

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Standards of Conduct for Transmission
Providers

Docket No. RM01-10-005

ORDER NO. 2004-D

ORDER ON REQUEST FOR CLARIFICATION OR REHEARING

(Issued March 23, 2005)

1. On January 21, 2005, Algonquin Gas Transmission, LLC, East Tennessee Natural Gas, LLC, Egan Hub Storage, LLC, Gulfstream Natural Gas System, L.L.C., Maritimes & Northeast Pipeline, L.L.C., and Texas Eastern Transmission, LP (collectively, Duke Pipelines) filed a request for clarification or rehearing of Order No. 2004-C.¹ Specifically, Duke Pipelines challenge the Commission's determination in Order No. 2004-C that Canadian local distribution companies (LDCs) that are regulated by their provincial governments may qualify for exemption from Energy Affiliate status under section 358.3(d)(6)(v) of the Standards of Conduct regulations² only if the Canadian LDCs do not participate in the U.S. commodity and transmission markets.³ In this order, the Commission grants rehearing and clarifies that Canadian LDCs may qualify for exemption from Energy Affiliate status under section 358.3(d)(6)(v) to the same extent as state-regulated LDCs. This order benefits customers because it permits provincially-regulated Canadian LDCs to operate in the same manner as state-regulated LDCs while ensuring there is no undue preference or services.

¹ *Standards of Conduct for Transmission Providers*, III FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003) (Order No. 2004), *reh'g*, III FERC Stats. & Regs., Regulations Preambles ¶ 31,161 (2004) (Order No. 2004-A), *reh'g*, 108 FERC ¶ 61,118 (2004) (Order No. 2004-B), *reh'g*, 109 FERC ¶ 61,325 (2004) (Order No. 2004-C).

² See 18 C.F.R. § 358.3(d)(6)(v) (2004).

³ See Order No. 2004-C, 109 FERC ¶ 61,325 at P 16.

Background

2. On November 25, 2003, the Commission issued a final rule adopting *Standards of Conduct for Transmission Providers* (Order No. 2004 or Final Rule)⁴ which added Part 358 and revised Parts 37 and 161 of the Commission's regulations. The Commission adopted Standards of Conduct that apply uniformly to interstate natural gas pipelines and public utilities (jointly referred to as Transmission Providers) that were subject to the former gas Standards of Conduct in Part 161 of the Commission's regulations or the former electric Standards of Conduct in Part 37 of the Commission's regulations.⁵ Under Order No. 2004, the Standards of Conduct govern the relationships between Transmission Providers and all of their Marketing and Energy Affiliates. On April 16, 2004, the Commission affirmed the legal and policy conclusions on which Order No. 2004 was based, granted and denied rehearing and offered clarification in Order No. 2004-A.⁶ On August 2, 2004 and December 21, 2004, the Commission issued Order Nos. 2004-B and 2004-C, respectively, in which it addressed intervenors' requests for rehearing and clarification.⁷

3. In Order No. 2004-C, the Commission addressed Duke Pipelines' request for clarification that Canadian LDCs regulated at the provincial level and not engaged in off-system sales may qualify for exemption from Energy Affiliate status under section 358.3(d)(6)(v). The Commission granted Duke Pipelines' request for clarification, stating that it will treat LDCs that are regulated by Canadian provincial authorities as if they are state-regulated.⁸ If provincially-regulated Canadian LDCs meet the requirements of section 358.3(d)(6)(v), the Commission stated that they will not be treated as Energy Affiliates as long as they do not participate in the U.S. commodity and transmission markets.⁹

4. Duke Pipelines argue that a literal reading of the Commission's clarification in Order No. 2004-C would prohibit a Canadian LDC from obtaining the state-regulated LDC exemption if it purchases gas and transmission in the United States in order to serve its on-system distribution customers, even though such activities are permitted

⁴ *Supra* note 1.

⁵ The gas Standards of Conduct were codified at part 161 of the Commission's regulations. *See* 18 C.F.R. Part 161 (2003). The electric Standards of Conduct were codified at part 37 of the Commission's regulations. *See* 18 C.F.R. Part 37 (2003).

⁶ *Supra* note 1.

⁷ *Id.*

⁸ *See* Order No. 2004-C, 109 FERC ¶ 61,325 at P 16.

⁹ *Id.*

for state-regulated LDCs under section 358.3(d)(6)(v) of the Standards of Conduct regulations. Duke Pipelines request, therefore, that the Commission clarify that Canadian LDCs will not be treated as exempt only if they participate in the U.S. commodity and transmission markets in any manner other than as permitted under section 358.3(d)(6)(v). In the alternative, if the Commission does not grant this clarification, Duke Pipelines request rehearing.

5. Duke Pipelines argue that there is no reason why regulated foreign distribution companies that do not engage in Energy Affiliate activities, except to the extent needed to support on-system sales, should be treated differently from their state-regulated counterparts in the United States. According to Duke Pipelines, the same logic that supports exempting state-regulated LDCs under section 358.3(d)(6)(v) should apply to provincially-regulated Canadian LDCs engaged in United States markets. Duke Pipelines argue that a decision to allow Canadian LDCs to qualify for the section 358.3(d)(6)(v) exemption only if they do not engage in U.S. transmission or commodity markets renders the exemption meaningless for Canadian LDCs. Duke Pipelines point out that a Canadian LDC that is not engaged in United States markets is already exempt as a foreign affiliate under section 358.3(d)(6)(i), and therefore needs no exemption under section 358.3(d)(6)(v).

Commission Decision

6. Section 358.3(d)(6)(v) provides that an Energy Affiliate does not include a state-regulated local distribution company that acquires interstate transmission capacity to purchase and resell gas only for on-system customers, and otherwise does not engage in the activities described in sections 358.3(d)(1), (2), (3) or (4), except to the limited extent necessary to support on-system customer sales and to engage in de minimis sales necessary to remain in balance under applicable pipeline tariff requirements.¹⁰

7. The Commission clarifies that, to the extent provincially-regulated Canadian LDCs engage in sales for resale to support on-system customer sales, they may do so in U.S. commodity and transmission markets and qualify for exemption from Energy Affiliate status under section 358.3(d)(6)(v), just as similarly-situated state-regulated LDCs do. The Commission cautions, however, that the LDC exemption from Energy Affiliate status under section 358.3(d)(6)(v) is not intended to allow either state-regulated LDCs or provincially-regulated Canadian LDCs an opportunity to engage in

¹⁰ See 18 C.F.R. § 358.3(d)(6)(v) (2004). Section 358.3(d)(6)(i) provides that an Energy Affiliate does not include a foreign affiliate that does not participate in United States energy markets. See 18 C.F.R. § 358.3(d)(6)(i) (2004).

unduly preferential or discriminatory sales that would otherwise be prohibited under the Standards of Conduct regulations.

The Commission orders:

Duke Pipelines' request for clarification and rehearing is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.