

149 FERC ¶ 61,269
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Hudson Transmission Partners, L.L.C.

Docket No. TS13-4-000

ORDER GRANTING REQUEST FOR CONFIRMATION AND DISMISSING, AS
MOOT, REQUEST FOR WAIVER OF STANDARDS OF CONDUCT
REQUIREMENTS

(Issued December 22, 2014)

1. On July 12, 2013, as supplemented on October 30, 2014, Hudson Transmission Partners, LLC (Hudson Transmission) submitted a request for confirmation that the Standards of Conduct for Transmission Providers (Standards of Conduct) in Part 358 of the Commission's regulations¹ do not apply to Hudson Transmission, or, in the

¹ 18 C.F.R. pt 358 (2014); *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. and Regs., Regulations Preambles 2001-2005 ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. and Regs., Regulations Preambles 2001-2005 ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. and Regs., Regulations Preambles 2001-2005 ¶ 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*, Interim Rule, Order No. 690, 72 Fed. Reg. 2,427 (Jan. 19, 2007), FERC Stats. & Regs. ¶ 31,237 (2007) *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *Standards of Conduct for Transmission Providers*, Final Rule, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

alternative, that the Commission grant Hudson Transmission a waiver of such standards. As discussed below, we confirm that the Standards of Conduct do not apply to Hudson Transmission and we therefore dismiss its alternative request for waiver as moot.

I. Background

2. The Standards of Conduct govern the relationships between a transmission provider and its marketing affiliates, and are intended to foreclose preferential access for those affiliates to non-public transmission, customer, or market information.² The Standards of Conduct also require a transmission provider's transmission function employees to function independently from its marketing function employees.³ Any public utility that owns, operates, or controls facilities used for the transmission of electric energy and engages in transmission transactions with affiliates with marketing functions must comply with the Standards of Conduct.⁴ However, a transmission provider may request a waiver from the Standards of Conduct if it meets the criteria listed in Part 358(b) of the Commission's regulations.

3. Hudson Transmission is an independent transmission company that owns and operates an eight-mile, 660 MW merchant transmission project extending from the Bergen Substation in Ridgefield, New Jersey to the West 49th Street Substation in New York City (Hudson Transmission Project), and thereby connects PJM Interconnection, L.L.C. (PJM) and the New York Independent System Operator, Inc. The Hudson Transmission Project commenced commercial operations in June 2013.⁵

² See 18 C.F.R. § 358.2(a)-(d) (2014). "Affiliate" is defined in 18 C.F.R. § 358.3 (2014) for purposes of the Standards of Conduct.

³ 18 C.F.R. § 358.5 (2014).

⁴ 18 C.F.R. § 358.1(b) (2014).

⁵ Hudson Transmission Request at 2-3.

4. Hudson Transmission is jointly owned by five entities: Hudson Power Ventures, LLC (Hudson Power),⁶ Anbaric Hudson LLC (Anbaric Hudson),⁷ Triton Partners, LLC (Triton),⁸ EIF Hudson, LLC (EIF Hudson),⁹ and Starwood Energy Hudson Investors, L.P. (Starwood Hudson).¹⁰ Hudson Power is the sole managing member of Hudson Transmission, with active control over the day-to-day activities and management of Hudson Transmission.¹¹ The remaining four equity owners – Anbaric Hudson, Triton,

⁶ Hudson Power is owned by PowerBridge, LLC (PowerBridge), a developer of independent transmission and renewable energy projects. PowerBridge also owns Neptune Power Ventures, LLC (Neptune). According to Hudson Transmission, Hudson Power and its affiliates own no interests in any generation or transmission assets other than Neptune, operational control of which has been transferred to PJM. Hudson Transmission Request at 5.

⁷ Anbaric Hudson is a Delaware limited liability company established to develop, construct, and own independent transmission projects. The majority owner of Anbaric Hudson also owns a passive minority interest holder in Neptune. According to Hudson Transmission, Anbaric Hudson and its affiliates own no interests in any other generation or transmission assets. Hudson Transmission Request at 5-6.

⁸ Triton is a Maine limited liability company. Several owners of Triton also own a passive minority interest in Neptune. According to Hudson Transmission, Triton and its affiliates own no interests in any other generation or transmission assets other than a minority passive investor interest in Neptune. Hudson Transmission Request at 6.

⁹ EIF Hudson is a subsidiary of the Energy Investors Funds (EIF). EIF is a private equity fund manager dedicated exclusively to the independent power and electric utility industry. EIF owns a passive equity interest in Hudson Transmission through its investment fund, United Stated Power Fund II, L.P., which EIF exclusively controls. According to Hudson Transmission, neither EIF Hudson nor any of its affiliates is affiliated with any customer, user, or holder of transmission rights on the Hudson Transmission Project. Hudson Transmission Request at 7.

¹⁰ Starwood Hudson is an affiliate of Starwood Energy Group Global, LLC, which is a private equity fund focusing on energy infrastructure investment, including acquiring and holding interests in power generation and transmission projects. Neither Starwood Hudson nor any of its affiliates is affiliated with any customer, user, or holder of transmission rights on the Hudson Transmission Project. Hudson Transmission Request at 6.

¹¹ Hudson Transmission Request at 4.

EIF Hudson, and Starwood Hudson – have passive ownership interests in Hudson Transmission. According to Hudson Transmission, the passive ownership interests do not confer control or involve the exercise of voting interests, except for the limited consultation, consent, and veto rights essential to the preservation of their respective financial interests.¹²

5. Hudson Transmission entered into a Firm Transmission Capacity Purchase Agreement with the New York Power Authority (NYPA), pursuant to which NYPA will purchase 75 percent of the capacity on the Hudson Transmission Project.¹³ Consolidated Edison Energy (CEE) will purchase the remaining 25 percent of the capacity on the project, as Hudson Transmission and CEE have entered into an Anchor Tenant Agreement for 15 percent of the project's capacity and CEE was awarded the final 10 percent of capacity through an open season process.¹⁴

6. Hudson Transmission states that it has transferred operational control over its facilities to PJM, and that transmission service over the Hudson Transmission Project is provided by PJM pursuant to Schedule 17 of the PJM Open Access Transmission Tariff (PJM Tariff). According to Hudson Transmission, it is not a participant in any PJM energy markets, as either a buyer or a seller, and has not pursued Commission authorization to make wholesale sales of power. Hudson Transmission asserts that it does not engage in any other business activities and does not have any power sales or marketing functions.¹⁵

II. Hudson Transmission's Request

7. Hudson Transmission requests confirmation that the Standards of Conduct do not apply to Hudson Transmission. Since 100 percent of the capacity on the Hudson Transmission Project has been allocated to NYPA and CEE, neither of which is an affiliate of Hudson Transmission or of any owner, managing or passive, of interests in

¹² *Id.* at 4-5.

¹³ *Id.* at 3. *See generally Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104 (2011) (granting Hudson Transmission's application to sell transmission scheduling rights on the Hudson Transmission Project at negotiated rates and Hudson Transmission's request to sell up to 90 percent of the Hudson Transmission Project's capacity to anchor customers). *Id.*

¹⁴ Hudson Transmission Request at 3.

¹⁵ *Id.* at 3-4.

Hudson Transmission, Hudson Transmission asserts that it does not engage in transmission transactions with affiliates.¹⁶ Hudson Transmission therefore requests that the Commission issue an order confirming that it is not currently subject to the Standards of Conduct.¹⁷

8. In the alternative, Hudson Transmission requests that the Commission find that it meets the requirements for waiver under section 358.1(c) of the Commission's regulations.¹⁸ Hudson Transmission notes that, under this provision, a public utility transmission owner may obtain a waiver from the Standards of Conduct if it: (1) participates in a Commission-approved Regional Transmission Organization (RTO); (2) does not operate or control its transmission system; and (3) lacks access to transmission function information.¹⁹

9. Hudson Transmission asserts that it has transferred operational control of the Hudson Transmission Project to PJM, an RTO, and that the Commission has accepted this transfer.²⁰ Moreover, Hudson Transmission contends that all transmission service on the Hudson Transmission Project is provided under the terms and conditions in Schedule 17 of the PJM Tariff. Thus, according to Hudson Transmission, it does not operate or control its transmission system.²¹

10. Hudson Transmission also contends that it does not have access to confidential transmission function information. Hudson Transmission explains that any capacity that is released by NYPA or CEE will be posted on PJM's Open Access Same-Time Information System, and this released capacity will be available for other transmission customers to take service from PJM pursuant to the terms of the PJM Tariff.²²

¹⁶ *Id.* at 7. Hudson Transmission submitted the sworn affidavit of Jeff Wood, Senior Vice President of Hudson Power, attesting that Hudson Transmission has not conducted any transmission transactions with any of its affiliates, or any owners of its affiliates. Hudson Transmission Supplement at Attachment.

¹⁷ *Id.* at 7-8.

¹⁸ *Id.* at 8 (citing 18 C.F.R. § 358.1(c) (2014)).

¹⁹ *Id.* at 8.

²⁰ *Id.* at 4; Hudson Transmission Supplement at 2.

²¹ Hudson Transmission Request at 4.

²² Hudson Transmission Request at 8; Hudson Transmission Supplement at 3.

Accordingly, Hudson Transmission claims that it does not have exclusive access to information regarding the Hudson Transmission Project's transmission capacity.²³

11. Finally, Hudson Transmission contends that good cause exists to grant the requested waiver.²⁴ Hudson Transmission notes that the purpose of the Standards of Conduct is to ensure that transmission providers do not grant undue preference to their own power marketing or sales functions, or to affiliates that engage in marketing functions. Hudson Transmission asserts that no regulatory purpose would be served by subjecting Hudson Transmission to the Standards of Conduct since Hudson Transmission does not have a marketing affiliate or any internal power marketing or sales function.²⁵

III. Interventions and Protests

12. Notice of Hudson Transmission's July 12, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 49,748 (2013), with interventions and protests due on or before August 23, 2013, and notice of Hudson Transmission's supplemental October 29, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 65,934 (2014), with interventions and protests due on or before November 19, 2014. None were filed.

IV. Discussion

13. Under section 358.1(b) of the Commission's regulations, the Standards of Conduct apply to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce and conducts transmission transactions with an affiliate that engages in marketing functions. Hudson Transmission represents that although it is a public utility that owns an interstate transmission facility, it does not conduct transmission transactions with an affiliate. Therefore, we find that the Standards of Conduct do not apply to Hudson Transmission. Because we find that the Standards of Conduct do not apply to Hudson Transmission, we will dismiss its request for waiver as moot.

²³ Hudson Transmission Request at 8-9.

²⁴ *Id.* at 9. A transmission provider may also file a request for waiver of all or parts of the Standards of Conduct for good cause. 18 C.F.R. § 358.1(d) (2014).

²⁵ *Id.* at 10.

14. If any of the facts or circumstances pertinent to the Commission's above findings materially change, Hudson Transmission must inform the Commission within 30 days of such a change.²⁶

The Commission orders:

(A) Hudson Transmission's request for confirmation that the Standards of Conduct in Part 358 do not apply to Hudson Transmission is hereby granted, as discussed in the body of this order.

(B) Hudson Transmission's request for waiver of the Commission's Standards of Conduct requirements is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁶ See e.g., 18 C.F.R. § 358.8(a).