147 FERC ¶ 61,016
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

KPC Pipeline, LLC   Docket No. TS13-3-000

TWP Pipeline LLC   Docket No. TS14-1-000

ORDER ON REQUESTS FOR PARTIAL
WAIVERS FROM THE STANDARDS OF CONDUCT

(Issued April 7, 2014)

1. This order addresses two separate requests for a partial waiver of the Commission's Standards of Conduct requirements applicable to natural gas pipelines as set forth in Part 358 of the Commission's regulations, 18 C.F.R. Part 358 (2013). Both applicants claim that a waiver is warranted based on the applicant's small size and other factors. Based on the facts presented, we will grant one of these waiver requests, but will deny the other.

I. Background

2. The Commission first established Standards of Conduct for the natural gas industry in 1988 in Order No. 497.[1] In Order No. 2004, the Commission revised its rules to create a single set of Standards of Conduct for both the electric industry and the natural gas industry and expanded the scope of the Standards of Conduct.[2] The U.S. Court of

[1] *Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines*, Order No. 497, FERC Stats. & Regs. ¶ 30,820 (1988), *order on reh'g*, Order No. 497-A, FERC Stats. & Regs. ¶ 30,868 (1989).

[2] *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. Nat'l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006).

Appeals for the D.C. Circuit vacated Order No. 2004 as it applied to the gas industry because the Commission had not sufficiently justified expanding the scope of the Standards of Conduct. In light of this decision, the Commission revised its Standards of Conduct in Order No. 717.[3]

3. The Commission explained the parameters for waivers of the Standards of Conduct in Order No. 2004-A.[4] Although the Commission revised the Standards of Conduct in Order No. 717, the Commission did not revise the criteria for obtaining a waiver from the Standards of Conduct.

4. When considering a number of requests for waivers of Order No. 2004, the Commission articulated, in *Black Marlin Pipeline Co.*,[5] the parameters for waivers, partial waivers, or exemptions as discussed in Order No. 2004-A. Among other things, the Commission stated that it will grant exemptions only for good cause.[6] Second, the Commission will review the merits of each exemption request to determine whether a Transmission Provider qualifies for a full or partial waiver of the Standards of Conduct.[7] Third, small pipelines may qualify for a partial waiver based on the size of the company, the number of employees and level of interest in transportation on the pipeline, and, where appropriate, whether the pipeline has separated to the maximum extent practicable from its Marketing Affiliates.[8]

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[3] *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 (2009).

[4] Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161 at PP 29-32 & n.43. The criteria for natural gas pipeline waivers were carried over from Order No. 497. *See, e.g., Ringwood Gathering Co.,* 55 FERC ¶ 61,300 (1991) (granting Ringwood a partial waiver from the information sharing prohibition and the independent functioning requirement based on its small size, which included 43 miles of transmission facilities and three employees).

[5] 108 FERC ¶ 61,184, at P 2 (2004).

[6] *Id.* (citing Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161 at P 29). *See also* 18 C.F.R. § 358.1(d) (2013).

[7] 108 FERC ¶ 61,184, at P 2, citing Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161 at P 27.

[8] *Id.*, citing Order No. 2004-A at P 30.

II. Waiver Request of KPC Pipeline, LLC

A. Request for Waiver

5. On May 30, 2013, KPC Pipeline, LLC (KPC) filed a request for a partial exemption from the Commission's Standards of Conduct requirements applicable to natural gas pipelines as set forth in Part 358 of the Commission's regulations, 18 C.F.R. Part 358 (2013). Specifically, KPC requests waiver of the Standards of Conduct requirements involving the separation of functions, the information sharing prohibitions, and the no-conduit rule.[9]

6. KPC describes itself as natural gas company as defined by the Natural Gas Act that owns and operates a 1,120-mile interstate natural gas pipeline system that transports natural gas from Oklahoma and western Kansas to gas markets in metropolitan Wichita and Kansas City.[10] KPC states that it is a wholly owned subsidiary of MVP Holdings, LLC (MVP Holdings) and states that, through its various subsidiaries, MVP Holdings provides gathering, transportation, storage, distribution, marketing and other midstream services to independent oil and natural gas producers, refiners of petroleum products, and other market participants located throughout the United States.[11]

7. KPC states that it is currently not subject to the Part 358 Standards of Conduct because it does not engage in transmission transactions with affiliates that engage in marketing functions (or any other affiliate, for that matter).[12] KPC states that, in late 2007, its management decided to not to engage in such transactions to avoid the costs to comply with the Standards of Conduct. KPC adds that, since 2007, a large portion (approximately 50 percent) of the long-term firm capacity on the KPC system has become unsubscribed, and efforts to remarket that capacity to unaffiliated shippers on a long-term firm basis have been largely unsuccessful.[13] KPC states that its management is, therefore, reevaluating the potential to make sales of KPC capacity to one or more marketing affiliates, which would trigger standards of conduct compliance obligations.[14] KPC proposes to have the KPC employee that currently markets KPC's pipeline capacity

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[9] KPC Transmittal at 1 (citing 18 C.F.R. §§ 358.5, 358.6, 358.7(a) (2013)).

[10] *Id.* at 3.

[11] *Id.*

[12] *Id.* at 1. *See also* 18 C.F.R. § 358.1(a) (2013).

[13] KPC Transmittal at 1.

[14] *Id.* at 1-2.

(as a transmission function) also perform natural gas marketing functions on behalf of a new or repurposed marketing affiliate.

8. In the instant proceeding, KPC seeks approval for a waiver that would allow it to enter into transactions with its affiliates engaged in marketing functions without triggering the obligation to comply with the separation of functions and information sharing prohibitions as well as the no-conduit rule of the Standards of Conduct. KPC explains that it is making this request to reduce the costs associated with compliance with the Standards of Conduct applicable to the separation of functions, information sharing prohibitions, and no-conduit rule.[15]

9. KPC argues that good cause exists to grant the requested waivers because, like other transmission providers that have been granted similar waivers, KPC is a small company with few employees, limited resources and small operations.[16] It adds that the costs of complying with the Standards for which waiver is sought would be particularly burdensome in KPC's case due to the significant financial constraints and revenue uncertainty it is currently facing as the result of capacity turnbacks.[17] It also argues that there is very little risk of KPC acting in an unduly discriminatory manner if the requested waivers are granted, because KPC has substantial unsubscribed capacity available, which it would prefer to sell to unaffiliated shippers, if possible.[18]

10. Notice of KPC's waiver request was published in the *Federal Register*, 78 Fed. Reg. 37,217 (2013), with interventions and protests due on or before June 28, 2013. Timely motions to intervene were filed by Kansas Gas Service, Southern Star Central Gas Pipeline, Inc. (Southern Star), and ScissorTail Energy, L.L.C. Kansas Gas Service comments that it does not oppose KPC's waiver request, but suggests the waiver be approved for only a three year period and renewed thereafter, if needed. Southern Star comments that it does not oppose KPC's waiver request, but the Commission should require KPC to comply with the other provisions of the Standards of Conduct, such as the requirement to implement its tariffs in a non-discriminatory manner, and should require KPC to comply with the internet posting and training requirements in the Standards of Conduct. On September 25, 2013, KPC filed a request for expedited action stating it would comply with the provisions of the Standards of Conduct for which it is not seeking waiver and would abide by the three-year limitation sought by Kansas Gas Service, if the Commission finds this necessary.

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[15] *Id.* at 2.

[16] *Id.*

[17] *Id.*

[18] *Id.*

B. Discussion

1. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

2. Substantive Matters

12. Under section 358.1(b) of the Commission's regulations, the Standards of Conduct apply when an interstate natural gas pipeline, like KPC, conducts transmission transactions with an affiliate that engages in marketing functions. KPC currently does not engage in transmission transactions with an affiliate that engages in marketing functions and, therefore, is not currently subject to the Standards of Conduct. However, KPC contemplates entering into transmission transactions with an affiliate that engages in marketing functions, prompting its request for a partial waiver of the Standards of Conduct. KPC claims that it qualifies for a partial waiver as a small entity because it: (1) has only 26 employees; (2) owns 1,120 miles of pipeline, with a total capacity of 159,257 MMBtu/day, of which only 111,120 MMbtu/day is currently subscribed; (3) only has five shippers; and (4) the risk of discrimination is low because of the quantity of unsubscribed capacity. KPC also claims that the Commission has granted waivers to other small pipelines with greater volumes of capacity.[19]

13. As discussed above, the Commission considers a number of factors in determining whether to grant a pipeline a partial waiver of the Standards of Conduct and to determine whether there is a risk of unduly discriminatory or unduly preferential behavior. We deny KPC's request for a partial waiver of the Standards of Conduct because it has failed to show good cause for its waiver request to be granted. First, KPC has well over 1,000 miles of pipeline facilities, which is far greater than the quantity of pipeline facilities of other pipelines that have been granted partial waivers of the Standards of

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[19] KPC relies on the Commission's waivers in *Rendezvous Pipeline Co., LLC,* 120 FERC ¶ 61,131, at PP 3, 19 (2007) (a pipeline with firm service agreements of 220,000 Dth/day of capacity) and *Black Marlin Pipeline Corp.,* 108 FERC ¶ 61,184 at PP 17, 24 (granting Discovery Gas Transmission LLC a partial waiver based on a maximum capacity of approximately 600,000 Dth/day with an average throughput of approximately 282,000 Dth/day.).

Conduct. For example, the Commission has granted partial waivers of the Standards of Conduct based, in part, on pipeline sizes ranging from 6 miles[20] to 253 miles.[21]

14. Second, although KPC characterizes itself as being comparable to two other pipelines that received partial waivers, when looking overall at the factors, there are a number of differences. Specifically, Discovery is a much shorter pipeline, with only 105 miles of pipeline facilities as compared to KPC's 1,120 miles of pipeline facilities; Discovery had less than 50 percent subscribed throughput as compared to KPC's current subscribed throughput of approximately 69 percent. Discovery had no employees of its own, but shared 50 employees with non-marketing function affiliates, while KPC has 26 employees. Moreover, Discovery had indicated that it would be ending its affiliation with the entity that triggered its obligation to comply with the Standards of Conduct.[22] In contrast, KPC's stated purpose of creating a marketing affiliate and sharing employees is to be able to take advantage of marketplace opportunities by making sales for resale of natural gas using KPC's pipeline capacity. Likewise, KPC is much larger than Rendezvous Pipeline, which had 20.8 miles of pipeline facilities, no employees of its own and subscribed throughput of approximately 66 percent.[23] In considering all of KPC's circumstances, KPC does not meet the criteria for a partial waiver of the Standards of Conduct based on its size.

III. <u>Waiver Request of TWP Pipeline LLC</u>

A. <u>Request for Waiver</u>

15. On December 9, 2013, TWP Pipeline LLC (TWP) filed a request with the Commission for a partial exemption from the Commission's Standards of Conduct applicable to interstate natural gas pipelines. Specifically, TWP requests waiver of the

[20] *See, e.g.*, *Bear Creek Storage Co., LLC*, 108 FERC ¶ 61,011, at PP 36-43 (2004) (granting a partial waiver to Missouri Interstate Gas, LLC based on six miles of pipeline facilities, no full-time employees, throughput of less than 30,000 MMBtus and total revenues of less than $25,000).

[21] *See, e.g.*, *American Transmission Co., LLC*, 109 FERC ¶ 61,082, at PP 68-69 (2004) (granting a partial waiver to Venice based on 253 miles of pipeline facilities, 14 employees and more than 50 percent unsubscribed capacity.)

[22] *See Black Marlin Pipeline Co., LLC*, 108 FERC ¶ 61,184 at PP 14-25.

[23] *See Rendezvous Pipeline Co., LLC*, 120 FERC ¶ 61,131. *See also* Rendezvous Pipeline Company, LLC, Docket No. TS07-1-000, Request for Partial Exemption from the Standards of Conduct dated February 21, 2007 at 4.

Standards of Conduct requirements involving the separation of functions, prohibitions on sharing information, and the no-conduit rule.[24]

16. TWP states that it was issued a certificate of public convenience and necessity to construct, own and operate a small interstate natural gas pipeline in 2009.[25] It states that, pursuant to such authority, it constructed a new 8-mile, 6-inch pipeline, running from a new interconnection with Columbia Gas Transmission Company's (Columbia) 16-inch diameter Line No. 1711 pipeline in Boggs Township, Pennsylvania to a new grain processing plant to be constructed and owned by Bionol Clearfield, LLC (Bionol), located in Clearfield County, Pennsylvania.[26] TWP states that the project also included the installation of three mainline valves located at mileposts 0.00, 3.12 and 7.93, a metering station at the interconnection with Columbia, and a regulating station at the interconnection with Bionol. It states that the TWP facilities have a capacity of 11,200 million Btus per day (MMBtu/day).[27]

17. TWP also states that it began service on behalf of only one customer. Initially, that customer was Bionol, which had a contract for firm transportation of up to 10,000 MMBtu/day.[28] TWP states that Bionol filed for bankruptcy in 2011, and suspended operations at the ethanol plant.[29] TWP further states that, on April 20, 2012, the Bankruptcy Court authorized the sale of the plant to Pennsylvania Grain Processing, LLC (Pennsylvania Grain Processing) with the Bionol firm transportation agreement assigned to and assumed by Pennsylvania Grain Processing.[30] TWP states that

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[24] TWP Transmittal at 4.

[25] *Id.* at 1 (citing *T.W. Phillips Pipeline Corp*., 126 FERC ¶ 62,132 (2009)). TWP states that it changed its name from T.W. Phillips Pipeline Corporation to TWP Pipeline LLC in 2011. *Id.* at n.1. Additionally, effective January 3, 2014, TWP changed its name to PGPipeline, LLC (PGP). However, in this order we will continue to refer to the applicant as TWP, as its waiver request predated its latest name change.

[26] *Id.* at 1.

[27] *Id.* at 1-2.

[28] *Id.* at 2.

[29] *Id.* (citing *TWP Pipeline, LLC*, 143 FERC ¶ 61,170, at P 4 (2013) (May 24 Order)).

[30] *Id.* (citing May 24 Order, 143 FERC ¶ 61,170 at P 5).

Pennsylvania Grain Processing resumed commercial operations of the ethanol plant in July 2012, at which time TWP resumed firm transportation service to the plant.[31]

18. TWP states that, prior to the acquisition by Pennsylvania Grain Processing, TWP did not have an affiliate and thus did not engage in transmission transactions with an affiliate that engages in marketing functions as defined in 18 C.F.R. § 358.1(a), therefore, the Commission's Standards of Conduct historically have not applied to TWP's operations.[32] However, TWP states that it is now affiliated with its sole shipper, Pennsylvania Grain Processing. Consequently, TWP states that it now conducts transmission transactions with its affiliate PGP.[33]

19. TWP states that to avoid violating the Commission's regulations, Pennsylvania Grain Processing, at all times since the acquisition of TWP, conducted its business so that it would not engage in sales for resale in interstate commerce.[34] In particular, PGP, through its agent, US Energy Services, has bought natural gas on a daily basis. US Energy Services has delivered this gas to PGP at the interconnection between Columbia Gas Transmission and TWP.[35] In carefully managing its gas purchases on a daily basis, Pennsylvania Grain Processing and its agent have endeavored to only buy sufficient gas for its next day requirements. Minor variations between natural gas bought and natural gas actually used have been handled pursuant to the Operational Balancing Agreement between Columbia and TWP and have been cleared by subsequent nominations. Thus, neither Pennsylvania Grain Processing, nor its agent, has made sales for resale in interstate commerce since the acquisition was completed.[36]

20. TWP states that it is seeking a waiver so that it would be free to enter long-term gas supply contracts on more favorable terms.[37] TWP explains that, given the nature of the ethanol business, it is possible that a long-term supply contract would result in the need for Pennsylvania Grain Processing to re-sell natural gas, albeit on a sporadic basis,

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[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.* at 3.

[35] *Id.*

[36] *Id.*

[37] *Id.*

to account for fluctuations in operations, plant outages, pipeline balancing, etc.[38] Thus, in order to provide additional operational flexibility for Pennsylvania Grain Processing to enter into long-term contracts and, when necessary, re-sell natural gas when not needed for operational purposes, TWP requests a partial waiver of the Standards of Conduct.[39]

21. Specifically, TWP requests a waiver of the Standards of Conduct respecting separation of functions, information sharing prohibitions, and the no-conduit rule. TWP acknowledges that, under section 4 of the Natural Gas Act, TWP is prohibited from engaging in unduly discriminatory or preferential behavior and intends to abide by that requirement.[40]

22. TWP states that the Commission recently provided similar waivers to USG Pipeline.[41] TWP maintains that there, as here, USG Pipeline historically provided transportation service to only its affiliate and that USG Pipeline filed a new petition for waiver after it obtained a second customer, to which USG Pipeline provided Part 284 open-access transportation service.[42]

23. TWP notes that in the USG Waiver Order the Commission granted USG Pipeline a partial waiver of the Standards of Conduct "including its separation of function and no-conduit rules and the information sharing prohibitions."[43] TWP states that, in so doing, the Commission applied the prior Order No. 2004-A criteria, where the Commission "stated that it would grant waivers to small pipelines, based on the size of the company, the number of employees, the level of interest in transportation on the pipeline, and where appropriate, where the company has separated to the maximum extent practicable from its Marketing or Energy Affiliates."[44] TWP states that, in the USG Waiver Order, the Commission determined that it would continue USG Pipeline's limited exemption from the Standards of Conduct stating:

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[38] *Id.*

[39] *Id.* at 3-4.

[40] *Id.* at 4.

[41] *Id* (citing *USG Pipeline Co., LLC*, 139 FERC ¶ 61,202 (2012) (USG Waiver Order)).

[42] *Id.*

[43] *Id.*

[44] *Id.*

> USG Pipeline continues to be a small pipeline with no employees of its own and has excess capacity. Based on these facts, the operations of the pipeline and market circumstances, the Commission will not at this time require US Gypsum to separate its functions from those of USG Pipeline, nor prohibit their sharing of information.[45]

24. TWP also notes that, in the USG Waiver Order, the Commission cautioned that "if a shipper identifies any future abuses by USG Pipeline, it can file a complaint with the Commission and the issue can be reexamined at that time." TWP notes that, in that same order, the Commission "remind[ed] USG Pipeline that, under section 4 of the Natural Gas Act, USG Pipeline is prohibited from engaging in unduly discriminatory or preferential behavior."[46]

25. TWP likewise seeks a partial waiver of the Standards of Conduct.[47] TWP describes itself as a small pipeline, only 8 miles in length, with no separate employees.[48] It states it is operated by USDI, a non-affiliated full service natural gas engineering and utility services firm. TWP states that, although there are approximately 4 to 5 people in USDI that have a role in TWP's operation, it estimates that, at most, this is the functional equivalent of one full time employee.[49] Although TWP has been an open access pipeline since the issuance of its certificate in 2009, it asserts that there is currently no other shipper on the pipeline other than PGP.[50] TWP notes that, more recently, UGI has submitted a request for service on TWP, in accordance with the provisions of its tariff and TWP is working with UGI to respond to this request.[51] Thus, TWP states that, similar to USG Pipeline, it is possible that there will be one unaffiliated shipper on TWP in the future.[52]

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[45] *Id.* at 5 (citing USG Waiver Order, 139 FERC ¶ 61,202 at P 13).

[46] *Id.*

[47] *Id.* at 4.

[48] *Id.* at 5.

[49] *Id.*

[50] *Id.* at 6.

[51] *Id.*

[52] *Id.*

26. TWP further states that Pennsylvania Grain Processing is a family run agricultural business that has contracted with an affiliated company, Zeeland Farm Services, Inc. (Zeeland Farm Services), to oversee Pennsylvania Grain Processing's gas procurement.[53] It states that the Zeeland Farm Services' President handles these responsibilities, with the actual contracting, nomination and scheduling functions outsourced to US Energy Services.[54]

27. TWP states that any future sale of gas for resale in interstate commerce by Pennsylvania Grain Processing would be incidental to the need to balance its contracted gas supplies with its changing grain processing requirements, and to comply with pipeline balancing rules.[55] TWP states that, as with USG Pipeline, operating a small pipeline like TWP gives Pennsylvania Grain Processing "no inside information about the operations of upstream pipelines or pipelines located elsewhere in the country," and everything Pennsylvania Grain Processing personnel "know about upstream pipelines is based on websites and sources available to all other shippers," so that nothing learned from the operation of TWP would give Pennsylvania Grain Processing "any operating advantage when selling its excess gas."[56]

28. Notice of TWP's waiver request was published in the *Federal Register*, 79 Fed. Reg. 8960 (2014), with interventions and protests due on or before February 28, 2014. None was filed.

B. Discussion

29. Based on our evaluation of TWP's operations and the Commission's waiver criteria, the Commission will grant TWP's request for partial waiver of the Standards of Conduct. Specifically, based on the facts presented, we will, at this time, grant TWP a waiver from the separation of functions requirements in section 358.5(b) of the Commission's regulations, the information sharing prohibition requirements in section 358.7 of the Commission's regulations, and the no-conduit rule in section 358.6 of the Commission's regulations. The Commission considers that waivers of these provisions are warranted at this time because of TWP's small size, lack of staff and limited operations. TWP must comply with the remaining Standards of Conduct for which it has not received a waiver at such time as it commences transactions that would bring the Commission's Standards of Conduct requirements into play and, under section 4 of the

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[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Id.* at 7.

Natural Gas Act, it is prohibited from engaging in unduly discriminatory or preferential behavior. We also note that, if, at some future time, there is a change in the circumstances relied on by the Commission in granting this waiver, the applicant[57] must report this to the Commission within 30 days of the date of such change.[58]

The Commission orders:

(A) The Commission hereby denies KPC's request for a partial waiver of the Commission's Standards of Conduct requirements, as discussed in the body of this order.

(B) The Commission hereby grants TWP's request for a partial waiver of the Commission's Standards of Conduct requirements, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[57] *See supra* n.25.

[58] *See Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations*, 127 FERC ¶ 61,141 (2009).