

157 FERC ¶ 61,103  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

City of Rochester, Minnesota  
Board of Public Utilities

Docket No. TS15-3-000

ORDER GRANTING REQUEST FOR WAIVERS

(Issued November 17, 2016)

1. In this order, we grant a request by the City of Rochester, Minnesota's Board of Public Utilities (Rochester) for waiver of the Standards of Conduct requirements under Part 358 of the Commission's regulations,<sup>1</sup> as applicable to Rochester under the Commission's reciprocity rules, on the grounds that Rochester meets the definition of a small utility.

**I. Background**

2. On September 25, 2015, Rochester filed a request asking the Commission to grant it a waiver of the Commission's Standards of Conduct requirements on the grounds that Rochester meets the definition of a small utility.

3. Rochester describes itself as a municipal utility formed and located in the state of Minnesota, serving approximately 50,000 electric customers.<sup>2</sup> Rochester further states that, to serve the citizens of its city, Rochester owns and operates a number of generating stations (approximately 86 MW), approximately 42 miles of transmission, and approximately 793 miles of distribution.<sup>3</sup> Rochester also states that, on December 1, 2014, it transferred operational control of its transmission facilities to the Midcontinent

---

<sup>1</sup> 18 C.F.R. pt. 38 (2016).

<sup>2</sup> Rochester Waiver Request at 2.

<sup>3</sup> *Id.*

Independent System Operator, Inc. (MISO).<sup>4</sup> Rochester further states that it is a member of the Southern Minnesota Municipal Power Agency (SMMPA), a municipal joint action agency created in 1977 under Minnesota Statute chapter 453.<sup>5</sup> Rochester states that a majority of its electric load is served by SMMPA under a partial requirements contract that expires in 2030.<sup>6</sup>

4. Rochester maintains that, as a non-jurisdictional utility, it is not directly subject to the Commission's Standards of Conduct.<sup>7</sup> However, it would indirectly be subject to such standards based on the Commission's reciprocity rules, absent a waiver. Pointing to cases where the Commission clarified that non-public utilities, like Rochester, qualify for waivers on the same grounds as public utilities, Rochester argues that the Commission should grant its waiver request.<sup>8</sup>

5. Rochester argues that a waiver is warranted because it is a small utility that disposes of no more than four million MWh annually.<sup>9</sup> In this regard, Rochester adds that its annual wholesale sales remain relatively steady from year to year.<sup>10</sup> It states that, in 2014 its sales of electric energy amounted to 1,215,495 MWh and in 2013 amounted to 1,294,628 MWh.<sup>11</sup> It concludes that these sales place it well below the 4 million MWh threshold to qualify a candidate for waiver.<sup>12</sup> Additionally, Rochester adds that it no longer has operational control over its transmission facilities, as its transmission facilities

---

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

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

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

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

<sup>8</sup> *Id.* at 3 & n.12 (citing *City Util. Comm'n of Owensboro, Ky.*, 140 FERC ¶ 61,163, at P 3 (2012) and *Kansas City Bd. Of Public Utils.*, 140 FERC ¶ 61,113, at P 8 (2012)).

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

were turned over to MISO's operational control and are operated under MISO's tariff effective December 1, 2014.<sup>13</sup>

6. For all these reasons, Rochester requests that the Commission grant its request for waiver of the Standards of Conduct requirements that otherwise might be imposed under Part 358 of the Commission's Rules and Regulations and Order Nos. 717,<sup>14</sup> 888,<sup>15</sup> 889,<sup>16</sup> and 2004.<sup>17</sup>

---

<sup>13</sup> *Id.* & n.14 (citing *Midcontinent Independent System Operator, Inc.*, 149 FERC ¶ 61,282 at P 2 (2014)).

<sup>14</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g and clarification*, 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>15</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), *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).

<sup>16</sup> *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).

<sup>17</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*, 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).

## II. Notice

7. Notice of Rochester's filing was published in the *Federal Register*, 80 Fed. Reg. 63,754 (2015), with interventions and protests due on or before November 5, 2015. None was filed.

## III. Discussion

8. 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>18</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 and 889.<sup>19</sup> The Commission has stated that the criteria for waiver of the requirements of Order No. 890<sup>20</sup> and 2004 have not changed from those used to evaluate requests for waiver under Order Nos. 888 and 889.<sup>21</sup> Order No. 717 did not change those criteria.<sup>22</sup>

9. The Commission has determined that waiver of the requirement 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

---

<sup>18</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; 18 C.F.R. pt. 358.

<sup>19</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*).

<sup>20</sup> *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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>21</sup> See *Alcoa Power Generating Inc. (Long Sault Division)*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

<sup>22</sup> See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

indicate that a waiver would not be justified.<sup>23</sup> The Commission has held that waiver of the Commission's Standards of Conduct requirements will remain in effect until the Commission takes action in response to a complaint to the Commission that the public utility has unfairly used its access to transmission information to benefit the utility or its affiliate (for Standards of Conduct waivers).<sup>24</sup>

10. While Rochester is not a public utility, it must comply with the Standards of Conduct requirements under the Commission's reciprocity rules absent a waiver. It relies on the same criteria the Commission uses to justify Standards of Conduct waivers in support of its waiver request.<sup>25</sup>

11. Based on the statements in Rochester's filing, we find that Rochester meets the definition of a small public utility.<sup>26</sup> Accordingly, we will grant Rochester's request for waiver of the requirements Order Nos. 889, 2004, and 717 and Part 358 with respect to the Standards of Conduct. Rochester'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 Rochester has unfairly used its access to information to unfairly benefit itself or its affiliates.<sup>27</sup>

---

<sup>23</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 four million megawatt-hours annually.

<sup>24</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 (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)).

<sup>25</sup> *See supra* n.8.

<sup>26</sup> Our determination here does not rely on Rochester's statements with regard to turning its operations over to MISO, as it has not presented any information showing that it no longer has access to non-public information.

<sup>27</sup> Rochester 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:

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

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.