

107 FERC ¶ 61,054

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

Inland Power & Light Company	Docket No. EL04-62-000
East Texas Electric Cooperative, Inc.	Docket No. EL04-63-000
North West Rural Electric Cooperative	Docket No. EL04-64-000
Oregon Trail Electric Consumers Cooperative, Inc.	Docket No. EL04-67-000
Bridger Valley Electric Association, Inc.	Docket No. EL04-68-000
Wayne-White Counties Electric Cooperative	Docket No. EL04-69-000
	(Not Consolidated)

ORDER GRANTING AND REJECTING REQUESTS FOR WAIVER  
OF ORDER NO. 2003

(Issued April 19, 2004)

1. On January 20, 2004, Inland Power and Light Company (Inland), East Texas Electric Cooperative (East Texas), North West Rural Electric Cooperative (North West), Oregon Trail Electric Cooperative (Oregon Trail), Bridger Valley Electric Association, Inc. (Bridger Valley), and Wayne-White Counties Electric Cooperative (Wayne-White) all submitted requests for waiver of Order No. 2003's<sup>1</sup> requirement that they adopt the pro forma Large Generator Interconnection Procedures (pro forma LGIP) and Large Generator Interconnection Agreement (pro forma LGIA).

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<sup>1</sup> Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), order on reh'g, Order No. 2003-A, 106 FERC ¶ 61,220 (2004) (Order No. 2003-A), reh'g pending.

2. Order No. 2003 requires that all utilities with an open access transmission tariff (OATT) on file with the Commission must amend their OATTs to include the pro forma LGIA and LGIP.<sup>2</sup> Public utilities that do not have an OATT on file are not required to comply with Order No. 2003 since they do not have an OATT to amend. For these entities (Inland and Oregon Trail), no further waiver is required.

3. East Texas, Bridger Valley, and North West each have an OATT on file, but state that they currently have no customers taking service under their OATTs. Wayne-White does offer limited transmission services, but is a small entity with limited resources. For these small entities, waiver of Order No. 2003 is appropriate and is conditionally granted with the understanding that if a customer seeks jurisdictional interconnection service then the utility must file the pro forma LGIA and LGIP at that time. Additionally, the Commission will require that these entities remove any interconnection procedures and agreement from their currently effective OATTs within 30 days of the issuance of this order.

4. This order benefits customers because it relieves the small utilities of the financial burden to perform Interconnection Studies or manage the construction of Interconnection Facilities in the same manner as a large Transmission Provider while still ensuring customers access to interconnection service should they desire it at some time in the future.

## **I. Background**

5. In Order No. 2003, pursuant to its responsibility under sections 205 and 206 of the Federal Power Act (FPA)<sup>3</sup> to remedy undue discrimination, the Commission required all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append to their OATTs a pro forma LGIP and LGIA by January 20, 2004.<sup>4</sup>

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<sup>2</sup> Order No. 2003 at P 1.

<sup>3</sup> 16 U.S.C. §§ 824d, 824e (2000).

<sup>4</sup> See Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 at P 2 (2004) (clarifying that Commission will deem OATTs of non-independent public utilities to be revised as of January 20, 2004).

6. The Commission recognized that complying with Order No. 2003 might place an undue burden on small Transmission Providers if they were required to implement Order No. 2003 in the same manner as larger Transmission Providers. Small Transmission Providers may simply not have the staff or expertise to efficiently accommodate all interconnection requests and may indeed not receive any requests for interconnection.<sup>5</sup> Order No. 2003 stated that the Commission was aware of the array of concerns of small transmission providers, that Order Nos. 888 and 889 established guidelines for the granting of waivers to small entities and that Order No. 2003 adopts this approach.<sup>6</sup>

### **Notice of Filings and Interventions**

7. These filings were noticed on February 4, 2004 with comments, protests or interventions due on or before February 10, 2004. None were received.

## **II. Discussion**

### **A. Inland's Waiver Request Filing in Docket No. EL04-62-000 and Oregon Trail's Waiver Request Filing in Docket No. EL04-67-000**

8. Inland states that it is a cooperative corporation that owns and operates an electric distribution system in Spokane, Stevens, Whitman, Lincoln, Adams, Asotin, Columbia, Franklin, Garfield, and Walla Walla counties in the state of Washington, and in Benewah, Bonner, and Kootenai counties in the state of Idaho. Inland asserts that it owns and operates only limited and discrete transmission facilities that do not form an integrated transmission grid and that Inland's facilities are mainly low voltage and are used primarily to serve Inland's customers. Inland has previously been given waiver of the requirements of Order Nos. 888 and 889.<sup>7</sup> Inland states that since the facts supporting Inland's request for waiver of Order Nos. 888 and 889 have changed only slightly since the Commission relied on them to grant waiver in 1998, the Commission should rely on them again in granting Inland a waiver in Order No. 2003.

9. Oregon Trail states that it owns only one transmission line subject to the open access and interconnection rules described in Order Nos. 888 and 2003. That line is a 66

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<sup>5</sup> Order No. 2003 at P 830.

<sup>6</sup> Id.

<sup>7</sup> Inland Power and Light Co., 84 FERC ¶ 61,301 (1998).

mile, 138 kv line which Oregon Trail leases to Bonneville Power Administration (BPA). BPA has the exclusive right to use the line as part of its transmission grid to serve Oregon Trail and other customers. Oregon Trail does not own any generating facilities.

10. Oregon Trail states that it was granted waiver from compliance with Order No. 888 pursuant to section 35.28(d) because it had satisfied the second criterion for a waiver that it had turned control of its facilities over to someone else who complies with the Rule as an agent.<sup>8</sup> Oregon Trail states that there are no new circumstances that would cause the waiver provision of Order No. 888 not to apply in this instance. Control over Oregon Trail's limited facilities is still vested in BPA, and BPA continues to control their use.

### **Commission Determination**

11. Neither party currently has an OATT on file with the Commission. As stated in the regulatory text of Order No. 2003, public utilities not required to file an OATT are exempt from the requirement to make a filing in compliance with Order No. 2003.<sup>9</sup> Therefore, until either Inland or Oregon Trail are required to file an OATT as a result of a request for open access transmission service or for large generator interconnection service, Orders No. 2003 and 2003-A do not apply and no waiver is necessary.

#### **B. East Texas' Waiver Request Filing in Docket No. EL04-63-000; Bridger Valley's Waiver Request Filing in Docket No. EL04-68-000; North West's Waver Request Filing in Docket No. EL04-64-000; and Wayne-White's Waiver Request Filing in Docket No. EL04-69-000.**

##### **1. East Texas' Waiver Request**

12. East Texas states that it is a non-profit generation and transmission rural electric cooperative corporation. According to East Texas, it owns a transmission system integrated with the Southwestern Electric Power Company (SWEPCO) transmission system located in the Southwest Power Pool (SPP) reliability area. East Texas has an OATT on file with the Commission and is not exempt from Order No. 888. However, East Texas asserts that it is exempt from Order No. 889 because it qualifies as a small

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<sup>8</sup> See Northern States Power Company, et al., 76 FERC ¶ 61,250 at 62,296 (1996).

<sup>9</sup> See 18 CFR § 35.28(f)(1) (not yet codified).

public utility<sup>10</sup> that owns, operates, or controls limited and discrete transmission facilities.<sup>11</sup> East Texas states that it has sought to turn operational control of its facilities over to SPP, but SPP has effectively rejected the offer. East Texas states that it has offered transmission under its OATT since 1997, although it has no customers under that tariff and has never received a formal generator interconnection request.

13. As a small public utility, East Texas states that it contracts all of its staffing needs out to two of its member cooperatives: Tex-La Electric Cooperative of Texas, Inc. (Tex-La) and Sam Rayburn G&T Electric Cooperative, Inc. (SRG&T). A staff of seven individuals divides its time between East Texas, Tex-La, and SRG&T. East Texas claims that to comply with Order No. 2003, it would have to hire several more employees with unique expertise to evaluate interconnection requests. The expense of hiring these specialized employees, which would be shouldered by East Texas' members, would be significant and would offer few benefits to its customers.

## **2. Bridger Valley's Waiver Request**

14. Bridger Valley owns and operates a distribution system to serve its member-owners. Among the facilities are some higher voltage 69 kV lines (approximately 180 miles); however, these lines do not form an integrated transmission grid. Bridger Valley states that these facilities are essentially radial in nature, and primarily used for local distribution of power from purchased resources to its member-owners. Bridger Valley states that it is a small utility and has minimal Commission-jurisdictional transactions. Bridger Valley states that it has limited support staff of 25 who deal almost exclusively with the provision of distribution to its member-owners.

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<sup>10</sup> To qualify as a "small public utility," an applicant must meet the Small Business Administration's definition of a small electric utility (i.e., dispose of no more than four million MWh annually). See First Electric Cooperative Corp., 90 FERC ¶ 61,241 at 61,771 n.7 (2000); see also Black Creek Hydro, Inc., 77 FERC ¶ 61,232 at 61,941 (1996) (establishing the small public utility exemption from Order No. 889). East Texas states that its annual sales average well below the four million MWh threshold.

<sup>11</sup> See Open-Access Same-Time Information System (OASIS) and Standards of Conduct, Order No. 889, FERC Stats. & Regs., Regulations Preambles ¶ 31,035 (1996) (Order No. 889), order on reh'g, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049 (1997), order on reh'g, Order No. 889-B, 81 FERC ¶ 61,253 (1997); see also Dakota Electric Association, et al., 78 FERC ¶ 61,117 (1997).

15. Bridger Valley states that it had previously received a request for interconnection from a developer requesting interconnection of a proposed generation facility in Southwestern Wyoming to Bridger Valley in Uinta County, Wyoming. Consistent with the terms of its Order No. 888 waiver, Bridger Valley filed an OATT with the Commission.<sup>12</sup> However, the developer of the prospective generation facility has since not pursued its request for interconnection services with Bridger Valley.

16. Bridger Valley requests waiver of its obligation to comply with the requirements of Order No. 2003, as well as the requirement to include the LGIP and LGIA in its future OATT filing. Bridger Valley also states that it is prepared to provide Interconnection Service should it be requested to do so, under the provisions included in its OATT already on file with the Commission.

### **3. North West's Waiver Request**

17. North West is a distribution rural electric cooperative in northwestern Iowa. North West states that the Commission recognized that NWREC operates only limited facilities and waived the requirements of Order Nos. 888 and 889.<sup>13</sup> That waiver was subject to North West filing an OATT in the event that it received a request for transmission service on its facilities. Subsequent to the Commission order granting waiver, North West received a request from the City of Westfield to provide wheeling services. The wheeling agreement expired on January 1, 2001. North West states that it currently provides no transmission service and has no pending request for such service. North West claims that absent North West having to file an OATT because of the twelve month wheeling agreement, North West's waiver requirement of Order No. 888 would be in place and North West would not be subject to Order No. 2003.

18. North West also states that it is a small cooperatively owned system with a small number of employees and does not have the technical staff to implement the standardized large generator interconnection procedures or to accommodate all interconnection requests. Therefore, it would be a significant burden on the member-owners to comply with Order No. 2003. North West requests that the Commission waive the requirements of Order No. 2003 as it would apply to North West until such time as circumstances

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<sup>12</sup> The Commission accepted Bridger Valley's OATT for filing in a Letter Order dated November 27, 2002.

<sup>13</sup> Easton Utilities Commission, et al., 83 FERC ¶ 61,334 (1998).

change in such a manner as to affect the basis of this waiver.

#### **4. Wayne-White's Waiver Request**

19. Wayne-White is a consumer-owned transmission and distribution cooperative located in Illinois. Wayne-White is currently a full-requirements customer of Constellation Power Source, Inc., and is a network service transmission customer of Ameren Services Company (Ameren). Wayne-White has 214 miles of transmission line operating at 69 kV and these transmission lines are predominantly radial extensions 0.5 to 15 miles in length connecting Ameren's delivery points to Wayne-White distribution load centers.

20. By order dated December 17, 1999,<sup>14</sup> the Commission accepted Wayne-White's OATT and authorized Wayne-White to sell wholesale power at market-based rates. At the same time, the Commission granted Wayne-White's request for waiver of the requirements of Order Nos. 889 and 889-A. Wayne-White states that its circumstances have not materially change since it was granted the waiver.

21. Wayne-White states that implementing Order No. 2003 would be highly burdensome and that it lacks the employee resources to conduct the required studies and manage the construction of interconnection facilities and requests that the Commission waive the requirement that it adopt Order No. 2003.

#### **Commission Determination**

22. Order No. 2003 required that all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce append to their OATTs the pro forma LGIP and LGIA. However Order No. 2003 recognized that not all public utilities are likely to receive interconnection requests and the burden of complying with Order No. 2003 may outweigh the benefits to consumers. In such cases, the Commission stated that it would consider requests to waive the requirements of Order No. 2003 until such time as the public utility receives a request for interconnection service.<sup>15</sup>

23. We note that, even though East Texas, Bridger Valley and North West all currently have OATTs on file with the Commission, none of them have customers currently taking service under their OATTs. Furthermore, none of these utilities have

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<sup>14</sup> Wayne-White Counties Electric Cooperative, 89 FERC ¶ 61,282 (2000).

<sup>15</sup> Order No. 2003 at P 830-31.

current interconnection requests pending. In the cases of East Texas and North West, they have never received a request for interconnection service. While Bridger Valley did receive a single request for interconnection service in 2002, that project never went forward, and it has no pending requests on file. And while Wayne-White does currently provide transmission service under its OATT, it also has yet to receive a request for jurisdictional interconnection and faces the same resource issues as the other small utilities. Because the burden of complying with Order No. 2003 is likely to exceed any benefits, the Commission will grant the waiver requests of East Texas, Bridger Valley, North West, and Wayne-White.

24. However, should any of the parties receive a request for large generator interconnection service in the future, the Commission will require that they amend their OATTs to include the pro forma LGIA and LGIP within 30 days of receiving such a request.

25. Finally, Bridger Valley requests permission to use the interconnection procedures and agreement it currently has in its OATT to process any future interconnection requests. While the Commission is willing to waive its requirement that Bridger Valley adopt the pro forma LGIA and LGIP until it receives an interconnection request, the Commission will require that Bridger Valley process any such request under the pro forma.<sup>16</sup> In the meantime, the Commission will require Bridger Valley to remove any existing interconnection procedures or agreements from its tariff within 30 days.

The Commission orders:

(A) The requests of Inland and Oregon Trail for waiver of Order No. 2003 are denied as discussed in the body of this order.

(B) The requests of East Texas, Bridger Valley, North West, and Wayne-White are granted as discussed in the body of this order.

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<sup>16</sup> Alternatively, Bridger Valley may make a section 205 filing with the Commission asserting that its current interconnection procedures and agreement are "consistent with or superior to" the Commission's pro forma LGIA and LGIP. See Order No. 2003 at P 825.

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(C) Bridger Valley is directed to remove interconnection procedures and agreement from its currently effective OATT within 30 days.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.