of the interconnection service for the Lonesome Creek generating facility (i.e., the Basin Facility) constitutes McKenzie's sole jurisdictional service and is material to the Commission's analysis of the Waiver Request.²⁸

25. In its answer Basin Electric argues that McKenzie's obligation to file an OATT, establish an OASIS, or comply with the Standards of Conduct does not relieve McKenzie of its obligation to file the Interconnection Agreement with the Commission, and that there remains no reason the Interconnection Agreement cannot be accepted independently and prior to action on the Waiver Request.

III. Discussion

A. Procedural Matters

26. 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 these proceedings.

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

B. Substantive Matters

1. Waiver Requests

28. McKenzie seeks waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct. In support, McKenzie states that its transmission and distribution systems are limited and discrete, and the only jurisdictional transmission services it provides consists of a single interconnection line

²⁷ Basin Protest at 2-3.

²⁸ McKenzie Answer at 2.

from a generator owned by a separate cooperative (i.e., Basin Electric) in which McKenzie is a member.

29. As an initial matter, McKenzie correctly submitted the filing in anticipation of becoming a Commission-jurisdictional public utility. Specifically, FPA section 201(f) states that “[n]o provision in this Part shall apply to, or be deemed to include...an electric cooperative that receives financing under the Rural Electrification Act of 1936...or that sells less than 4,000,000 megawatt hours of electricity per year... .” As McKenzie states that it does not receive financing under the Rural Electrification Act of 1936 and McKenzie expected that it would sell more than 4,000,000 MWh of electricity in 2019, McKenzie no longer qualifies for exemption under section 201(f). Order Nos. 888 and 890 and section 35.28²⁹ of the Commission’s regulations require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT. Order No. 889 and Part 37³⁰ of the Commission’s regulations require public utilities to establish and maintain 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.³¹ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.³² The Commission has stated that 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 889.³³ Order No. 717 did not change those criteria.³⁴

30. The Commission may grant requests for waiver of the obligation to file an OATT 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.

²⁹ 18 C.F.R. § 35.28 (2019).

³⁰ 18 C.F.R. pt. 37.

³¹ 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; 18 C.F.R. pt. 358.

³² 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) (*Entergy*).

³³ 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).

³⁴ See Order No. 717, 125 FERC ¶ 61,064 at PP 31-33.

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.³⁵

31. The Commission has also 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.³⁶

32. The Commission has held that waiver of Order No. 889 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 public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).³⁷

33. Based on McKenzie's statements in the Waiver Request, we find that its facilities are limited and discrete and do not constitute an integrated transmission system for purposes of the waiver analysis considered in this order. The interconnection service that McKenzie provides is limited to a single generating facility, and no other generating facility shares the same infrastructure. Accordingly, we will grant McKenzie's request for waiver of the requirements set forth in Order Nos. 888 and 890 and in section 35.28 of the Commission's regulations to have an OATT on file. However, if McKenzie

³⁵ *Black Creek*, 77 FERC at 61,941.

³⁶ *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 (2011) (*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 4 million megawatt-hours annually.

³⁷ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Cent. Minn. Mun. Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997) (*Central Minnesota*); *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998) (*Easton*)).

receives a request for transmission service, it must file with the Commission a *pro forma* OATT within 60 days of the date of the request.

34. We also grant McKenzie's request for waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to the requirement to establish and maintain an OASIS and the requirements of Order Nos. 889, 2004, and 717 and Part 358 with respect to the requirement to abide by the Standards of Conduct. We note McKenzie'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 alleging that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.³⁸

35. Likewise, McKenzie's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity alleging that McKenzie has unfairly used its access to information to unfairly benefit itself or its affiliates.³⁹ Finally, McKenzie 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.⁴⁰

2. Generating Facility Interconnection Agreement

36. The Interconnection Agreement, which governs the interconnection service of Basin Electric's Facility and McKenzie system, is subject to Commission review pursuant to FPA sections 205 and 206. As discussed below, we find the Interconnection Agreement to be just and reasonable and not unduly discriminatory or preferential and therefore accept it for filing effective November 8, 2019, as requested.

37. McKenzie states that it has historically been exempt from the Commission's jurisdiction under Part II of the FPA but anticipates no longer being exempt under section 201(f) because it expects to have sales of electric energy that exceed four million MWh per year. Accordingly, it has submitted the Interconnection Agreement for filing. Order No. 2003 requires all utilities with an OATT on file with the Commission to amend their OATTs to include the *pro forma* Large Generator Interconnection Agreement (LGIA)

³⁸ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota*, 79 FERC 61,260 at 62,127; *Easton*, 83 FERC ¶ 61,334, at 62,343).

³⁹ *Id.*

⁴⁰ *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*).

and Large Generator Interconnection Procedures.⁴¹ Public utilities that do not have an OATT on file are not required to comply with Order No. 2003 because they do not have an OATT to amend.⁴² When McKenzie and Basin executed the Interconnection Agreement in 2013 McKenzie was not subject to the Commission's jurisdiction under FPA sections 205 and 206 and therefore McKenzie did not need to have an OATT on file and to comply with Order No. 2003. Accordingly, the Interconnection Agreement need not conform to the *pro forma* LGIA.

38. In addition, by acting on the Waiver Request and the Interconnection Agreement concurrently in this order, we grant McKenzie's request for the Commission to hold the Interconnection Agreement in abeyance pending action on the Waiver Request. We disagree with Basin Electric's argument that McKenzie did not provide any basis for the Commission to grant the request for abeyance and that the Interconnection Agreement is not related to McKenzie's Waiver Request. In any event, by refileing the Interconnection Agreement on January 21, 2020 using 12/31/9998 in the metadata "effective date" field of its tariff record, in addition to requesting that the Commission defer action, McKenzie itself deferred the required action date on the Interconnection Agreement.⁴³ Accordingly, we accept the Interconnection Agreement effective November 8, 2019, as requested.

⁴¹ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

⁴² *See Inland Power & Light Co.*, 107 FERC ¶ 61,054 at 61,175 (2004).

⁴³ *Federal Energy Regulatory Commission, Office of the Secretary, Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings*, at 10 (Version: Nov. 14, 2016).

The Commission orders:

(A) McKenzie's request for waiver of the 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.

(B) McKenzie's Interconnection Agreement is hereby accepted for filing, effective November 8, 2019, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.