

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Neptune Regional Transmission System, L.L.C.

Docket No. TS07-5-000

ORDER GRANTING EXEMPTION FROM  
STANDARDS OF CONDUCT

(Issued July 26, 2007)

1. By this order, we exempt Neptune Regional Transmission System, L.L.C. (Neptune) from the standards of conduct in Part 358 of our regulations.<sup>1</sup>

**I. Background**

2. The standards of conduct in Part 358 govern the relationships between a Transmission Provider and the Transmission Provider's Marketing Affiliates as defined in Part 358.<sup>2</sup> The standards of conduct are intended to foreclose affiliates' preferential access to non-public transmission, customer or market information. Under section 358.1(c), a Transmission Provider may be exempted from the standards of conduct if the Transmission Provider:

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<sup>1</sup> 18 C.F.R. Part 358 (2007); *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 Statutes and Regulations, Regulations Preambles 2001-2005 ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Statutes and Regulations, Regulations Preambles 2001-2005 ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Statutes and Regulations, 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, 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), Notice of Proposed Rulemaking, 72 Fed. Reg. 3,958 (Jan. 29, 2007), FERC Stats. & Regs. ¶ 32,611 (2007).

<sup>2</sup> *See* 18 C.F.R. §§ 358.1-4.

- (1) is a public-utility transmission owner;
- (2) participates in a Commission-approved independent system operator (ISO) or regional transmission organization (RTO);
- (3) does not operate or control transmission facilities; and
- (4) has no access to non-public transmission, customer or market information that is not contemporaneously available to the public.<sup>3</sup>

In addition, under section 358.1(d), a Transmission Provider may be exempted from the standards of conduct for good cause.<sup>4</sup>

## **II. Neptune's Request**

3. On May 10, 2007, Neptune requested an exemption from the standards of conduct in Part 358. Neptune owns a 65-mile electrical transmission line that runs between New Jersey and Long Island (Neptune Line). The Neptune Line crosses the boundary between the service territory of PJM Interconnection, L.L.C. (PJM) and the service territory of the New York Independent System Operator (NYISO). Neptune developed the line as a merchant transmission owner and has sold all of the capacity of the line to Long Island Lighting Company d/b/a/ LIPA (LIPA) under a twenty-year contract. Neptune participates in PJM, which is a Commission-approved RTO, and has transferred operational control of the Neptune Line to PJM.<sup>5</sup> Other than the Neptune Line, Neptune does not own, operate or control transmission facilities. Neptune does not engage in the marketing or sale of electricity.

4. Neptune is owned by four entities that are not public utilities and are not owned by public utilities: Neptune Power Ventures, L.L.C. (NP Ventures), Atlantic Energy Partners, LLC, EIF Neptune, and Starwood Energy Investors L.L.C.<sup>6</sup> Other subsidiaries of NP Ventures will own transmission facilities upon the completion of ongoing

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<sup>3</sup> See 18 C.F.R. §§ 358.1(c) and 358.5(b).

<sup>4</sup> See 18 C.F.R. § 358.1(d).

<sup>5</sup> See *PJM Interconnection, L.L.C.*, Docket No. ER07-662 (letter order dated May 3, 2007) and *Neptune Regional Transmission System, L.L.C.*, 96 FERC ¶ 61,147 (2001).

<sup>6</sup> See *Neptune Regional Transmission System, L.L.C.*, 111 FERC ¶ 61,306 at P 25 (2005).

transmission projects. Neptune has no affiliates that engage in the marketing or sale of electricity.

5. Neptune asserts two grounds for an exemption from the standards of conduct. First, according to Neptune, Neptune meets the criteria for an exemption under section 358.1(c). Neptune asserts that Neptune: (1) is a public utility transmission owner; (2) is a participant in a Commission-approved RTO; (3) has transferred operational control over its transmission facilities to PJM; and (4) has no access to transmission, customer or market information that is not contemporaneously available to the public. Specifically with respect to Neptune's access to information, Neptune states that Neptune will learn about available capacity on the Neptune Line only through postings on PJM's OASIS.

6. Second, according to Neptune, there is good cause under section 358.1(d), for granting the exemption. Neptune reasons that the standards of conduct are designed to govern relationships between entities that engage in a transmission function and their affiliates that engage in power sales functions. Neptune states that it has no affiliate that engages in a power sales function and that Neptune itself does not engage in a power sales function, such that it is unnecessary to apply the standards of conduct to Neptune. With regard to Neptune's transmission-owning affiliates, Neptune notes that, under section 358.3(d)(5)(ii), transmission-owning affiliates are excluded from the definition of "Energy Affiliate" such that there is no regulatory basis for imposing standards of conduct on Neptune's relationships with those affiliates.

7. Neptune asserts additional good cause for an exemption because, according to Neptune, it has no opportunity or incentive to provide a preferential benefit to any entity. Neptune notes that the Neptune Line operates only as part of a large, interconnected system and that Neptune has transferred rights to the capacity of that line to a non-affiliated entity.

8. Finally, Neptune asserts good cause for exemption based on the fact that Neptune is a small entity whose facilities operate only as part of a large, interconnected system. According to Neptune, the Commission exempts such entities from the standards of conduct in Order No. 889<sup>7</sup> and has followed a similar practice in implementing Part 358.<sup>8</sup>

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<sup>7</sup> Order No. 889 governs the relationships between a utility's transmission function and the utility's wholesale power sales function and, like Part 358, is designed to foreclose preferential access to information. *See Open Access Same-Time Information System (Formerly Real-Time Information Networks) and Standards of Conduct*, Order No. 889, 61 Fed. Reg. 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049 (1997), *order on reh'g*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

<sup>8</sup> *See Neptune Request for Exemption from Standards of Conduct* at 12-13

9. Neptune requests that its proposed exemption take effect on June 22, 2007 to accommodate the commencement of commercial operation of the Neptune Line on July 1, 2007.

### **III. Interventions and Protests**

10. Notice of Neptune's request for exemption was published in the Federal Register on May 24, 2007.<sup>9</sup> Interventions, comments and protests were due on or before June 11, 2007. No motions to intervene, comments or protests were filed.

### **III. Discussion**

11. We grant the requested exemption. Neptune meets the requirements for exemption under section 358.1(c). Neptune is a public utility transmission owner; is a participant in a Commission-approved RTO; has transferred operational control over its transmission facilities to PJM; and has no access to transmission, customer or market information that is not contemporaneously available to the public.<sup>10</sup> In the event of a change in circumstances that would affect Neptune's continued qualification for an exemption, Neptune must report the change to the Commission.

#### The Commission orders:

Neptune's request for exemption from the standards of conduct in Part 358 is hereby granted effective July 1, 2007.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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(May 10, 2007) (citing *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 at 61,943-44 (1996) and *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243 at P 28 (2004)).

<sup>9</sup> 72 Fed. Reg. 29,147 (May 24, 2007).

<sup>10</sup> See *American Transmission Company LLC*, 109 FERC ¶ 61,082 at P 38 (2004) (granting Old Dominion Electric Cooperative's request for exemption from Part 358 because Old Dominion had demonstrated that it participates in a Commission-recognized RTO, does not operate or control its transmission facilities, and lacks access to transmission or market information covered by section 358.5(b)).