

129 FERC ¶ 61,054  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Honeoye Storage Corporation

Docket No. TS09-5-000

ORDER GRANTING REQUEST FOR EXEMPTION

(Issued October 22, 2009)

1. On April 15, 2009, Honeoye Storage Corporation (Honeoye) filed a request for exemption from the standards of conduct under part 358 of the Commission's regulations, as amended by Order No. 717,<sup>1</sup> or, in the alternative, a blanket waiver of those regulations. As discussed below, this order grants the exemption. The alternative request for waiver is dismissed as moot.

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<sup>1</sup> 18 C.F.R. Part 358 (2009); *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008) revising the standards of conduct originally adopted in Order No. 2004. *See Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003) (Order No. 2004), *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 also 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).

## **I. Background**

2. Honeoye is a jurisdictional natural gas storage provider which operates an underground storage facility in Ontario County, New York. Honeoye has rendered individually certificated storage services under part 157 of the Commission's regulations since 1975.<sup>2</sup> In 2000, Honeoye was authorized by the Commission to provide part 284 open access storage services and to charge market-based rates for those services.<sup>3</sup> Honeoye offers both firm and interruptible part 284 open access storage service at market-based rates. Honeoye's part 284 open access storage service tariff provides that part 284 service is not available to "local distribution companies that are considered to be affiliates" of Honeoye.<sup>4</sup> Honeoye states that it provides individually certificated part 157 services to affiliated local distribution companies at cost-based rates.<sup>5</sup> Honeoye further states that these services cannot be released or assigned to other potential shippers.

## **II. Details of Filing**

3. In support of its exemption request, Honeoye states that the Commission's regulations provide that a transmission provider does not include a natural gas storage provider authorized to charge market-based rates.<sup>6</sup> Honeoye contends that it is not a "transmission provider" as defined by Order No. 717 and the regulations. Honeoye further contends that while it provides cost-based contract storage services to affiliates that may engage in marketing functions such services are provided only on an individually certificated basis under part 157 of the Commission's regulations. Honeoye asserts that, in Order No. 717, the Commission determined that part 157 service providers are not subject to the standards of conduct because they cannot discriminate in favor of an affiliate; they can only serve the specific customers authorized by their part 157

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<sup>2</sup> *Honeoye Storage Corp.*, 53 FPC 364 (1975).

<sup>3</sup> *Honeoye Storage Corp.*, 91 FERC ¶ 62,165 (2000).

<sup>4</sup> *Citing* section 1, Firm Storage Service Rate Schedule, and section 1, Interruptible Storage Service, Honeoye FERC Gas Tariff Original Volume No. 1A.

<sup>5</sup> Honeoye states that these affiliates include The Brooklyn Union Gas Company d/b/a National Grid NY, Boston Gas Company d/b/a National Grid, Consolidated Edison Co of New York, Inc., Consolidated Edison Solutions, Inc. and Energy North Natural Gas Inc. d/b/a National Grid.

<sup>6</sup> 18 C.F.R. § 358.3(k)(3) (2009).

certificates.<sup>7</sup> Honeoye requests confirmation that providing part 157 services to affiliates at cost-based rates does not cause Honeoye to lose the exemption from the standards of conduct that arises from the fact that Honeoye has been authorized to charge market-based rates for part 284 services.

4. Honeoye contends that the provision of part 157 services to affiliates at cost-based rates does not permit Honeoye to discriminate in favor of those affiliates. Honeoye asserts that to the extent that any existing part 157 services are abandoned in the future, the freed-up capacity will be used by Honeoye to provide part 284 services in markets in which the Commission has already determined that Honeoye lacks market power. Honeoye argues that the same factors that lead the Commission to conclude that storage service providers that are authorized to charge market-based rates should be exempt from the standards of conduct apply equally to Honeoye, which provides both part 284 service at market-based rates and part 157 service at cost-based rates.

### **III. Public Notice and Interventions**

5. Notice of Honeoye's filing was issued on July 8, 2009 with protests or motions to intervene due on or before July 15, 2009. Pursuant to Rule 214,<sup>8</sup> all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

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<sup>7</sup> Citing Order No. 717, FERC Stats & Regs. ¶ 31,280 at P 15 (“Pipelines operating only under Part 157 cannot discriminate in favor of an affiliate, because such pipelines can only transport for specific shippers authorized by their certificates. Put another way, in this Final Rule, we are concerned about the relationship between pipelines and their shippers where the pipelines are providing transportation service pursuant to part 284 blanket certificate authorization and open access rules, which give the pipelines the flexibility to discriminate in favor of their affiliates because they may commence and terminate service without *ex ante* review by market participants or the Commission. By contrast, the very few pipelines that are not part 284 open-access transporters must receive shipper-specific certificate authorization from the Commission, which must find the service is required by the public convenience and necessity under section 7 of the Natural Gas Act. Accordingly, part 157 transporters do not have the flexibility that could lead to discriminating unduly in favor of their affiliates”).

<sup>8</sup> 18 C.F.R. § 385.214 (2009).

#### IV. Discussion

6. For the reasons discussed below, we will grant Honeoye's request for exemption from the Transmission Provider standards of conduct requirements. The standards of conduct codified in part 358 of the Commission's regulations,<sup>9</sup> govern the relationships between Transmission Providers and their marketing affiliates. Section 358.3(k)(3) of the Commission's regulations, specifically excludes from the definition of a Transmission Provider, a natural gas storage provider authorized to charge market-based rates. 18 C.F.R. § 358.3(k)(3) (2009). Further, in Order No. 717, the Commission eliminated any reference to part 157 service in the part 358 standards of conduct leaving only interstate pipelines that transport gas for others pursuant to subparts B or G of part 284 subject to the standards of conduct and within the definition of Transmission Provider.<sup>10</sup>

7. Honeoye qualifies for exemption from the standards of conduct applicable to a Transmission Provider under the Commission's part 358 regulations because it is both a natural gas storage provider authorized to charge market-based rates, and a part 157 service provider. Therefore, Honeoye is not a Transmission Provider subject to the standards of conduct with respect to these services, and its request for exemption should be granted. Accordingly, based on the statements in Honeoye's filing, we find that Honeoye is not a Transmission Provider subject to part 358 of the Commission's regulations.<sup>11</sup>

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<sup>9</sup> 18 C.F.R. Part 358 (2009).

<sup>10</sup> In 2004, the Commission denied Honeoye's request for partial exemption from the Standards of Conduct because it had not presented sufficient justification for a partial exemption from the Standards of Conduct. *Black Marlin Pipeline Co.*, 108 FERC 61,184 (2004), *order on requests for rehearing, requests for waivers from the standards of conduct, and compliance filings*, 111 FERC 61,099 (2005).

<sup>11</sup> Honeoye must notify the Commission if there is a material change in facts that affect its qualification for exemption, within 30 days of such change. *See e.g., 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:

Honeoye's request for exemption from the standards of conduct requirements of part 358 of the Commission's regulations is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.