

157 FERC ¶ 61,125  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

NorthWestern Corporation

Docket No. TS16-1-000

ORDER GRANTING REQUEST FOR CONTINUATION OF STANDARDS OF  
CONDUCT WAIVER NOTWITHSTANDING CHANGE IN FACTS

(Issued November 17, 2016)

1. On October 30, 2015, NorthWestern Corporation (NorthWestern) submitted a notice to the Commission that certain facts relevant to the Commission’s approval of its request for waiver of the Commission’s Standards of Conduct separation of functions requirement<sup>1</sup> applicable to its wholesale electric operations in South Dakota had changed (Notice), and requested continuation of its Standards of Conduct waiver notwithstanding changed circumstances. In this order, based on the facts presented, the Commission grants NorthWestern’s request for a continuation of its Standards of Conduct waiver notwithstanding its changed circumstances.

**I. Background**

2. In 1996, NorthWestern’s predecessor, Northwestern Public Service Company (Northwestern), filed a request for a waiver of the separation of functions requirement in Order No. 889.<sup>2</sup> Specifically, Northwestern requested a “waiver of the requirement to

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<sup>1</sup> The Commission’s Standards of Conduct for Transmission Providers (Standards of Conduct) are found in Part 358 of the Commission’s regulations, 18 C.F.R. Part 358 (2016). These standards are applicable both to interstate natural gas pipelines that transport natural gas and to public utilities owning, operating, or controlling facilities used for the transmission of electric energy in interstate commerce. 18 C.F.R. § 358.1 (2016). The instant case involves NorthWestern’s electric operations in South Dakota.

<sup>2</sup> See *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035, at 31,596, *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).

separate transmission personnel from wholesale marketing personnel.”<sup>3</sup> Northwestern also argued that it was a small public utility, and that it was a transmission using member of the Mid-Continent Area Power Pool (MAPP) whose entire customer load was within the Western Area Power Administration (WAPA) control area.<sup>4</sup> It also reported that it had an open access transmission tariff on file and that it planned to participate in the regional Open Access Same-Time Information System (OASIS).<sup>5</sup>

3. On November 26, 1996, the Commission granted Northwestern’s request for waiver as applicable to Northwestern’s electric operations in South Dakota.<sup>6</sup> Waiver was granted “unless and until an entity complains that a public utility has used its access to information about transmission to unfairly benefit the public utility's own or the public utility's affiliate's sales.”<sup>7</sup> After the Commission issued Order No. 2004,<sup>8</sup> a final rule prescribing Standards of Conduct for transmission providers, NorthWestern applied for a continuation of the separation of function waiver previously granted to Northwestern in 1996. The Commission affirmed continuation of this waiver for NorthWestern’s South Dakota electric operations in an order issued in 2004.<sup>9</sup>

4. On October 30, 2015, NorthWestern submitted the Notice, as required by the *Material Changes Order*,<sup>10</sup> explaining that a change in facts had occurred. NorthWestern

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<sup>3</sup> Northwestern August 1996 Waiver Request at P 4.

<sup>4</sup> *Id.* at PP 3-4.

<sup>5</sup> *Id.* at P 3.

<sup>6</sup> *Midwest Energy, et al.*, 77 FERC ¶ 61,208, at 61,853 (1996).

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

<sup>8</sup> *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 and clarification*, 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).

<sup>9</sup> *Alcoa Power Generating Inc., et al.*, 108 FERC ¶ 61,243, at P 146 (2004).

<sup>10</sup> *Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission’s Regulations*, 127 FERC ¶ 61,141 (2009) (*Material Changes Order*).

states that it does not believe this change is a material change as contemplated under the *Material Changes Order*; but it maintains that it nonetheless submitted its notice out of an abundance of caution.<sup>11</sup>

5. NorthWestern's reports that, effective October 1, 2015, it switched from being a member of MAPP to being a member of the Southwest Power Pool (SPP) as a transmission-owning member.<sup>12</sup> NorthWestern also reports that it has placed a large portion of its South Dakota transmission assets under SPP's functional control.<sup>13</sup> It further states that its transition to SPP has not impacted its status as a small public utility.<sup>14</sup> NorthWestern explains that its facilities in Montana and South Dakota are not physically connected and are not in the same electric reliability region, and that NorthWestern maintains separate open access transmission tariffs for operations in each state. NorthWestern also reports that its Notice involves only NorthWestern's South Dakota operations.<sup>15</sup>

6. NorthWestern further explains that, in South Dakota, it is a transmission owner within SPP and it has transferred functional control of a large portion of its electric transmission facilities in South Dakota to SPP. NorthWestern states that it joined SPP on October 1, 2015, along with WAPA and other previous members of MAPP's Integrated System. NorthWestern states that SPP now operates all of NorthWestern's transmission facilities (comprising 115-kV and 69-kV facilities). It adds that its remaining facilities are distribution facilities under the Commission's seven-factor test enunciated in Order No. 888.<sup>16</sup> NorthWestern states that a combination of facilities operated under SPP's tariff and NorthWestern distribution facilities are used to serve NorthWestern's bundled retail load, which was approximately 1.57 million MWh in 2014.<sup>17</sup> NorthWestern states

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<sup>11</sup> Notice at n.2.

<sup>12</sup> *Id.* at 1, 4.

<sup>13</sup> *Id.* at 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 2.

<sup>16</sup> See *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. and Transmitting Utils.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,771 (1996).

<sup>17</sup> Notice at 2-3.

that, after October 1, 2015, services previously provided by WAPA diminished considerably, and SPP became the balancing authority for NorthWestern's area.<sup>18</sup> The transmission services previously provided by MAPP are now provided by SPP, and Rainbow Energy Marketing Corporation provides the marketing services previously provided by WAPA.<sup>19</sup>

7. NorthWestern further reports that the transmission assets it turned over to SPP's functional control include most of its 115-kV transmission facilities (with the exception of two radial lines) and certain 69-kV facilities that satisfy the definition of "Transmission Facilities" under Attachment AI of the SPP Tariff. In total, NorthWestern reports it transferred 333.64 miles of 115-kV transmission facilities and 180.10 miles of 69-kV facilities for a total of 513.74 miles of transmission facilities.

8. NorthWestern states that, before joining SPP, it had 11 long-term firm point-to-point transmission customers under its South Dakota Open Access Transmission tariff (OATT). These customers took transmission service on NorthWestern's lower voltage (69-kV or below) transmission facilities that were not under WAPA's OATT to transmit power and energy obtained from WAPA. NorthWestern states it has never provided network service under its South Dakota OATT.

9. NorthWestern further states it has sought Commission approval to terminate nine of the 11 point-to-point transmission service agreements.<sup>20</sup> NorthWestern also states that four of these customers now receive service to their points of delivery under the SPP OATT and five of these customers take distribution service under a South Dakota state tariff for delivery of power from the SPP-controlled transmission system to their points of delivery.<sup>21</sup> NorthWestern additionally states that each of these customers is an end-use customer that will consume the power delivered to it.<sup>22</sup> NorthWestern adds that the lower voltage facilities used to serve these customers are radial facilities that qualify as distribution facilities under the Commission's seven-factor test.<sup>23</sup>

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<sup>18</sup> *Id.* at 4.

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

<sup>20</sup> *Id.* at 5.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

10. In conclusion, NorthWestern argues that its South Dakota electric operations continue to meet the Commission's criteria for a waiver of the Standards of Conduct separation of functions requirements and that there are no other circumstances present to indicate a waiver is not justified. Additionally, NorthWestern contends that there are not any material changes in NorthWestern's organization or operations from the conditions that justified its prior waiver.<sup>24</sup> Therefore, NorthWestern argues that continuation of its existing waiver is justified.<sup>25</sup>

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

11. Notice of NorthWestern's filing was published in the *Federal Register*, 81 Fed. Reg. 56,630 (2016), with interventions and protests due on or before September 6, 2016. None was filed.

## **III. Discussion**

12. Order Nos. 889, 2004, and 717<sup>26</sup> and Part 358 of the Commission's regulations require public utilities to abide by certain standards of conduct.<sup>27</sup> These Standards of Conduct require, among other matters, a transmission provider to have a separation of functions between employees engaged in marketing functions and employees engaged in system operations. 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.<sup>28</sup> 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

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<sup>24</sup> *Id.* at 6.

<sup>25</sup> *Id.*

<sup>26</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, *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>27</sup> 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.

<sup>28</sup> *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*).

requests for waiver under Order Nos. 888 and 889.<sup>29</sup> Order No. 717 did not change those criteria.<sup>30</sup>

13. 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 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.<sup>31</sup> 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).<sup>32</sup>

14. We find that continuation of the previously granted waiver of the Standards of Conduct requirement for a separation of functions is appropriate because NorthWestern continues to qualify as a small utility under the 4 million MWh eligibility threshold. This waiver will remain in effect unless and until the Commission takes action on a complaint by an entity that NorthWestern has unfairly used its access to information to unfairly benefit itself or an affiliate.<sup>33</sup>

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<sup>29</sup> 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).

<sup>30</sup> See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

<sup>31</sup> *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.

<sup>32</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 & n.20 (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)).

<sup>33</sup> *Id.* NorthWestern 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. See *Material Changes Order*, 127 FERC ¶ 61,141 at P 5.

The Commission orders:

NorthWestern's request for continuation of waiver of the separation of functions requirement in the Commission's 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.