

111 FERC ¶ 61,099  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Algonquin Gas Transmission, L.L.C.	Docket No. TS04-107-001
Dauphin Island Gathering Partners	Docket No. TS04-242-002
East Tennessee Natural Gas, L.L.C.	Docket No. TS04-106-001
Egan Hub Storage, L.L.C.	Docket No. TS04-105-001
Florida Power & Light Company	Docket No. TS05-001-000
Guardian Pipeline Company	Docket No. TS04-207-001
Gulfstream Natural Gas System, L.L.C.	Docket No. TS04-161-001
Honeoye Storage Corporation	Docket No. TS04-257-001
Kinder Morgan Pipelines	Docket Nos. TS04-249-001 TS04-271-001 TS04-272-001
Maritimes & Northeast Pipeline, L.L.C.	Docket No. TS04-159-001
MidWestern Gas Transmission Company	Docket No. TS04-209-001
Missouri Interstate Gas, LLC	Docket No. TS04-259-001
NewCorp Resources Electric Cooperative, Inc.	Docket No. TS04-62-000
Northern Border Pipeline Company	Docket No. TS04-208-001
Texas Eastern Transmission, L.P.	Docket No. TS04-154-001
Texas Gas Transmission, L.L.C.	Docket No. TS04-253-001
Total Peaking Services	Docket No. TS04-97-001
Union Gas Limited	Docket No. TS04-279-000
Viking Gas Transmission Company	Docket No. TS04-212-001

ORDER ON REQUESTS FOR REHEARING, REQUESTS FOR WAIVERS FROM  
THE STANDARDS OF CONDUCT, AND COMPLIANCE FILINGS

(Issued April 19, 2005)

1. On November 25, 2003, the Commission issued a Final Rule adopting Standards of Conduct for Transmission Providers (Order No. 2004 or Final Rule).<sup>1</sup> Under Order No. 2004, the Standards of Conduct govern the relationships between Transmission Providers and all of their Marketing and Energy Affiliates. Order No. 2004 states that Transmission Providers may request waivers or exemptions from all or some of the requirements of Part 358 for good cause. *See* 18 C.F.R. § 358.1(d)(2004).<sup>2</sup>

2. Between February 9, 2004 and October 1, 2004, the above-captioned Transmission Providers filed requests for exemption, waiver and partial waiver. Notices of the filings were published. In addition, one Transmission Provider made a compliance filing in response to the Commission's previous order on its respective request for waiver, one filed a request for rehearing, and a state agency requested rehearing of another order. The Commission is granting and denying the requests for waiver and exemption, the compliance filings and the requests for rehearing, as discussed herein. This order benefits customers by applying the Standards of Conduct, as necessary, to ensure that Transmission Providers operate without undue discrimination or preference.

**Algonquin Gas Transmission, L.L.C. (Algonquin), East Tennessee Natural Gas, L.L.C. (East Tennessee), Egan Hub Storage, L.L.C. (Egan Hub), Gulfstream Natural Gas System, L.L.C. (Gulfstream), Maritimes & Northeast Pipeline, L.L.C. (Maritimes), Texas Eastern Transmission, L.P. (Texas Eastern), (collectively referred to as the Duke Pipelines) and Union Gas Limited– Docket Nos. TS04-279-000, TS04-105-001, TS04-106-001, TS04-107-001, TS04-154-001, TS04-159-001, TS04-161-001**

**Request for Clarification and/or Exemption - Docket No. TS04-279-000**

3. On August 20, 2004, in Docket No. TS04-279-000, the Duke Pipelines filed a request for clarification regarding Union Gas' status as an Energy Affiliate, or in the alternative, a request for exemption of the Standards of Conduct. The Duke Pipelines

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<sup>1</sup> *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, III FERC Stats. & Regs. ¶ 31,161 (2004), 107 FERC ¶ 61,032 (2004), *order on reh'g*, Order No. 2004-B, III FERC Stats. & Regs. ¶ 31,166 (2004), 108 FERC ¶ 61,118 (2004), *order on reh'g*, Order No. 2004-C, 109 FERC ¶ 61,325 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005).

<sup>2</sup> *See, e.g., Bear Creek Storage Co.*, 108 FERC ¶ 61,011 (2004); *Black Marlin Pipeline Co.*, 108 FERC ¶ 61,184 (2004); and *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243 (2004).

seek clarification that Union Gas is not an Energy Affiliate because Union Gas is a provincially-regulated local distribution company.

4. Duke Energy Corporation holds ownership interests in several interstate natural gas pipeline companies. Algonquin owns and operates a natural gas pipeline system extending from New Jersey through Massachusetts. East Tennessee owns and operates a natural gas pipeline system through the states of Tennessee and Virginia. Egan Hub provides storage service subject to Commission jurisdiction in Louisiana. Texas Eastern is a natural gas transmission company with facilities extending from Texas through New York. Gulfstream transports natural gas from Alabama and Mississippi across the Gulf of Mexico to Florida. Maritimes transports natural gas from Nova Scotia, across the Canadian-United States border, through Maine, New Hampshire, and Massachusetts. Union Gas owns and operates approximately 25,100 miles of pipeline in the Province of Ontario, Canada and a gas storage facility in Dawn, Ontario.

5. Union Gas states that it provides natural gas sales and related services to residential, commercial and industrial customers in Ontario and it provides natural gas storage and transportation services for other utilities and energy market participants in Ontario. Union Gas states that it is a Canadian distribution utility under the jurisdiction of the Ontario Energy Board (OEB), a regulatory agency of the Ontario Government responsible for regulating natural gas and electric utilities in the Province of Ontario. The OEB regulates natural gas and electric utilities in Canada and approves the terms and conditions of service by Union Gas to its system customers. Union Gas states that the OEB reviews the cost impacts of Union Gas' activities in the United States energy markets and that Union Gas is not permitted to make sales of gas acquired for its sales customers at prices in excess of costs.

6. Union Gas states that in order to provide bundled retail service and service as a provider of last resort, Union Gas purchases gas supply located in the United States. Union Gas also buys gas from the United States to support its own operations. Union Gas does not sell gas in the United States markets other than to comply with interstate pipeline balancing requirements. Union Gas states that it holds transmission capacity on unaffiliated interstate pipelines in order to support its on-system sales function and related system operations. Union Gas states that it engages in capacity release transactions in order to use this transmission capacity efficiently and to reduce the cost of transportation to its retail customers. Additionally, pursuant to Canadian laws and regulations, Union Gas releases certain capacity on interstate pipelines to its unbundled customers. Union Gas states that the revenue it receives is subject to OEB jurisdiction.

7. Union Gas states that it engages in hedging activities and other limited financial transaction in the United States solely for the purpose of supporting its service to its

customers and that these activities have been approved by the OEB.<sup>3</sup> Union Gas states that all of the costs and benefits of these activities are flowed through to its customers as part of the regulated gas cost for its on-system customers. Union Gas also has executed certain guaranty agreements on behalf of former bundled on-system customers who are now unbundled and who are replacement shippers in capacity release transactions involving certain transmission capacity held by Union Gas on interstate pipelines.

8. Union Gas states that it qualifies for the foreign affiliate exemption under the Standards of Conduct. Union Gas states that a foreign local distribution company that engages in limited activities in the United States solely in support of its foreign operations should not be treated as an Energy Affiliate.

9. In addition to the request in Docket No. TS04-279-000, the Duke Pipelines filed a request for rehearing in the Standards of Conduct rulemaking proceeding challenging the Commission's determination in Order No. 2004-C that Canadian local distribution companies 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 regulations only if the Canadian LDCs do not participate in the U.S. commodity and transmission markets.

#### **A. Public Notice, Interventions, and Protests**

10. The Berkshire Gas Company, Connecticut Natural Gas Company, The Southern Connecticut Gas Company, New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation (Energy East Gas Companies) individually and collectively filed timely motions to intervene. No protests or comments were filed.

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.214 (2004), the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

#### **B. Discussion**

12. In response to the Duke Pipelines' request for clarification of Order No. 2004-C, in Order No. 2004-D, the Commission clarified that, to the extent provincially-regulated Canadian LDCs engage in sales for resale to support on-system customer sales, they may do so in United States 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. Order No. 2004-D at P 7. Therefore, it appears that Union Gas is

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<sup>3</sup> Union Gas states that it engages in fixed-price swaps with third parties to mitigate natural gas price volatility for its on-system customers.

not an Energy Affiliate based on its statements that: (1) Union Gas' primary business activities take place in Canada and relate to its Canadian operations; (2) Union Gas is wholly regulated by the QEB; and (3) Union Gas' activities in the United States are limited to buying gas for its on-system customers and operations, to holding transmission capacity on unaffiliated interstate gas pipelines for the purpose of delivering gas to its distribution system in Canada, to releasing transmission capacity when not required for on-system customers, and to hedging against natural gas price volatility in connection with its gas supply purchases. If there is a material change in Union Gas' activities in the United States energy markets, Union Gas shall notify the Commission immediately.

**C. Request for Rehearing Regarding Extension of Time Request in Docket Numbers TS04-105-001, TS04-106-001, TS04-107-001, TS04-154-001, TS04-159-001, TS04-161-001**

13. On August 20, 2004, the Duke Pipelines<sup>4</sup> filed a request for an extension of time of the deadline for full compliance with the Standards of Conduct until 180 days after the Commission issues a decision on the exemption request and the Duke Pipelines' August 20, 2004 request for rehearing of Order No. 2004-B. The Duke Pipelines state that the compliance requirements for the Duke Pipelines will vary greatly depending upon the Commission's actions with respect to the exemption and rehearing requests. The Duke Pipelines state that if Union Gas is an Energy Affiliate, several functions now performed by shared transmission function employees will have to be separated and may require additional staffing. If, however, Union Gas is not an Energy Affiliate, the Duke Pipelines state that they can be in full compliance with the Standards of Conduct by September 22, 2004.

14. On September 22, 2004, the Commission issued a "Notice Granting Extension of Time Pending Action on Outstanding Requests for Waiver or Exemption From the Standards of Conduct For Transmission Providers" (Notice) granting 23 Transmission Providers,<sup>5</sup> including the Duke Pipelines, an extension of time to comply with the Standards of Conduct until thirty days after the Commission rules on the companies' pending requests for extension of time, waiver, or exemption. On October 12, 2004, the Duke Pipelines filed a timely request for rehearing of the Commission's September 22, 2004 Notice arguing that "the Commission erred in granting the Duke Pipelines an extension of time to comply with the Standards of Conduct until only 30, rather than 180,

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<sup>4</sup> Union Gas did not participate in the request for extension of time.

<sup>5</sup> An errata issued on September 23, 2004, excluded Saltville Gas Storage Company, L.L.C. from the September 22, 2004 Notice. An errata issued on September 28, 2004 included WestGas Interstate Inc. in the group of Transmission Providers covered by the Notice.

days after the Commission rules on their pending requests for rehearing and exemption.” The Duke Pipelines state that the denial of the Duke’s Pipelines’ request for a 180-day extension in favor of a 30-day extension is arbitrary and capricious, is unsupported, and does not reflect reasoned decision-making.

15. As discussed above, the Commission has determined that Union Gas is not an Energy Affiliate of the Duke Pipelines. The Commission is denying rehearing, and the Duke Pipelines are required to be in full compliance with the requirements of the Standards of Conduct within 30 days of the date of this order.

### **Dauphin Island Gathering Partners (Dauphin Island) – Docket No. TS04-242-002**

16. On October 20, 2004, El Paso Corporation (El Paso) filed a motion to intervene out of time and request for rehearing of the Commission’s September 20, 2004 Order.<sup>6</sup> In the September 20 Order, the Commission granted Dauphin Island’s request for partial waiver of the Standards of Conduct because of Dauphin Island’s lack of staff, small size and limited operations. The order also stated that El Paso, as an owner of Dauphin Island (which engages in commodity markets or transmission transactions), did not qualify as a holding or parent company under section 358.3(d)(6)(iii) and was, therefore, an Energy Affiliate of Dauphin Island.

17. El Paso argues that the Commission erred in failing to distinguish between El Paso (the parent corporation) and its subsidiary and affiliates that were the actual owners of Dauphin Island. El Paso states that El Paso Dauphin Island Company, LLC and MBPP Holding Company were the two El Paso companies that held an ownership interest in Dauphin Island, not El Paso the parent corporation. As a result, states El Paso, it qualifies as a parent or holding company under section 358.3(d)(6)(iii).

18. El Paso also states that since the waiver request, MBPP Holding Company merged into El Paso Dauphin Island Company, LLC and then El Paso Dauphin Island Company assigned all of its partnership interest in Dauphin Island to Pan Energy Dauphin Island, LLC, CNG Main Pass Gathering Corporation and Centana Gathering, LLC. Consequently, El Paso states that neither it nor any of its affiliates or subsidiaries currently has any ownership interest in Dauphin Island.

### **Discussion**

19. Pursuant to 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004) the Commission grants El Paso’s untimely, unopposed motion to

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<sup>6</sup> *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243 (2004) (September 20 Order).

intervene out of time. Granting intervention at this stage will not delay this proceeding or place additional burdens on existing parties.

20. El Paso's request for rehearing or clarification is moot because as El Paso states, at this time, neither it nor any of its affiliates or subsidiaries has any ownership interest in Dauphin Island. We clarify, however, that in the September 20 Order, Energy Affiliate status was intended to apply to the subsidiaries that held the ownership interests in Dauphin Island, and was not a ruling on El Paso's status under the Standards of Conduct.

**Florida Power & Light Company (FPL) - Docket No. TS05-001-000**

21. On October 1, 2004, Florida Power & Light Company, on behalf of itself and its affiliate, FPL Energy Seabrook, L.L.C. (FPLE Seabrook), filed a request for clarification of the Standards of Conduct. Specifically, FPL requests clarification that FPLE Seabrook personnel who perform operation and maintenance functions (O&M Personnel) for the Seabrook nuclear facility and the adjacent Seabrook Transmission Substation (STS), and who have access to transmission information necessary for the operation of the facility consistent with Nuclear Regulatory Commission (NRC) regulations are permissibly shared employees consistent with the Standards of Conduct. Alternatively, FPL requests any waivers necessary to permit the sharing of such functions, pursuant to section 358.1(d) of the Standards of Conduct, with an effective date of October 22, 2004.<sup>7</sup> Under Order No. 889, the Commission allowed similar sharing between FPL and FPLE Seabrook.<sup>8</sup> In this request, FPL is seeking to confirm that sharing is permissible under Order No. 2004.

22. FPLE Seabrook owns approximately 88 percent of Seabrook, a commercial nuclear power generating facility located in Seabrook, New Hampshire. In June 2004, FPLE Seabrook transferred ownership of its share of the STS to a division within FPL, FPL New England Division (FPL NED) under section 203 of the Federal Power Act.<sup>9</sup> FPL is a Transmission Provider with a transmission system in the State of Florida. FPL also owns the STS, which interconnects Seabrook Station to the transmission system and provides an essential switching point in the NEPOOL transmission system.

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<sup>7</sup> On August 19, 2004, the Commission granted FPL an extension of time to comply with the Standards of Conduct, until October 22, 2004, because of the damage in Florida caused by Hurricane Charley.

<sup>8</sup> *Florida Power & Light Co.*, 105 FERC ¶ 61,026 at P 3 (2003).

<sup>9</sup> *FPL Energy Seabrook, L.L.C.*, 104 FERC ¶ 61,258 (2003).

23. Seabrook is subject to the Atomic Energy Act of 1954, and all rules, regulations, and orders of the NRC. As such, Seabrook operations are subject to more stringent security and other requirements than non-nuclear generating stations. Among other things, the NRC requires that all personnel with unescorted access to a nuclear power plant undergo an extensive background investigation and undergo annual training regarding the operation and maintenance of nuclear facilities.<sup>10</sup> Seabrook and the STS are both within the Protected Area, meaning that only FPLE Seabrook and certain FPL employees and contractors, who have passed background investigations and participated in the training can access the STS.

24. FPLE Seabrook Operation and Maintenance (O&M) Personnel operate and maintain both Seabrook and the STS. With respect to the STS, O&M Personnel will from time to time operate switches at the direction of the local control area operator, Public Service of New Hampshire (under the operational control of the New England Independent System Operator (ISO-NE)).

25. FPLE Seabrook O&M Personnel have access to two types of related transmission information. First, O&M Personnel have access to transmission information about the STS through: (i) inspection, operation and maintenance of the STS; (ii) inspection and operation of certain transmission switches in the STS; (iii) cabinets and panels located in Seabrook's control relay vault; and (iv) inspection and operation of a switching panel in the Seabrook control room that provides for the operation of certain transmission switches and shows the status of all switches in the STS. Second, O&M Personnel have access to transmission information in the form of real-time electronic data feeds which provide the status and power flows of the three 345 kV lines interconnecting with Seabrook. These lines form part of the transmission grid operated by ISO-NE and access to this information is necessary to comply with NRC regulations.

26. FPL admits that because of their limited functions relative to the STS, the O&M Personnel might be considered to operate "transmission" facilities. However, FPL contends that no useful purpose would be served by prohibiting FPLE Seabrook personnel from carrying out their historic function of operating the STS, as none of those personnel engage in power sales or other Energy Affiliate activities, and they observe the no-conduit rule when dealing with those who do.

27. FPL adds that the output of FPLE Seabrook's share of Seabrook power is sold at wholesale. Thus, FPLE Seabrook is an Energy Affiliate of FPL. However, FPL states that none of the on-site personnel of FPLE Seabrook engages in Energy Affiliate

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<sup>10</sup> See 42 U.S.C. § 2167; 10 C.F.R. § 73.21 and 10 C.F.R. § 19.12(a); 10 C.F.R. § 50.120; *see generally* 10 C.F.R. Part 55.

activities. Instead, they perform the operating functions for all the owners of the facility, not just FPLE Seabrook. Thus, FPL contends that FPLE Seabrook is simply an operating services company. Accordingly, FPL argues that these O&M Personnel qualify as permissibly shared employees pursuant to Order No. 2004.

28. FPL argues that even if the O&M Personnel are Transmission Function employees, there is no reason to apply the rules here. FPLE Seabrook's O&M Personnel are separated from personnel engaged in Energy Affiliate activities (FPLE Seabrook's President and PMI personnel) by the length of the Eastern Seaboard and computer password protection. FPL adds that personnel engaged in Energy Affiliate activities may only enter the site with an escort, and potential escorts are trained with respect to the Standards of Conduct and the no conduit rule, meaning that no personnel engaged in Energy Affiliate activities will have access to transmission information even if they do enter the facilities. The O&M Personnel also report to FPL substation and transmission function personnel. These safeguards ensure that the purpose of the Standards of Conduct will be preserved in this relationship. Moreover, notwithstanding that the O&M Personnel operate the STS, this function is de minimis from a transmission operations perspective. This function is not comparable to a traditional Transmission Provider function but more like permissibly shared field and maintenance employees.<sup>11</sup> FPL argues that it would be inefficient and complex to require duplication of O&M Personnel.

29. FPL claims that the actual marketing of the output of the FPLE Seabrook share is carried out on an agency basis by FPLE Power Marketing, Inc. (PMI), an Energy Affiliate of FPL.<sup>12</sup> The employees engaged in the Energy Affiliate activities are subject to the Standards of Conduct, including the no-conduit rule, and do not receive off-OASIS

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<sup>11</sup> In Order No. 2004-A (at P 145, 146), the Commission clarified that “shared field personnel may include field supervisors who do not take part in advance planning for facility shut downs or are involved in shutting down facilities for economic reasons,” and that “the field and maintenance employees exception applies to technicians, mechanics and their immediate supervisors who are responsible for electric transmission activities.”

<sup>12</sup> Pursuant to FPLE Seabrook’s market-based rate tariff in Docket No. ER02-1838-000 (Letter Order dated July 3, 2003); PMI’s market-based rate tariff was accepted by the Commission on November 12, 1998 in Docket No. ER98-3566-000. *See FPL Energy Maine Hydro, Inc.*, 85 FERC ¶ 61,214 (1998).

transmission information from FPL or from FPLE Seabrook.<sup>13</sup> FPL states that none of the transmission information available to the O&M Personnel is available to any employee engaged in Energy Affiliate activities, including FPLE Seabrook's President and PMI employees marketing FPLE Seabrook's share of the output of Seabrook. FPL states that PMI employees access data necessary for making sales of power from Seabrook, but they do not have access to transmission information.

**A. Public Notice, Interventions, and Protests**

30. The New York State Electric & Gas Corporation (NYSEG), Rochester Gas & Electric (RGE) and Central Maine Power Company (CMP) (together the Energy East Electric Companies) filed a timely joint motion to intervene in this proceeding.

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

**B. Discussion**

32. The Commission will grant FPL a request for partial waiver of the Standards of Conduct vis-à-vis FPL's O&M Personnel. Based on FPL's pleading, it appears that the O&M Personnel are performing transmission functions for STS as well as generation functions for its Energy Affiliate, FPL Seabrook. However, given the safeguards that are

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<sup>13</sup> As explained in *Florida Power & Light Co.*:

With respect to employees, FPL NED shares some employees with FPLE Seabrook who are engaged in transmission and generation functions, as well as plant operations. None of the shared employees is engaged in merchant function activities. However, FPL NED states that Michael Leighton, the President of FPLE Seabrook, is the only employee who will engage in wholesale merchant functions for FPLE Seabrook. According to Mr. Leighton's job description, he does not engage in transmission or reliability functions, nor do any employees who engage in transmission or reliability functions report to him. FPL NED further states that Mr. Leighton's office is in Florida, far from the Seabrook offices/plant in New Hampshire, and that he will not have access to the transmission-related records and files of FPL NED or the shared employees of FPLE Seabrook that will perform work at the direction of the General Manager of FPL NED. This is acceptable so long as Mr. Leighton does not obtain information from the transmission and reliability functions or engage in transmission or reliability functions. 105 FERC ¶ 61,026 at P 13 (2003).

in place to prevent the preferential sharing of transmission information and the additional requirements imposed by the NRC, the Commission will grant FPL's request.

**Honeoye Storage Corporation (Honeoye) and KeySpan LNG, LP – Docket No. TS04-257-001**

33. This order addresses Honeoye's September 9, 2004 request for rehearing of the Commission's August 10, 2004 Order.<sup>14</sup> In the August 10, 2004 Order, the Commission, among other things, denied Honeoye's February 9, 2004 request for determination that Consolidated Edison Company of New York (Con Edison) was not an Energy Affiliate under Order No. 2004. The Commission rejected the argument that Con Edison's ownership of 28.8 percent voting equity in Honeoye does not rise to the level of "control" defined by the Commission in section 358.3(e) of the Commission's regulations. The Commission determined that Honeoye failed to rebut the presumption of control with respect to Con Edison because it did not provide enough documentation or explanation to support its claim that Con Edison does not have control over Honeoye.

34. In the September 9, 2004 request for rehearing, Honeoye asks the Commission to reconsider Honeoye's argument that Con Edison cannot exert control over Honeoye, and that it is not an affiliate under Part 358 of the Commission's Standards of Conduct. Honeoye explained that its day-to-day operations are managed by an independent company that is not affiliated with either Con Edison or Honeoye. Honeoye also states that it does not share any office space or employees with Con Edison and does not have an incentive to favor Con Edison's interests over others'.

35. Honeoye explains that Con Edison holds 28.8 percent voting interest in Honeoye. KeySpan Energy Development Corporation (KeySpan) owns 52.2 percent voting interest in Honeoye, and the remaining voting securities are held by individuals or corporate entities that are not affiliated with Con Edison.

36. Honeoye explains that a two-thirds majority vote of the voting securities is required to constitute a quorum and transact business. In addition, a three-fourths majority vote is required for decisions relating to merger or consolidation of Honeoye, the authorization and issuance of additional shares of capital stock, the acquisition of assets not incidental to the development and operation of the Honeoye storage fields, and any amendment to Honeoye's certificate of incorporation and by-laws. Honeoye argues that Con Edison cannot cause Honeoye to take action unless KeySpan is agrees because KeySpan owns 52.14 percent of the voting interest.

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<sup>14</sup> 108 FERC ¶ 61,184 (2004).

37. Honeoye references the Commission's decision in *Western Gas Marketing*, where the Commission considered whether The Brooklyn Union Gas Company's (Brooklyn Union's) eleven percent ownership interest in Iroquois Gas Transmission System, L.P. constituted a controlling interest so that Brooklyn Union would be treated as an affiliate. Honeoye argues that in *Western Gas Marketing*, the Commission considered whether Brooklyn Union could exercise any management or operating control over Iroquois as well as whether Iroquois had any incentive to favor Brooklyn Union. Honeoye concludes that Con Edison does not exercise any management or operating control over Honeoye and that Honeoye does not have any incentive to favor Con Edison and that the Commission should reconsider its position that Con Edison is an Energy Affiliate of Honeoye's.

#### **A. Public Notice, Interventions, and Protests**

38. There were no interventions or protests in this proceeding.

#### **B. Discussion**

39. Under section 358.3(b) of the Commission's regulations, an "affiliate" is defined as "[a]nother person which controls, is controlled by or is under common control with such person." Section 358.3(c) defines control as including, but not limited to, the possession, directly or indirectly, and whether acting alone or in conjunction with others, of the authority to direct or cause the management or policies of a company. A voting interest of ten percent or more creates a rebuttable presumption of control.

40. In *Dominion Transmission Inc. (DTI)*, the Commission determined that DTI's one-third interest in any affiliate and control over "several decisions" was a sufficient amount of control to treat the affiliate as an Energy Affiliate. *See* 95 FERC ¶ 61,370 (2001). Here, the Commission denies Honeoye's request for rehearing. Honeoye claims that Con Edison does not have the ability control Honeoye because Con Edison's 28 percent voting interest is insufficient to control some decisions requiring a two-thirds majority vote. However, there are a number of decisions for which a three-fourths majority vote is required, and Con Edison's 28 percent interest is sufficient to effect control of those decisions.

#### **Kinder Morgan Pipelines (KM Pipelines) – Docket Nos. TS04-249-001, TS04-271-001 and TS04-272-001**

41. On September 20, 2004, the Commission acted on three requests for a limited exemption from the Standards of Conduct by KM Pipelines.<sup>15</sup> The KM Pipelines

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<sup>15</sup> The affiliated KM Pipelines are Natural Gas Pipeline Company of America  
(continued....)

requested to share employees with certain intrastate pipeline affiliates (Docket No. TS04-249-000) and certain LDC affiliates (Docket Nos. TS04-271-000 and TS04-272-000) if they segregate the employees of these affiliates that perform Energy Affiliate-type functions from the other employees of the intrastate pipeline and LDC affiliates. In short, the KM Pipelines would treat the employees of the intrastate pipeline and LDC affiliates that performed Energy Affiliate activities as Energy Affiliates, but share employees and information with intrastate pipelines and LDCs not engaged in Energy-Affiliate activities. In the September 20, 2004 Order, the Commission granted KM Pipelines' request for partial waiver with respect to internally segregating employees who perform Energy Affiliate activities. The Commission directed the KM Pipelines to submit a compliance filing within 30 days of the order describing the measures they have taken to segregate employees who perform Energy Affiliate activities from intrastate pipeline and LDC employees who receive non-public transmission information from the KM Pipelines. On October 19, 2004, the KM Pipelines submitted compliance filings in all three dockets (October 19 compliance filing). As discussed below, the Commission requires certain additional information in Docket Nos. TS04-249-001, TS04-271-000 and TS04-272-000.

#### **Docket No. TS04-249-001**

42. In their initial partial exemption request KM Pipelines explained that they share numerous transmission functions with their intrastate natural gas pipeline affiliates in Texas and Colorado, including gas control, storage management and system design, project management, engineering, and operations. In the September 20 Order, the Commission agreed with the KM Pipelines' proposal to place the employees of their intrastate pipeline affiliates engaged in commodity purchases and sales or in the purchase of interstate pipeline capacity in a separate Commodity Unit and treat the Commodity Unit as an Energy Affiliate. The remaining intrastate pipeline employees who perform shared transportation functions would continue to be shared with KM Pipelines.

43. In the October 19 compliance filing, KM Pipelines state that, although intrastate pipeline employees who are not designated as part of the Commodity Unit are not directly subject to the requirements of Order No. 2004, such employees are committed to and will follow those requirements, as applicable, including the implementation of and compliance with the no-conduit rule. As the entities subject to the Commission's jurisdiction, KM Pipelines commit to assuring that all intrastate pipeline employees are trained on, and abide by, the requirements of Order No. 2004.

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(Natural), Kinder Morgan Interstate Gas Transmission LLC (KMIGT), Trailblazer Pipeline Company (Trailblazer), Canyon Creek Compression Company (Canyon), Horizon Pipeline Company, L.L.C. (Horizon), and TransColorado Gas Transmission Company (TransColorado).

44. KM Pipelines state that the intrastate pipeline employees responsible for commodity purchases and sales, for acquiring transmission capacity on interstate pipelines or for risk management functions to support intrastate commodity purchases and sales have been designated as the Commodity Unit within the intrastate pipeline group. KM Pipelines further state that the 17 individuals in this unit have been identified on the Intranet on an organizational chart that clearly identifies the Commodity Unit employees/positions, so that all non-Commodity Unit intrastate employees and KM Pipelines' employees will be expected to know which employees/positions are assigned to the Commodity Unit. KM Pipelines state that the Commodity Unit is listed as an identified Energy Affiliate of KM Pipelines on each pipeline's Internet website. KM Pipelines assert that employees who transfer to and from the Commodity Unit will be subject to the Standard of Conduct rules concerning transfers, including the "cooling off" period.

45. KM Pipelines explain that the Commodity Unit will operate independent of KM Pipelines, and that its employees do not have access to the KM Pipelines' control rooms. KM Pipelines state that the Commodity Unit is located on a different floor from KM Pipelines' control rooms and transportation function employees shared between KM Pipelines and the intrastate pipelines. KM Pipelines assert that on September 22, 2004, keycards for Commodity Unit personnel were deactivated for access to any facilities of KM Pipelines and any facilities shared by KM Pipelines and the intrastate pipelines, including control rooms. In addition, KM Pipelines note that they have posted signs outside the entrance to their facilities and all shared facilities stating that access is restricted to authorized employees of KM Pipelines and that access by Energy Affiliate personnel is prohibited.

46. KM Pipelines state that shared transportation function personnel who support the core businesses of the intrastate pipelines do meet with Commodity Unit personnel to the extent necessary to support and execute intrastate pipeline business, but that such meetings are for the sole purpose of discussing only information or events relating to intrastate pipeline business. KM Pipelines state that the shared transportation function personnel have received training to underscore that prohibited transmission information, may not, under any circumstances, be discussed at these meetings. Moreover, the Kinder Morgan Pipelines state that such meetings are to be held on floors that do not house KM Pipelines' personnel or shared transportation function personnel.

47. KM Pipelines state that they implemented password protection for transmission information to prevent Commodity Unit employees from obtaining unauthorized access to such information. In addition, KM Pipelines state that only authorized personnel have keycard access to workspace areas of KM Pipelines that contain hardcopy files with such information. The KM Pipelines further state that their Order No. 2004 implementation procedures, which have been posted and distributed to all KM Pipelines and intrastate

pipeline personnel, including the Commodity Unit personnel, instruct employees that prohibited transmission information may not be shared with Commodity Unit employees.

48. KM Pipelines assert that they have provided Standards of Conduct training to all employees who have any involvement in the natural gas business, all Energy Affiliate employees, and all senior management and members of the board of directors. KM Pipelines state that they also provided supplemental training, with particular emphasis on the no-conduit rule, to all shared transportation function employees and all intrastate pipeline employees. Commodity Unit personnel who might come in contact with interstate transmission personnel in the regular course of business have been instructed that they cannot ask questions about the interstate pipelines, and KM Pipelines personnel and shared transportation function personnel have been instructed that they are prohibited from communicating prohibited transmission information to Commodity Unit personnel. KM Pipelines state that all new employees of the Commodity Unit will be required to take Standards of Conduct training. KM Pipelines assert that their corporate policy states that failure to respect this prohibition may result in disciplinary action, including termination of employment. Employees are required to take Standards of Conduct training not less than every three years, and all shared transportation function personnel will be required to receive training on the no-conduit rule not less than annually. Employees are encouraged to refresh their training with the materials that are available on KM Pipelines' Intranet. KM Pipelines state that employees will also be advised when training materials are revised to reflect changes in Commission rules, regulations or interpretive precedent of general applicability.

49. KM Pipelines state that the Commodity Unit reports to the President of the Intrastate Pipelines, who in turn reports to the President of Natural Gas Pipelines. KM Pipelines assert that the President of Natural Gas Pipelines is not involved in the day-to-day activities of the Commodity Unit; the President receives information regarding the Commodity Unit in her role as the senior manager ultimately responsible for the financial performance of all of the gas pipeline groups. KM Pipelines state that the President of Natural Gas Pipelines has received Standards of Conduct training with emphasis on the no-conduit rule.

### **Discussion**

50. While the Commission approves of the measures described by KM Pipelines in their compliance plan regarding the segregation of the Commodity Unit of its intrastate pipeline affiliates from the employees of their intrastate pipeline affiliates that perform shared transmission functions, the Commission will require KM Pipelines to submit a compliance filing containing further information in a few specific areas. First, KM Pipelines must further describe and explain the "information or events relating to

intrastate pipeline business” that the shared transmission function personnel of the intrastate pipelines will discuss with the employees of the Commodity Unit.<sup>16</sup> KM Pipelines must also provide copies of the organizational chart on its Intranet site that identifies Commodity Unit employees and their positions so that the Commission can determine whether these employees have been clearly identified. KM Pipelines also must clarify that the President of the Intrastate Pipeline group has received training in the Standards of Conduct and understands that he or she may not serve as a conduit for improperly sharing transmission or customer information with the Commodity Unit.

**Docket Nos. TS04-271-001 and TS04-272-001**

51. In its October 19, 2004 compliance filing, KM Pipelines state that they separated out certain sales employees from the LDC operating unit of their parent company, Kinder Morgan, Inc. (KMI), and treat that unit, the Choice Gas Sales Unit, as an Energy Affiliate so that KMI could qualify for the parent company exemption under section 358.3(d)(6)(iii) of the Commission’s Standards of Conduct.

52. KM Pipelines explain that the manager and seven employees responsible for unbundled retail sales to customers on the KMI distribution system under state-regulated retail access Choice Gas programs in Wyoming and Nebraska have been functionally organized into the Choice Gas Sales Unit within KMI. KM Pipelines state that the Choice Gas Sales Unit is identified as an Energy Affiliate of KM Pipelines on each pipeline’s website. KM Pipelines commit that any Choice Gas Sales Unit employee who transfers to or from the KM Pipelines or the remainder of the LDC operating unit, including Rocky Mountain, will be subject to the Standards of Conduct and KM Pipelines’ implementation procedures concerning employee transfers, including an appropriate “cooling-off” period.

53. KM Pipelines state that the Choice Gas Sales Unit conducts gas purchases and retail marketing functions in support of the Choice Gas programs independent of the KM Pipelines. Three employees of the Choice Gas Sales Unit are responsible for purchasing gas supply to support retail sales to Choice Gas customers on the KMI distribution system in Wyoming and Nebraska. In addition, four employees of the Choice Gas Sales Unit perform retail marketing. KM Pipelines state that the Choice Gas Sales Unit is managed on a daily basis by the Director of Business Operations, who functions as an operating employee of the Choice Gas Sales Unit. KM Pipelines assert that neither the Director nor any of the other seven Choice Gas Sales Unit employees who report to him are shared employees with KM Pipelines. KM Pipelines further assert that the Choice Gas Sales Unit is subject to the supervision of the President of KMI Retail for financial, management and corporate governance purposes. That President has a senior executive

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<sup>16</sup> See October 19 Compliance Filing at 4-5.

role over all of the LDC operations, including Rocky Mountain and the Choice Gas Sales Unit. KM Pipelines assert that the President of KMI Retail does not have day-to-day operating responsibilities for the Choice Gas Sales Unit, is not a transmission function employee of KM Pipelines, and has no responsibilities for any of KM Pipelines.

54. KM Pipelines state that the manager and seven Choice Gas Sales Unit employees are located in offices that are physically separated from the other LDC employees and the KM Pipelines' employees. Four of the Choice Gas Sales Unit employees work from field locations and are responsible for marketing the Choice Gas program to end-use customers. Three of those employees are located in Kearney, Nebraska in an office building that is also occupied by seven non-Choice Gas Sales Unit employees of KMI's LDC operating unit and fifteen field operations personnel shared by KMI Retail and KM Pipelines. KM Pipelines state the Choice Gas Sales Unit employees located in Kearney are located in a different wing of a one-story office building and do not have access to the other employees' workspace. One Choice Gas Sales Unit employee works from his home in Hastings, Nebraska and is thus physically separated from the employees of KM Pipelines, as well as from other LDC employees.

55. The other four Choice Gas Sales Unit employees include the manager and three employees responsible for purchasing Choice Gas supply and for Choice Gas nominations and scheduling. In addition, KM Pipelines assert that their transmission function employees are located in locked, controlled-access areas, and no Energy Affiliate employees are permitted access to those areas.

56. KM Pipelines state that KMI has implemented password protections to prevent access by the Choice Gas Sales Unit personnel to the transportation information databases of KM Pipelines. KMI has also segregated all information databases that contain prohibited transmission information that were previously shared by its LDC operations and KM Pipelines and implemented password protections to prevent access by Choice Gas Sales Unit personnel to the databases of the remainder of the LDC operating units, including Rocky Mountain.

57. KM Pipelines assert that they have provided Standards of Conduct training to all employees who have any involvement in the natural gas business, all Energy Affiliate employees, and all senior management and members of their board of directors. KM Pipelines also provided supplemental training, with particular emphasis on the no-conduit rule, to all employees of KMI Retail, including Rocky Mountain, and the Choice Gas Sales Unit employees. KM Pipelines state that the employees of KMI Retail have received additional no-conduit rule training specific to the Choice Gas Sales Unit employees, including the need to remedy any inadvertent disclosure of Prohibited Transmission Information by the reporting of any such disclosure to the Chief Compliance Officer and prompt posting of the information on KM Pipelines' Internet website in accordance with section 358.5(b)(3) of the Commission's Standards of

Conduct. KM Pipelines state that the Standards of Conduct training will be conducted at least every three years, and no-conduit training will be conducted at least annually. All new employees will receive Standards of Conduct training at the beginning of their employment.

### **Discussion**

58. Based on the representations of KM Pipelines in their compliance filing in Docket Nos. TS04-271-001 and TS04-272-001 regarding their implementation of the separation of the Choice Gas Sales Unit employees from KMI, the Commission finds these implementation measures acceptable.

59. The Commission also clarifies that based on the KM Pipelines' assertions in Docket No. TS04-272-000 that Rocky Mountain's gas supply purchases are only to supply KNI Retail and that Rocky Mountain does not market gas or make unregulated sales of gas or engage in capacity release transactions, the Commission will grant the KM Pipelines' request to classify Rocky Mountain as an exempt LDC so long as Rocky Mountain continues to operate in the manner described by the KM Pipelines in Docket No. TS04-272-000.

### **MidWestern Gas Transmission Company (MidWestern) – Docket No. TS04-209-001, Northern Border Pipeline Company (Northern Border) – Docket No. TS04-208-001, Viking Gas Transmission Company (Viking) – Docket No. TS04-212-001, and Guardian Pipeline Company (Guardian) – Docket No. TS04-207-001**

60. This order addresses the October 19, 2004 compliance filing of Northern Plains Natural Gas Company (NPNG), as the system operator for MidWestern, Northern Border, Guardian, and Viking (collectively referred to as the Companies).

61. The Companies had previously sought exemption from sections 358.4(a)(1) and (3)(ii) so that the Gas Control department of NPNG may continue to provide certain pipeline operations monitoring services for Bear Paw Energy, LLC (Bear Paw) and Crestone Energy Ventures, LLC (Crestone).

62. On September 20, 2004, the Commission ordered the Companies within 30 days to explain whether Bear Paw and Crestone were Energy Affiliates as defined in section 358.3(d) of the Commission's Standards of Conduct. The Commission declared that, if Bear Paw and Crestone are Energy Affiliates, the Companies must explain the roles and responsibilities of the shared monitoring personnel and describe the procedures the Companies implemented to protect the Companies' customers.

63. In the October 19, 2004 compliance filing, the Companies acknowledged that Bear Paw is an Energy Affiliate but argued that Crestone is not as a result of clarifications

articulated in Order Nos. 2004-A and 2004-B. In addition, in the compliance filing, NPNG explains that its Gas Control unit provides pipeline monitoring and control services for the Companies and Guardian seven days a week, 24 hours a day. According to NPNG, prior to September 22, 2004, Gas Controllers in NPNG's Gas Control department watched screens for alarms on Bear Paw's system during the hours of 6:00 pm to 8:00 am Monday through Friday plus weekends and holidays. If an alarm occurred on the system, NPNG Gas Controllers would dispatch Bear Paw operational personnel to the particular field location and verbally provide data from Bear Paw's SCADA information to assist the field technician in analyzing the operational problem.

64. NPNG states that to protect the Companies' customers, NPNG implemented system modifications to allow Bear Paw and Crestone operations to be separated from those of the Companies. NPNG states that although Crestone is not an Energy Affiliate, NPNG is effectively treating Crestone as an Energy Affiliate because some of the employees who operate Bear Paw also provide services to Crestone. NPNG alleges that system modifications were implemented to ensure that no employee of Bear Paw or Crestone has access to the Gas Control systems and databases of the Companies and Guardian. NPNG indicated that further modifications also ensure that employees who operate Bear Paw do not have electronic access to any real-time or historical information from the Companies' SCADA system. Finally, NPNG adds that Bear Paw is not a shipper on the Companies, and if that status changes, NPNG will notify the Commission before service commences.

**A. Public Notice, Interventions, and Protests**

65. There were no interventions in any of the above referenced dockets.

**B. Discussion**

66. The Commission agrees that, based on NPNG's pleadings, it does not appear that Crestone is an Energy Affiliate. In addition, based on the representations NPNG made in its compliance filing, the Commission will grant its request for a partial waiver of the Standards of Conduct requirements regarding sections 358.4(a)(1) and 3(ii) to allow NPNG's Gas Controllers to provide night, weekend, and holiday monitoring operations for its Energy Affiliate, Bear Paw. NPNG satisfactorily explained how the Companies' customers would be protected with this monitoring system in place.

**Missouri Interstate Gas, LLC (Missouri Interstate) – Docket No. TS04-259-001**

67. This order addresses a rehearing request of the Commission's July 7, 2004 Order on Missouri Interstate's March 31, 2004 request for waiver from the Standards of Conduct.<sup>17</sup>

68. On March 31, 2004, Missouri Interstate requested that the Commission waive or exempt its affiliated intrastate pipeline affiliates, Missouri Pipeline Company (MPC) and Missouri Gas Company (MGC), and to exempt its unregulated local distribution affiliate, Omega Pipeline Company (Omega) from status as Energy Affiliates. Missouri Interstate stated that it has a limited scope of operation, is very small, has no direct employees and shares all of its employees with MPC and MGC. Missouri Interstate asserted that due to the small size of its operations and the fact that it has only one customer, it is more efficient for Missouri Interstate to share the coordination of operations with its intrastate affiliates. On April 12, 2004, the Missouri Public Service Commission (MoPSC) filed a Notice of Intervention and Protest.

69. On July 7, 2004, the Commission denied Missouri Interstate's request to exempt MPC and MGC from the definition of Energy Affiliate. The Commission, however, granted a partial waiver from the requirements of Order No. 2004 based on Missouri Interstate's small size, lack of staff and limited operations.<sup>18</sup> The Commission waived Missouri Interstate's obligation to comply with the independent functioning requirements of section 358.4 and the information disclosure prohibitions of sections 358.5(a) and (b)(1), (2), and (3) with respect to MPC and MGC.<sup>19</sup>

70. On July 28, 2004, MoPSC filed a rehearing request of the Commission's July 7, 2004 Order regarding Missouri Interstate. MoPSC does not believe that Missouri Interstate's size justifies exempting Missouri Interstate from the requirement to identify affiliates on the Internet and maintain separate books and records. MoPSC states that although Missouri Interstate has only one customer now, there is potential for Missouri Interstate to pick up other customers that would be captive to MPC. Thus, MoPSC

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<sup>17</sup> 108 FERC ¶ 61,011 (2004).

<sup>18</sup> 108 FERC ¶ 61,011 (2004).

<sup>19</sup> On September 22, 2004, Missouri Interstate filed revised tariff sheets regarding the July 7, 2004 Order granting an exemption from an obligation to comply with the independent functioning requirements of the Standards of Conduct, section 358.4 of the Commission's regulations, and the information disclosure requirements, section 358.5 of the Commission's regulations.

believes that affiliate information should be readily available because (1) MPC and MGC employees manage the day-to-day operations of Missouri Interstate, (2) Missouri Interstate's only delivery point is its interconnection with MPC and (3) nearly all of MPC's shippers and potential customers of Missouri Interstate are captive to MPC. MoPSC also argues that Missouri Interstate should already be posting this information because of its existing affiliate transaction rules and thus there would be no additional cost to Missouri Interstate. MoPSC also pointed out that the same waivers were not granted to another small pipeline, Total Peaking Services, LLC.<sup>20</sup> Finally, MoPSC argues that the Commission erred when it granted Missouri Interstate a waiver from the requirements concerning non-discriminatory access to information because the employees managing Missouri Interstate's day-to-day operations are privy to pertinent information regarding Missouri Interstate's system and operations and thus asking that transmission information should be made available to all potential customers.

71. MoPSC requests that the Commission reconsider and grant only partial waivers of sections 358.4(a), 358.4(c), and 358.5(b) and deny Missouri Interstate's request for waiver of sections 358.4(b), 358.4(d), 358.5(a), 358.5(c), and 358.5(d). MoPSC also requests that the Commission require Missouri Interstate to post (1) the names and addresses of its sales and marketing units along with its Energy Affiliates, (2) a complete list of the facilities shared by Missouri Interstate and its marketing or sales units or any Energy Affiliates, and (3) a comprehensive organizational chart. Finally, MoPSC requests that the Commission require Missouri Interstate to file a separate statement how it (Missouri Interstate) has implemented the Standards of Conduct as was formerly required under Part 161 of the Commission's regulations.

### **Discussion**

72. The Commission will grant, in part and deny, in part, MoPSC's request for rehearing. The July 7, 2004 Order stated granted Missouri Interstate a waiver of section 358.4. MoPSC correctly points out that in other orders, the waiver of section 358.4 is limited to section 358.4(a), and requires Transmission Providers to comply with the requirements of sections 358.4(b), (c), (d) and (e). Accordingly, the Commission grants MoPSC's request for rehearing and is requiring Missouri Interstate to comply with the requirements of sections 358.4(b), (c), (d) and (e).

73. The Commission is denying MoPSC's request to require that Missouri Interstate file separate Standards of Conduct as required by (former) section 161.3 of the Commission's regulations. Part 161 has now been superseded by the requirements of Order No. 2004. Although the Commission is no longer requiring the filing of

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<sup>20</sup> 108 FERC ¶ 61,011 at P 50-51.

procedures demonstrating how a Transmission Provider complies with the Standards of Conduct, section 358.4(e)(3) requires a Transmission Provider to post on its OASIS or Internet website, current written procedures implementing the Standards of Conduct in such detail as will enable customers and the Commission to determine that the Transmission Provider is in compliance with the Standards of Conduct requirements.

74. Although MoPSC states that the Commission granted Missouri Interstate a waiver with respect to section 358.5(c) and (d), in the Commission's July 7, 2004 Order, a careful review of the order indicates that the Commission did not grant Missouri Interstate a waiver with respect to those provisions. Accordingly, the petition for rehearing with respect to these provisions is denied.

**NewCorp Resources Electric Cooperative, Inc. (NewCorp) – Docket No. TS04-62-000**

75. NewCorp is an electric transmission cooperative with an open access transmission tariff. NewCorp is a subsidiary of Cap Rock Energy Corporation (CRE) which is NewCorp's sole customer. CRE serves retail customers in rural counties in the Permian Basin area of West Texas. The officers of NewCorp also hold positions of responsibility with CRE, and currently, there is no separation of personnel between the two entities. NewCorp uses CRE's personnel to service and maintain its facilities on a reimbursable basis. NewCorp operates a looped system consisting of approximately 305 miles of 138 kV transmission lines and has 16 substations. CRE owns the retail distribution system which is served from NewCorp's 16 substations. The NewCorp transmission system is interconnected to Southwestern Public Service Company at NewCorp's Jones and Vealmoor substations, and NewCorp obtains its full requirements to serve CRE from Southwestern Public Service Company.

76. In its February 9, 2004 request for full or partial exemption from the Standards of Conduct, NewCorp concedes that it meets the definition of a Transmission Provider as defined in section 358.3(a). NewCorp also concedes that CRE is engaged in providing retail service and is state-regulated. NewCorp, however, points out that section 358.3(b)(v) provides that state-regulated local distribution companies that do not make off-system sales are exempt from the definition of an Energy Affiliate.

77. NewCorp explains that both it and Southwestern Public Service recently filed for Commission authorization to consolidate NewCorp's ownership of the transmission facilities controlled by NewCorp and to change the wholesale service provided to CRE from bundled full-requirements to transmission-only service under NewCorp's OATT.<sup>21</sup>

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<sup>21</sup> NewCorp notes that these filings were accepted for filing by the Commission; but implementation of the changes is pending action by the Public Utilities Commission  
(continued....)

According to NewCorp, with that change, the Southwestern Public Service contract will be transferred to CRE and the associated opportunity sales will be for the benefit of CRE.

78. NewCorp anticipates that, if the Commission regards the transferred Southwestern Public Service contract and the associated opportunity sales as “off-system” sales by CRE, then NewCorp would not be eligible for the blanket exemption in section 358.3(5)(v). In addition, NewCorp notes that, while CRE does not sell energy or power “off” the CRE system, there is a rider in the Southwestern Public Service Company full requirements contract that entitles NewCorp to a de minimis amount of energy above and beyond its full requirement load obligations. According to NewCorp, this rider gives NewCorp the opportunity to reduce its power cost by receiving market price for the additional energy. NewCorp notes, further, that (1) it has retained an independent marketer to market the energy, (2) the energy does not enter NewCorp’s system, and (3) the revenues from these sales have reduced NewCorp’s costs by approximately \$3,000 per month. NewCorp also argues that the cost of compliance will outweigh any benefit from compliance.

79. Finally, NewCorp notes that Order No. 2004 provides that (1) cooperatives and small utilities will be eligible for exemption, and (2) that exemptions and partial waivers would be provided to those entities that previously received exemptions and partial waivers of Order Nos. 889 and 497. NewCorp notes that it was granted a waiver of the requirements of Order No. 889 in Docket No. OA96-26-000.<sup>22</sup> NewCorp, therefore, requests the Commission to grant an exemption from the requirements of the Standards of Conduct consistent with the waiver of Order No. 889 previously granted in Docket No. OA96-26-000.

#### **A. Interventions, Protests and Comments**

80. Pioneer Natural Resources USA, Inc. (Pioneer) filed a motion to intervene out of time and protest. Pioneer argues that NewCorp’s claim that it is entitled to an exemption because it is an LDC that does not make off-system sales is misplaced. Pioneer notes that CRE is an electric utility that does not transmit or distribute natural gas. According to Pioneer, a company that distributes electric power, and not natural gas, does not qualify as an LDC. Pioneer concludes, therefore, that the exemption for LDCs that do not make off-system sales does not apply to NewCorp and CRE.

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of Texas. *See NewCorp Resources Electric Cooperative, Inc.*, Docket No. ER03-1116-000, unpublished letter order dated August 29, 2003; *see also Southwestern Public Service Co.*, Docket No. ER03-1321-000, unpublished letter order dated October 20, 2003.

<sup>22</sup> *See Northern States Power Co.*, 76 FERC ¶ 61,250 at 62,296-97 (1996); *see also, Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 (1996).

81. Pioneer describes NewCorp's and CRE's relationship as "symbiotic." According to Pioneer, this affiliate relationship has caused, and will continue to cause, market disruptions that affect NewCorp's unaffiliated transmission customers and, ultimately, retail customers in NewCorp's service areas. Specifically, Pioneer alleges that NewCorp's use of CRE's employees and resources results in a preferential transfer of information. Pioneer characterizes NewCorp as a shell company, and states that NewCorp and CRE are operating as one entity with the same managers. According to Pioneer, CRE has access to NewCorp's transmission function information which gives CRE a competitive advantage in its service area and raises questions about CRE's ability to manipulate NewCorp's rates to keep potential competitors at bay. Pioneer also alleges that the NewCorp/CRE affiliate relationship permits NewCorp to maintain allegedly unjust and unreasonable transmission rates, and enables the entities to erect barriers to entry for other competitors. Pioneer alleges that these barriers to entry also keep out wholesale customers that might challenge NewCorp's rates. Pioneer also argues that NewCorp's/CRE's affiliate relationship enables the entities to obtain Commission approval of excessive costs and to insulate those costs from challenge by competitors and CRE's retail customers.

82. Pioneer argues that NewCorp's claim that it is entitled to an exemption because it only has one transmission customer should also be rejected. Pioneer argues that the fact that CRE is currently NewCorp's only customer does not mean that NewCorp will never have other transmission customers. Pioneer points out that NewCorp is operating under a Commission-approved OATT and that, as a result, it is ready to provide open access transmission service to non-affiliated transmission customers.

83. Finally, Pioneer argues that NewCorp's claim that it is entitled to an exemption because of its prior exemption from Order No. 889 should be rejected. Pioneer notes that when NewCorp was granted the exemption under Order No. 889, it did not transmit power under an OATT, but provided full requirements service to Cap Rock Energy under its Tariff WP. According to Pioneer, while it may have been appropriate for NewCorp to be exempt from Order No. 889's Standards of Conduct when NewCorp provided full requirements service on a non-open access basis, now that NewCorp operates under an OATT and provides unbundled transmission service to an affiliate, CRE, that passes those transmission costs on to retail customers, NewCorp is not entitled to the same exemption.

#### **B. NewCorp's Answer**

84. NewCorp filed an answer opposing Pioneer's untimely motion to intervene and protest. NewCorp argues that, in addition to being untimely, Pioneer incorrectly alleges that something is amiss in the relationship between NewCorp and CRE. NewCorp notes that the purpose of the affiliate relationship is not to accomplish a subterfuge; but to separate the Commission-regulated aspects of its energy business from the State-

regulated aspects. NewCorp is a transmission-only entity; CRE is a State-regulated distribution entity.

85. NewCorp also argues that there is nothing in Order No. 2004 indicating that CRE is ineligible for the exemption for state-regulated LDCs merely because it is not a gas utility. NewCorp points out, further, that CRE, through its ownership of NewCorp controls only the NewCorp transmission system, which is small and isolated in comparison to the Southwest Power Pool Regional Transmission Operator transmission system. NewCorp asserts that CRE's access to NewCorp's operational information does not give it an advantage over potential competitors because NewCorp's transmission rates are on file at the Commission and NewCorp must charge the same rate to CRE and to all other potential customers.

86. Finally, NewCorp challenges Pioneer's allegations that NewCorp's transmission rates are excessive. NewCorp notes that its transmission rates are on file at the Commission and under the filed rate doctrine are the legal rates for its transmission service. NewCorp suggests that, if Pioneer wishes to contest the rates, it can file a complaint pursuant to section 206 of the Federal Power Act. NewCorp concludes, therefore, that the Commission should deny Pioneer's motion to intervene as untimely, or in the alternative, reject the protest because Pioneer's allegations are unsubstantiated and untrue.

## **C. Discussion**

### **Procedural Matters**

87. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2004), the Commission is granting Pioneer's untimely motion to intervene because intervention at this stage will not delay the proceedings or prejudice the other party.

### **Commission Determination**

88. In Order No. 2004-C, the Commission clarified that an electric distribution division or company that performs only distribution wires functions may be shared with the transmission function of a Transmission Provider (wires-to-wires services).<sup>23</sup> The Commission clarified further, however, that, if the distribution function includes retail sales functions, a retail sales function employee cannot engage in any wholesale sales, such as selling excess generation to a non-retail customer without triggering Energy

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<sup>23</sup> See Order No. 2004-C, III FERC Stats & Regs. ¶ 31,172 at P 24-25 (2005).

Affiliate status. The Commission explained that it is not appropriate for an entity that participates in the wholesale market to obtain an undue preference when competing with non-affiliates for transmission capacity.<sup>24</sup> The Commission pointed out that many electric distribution divisions or companies are not Energy Affiliates because they do not engage in nor are involved with the following activities in U.S. energy or transmission markets: transmission transactions; manage or control transmission capacity; buy, sell, trade or administer electric energy; or engage in financial transactions relating to the sale or transmission of electric energy. The Commission also stated that it would consider case-specific requests for exemption for transmission providers with electric LDCs.

89. We are unable to grant NewCorp's request for partial waiver at this time. We find that NewCorp has not provided us with sufficient information upon which to make a determination on whether to grant its requested exemption from the prohibitions against shared employees and shared information in the Standards of Conduct. Specifically, NewCorp has not provided any description of which individuals are responsible for procuring power to serve CRE's retail customers other than to say that they are "separated." Nor does NewCorp provide any explanation on why CRE cannot functionally separate these individuals from participating in procurement or commodity functions from the individuals performing transmission-related functions. Therefore, within 30 days of the date of issuance of this order, we direct NewCorp to identify the individuals who are participating in market activities or commodity-related functions, and explain why those individuals or group of individuals can not be separated from the transmission-related functions.

#### **Texas Gas Transmission, LLC (Texas Gas) – Docket No. TS04-253-001**

90. On October 20, 2004, Natural Gas Supply Association (NGSA) filed a motion for leave to intervene out-of-time and request for clarification or in the alternative, rehearing of the Commission's September 20, 2004 Order<sup>25</sup> on Texas Gas' request for exemption from the Standards of Conduct. In the September 20, 2004 Order, the Commission granted Texas Gas's request for an exemption from the Standards of Conduct because Texas Gas does not have Energy or Marketing Affiliates nor any sales or marketing functions.

91. In its request for rehearing, NGSA argues that the Commission should not grant Texas Gas a complete waiver of the Standards of Conduct regulations. NGSA argues that certain provisions of the Standards of Conduct, including sections 358.5(c) and (d)

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<sup>24</sup> *Id. citing* Order No. 2004, III FERC Stats. & Regs. ¶ 31,115 at P 78 (2004).

<sup>25</sup> *See Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243 (2004).

have general application and, therefore, should not be waived except in extraordinary circumstances. NGSAs argues that such extraordinary circumstances are not present in Texas Gas' case. NGSAs asserts that Texas Gas should only receive a partial waiver from those provisions of the Standards of Conduct that apply specifically to affiliate relationships, and not receive a waiver of other provisions of the Standards of Conduct, such as sections 358.5(c) and (d). NGSAs also seeks clarification, that, if in the future, Texas Gas forms or acquires an Energy Affiliate, the waiver will no longer apply.

92. Texas Gas filed an answer to NGSAs' request for clarification or rehearing on November 4, 2004. Texas Gas first challenges NGSAs' motion to intervene out of time pointing out that it is the Commission's policy not to grant untimely motions to intervene after a final order has been issued. Texas Gas argues that NGSAs fails to provide any explanation to show that good cause exists for granting the untimely motion to intervene. Texas Gas then argues that NGSAs' request for clarification should be denied because: (1) Order No. 2004 contemplates both full, as well as partial, exemptions from the Standards of Conduct; (2) the Commission's order granting Texas Gas a full exemption continues in effect the Commission's exemption practice under the prior Part 161 Standards of Conduct; (3) the Commission's determination to grant Texas Gas an exemption is limited because Texas Gas is the only major jurisdictional pipeline that has no Energy Affiliates; and (4) Texas Gas continues to be subject to the statutory provisions prohibiting undue discrimination under sections 4 and 5 of the Natural Gas Act and the open access transportation policies and procedures in Order Nos. 636 and 637. Texas Gas, therefore, requests the Commission to deny NGSAs' motion to intervene out of time and request for clarification or rehearing.

93. The Commission addressed NGSAs' request for clarification or rehearing and Texas Gas' answer in Order No. 2004-C.<sup>26</sup> Therefore, no further action is required in this docket, and the filings are dismissed as moot. The Commission notes that, if the circumstances that serve as the basis for granting a full or partial exemption of the Standards of Conduct to Texas Gas or any other jurisdictional entity changes following an order granting the exemption, the entity must notify the Commission, within 30 days of the changed circumstances, and seek a determination that the entity continues to qualify for an exemption in spite of the changed circumstances.

#### **Total Peaking Services (TPS) – Docket No. TS04-97-001**

94. On August 6, 2004, Total Peaking Services, L.L.C. (TPS) requested rehearing of the Commission's *Bear Creek Storage Co.*<sup>27</sup> order, as TPS believes that the

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<sup>26</sup> See Order No. 2004-C, III FERC Stats. & Regs. ¶ 31,172 at P 47- 49.

<sup>27</sup> 108 FERC ¶ 61,011 (2004).

Commission's order is based on "a misapprehension of the facts and has produced a result inconsistent with its regulations."<sup>28</sup> In *Bear Creek*, the Commission concluded that Total Peaking was ineligible for the exemption set forth in section 358.3(a)(3) of the Standards of Conduct applicable to independent storage providers because it interconnected with an affiliated interstate pipeline. TPS argues that while it is interconnected to the Southern Connecticut Gas Company (SCG), SCG is not an interstate pipeline.

95. TPS states that it operates an LNG peak-shaving facility in Milford, Connecticut designed to liquefy and store natural gas in the summer for revaporization during peak days in the winter. It holds a blanket certificate of public convenience and necessity pursuant to 18 C.F.R. § 284.221.<sup>29</sup> Also, TPS states that it provides open-access firm and interruptible storage service and storage-related transportation service to SCG and other market participants at market-based rates.<sup>30</sup> TPS is interconnected with the facilities of SCG.

96. TPS states that SCG is a local distribution company (LDC) that provides retail service regulated by the Connecticut Department of Public Utility Control. The Commission granted SCG a blanket marketing certificate under section 284.401(a) of the Commission's regulations. TPS states that SCG's certificate is "a limited jurisdiction certificate issued to any person that is not an interstate pipeline."<sup>31</sup>

97. Finally, TPS argues that SCG is connected to the facilities of Iroquois Gas Transmission System, L.P. (Iroquois), not TPS. TPS states that while it receives customer-owned gas transported by Iroquois, TPS's only interconnection is to the facilities of SCG.

**A. Public Notice, Interventions, and Protests**

98. There were no interventions or protests in this proceeding.

**B. Discussion**

99. In its request for rehearing, TPS provided additional information that clarifies that TPS is not interconnected to an affiliated interstate pipeline. It is interconnected with an

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<sup>28</sup> Total Peaking Services, L.L.C. *Application for Rehearing*, August 6, 2004.

<sup>29</sup> *Total Peaking Services L.L.C.*, 81 FERC ¶ 61,246 (1997).

<sup>30</sup> *Total Peaking Services L.L.C.*, 84 FERC ¶ 61,189 (1998).

<sup>31</sup> Total Peaking Services, L.L.C. *Application for Rehearing*, August 6, 2004.

affiliate, SCG, but SCG is an LDC, not an affiliated interstate pipeline. Therefore, based on TPS's representations that it is a natural gas storage provider authorized to charge market-based rates and is not interconnected with the jurisdictional facilities of any affiliated interstate natural gas pipeline, has an exclusive franchise area, no captive rate payers and no market power, the Commission finds that TPS meets the criteria for an exemption consistent with the provisions of section 358.3(a)(3) of the Standards of Conduct. Therefore, the Commission grants TPS's request for rehearing.

The Commission orders:

(A) As discussed herein, the Commission is granting clarification and denying the rehearing requests of Algonquin Gas Transmission, LLC, East Tennessee Natural Gas, Gulfstream Natural Gas System, Maritimes and Northeast Pipeline, Texas Eastern Transmission Company and Union Gas Limited.

(B) As discussed herein, the Commission finds that the El Paso's request for rehearing is moot and grants clarification to Dauphin Island Gathering Partners.

(C) As discussed herein, the Commission is granting Florida Power and Light's request for partial waiver.

(D) As discussed herein, the Commission is denying Honeoye Storage Corporation's request for rehearing.

(E) As discussed herein, the Commission is directing Kinder Morgan to make a compliance filing in Docket No. TS04-249-001.

(F) As discussed herein, the Commission is granting Kinder Morgan's request for waiver in Docket Nos. TS04-271-001 and TS04-272-001.

(G) As discussed herein, the Commission is granting a partial waiver for Midwestern Gas Transmission Company, Northern Border Transmission and Viking Gas Transmission.

(H) As discussed herein, the Commission is granting, in part, and denying, in part, the Missouri Public Service Commission's request for rehearing of the Commission's July 7, 2004 Order regarding Missouri Interstate Gas, LLC.

(I) As discussed herein, the Commission is directing New Corp Resources Electric Cooperative, Inc to make a compliance filing.

(J) As discussed herein, the Commission is denying Natural Gas Supply Association's request for rehearing of the Commission's September 20, 2004 Order concerning Texas Gas Transmission, L.L.C.

(K) As discussed herein, the Commission is granting Total Peaking Storage's request for rehearing.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.