

111 FERC ¶ 61,512  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Cinergy Services Inc.	Docket No. TS05-11-000
Exelon Corporation	Docket Nos. TS04-286-000 TS04-287-000
National Grid USA	Docket Nos. TS04-45-000 TS04-46-000

ORDER ON REQUESTS FOR WAIVERS FROM THE STANDARDS OF CONDUCT

(Issued June 30, 2005)

1. On November 25, 2003, the Commission issued a Final Rule Adopting Standards of Conduct for Transmission Providers (Order No. 2004 or Final Rule).<sup>1</sup> Under Order No. 2004, the Standards of Conduct govern the relationships between Transmission Providers and all of their Marketing and Energy Affiliates. Order No. 2004 states that Transmission Providers may request waivers or exemptions from all or some of the requirements of Part 358 for good cause. *See* 18 C.F.R. § 358.1(d)(2004).<sup>2</sup>

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<sup>1</sup> *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, III FERC Stats. & Regs. ¶ 31,161 (2004), 107 FERC ¶ 61,032 (2004), *order on reh'g*, Order No. 2004-B, III FERC Stats. & Regs. ¶ 31,166 (2004), 108 FERC ¶ 61,118 (2004), *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).

<sup>2</sup> *See, e.g., Bear Creek Storage Co.*, 108 FERC ¶ 61,011 (2004); *Black Marlin Pipeline Co.*, 108 FERC ¶ 61,184 (2004); and *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243 (2004).

2. Between February 9, 2004 and September 22, 2004, the above-captioned Transmission Providers filed requests for exemption, waiver and partial waiver of the Standards of Conduct. Notices of the filings were published. The Commission is granting and denying the requests for waiver and exemption, the compliance filings and the requests for rehearing, as discussed herein. This order benefits customers by applying the Standards of Conduct, as necessary, to ensure that Transmission Providers operate without undue discrimination or preference.

**Exelon Corporation (Exelon) – Docket Nos. TS04-286-000 and TS04-287-000**

**Docket No. TS04-286-000**

3. On September 22, 2004, Exelon, on behalf of its subsidiaries, PECO Energy Company (PECO) and Commonwealth Edison Company (ComEd) requested clarification relating to application of the Standards of Conduct to PECO's and ComEd's retail services. Specifically, Exelon requests clarification that PECO's and ComEd's retail electric services as Provider of Last Resort (POLR) under relevant state law do not constitute "sales" within the meaning of the Standards of Conduct, or, at a minimum, that they qualify for the exemption accorded bundled retail sales, and are not otherwise engaged in activities that would cause PECO's or ComEd's POLR Divisions that provide POLR services to be considered Energy Affiliates or Marketing Affiliates.<sup>3</sup> If the Commission declines to issue the clarification, Exelon seeks a partial waiver of any application of the definitions of Energy Affiliate and Marketing Affiliate to the POLR Divisions. As discussed below, the Commission is granting PECO the partial waiver and is directing ComEd to submit additional information.

4. PECO and ComEd are both franchised public utilities that do not own generation but have divested their generation to an affiliate, Exelon Generation Company, LLC (ExGen), which supplies the power for service to PECO and ComEd load under requirements contracts. Exelon states that PECO and ComEd treat ExGen as an Energy Affiliate. Exelon indicates that it structurally and functionally separated its competitive generation activities from its Transmission Providers.

5. Exelon also states that PECO and ComEd operate in Pennsylvania and Illinois, respectively. Exelon states that both states have enacted legislation that allows retail customers to choose an energy supplier other than their local utility. Each state also imposed certain POLR obligations on incumbent utilities.

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<sup>3</sup> At ComEd, the Energy Acquisition Division performs the POLR function and at PECO, the Electric and Gas Choice Division performs the POLR function, collectively referred to as the POLR Divisions.

6. Exelon points out that “no PECO or ComEd employee engages in any wholesale market power sales or purchases, or reserves or schedules transmission” because these services are provided by ExGen. ExGen makes the wholesale purchases and sales of power as well as reserves and/or schedules transmission. Exelon adds that the rates for ComEd and PECO POLR power supply are determined by the state commissions and cannot be discounted to compete with alternate power suppliers.

7. Exelon explains that ComEd’s Energy Acquisition Division and PECO’s Electric and Gas Choice Division (POLR Divisions) are the groups of employees that provide the POLR service. Exelon argues that the roles of POLR Divisions are primarily ministerial because ExGen does all the purchases and sales of power. According to Exelon, these employees do not compete in the market and do not compete with other suppliers who are also seeking to use transmission facilities to serve retail or wholesale customers. Finally, Exelon argues that these employees are not involved in the purchase, reservation or scheduling of transmission service.

8. In addition, Exelon states that PECO’s Energy Acquisition Division and ComEd’s Electric and Gas Choice Division exchange operational data and engage in communications necessary to ensure reliable service to POLR customers and to match generation to load. Exelon states that the POLR employees also assemble information from the Transmission Providers in its raw form, and distil it into its “aggregate” form that is then provided to ExGen, to enable ExGen to discharge its duties as a supplier. Exelon claims that providing the aggregate information in support of generation dispatch is permitted under Paragraph 158 of Order No. 2004. Finally, Exelon states that the POLR employees obtain information from third party providers as to their load forecasts, aggregate it into a single number and provide it to ExGen.

9. Exelon recognizes that the Commission previously found that the Standards of Conduct governs PECO’s relationship with its Supply Acquisition unit (that performed the POLR function) because that unit was active in the wholesale markets and made purchases of energy and capacity to service its POLR load and arranged for transmission service to deliver energy and capacity.<sup>4</sup> However, Exelon argues that it has restructured the business and the employees of the POLR function neither participate in the wholesale market nor arrange for transmission service and, therefore, the Commission should treat the employees that perform the POLR functions as if they were engaging in bundled retail service.

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<sup>4</sup> *Peco Energy Co.*, 89 FERC ¶ 61,104 (1999). *See also Allegheny Power Service Corp.*, where the Commission found that APS had not provided any compelling reasons why a power provider of last resort making purchases in the wholesale market and scheduling transmission needs a special relationship with the transmission/reliability function. 85 FERC ¶ 61,390 (1998).

10. Exelon claims that treating the POLR service employees as Marketing or Energy Affiliates would significantly increase costs because it would require the splitting of the POLR service function between generation supply, on the one hand, and transmission and distribution, on the other.

11. Exelon also states that the ComEd POLR employees (Energy Acquisition Division) also perform contract administration functions with respect to four ComEd legacy wholesale supply agreements and several purchases from qualifying facilities under the Public Utilities Regulatory Policies Act of 1978 (PURPA). Exelon argues that these wholesale agreements are “legacy” fixed rate contracts that pre-date the corporate reorganization and have not been re-assigned. Rather, Exelon chose to arrange for supply from ExGen to ComEd to serve this wholesale load on a requirements basis. With respect to the QF purchases, Exelon argues that these are mandatory purchases used to serve POLR load and off-set the amount taken from ExGen.

12. Finally, Exelon requests that the Commission confirm that the following business units do not engage in activities that results in the affected business unit being an Energy or Marketing Affiliate: (1) Customer and Marketing Services; (2) Energy Services Organization; (3) Customer Care; (4) Electric Supplier Services Department; (5) Exelon Energy Delivery Marketing; (6) Revenue Management; (7) Research; (8) Technical Services; (9) Metering and Meter Reading; (10) Billing; and (11) Energy Acquisition and Electric and Gas Choice.

**A. Public Notice, Interventions, and Protests**

13. On October 22, 2004, New York State Electric & Gas Corporation (NYSEG), Rochester Gas and Electric Corporation (RG&E), and Central Maine Power Company (CMP) filed timely motions to intervene in this proceeding.<sup>5</sup>

14. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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<sup>5</sup> NYSEG, RG&E, and CMP are wholly-owned subsidiaries of East Energy Corporation.

**B. Discussion**

15. Section 358.3(e)(2) of the Commission's regulations, 18 C.F.R. § 358.3(e)(2), provides that a public utility Transmission Provider's energy sales unit is considered a Marketing Affiliate, unless such unit engages solely in bundled retail sales. Accordingly, a Transmission Provider may share information and employees with its unit that engages solely in bundled retail sales, but not with a Marketing or Energy Affiliate. However, where a Transmission Provider is in a state that requires retail choice, the Commission stated that the retail function of the Transmission Provider will be considered a Marketing or Energy Affiliate.<sup>6</sup> In Order No. 2004-A, the Commission stated that it would not modify the definition of "marketing, sales or brokering" to allow exemptions for POLR on a generic basis.<sup>7</sup> Rather, the Commission stated that we will entertain case-by-case requests for exemption of a POLR service based on the relevant facts and circumstances.<sup>8</sup>

16. Exelon claims that the POLR service is like bundled retail sales because it is state-mandated with state-approved rates, the service for retail customers is provided on a default basis, the POLR employees do not market POLR service, the POLR employees do not engage in any competitive functions, and the POLR employees do not schedule or reserve transmission service. Therefore, Exelon urges the Commission to grant ComEd and PECO partial waivers of the Standards of Conduct requirements regarding the definition of Energy Affiliate or Marketing Affiliate as it applies to its POLR services. Based on these facts, the Commission will grant PECO a partial waiver and treat the employees engaged in POLR service functions for PECO as if they were bundled retail employees. The Commission is granting waiver because it appears that PECO has functionally separated its purchasing and sales functions (by means of ExGen) from its transmission functions. POLR employees may not serve as conduits for transmission information to ExGen employees. PECO or Exelon must inform the Commission if any of the facts described herein change.

17. However, Exelon has not adequately explained why the Commission should determine that, despite retention of the "legacy" contracts, ComEd's Energy Acquisition Division should be exempt from the definitions of Marketing or Energy Affiliate. It is unclear based on Exelon's pleading whether these "legacy" contracts are actually grandfathered contracts under Order No. 888 or are post-Order No. 888 contracts which

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<sup>6</sup> See Order No. 2004 at P 79. See also *American Electric Power Service Corp.*, 81 FERC ¶61,332 (1997).

<sup>7</sup> See Order No. 2004-A at P 127.

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

predate Exelon's restructuring. Within 30 days of the date of this order, Exelon must provide additional explanation regarding the legacy contracts and why these activities should be exempt from the definition of Marketing or Energy Affiliate.

18. With respect to Exelon's requests vis-à-vis individual divisions, the Commission provides the following guidance. Customer and Marketing Services appears to house several business units that provide non-operational services associated with POLR. Based on Exelon's description, Customer and Marketing Services is an umbrella organization that we would treat as a service company that does not engage in transmission functions or Energy Affiliate activities. As described by Exelon, some employees are treated as if they are employees of PECO and ComEd for purposes of the Standards of Conduct. Based on Exelon's description, it does not appear that the Customer and Marketing Services is a Marketing or Energy Affiliate.

19. With respect to the Energy Services Organization, Exelon states that these employees maintain direct customer contracts with large accounts of 500 kw or more. Exelon states that these employees do not compete in wholesale markets, schedule transmission or provide retail supply. However these employees respond to customer inquiries regarding billing, tariff rates, terms and conditions, and answer questions regarding the transmission and distribution system or demand-side management. Exelon claims that these employees provide the same level of service and information to all customers, regardless of whether they have chosen an alternate supplier. Exelon claims that employees of the Energy Services Organization do not have access to transmission information on the Energy Management System. However, when outages occur, ComEd and PECO transmission operations notify these employees, who in turn notify customers as to what the cause of the problem is (if known) and how long the disruption in service is expected to last. In addition, transmission function employees may provide transmission information to service representatives when a large usage customer connected to the system at transmission voltages seeks to modify its contract or interconnection. At that point, the representative may become involved in the process of establishing and maintaining the service for the customer, including the interconnection. Based on Exelon's description it does not appear that Energy Services Organization is a Marketing or Energy Affiliate.

20. Exelon claims that the Customer Care Unit consists of the "call centers" for PECO and ComEd to respond to inquires from small (less than 500 kW) customers. Exelon states that typical inquiries include questions relating to billing, service activation or deactivation, tariff terms and conditions credit requirements and power outages. Exelon states that these individuals do not compete in wholesale markets or reserve or schedule transmission. Based on Exelon's description it does not appear that the Customer Care Unit is a Marketing or Energy Affiliate.

21. Exelon claims that employees in Exelon Energy Delivery Marketing (EED Marketing) administer PECO and ComEd state-approved curtailment procedures, support economic development efforts, support sales of Renewable Energy Credits, and provide several internet-based services. Exelon claims that ExGen makes the decisions to offer economic curtailment to load. ExGen does not work directly with retail customers to interrupt load for economic reasons. Rather, EED Marketing works with retail customers based on the information it receives from ExGen. EED Marketing employees also try and attract load to the PECO territory to increase throughput on the transmission and distribution wires. EED Marketing has state authorization to negotiate, on behalf of PECO, discounts on stranded cost surcharges, but these charges apply to all customers, not just those taking POLR service. Exelon states that PECO does not discount power supply rates. Exelon states that these individuals do not compete in wholesale markets or reserve or schedule transmission. Based on Exelon's description it does not appear that the Exelon Energy Delivery Marketing is a Marketing or Energy Affiliate.

22. Exelon claims that employees in Revenue Management should not be treated as participating in Energy Affiliate functions. Exelon states that these employees manage issues pertaining to customer credit. Although Exelon states that these credit requirements pertain to new customers or customers with poor payment histories, it is unclear whether this applies to only retail customers or also applies to transmission customers. Exelon states that these individuals do not compete in wholesale markets or reserve or schedule transmission. Within 30 days of the date of this order, Exelon must provide additional explanation as to the duties and responsibilities of the employees in the Revenue Management function, including an explanation as to whether these individuals engage in activities relating to transmission customers.

23. Exelon claims that employees in Research should not be treated as participating in Energy Affiliate functions. Exelon states that these employees perform customer satisfaction research seeking to determine how customers feel about customer service, delivery service or POLR service provided by ComEd or PECO. Exelon states that these individuals do not compete in wholesale markets or reserve or schedule transmission. Based on Exelon's description, it appears that these employees perform research related to retail customer satisfaction and do not engage in transmission functions or Energy Affiliate activities.

24. Exelon claims that the Technical Services unit should not be treated as a Marketing or Energy Affiliate because it provides customer support to those who make technical inquiries about electrical consumption. Technical Service also provides fee-based consulting for customers regarding increased energy efficiency. Exelon states that these individuals do not compete in wholesale markets or reserve or schedule transmission. Based on Exelon's description, it appears that the Technical Services unit is not a Marketing or Energy Affiliate.

25. Exelon claims that the Metering and Meter Reading units should not be treated as Marketing or Energy Affiliates. These groups install and maintain meters or read meters. Exelon states that these individuals do not compete in wholesale markets or reserve or schedule transmission. Based on Exelon's description, it appears that the Metering and Meter Reading Units are not Marketing or Energy Affiliates.

26. Exelon claims that the Billing unit provides billing and accounting services related to POLR service and delivery service. Exelon states that these individuals do not compete in wholesale markets or reserve or schedule transmission. Based on Exelon's description, it appears that the Billing unit is not a Marketing or Energy Affiliate.

**Docket No. TS04-287-000**

27. On September 22, 2004, Exelon, on behalf of its utility subsidiary, PECO Energy Company (PECO), filed a request for clarification or, in the alternative, a partial waiver of the Standards of Conduct regarding the definition of Energy Affiliate as it relates to certain functional units within PECO involved in gas distribution activities. In addition to being an electric Transmission Provider, PECO is also a franchised retail gas distributor under the laws of the Commonwealth of Pennsylvania.<sup>9</sup> Specifically, PECO is requesting the Commission to clarify that only the functional unit of PECO's distribution division engaged in off-system sales, its Acquisition and Planning unit, is an Energy Affiliate. PECO requests that the Commission exempt the other functional units, which provide gas distribution-related services but do not engage in Energy Affiliate activities.<sup>10</sup>

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<sup>9</sup> PECO does not own or operate any interstate gas transmission systems.

<sup>10</sup> For example, the exempt local distribution company (LDC) functions would include: (1) the Regulation and Transportation Services Unit, which is engaged in oversight of transportation of gas for PECO retail customers receiving gas supply from third party suppliers and obtains pipeline capacity on non-affiliated Transmission Providers to serve PECO load; (2) the System Control and Plant Operations Unit, which manages and maintains the distribution system in conjunction with the Construction and Maintenance Unit; (3) the Transactions and Reporting Unit, which prepares invoices for all gas purchases; (4) the Gas Engineering Unit, which provides engineering studies and is involved in the planning and sizing of PECO's high pressure distribution mains; and (5) the Construction and Maintenance Unit, which performs inspection, maintenance and construction work.

Alternatively, Exelon requests a complete waiver of the application of the Energy Affiliate definition to the seven business units engaged in gas distribution-related activities, but are not engaged in Energy Affiliate activities.<sup>11</sup>

28. Additionally, Exelon seeks confirmation that the senior officer to whom five of seven business units report qualifies as a permissible shared senior officer.

29. One of those business units, the Acquisition and Planning Unit, is self-contained and has only six employees – one manager and five analysts. The unit is responsible for the planning and acquisition of natural gas supplies for PECO load. In addition, it oversees the daily activity related to the delivery of gas and approves pipeline nominations and/or confirmations for PECO’s retail load. One manager and one analyst from the Acquisition and Planning Unit also engage in off-system sales of gas, release unutilized pipeline capacity and enter into asset management agreements to help maximize the efficiency of PECO’s contractual assets and decrease costs to its retail customers. These individuals do not obtain any pre-approval from, or consult with, any other unit or individual at PECO with regard to those sales.

30. With respect to the shared senior officer, Exelon claims that in Order 2004-A the Commission clarified that shared senior officers cannot “participate in directing, organizing or executing transmission system operations or marketing functions.”<sup>12</sup> Exelon states that Mr. Horting, as PECO’s Vice President, does not have any day-to-day duties and/or responsibilities for planning, directing, organizing or executing the activities of the Acquisition and Planning Unit that makes off-system sales. Exelon states that Mr. Horting does not engage in any off-system sales either, meaning that he does not direct, advise, negotiate, approve or execute any of the transactions related to off-system sales. Exelon argues that Mr. Horting’s role is to oversee all of the functional units, establish policy, and undertake only periodic performance reviews of the Acquisition and Planning unit. Exelon states that Mr. Horting does sign all contracts and master agreements related to the regulated gas supply function. Exelon argues that the specific terms of the gas sales are negotiated by an analyst in the Acquisition and Planning Unit and that Mr. Horting does not review, approve or sign the confirmations for off-system sales.

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<sup>11</sup> If the Commission denies these waivers, Exelon requests an extension of time to comply with the Standards of Conduct.

<sup>12</sup> *See* 18 C.F.R. § 358.4(a)(5); Order No. 2004 at P 104; and Order No. 2004-A at P 135, 139.

**A. Public Notice, Interventions, and Protests**

31. On October 22, 2004, New York State Electric & Gas Corporation (NYSEG), Rochester Gas and Electric Corporation (RG&E), and Central Maine Power Company (CMP) filed timely motions to intervene.

32. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

**B. Discussion**

33. The Commission denies Exelon's request for a partial waiver of the Standards of Conduct regarding the definition of an Energy Affiliate in section 358.3(d), as discussed herein. With respect to PECO's Acquisition and Planning Division, this division undertakes all of the planning and acquisition of natural gas supplies for PECO load. It schedules pipeline capacity, engages in off-system sales of gas, releases unutilized pipeline capacity and enters into asset management agreements. Clearly, these are Energy Affiliate activities defined under section 358.3(d). With respect to the Regulation and Transportation Services unit, this unit, among other things, purchases firm pipeline capacity and storage necessary to fulfill PECO's obligation to serve PECO's customers and, as needed, releases capacity. The Regulation and Transportation Services unit coordinates with the Acquisition and Planning unit.

34. Based on Exelon's description, it appears that Mr. Horting has transmission responsibilities, and in addition signs all contracts and master agreements related to the regulated gas supply function. The Commission does not find Exelon's argument persuasive that he is not involved in day-to-day operations because he is not involved in the gas supply negotiations. As the Commission stated in *Ameren Services Co.*, a senior officer who executes or signs about one percent of the contracts is engaging in or directing wholesale merchant function activities.<sup>13</sup> As a result, the officer cannot be shared. Exelon may make a filing designating another individual to sign those contracts or provide additional information articulating why the Commission should permit Mr. Horting to perform transmission and gas supply functions.

35. Finally, with respect to the five functional LDC units that Exelon identifies, it appears that none is a Marketing or Energy Affiliate. According to Exelon, the Regulation and Transportation Services Unit is engaged in oversight of transportation of gas for PECO retail customers receiving gas supply from third party suppliers and obtains pipeline capacity on non-affiliated Transmission Providers to serve PECO load; the

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<sup>13</sup> See 87 FERC ¶ 61,145 at 61,600 (1999).

System Control and Plant Operations Unit manages and maintains the distribution system in conjunction with the Construction and Maintenance Unit; the Transactions and Reporting Unit prepares invoices for all gas purchases; the Gas Engineering Unit provides engineering studies and is involved in the planning and sizing of PECO's high pressure distribution mains; and the Construction and Maintenance Unit performs inspection, maintenance and construction work. Based on Exelon's description, it appears that these employees do not engage in any Marketing or Energy Affiliate activities. Although these units or divisions are not Marketing or Energy Affiliates, they are prohibited from being a conduit to share transmission or customer information with Marketing or Energy Affiliates.

**National Grid USA (National Grid) – Docket Nos. TS04-45-000 and TS04-46-000**

36. On February 9, 2004, in Docket No. TS04-46-000, National Grid filed a request for a waiver of Energy Affiliate status for its affiliate, Granite State Electric Company. National Grid states that Granite State is regulated by the New Hampshire Public Utilities Commission as a public utility and is an electric distribution company that provides distribution service in New Hampshire. National Grid states further that Granite State meets its power needs through all-requirements service supply contracts with third-party power suppliers.

37. In its February 9, 2004 information filing in Docket No. TS04-45-000, National Grid describes its restructuring efforts to comply with the Standards of Conduct:

National Grid has divested virtually all of its generating assets to unaffiliated companies; and it has also completely exited the energy marketing business. . . . the bulk of National Grid's operations relate to the ownership, operation, and control of transmission and distribution delivery assets, with limited supply procurement activity associated with the "provider of last resort" ("POLR") retail electric service in compliance with obligations under state restructuring laws and settlements. National Grid has taken steps to eliminate any residual economic or commercial interests it may have in connection with this supply procurement function and the provision of these last resort commodity services.<sup>14</sup>

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<sup>14</sup> *National Grid USA*, informational filing of National Grid USA, Docket No. TS04-45-000, at 2 (February 9, 2004).

38. On September 1, 2004, National Grid amended its waiver request in Docket No. TS04-46-000 to include a request to exempt Nantucket Electric Company (Nantucket Electric), another small electric distribution company, from Energy Affiliate status.<sup>15</sup> According to National Grid, Nantucket Electric is located on the island of Nantucket, Massachusetts and purchases transmission service from its affiliate, New England Power Company. Under state law, Granite State and Nantucket Electric are both providers of last resort (POLR), and, therefore, purchase power for resale. National Grid asserts that Nantucket Electric's power sales are subject to state supervision, and the power is sold at cost. Consequently, National Grid claims that there is no profit made from resale. National Grid states that since both Granite State and Nantucket Electric purchase transmission for their retail customers and power for their POLR customers, they do not qualify for the state- regulated LDC exemption.

39. In addition, National Grid notes that its service company employees who purchase transmission service and electric energy on behalf of customers of Granite State and Nantucket are in a division that will be treated as an Energy Affiliate. Given the functional separation of wholesale market functions, state regulation of distribution functions, and the fact that these operations take place within the markets maintained by ISO New England, National Grid requests that the Commission waive the otherwise applicable requirement that Granite State and Nantucket be considered Energy Affiliates under the Standards of Conduct.

40. In addition, National Grid explains that under state law, Granite State is required to purchase the output of qualifying facilities (QF) located in its service territory. Currently there is only one QF in Granite State's territory that makes energy sales into ISO New England. National Grid explains that in 2003, the QF's peak generation was 0.068 MW and Granite State had a non-coincident peak load of 177.428 MW. National Grid states that this generation represents 0.00038 percent of Granite State's non-coincident peak load.

41. National Grid points out that since Granite State resells the QF power in ISO-New England's real time market, Granite State accepts the prevailing market price and does not schedule or solicit bids for the QF power. From October 2002 to September 2003, National Grid claims that Granite State purchased QF power for \$5,477.04 and

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<sup>15</sup> National Grid's amended waiver request was filed jointly with its request for clarification of Order No. 2004-B in which it asked the Commission to provide for an exemption to the definition of Energy Affiliate for electric local distribution companies (LDCs). This request was denied in Order No. 2004-C. 109 FERC ¶ 61,325, P 24-25 (2004).

immediately resold the power into the ISO New England real-time market for \$20,443.02, netting \$14,965.98 in profits from the QF's power sales. National Grid argues that Granite State's QF sales are *de minimis* and requests a waiver to exclude Granite State from Energy Affiliate status.

42. National Grid states that while it has separated its transmission and distribution entities into separate companies, their operations are still integrated. National Grid argues that compliance with the Standards of Conduct would require a substantial restructuring of its Information Technology systems so that distribution employees would no longer have access to transmission information. Furthermore, National Grid argues that requiring separation of all distribution and transmission employees would be an unnecessary expense. National Grid states that those employees who purchase transmission service and electric energy are separated in compliance with the Standards of Conduct; however, National Grid requests the waiver so that other employees, such as those involved in distribution delivery functions, need not also be separated from transmission system employees and information.

**A. Public Notice, Interventions, and Protests**

43. Public Service Electric and Gas Company, PSEG Energy Resources and Trade LLC, and PSEG Power LLC filed timely motions to intervene.

44. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

**B. Discussion**

45. National Grid's request to exempt Granite State and Nantucket Electric from Energy Affiliate status is granted, as explained below. National Grid has created a wholesale energy market functional unit which is functionally separated from the other distribution functions of Granite State and Nantucket Electric and will be treated under the Standards of Conduct as an Energy Affiliate. So long as these wholesale energy market functions, including purchase and administration of transmission services and energy to serve unbundled retail load, and purchase and resale of QF power purchases, are contained in this functionally separated business unit, and National Grid ensures that Granite State and Nantucket Electric employees outside of the wholesale energy market function do not act as a conduit for transmission or customer information, we grant waiver for Granite State and Nantucket Electric.

**Cinergy Services, Inc. – Docket No. TS05-11-000**

46. On March 3, 2005, Cinergy Services, Inc. (Cinergy), on behalf of its gas and electric utility affiliates, The Cincinnati Gas & Electric Company (CG&E)<sup>16</sup> and The Union Light, Heat and Power Company (ULH&P)<sup>17</sup> (collectively, Utilities), requests that the Commission grant CG&E and ULH&P an exemption from the Standards of Conduct to the extent necessary to permit its employees who provide field customer support to their retail utility customers (Account Representatives) to manage CG&E's and ULH&P's retail electric distribution, transmission, generation, and gas and supply and delivery customer services.

47. Cinergy explains that the Utilities' Account Representatives who manage state-approved retail tariffs, customer relations and customer service issues need transmission system information in order to address retail customers' questions related to electric distribution, transmission, generation, and gas supply and delivery. Cinergy states that the Utilities' Account Representatives fall in the following four service areas: (1) Business Services, (2) Area Engineering, (3) Operations Engineering, and (4) Customer Projects.

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<sup>16</sup> Cinergy states that CG&E is a public utility in Ohio that provides natural gas supply and distribution and electric generation Provider of Last Resort (POLR), transmission and distribution services to retail customers within its service territory. Cinergy states that CG&E operates in competitive retail markets. Cinergy explains that, under Ohio's electric deregulation scheme, electric utilities offer generation service at separately stated, frozen cost-of-service based rates during a market development period, and thereafter at Ohio-approved market-based rates, serving as the POLR. Cinergy notes that CG&E also sells retail generation and distribution services at stated regulated prices. Cinergy notes further that, other than the requirement to allow customers to purchase retail electric generation from an alternative supplier, CG&E's retail electric business is identical to that of PSI Energy, Inc., its affiliate, which provides bundled retail electric service, at bundled prices, in Indiana, which has not adopted retail competition. Cinergy notes that CG&E also operates a Gas Customer Choice program that allows retail gas customers to choose an alternate supplier of natural gas. Under this program, Cinergy states that CG&E serves as the POLR for customers who choose not to switch or for customers that have switched to other competitive suppliers who then default on their supply obligations.

<sup>17</sup> Cinergy states that ULH&P is a natural gas and electric utility serving customers in Greater Cincinnati's Northern Kentucky communities, and is wholly owned by CG&E. According to Cinergy, ULH&P offers only bundled retail sales of natural gas supply and delivery, and electric distribution and transmission services.

48. According to Cinergy, the Utilities' Business Services personnel are specialists with knowledge of the Utilities' tariffs and billing practices, as well as the Utilities' and their customers' electric system operations and gas supply needs. Cinergy states that Business Services personnel (1) work with retail commercial and industrial customers to resolve billing and service issues, including retail tariff administration, power quality issues, and gas electric service expansions or modifications, (2) provide account management for assigned customers, and (3) support economic development activities by addressing power requirements of potential customers who are evaluating sites in the Utilities' retail service territories.

49. Cinergy states that the Utilities' Area Engineering personnel handle the day-to-day operations of the electric distribution system from a reliability and engineering standpoint. According to Cinergy, Area Engineering personnel (1) respond to customer inquiries on topics ranging from voltage levels, outages, electric shocks, damage claims to radio interference; and (2) prepare system switching requirements for load transfer and maintenance activities.

50. Cinergy states that the Utilities' Operations Engineering personnel include senior engineers with technical knowledge of the Utilities' electrical system and customer equipment/processes. According to Cinergy, Operations Engineering personnel (1) address customers' power quality issues and service reliability improvement options, (2) monitor and evaluate sites to identify the factors contributing to service problems, and (3) provide solutions to mitigate service problems or to improve system operations.

51. Cinergy states that the Utilities' Customer Projects personnel (1) design distribution facilities to provide service to residential, commercial, and industrial customers; (2) coordinate activities between Operations Engineering personnel, Construction and Maintenance personnel and the customers to ensure that service is provided in a timely manner; and (3) prepare and process customer agreements for aid to construction or service arrangements.

52. Cinergy explains that these Account Representatives, *i.e.*, Business Services personnel, Area Engineering personnel, Operations Engineering personnel and Customer Projects personnel, provide the same service whether they are representing one of the Utilities operating in a bundled state or a utility operating in an unbundled state. According to Cinergy, these personnel do not receive bonuses or incentives for retaining generation load. Cinergy argues that these Account Representatives do not sell power or gas in a traditional sense and do not sell wholesale power or gas at all. Cinergy argues further that the Account Representatives' relationship to the wholesale electric and gas commodity markets is remote.

53. Cinergy concludes therefore that these types of Account Representatives do not meet the definition of sales and marketing employee in section 358.3(e) of the Standards of Conduct.<sup>18</sup> Cinergy concludes further that these personnel do not engage in the competitive activities defined in the Energy Affiliate definition in section 358.3(d)(1) – (4) of the Standards of Conduct.<sup>19</sup> Should the Commission grant the requested exemption, Cinergy commits to ensure that these Account Representatives will work independently from, and not share transmission information with, Cinergy sales and marketing employees and Energy Affiliate employees.

**A. Public Notice, Interventions, and Protests**

54. There were no interventions or protests in this proceeding.

**B. Discussion**

55. Based on Cinergy's description of the duties of the Account Representatives, they do not need an exemption from the Standards of Conduct to function in their positions. As Cinergy describes these employees' functions, it appears that they are not engaging in transmission functions nor are they engaging in marketing or energy affiliate functions. Such employees, therefore, may be shared but may not be a conduit for sharing transmission or customer information with Marketing or Energy Affiliates. Cinergy must inform the Commission if there is a change in the facts on which this decision is based.

The Commission orders:

(A) The Commission grants in part and denies in part Exelon's request for partial waiver, as described in the body of this order.

(B) The Commission grants National Grid's request for exemption for Granite State and Nantucket Electric, as discussed in the body of this order.

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<sup>18</sup> See 18 C.F.R. § 358.3(e) (2004).

<sup>19</sup> See 18 C.F.R. § 358.3(d)(1) – (4) (2004).

(C) The Commission denies Cinergy's request for exemption, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.