

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

High Island Offshore System, L.L.C	Docket No. TS06-8-000
Petal Gas Storage, L.L.C.	Docket No. TS06-9-000
NGO Transmission, Inc.	Docket No. TS05-13-000
Exelon Corporation	Docket Nos. TS04-286-001 TS04-287-001
Ozark Gas Transmission, L.L.C.	Docket No. TS06-10-000
Texas Gas Service Company	Docket No. TS05-9-000
NorthWestern Energy	Docket No. TS04-3-001
Williston Basin Interstate Pipeline	Docket No. TS04-260-001
Attala Transmission, L.L.C.	Docket No. TS05-18-000
The Detroit Edison Company	Docket No. TS06-1-000

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

(Issued July 20, 2006)

1. On November 25, 2003, the Commission issued a Final Rule Adopting Standards of Conduct for Transmission Providers (Order No. 2004).¹ Under Order No. 2004, the

¹ *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, FERC Stats. & Regs. ¶ 31,161 (2004), 107 FERC ¶ 61,032 (2004), *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166 (2004), 108 FERC ¶ 61,118 (2004), *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *appeal pending*, (U.S.C.A., D.C. Circuit, Docket Nos. 04-1178, et al.).

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) (2005).

2. Between October 2004 and April 2006, the above-captioned Transmission Providers submitted: (1) requests for full or partial waiver of or exemption from the Standards of Conduct; (2) requests for clarification; (3) compliance filings; (4) or requests for rehearing. Notices of the filings were published in the Federal Register. The Commission is granting and denying the requests for waiver, clarification and rehearing, and accepting and rejecting the compliance filings, as discussed herein. If any of the underlying facts upon which the orders are based change, the Transmission Providers must inform the Commission of those changes.

I. High Island Offshore System, L.L.C. (HIOS) and Petal Gas Storage, L.L.C. (Petal) – Docket Nos. TS06-08-000 and TS06-09-000

3. On March 27, 2006, HIOS and Petal filed a joint request for partial waiver of sections 358.3(d)(6) and 358.3(k) of the Commission's Standards of Conduct regulations as those sections apply to their intrastate pipeline affiliate, Enterprise Texas Pipeline, L.P. (Enterprise Texas). As discussed below, the Commission is granting the request of HIOS and Petal and they will not be required to treat Enterprise Texas as a Marketing Affiliate.

4. HIOS and Petal are Transmission Providers under Order No. 2004 and are subsidiaries of Enterprise Products Partners L.P. (Enterprise Products). HIOS is an interstate natural gas pipeline system that consists of 204 miles of pipeline facilities located entirely in the offshore waters of the Gulf of Mexico. HIOS' 42-inch mainline extends from High Island Block A-264 northward to offshore interconnections with ANR Pipeline Company, Tennessee Gas Pipeline Company, and Enbridge Offshore Pipelines (UTOS) L.L.C. The system also interconnects with Stingray Pipeline at High Island Block A-330. Petal's facilities are located entirely within the state of Mississippi. Petal's facilities consist of three salt dome storage caverns, two compressor stations, and a 59-mile pipeline system which interconnects with Destin Pipeline Company, Koch Gateway Pipeline Company, Southern Natural Gas Company, and Hattiesburg Gas Company, a Hinshaw pipeline affiliate of Enterprise Products.

5. Enterprise Texas owns and operates a 6,200-mile intrastate natural gas pipeline system in the state of Texas. HIOS and Petal state that Enterprise Texas is under both the jurisdiction of the Texas Railroad Commission for the intrastate transportation service and this Commission pursuant to section 311 of the Natural Gas Policy Act. HIOS and Petal state that Enterprise Texas' intrastate facilities do not interconnect with, and are geographically well-removed from, the offshore facilities of HIOS and the Mississippi operations of Petal. They also state that Enterprise Texas is not now, and has never been, a shipper on either HIOS' or Petal's systems.

6. HIOS and Petal state that, with one limited exception, Enterprise Texas operates exclusively as a provider of transportation, storage, and/or gathering services for natural gas owned by its shippers and is not engaged in selling or otherwise marketing natural gas. Enterprise Texas is involved in the purchase and sale of natural gas solely to the extent necessary to meet the operational requirements of its pipeline system. The one limited exception is certain sales ordered pursuant to a 1979 Texas Railroad Commission settlement, Docket No. 500.² According to HIOS and Petal, Docket No. 500 required Enterprise Texas to continue certain sales services rendered through certain pipeline assets now owned and operated by Enterprise Texas. HIOS and Petal state that, the Docket No. 500 sales represent 0.0003 percent of the Enterprise Texas system throughput, generating \$26,977 in gross revenue. HIOS and Petal contend that because of these *de minimis* sales, Enterprise Texas does not qualify for the exemption for Energy Affiliates articulated in section 358.3(d)(6)(vi) (2005), 18 C.F.R. § 358.3(d)(6)(vi) (2005).

A. Public Notice, Interventions, and Protests

7. There were no comments, motions to intervene or protests filed in this proceeding.

B. Discussion

8. HIOS and Petal request a partial waiver of the Standards of Conduct for the *de minimis* sales made by Enterprise Texas pursuant to the Texas Railroad Commission Docket 500 program. They state that these sales do not raise any of the concerns or considerations that led the Commission to require Energy Affiliate status for Transmission Provider affiliates engaged in merchant function purchases and sales. Furthermore, HIOS and Petal state that the Docket 500 sales exist solely as a result of a state regulatory requirement and represent less than 0.001 percent of Enterprise Texas' business. The Docket 500 purchases and sales are a minor increment to the operational purchases and sales necessary for overall system operations.

9. Second, HIOS and Petal state that the Docket 500 purchases and sales do not use the pipeline or storage capacity of HIOS and Petal. Moreover, since Enterprise Texas is not interconnected to either HIOS or Petal, there is no possible way that HIOS or Petal could discriminate in favor of the Docket 500 purchases or sales.

10. Third, HIOS and Petal argue that Enterprise Texas' operations are indistinguishable from those of an intrastate transportation-only pipeline that receives the benefit of the automatic exemption of section 358.3(d)(6)(vi). HIOS and Petal also state

² See "Final Order," *In Re Application of Lo-Voca Gathering Co.*, Docket No. 500, Railroad Commission of Texas (Sept. 4, 1979) (Docket 500).

that all officers and employees assigned to Enterprise Texas have received training in the Standards of Conduct, including the no conduit rule.

11. The Commission grants the request for partial waiver filed by HIOS and Petal. HIOS and Petal are not required to treat Enterprise Texas as an Energy or Marketing Affiliate under the Standards of Conduct. An Energy Affiliate is defined as an affiliate that “(1) engages or is involved in transmission transactions in U.S. energy or transmission markets; (2) manages or controls Transmission capacity of a Transmission Provider in U.S. energy or transmission markets; (3) buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; (4) engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy of transmission markets; or (5) is a local distribution division of an electric public utility Transmission Provider.” 18 C.F.R. § 358.3(d)(1)-(5) (2005). Based on the information provided by HIOS and Petal, we find that Enterprise Texas is principally engaged in the intrastate transmission and sale of natural gas. But, as a result of the Docket No. 500 sales, Enterprise Texas is an Energy Affiliate of HIOS and Petal. Since Enterprise Texas is not interconnected to either HIOS or Petal, it does not appear that HIOS or Petal could discriminate in favor of the Docket 500 purchases or sales and the waiver is therefore granted.³

12. HIOS and Petal also claim that Enterprise Texas is not a Marketing Affiliate because the only sales made by Enterprise Texas are those made pursuant to the Texas Railroad Commission’s Docket 500 settlement. A Marketing Affiliate is defined as an affiliate that “engages in marketing, sales, or brokering activities.” 18 C.F.R. § 358.3(k) (2005). Based, on the information provided by HIOS and Petal, it appears that Enterprise Texas is a Marketing Affiliate because of the Docket 500 sales. However, good cause exists to grant the request for partial waiver of the Standards of Conduct. Under these circumstances, HIOS and Petal are not required to treat Enterprise Texas as a Marketing Affiliate.

II. NGO Transmission, Inc. (NGO) – Docket No. TS05-13-000

13. On February 2, 2005, NGO filed a request asking the Commission to: (1) determine that its affiliated local distribution company (LDC), National Gas and Oil Cooperative (Cooperative), qualifies for an exemption from Energy Affiliate status under section 358.3(d)(6)(v) of the Commission’s regulations, or, in the alternative (2) grant NGO a partial waiver of the independent functioning and information sharing prohibitions of the Standards of Conduct. As discussed below, the Commission is denying NGO’s request to exempt Cooperative from being treated as an Energy Affiliate, but is granting NGO a partial waiver of the independent functioning and information sharing prohibitions of the Standards of Conduct.

³ See Order No. 2004-D, 110 FERC ¶ 61,320, at P 6 (2005).

14. NGO is a small natural gas pipeline and storage company operating in Ohio.⁴ It owns and operates approximately 171 miles of small and medium diameter pipeline, as well as three interconnected storage fields. NGO's pipeline facilities have a peak day capacity of 76,773 MMBtu/d and its storage facilities have a combined working gas capacity of 2,214,500 MMBtu/d and a peak withdrawal rate of 43,260 MMBtu/d. NGO provides firm, no-notice service to its gas LDC affiliate, National Gas and Oil Cooperative (Cooperative). According to NGO, this service to Cooperative bundles transportation and storage functions. Cooperative is NGO's only firm customer and has contracted for all of NGO's firm transportation and storage capacity. In addition, NGO provides periodic interruptible service to two other affiliates, NGO Development Corporation and Producers Gas Sales, Inc. There are no other shippers at this time.

15. NGO claims that Cooperative should qualify for the LDC exemption from Energy Affiliate Status in section 358.3(d)(6)(v) of the Commission's regulations.⁵ NGO states that Cooperative is a member-owned, not-for-profit cooperative regulated by the local municipalities it serves in Ohio, rather than by the Public Utilities Commission of Ohio (Ohio Commission).⁶ NGO argues that even though Cooperative is regulated by a municipality rather than a state, the Commission should determine that Cooperative qualifies for the LDC exemption. NGO claims that Cooperative's regulation by the municipalities it serves rather than a state commission does not undermine the scope of the LDC exemption from the definition of an Energy Affiliate in the Standards of Conduct.

16. Alternatively, NGO seeks a partial exemption of the independent functioning and information sharing requirements of the Standards of Conduct with respect to its employee-sharing arrangement with Cooperative. NGO explains that it employs nine

⁴ The Commission issued a certificate of public convenience and necessity to NGO on October 27, 2003, and subsequently approved its Open Access Transmission Tariff. *See NGO Transmission, Inc.*, 105 FERC ¶ 61,138 (2003) and 107 FERC ¶ 61,302 (2004).

⁵ Under section 358.3(d)(6)(v) of the Commission's regulations, 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 section 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 minimus* sales necessary to remaining in balance under applicable pipeline tariff requirements.

⁶ Ohio law exempts from Ohio jurisdiction electric light companies that operate their utilities on a not-for-profit basis and are owned and operated exclusively by and solely for the utilities' customers. *See* Ohio Revised Code §§ 4905.02(A) and (B).

field and/or gas control employees and two supervisors. According to NGO, these employees report to its Director of Operations and are responsible for the physical, day-to-day operation of its pipeline and storage facilities. NGO notes that these employees also perform certain functions on behalf of Cooperative, *e.g.*, the NGO Transmission employee who responds to pipeline maintenance calls may also respond to calls relating to Cooperative's local distribution facilities. In addition, Cooperative employees responsible for performing various engineering, environmental, and regulatory compliance functions as well as construction and gas measurement activities also provide similar services to NGO. NGO asserts that its sharing of employees with Cooperative achieves efficiencies and minimizes redundancies. Finally, NGO also asserts that because Cooperative is regulated by the municipalities it serves, NGO should qualify for the LDC exemption from the definition of Energy Affiliate.

17. NGO, therefore, requests the Commission either to find that Cooperative qualifies for the LDC exemption from the definition of an Energy Affiliate in section 358.3(d)(6)(v), or grant waiver of the independent functioning requirement in section 358.4(a) and the information disclosure prohibitions in sections 358.5(a) and (b)(1) through (b)(3) because it is a small pipeline.⁷

A. Public Notice, Interventions and Protests

18. No comments, protests or motions to intervene were filed.

B. Discussion

19. Based on statements in NGO's pleadings concerning its small size, lack of staff and limited number of employees, the Commission is granting NGO a partial waiver from the requirements of Order No. 2004. Specifically, the Commission is waiving the obligation to comply with the independent functioning requirement of section 358.4(a), and is waiving the information disclosure prohibitions of sections 358.5(a) and (b)(1), (2) and (3). NGO must notify the Commission if there is any change in circumstances in its operations such as having other shippers that might affect its waiver.

20. Because the Commission is granting NGO's request for partial exemption, the question of whether Cooperative is exempt from the definition of Energy Affiliate is moot.

⁷ NGO points out that the Commission granted partial exemptions to other similarly situated small pipelines including, Hampshire Gas Company, KP Pipeline Company, MIGC, Inc, Missouri Interstate Gas LLC, Total Peaking Services, L.L.C, and Tuscarora Gas Transmission Company in *Bear Creek Storage Company*, 108 FERC ¶ 61,011, at P 20, 27, 35, 43, 50 and 56 (2004).

III. Exelon Corporation (Exelon) Docket Nos. TS04-286-001 and TS04-297-001

21. On July 29, 2005, Exelon made two compliance filings and a renewed request for waiver, on behalf of its subsidiaries PECO Energy Company (PECO) and Commonwealth Edison Company (ComEd), in response to the Commission's June 30, 2005 Order.⁸ As discussed below, this order accepts the compliance filings of PECO and ComEd and grants the request for partial waiver for ComEd.

A. Public Notice, Interventions, and Protests

22. No motions to intervene or interventions were filed. New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, and Central Maine Power Company are parties to the proceeding based on their earlier timely-filed motions to intervene.⁹

B. Docket No. TS04-286-001

23. Previously, on June 3, 2005, the Commission granted Exelon's request for a partial waiver of the Standards of Conduct to allow PECO to treat the employees engaged in Provider of Last Resort (POLR) service functions for PECO as if they were bundled retail employees because PECO has functionally separated its purchasing and sales functions from its transmission functions.¹⁰ However, with respect to the request for partial waiver on behalf of ComEd's POLR services, the Commission directed ComEd to provide additional information with respect to four wholesale, legacy sales contracts that are handled by its Energy Acquisition Unit. The Commission stated that it was unclear whether these "legacy" contracts are actually grandfathered contracts under Order No. 888 or are post-Order No. 888 contracts that predate Exelon's restructuring.¹¹

24. The June 30 Order also confirmed Exelon's position that several business units do not engage in Energy or Marketing Affiliate Activities. However, the Commission directed Exelon to submit additional information regarding the Revenue Management function because it was unclear whether the individuals performing these functions engage in activities relating to transmission customers.

⁸ *Cinergy Services, Inc., et al.*, 111 FERC ¶ 61,512 (2005) (June 30 Order).

⁹ *Id.* at P 13-14.

¹⁰ PECO's POLR unit provides retail services within the state of Pennsylvania.

¹¹ *See Cinergy*, 111 FERC ¶ 61,512, at P 17.

25. In the July 29, 2005 compliance filing Exelon states that the customers of the four legacy contracts under which ComEd provides electric service on a bundled basis are the Illinois Cities of Naperville, Batavia and St. Charles (Illinois Cities), and the Illinois Municipal Electric Agency (IMEA). Exelon points out that the legacy contracts cover sales of electric energy pursuant to a requirements service agreement or bilateral non-economy energy coordination agreement that were executed on or before July 9, 1996. Therefore the contracts meet the requirements of 18 C.F.R. § 35.28(c)(2)(ii), which means that open access transmission service under the Commission's pro forma tariff that will not apply unless separately ordered by the Commission. Exelon states further that, after the merger with PECO, ComEd transferred to Exelon Generation Company, LLC (a Marketing and Energy Affiliate) all of ComEd's contracts that were solely for the sale of power at wholesale, but retained the legacy contracts because they were bundled contracts grandfathered under Order No. 888.

26. With respect to the Revenue Management unit, Exelon states that the Revenue Management employees manage issues pertaining to credit requirements for both ComEd and PECO customers or new customers with poor payment histories. In addition, they provide four primary functions, all of them in relation to retail customers, whether residential, commercial, industrial or governmental. The four functions are: (1) implementing credit and collection policies to minimize financial risk to ComEd and PECO from bad debt; (2) insuring ComEd and PECO comply with credit and collection provisions of applicable state statutes; (3) evaluating and processing customer requests for exceptions to Exelon's credit and collections policies; and (4) coordinating the collection activities of other Exelon departments and outside collection agencies in regard to these retail customers, primarily to maintain proper criteria for disconnection for non-payment. Finally, Exelon clarifies that the Revenue Management employees do not perform any credit functions in regard to wholesale transmission customers. Rather, ComEd and PECO have turned over the operation of their transmission systems to PJM Interconnection, LLC. Transmission customers take service from PJM under the PJM OATT, and PJM handles the credit functions with regard to those customers.

Discussion

27. With respect to ComEd's Energy Acquisition unit, it appears from the information Exelon provides in the compliance filing that the four legacy contracts are grandfathered under Order No. 888. As a result, they should be treated as bundled retail sales-type transactions. Consistent with the Commission's treatment of PECO's POLR Services unit, the Commission will also grant ComEd's Acquisition unit, performing POLR services and oversight of the four legacy contracts unit, a partial waiver of the Standards of Conduct requirements regarding the definition of Energy Affiliate or Marketing Affiliate as it applies to POLR services. The Commission is granting such waiver because it appears that ComEd has functionally separated its purchasing and sales functions from its transmission functions. POLR employees may not serve as conduits for transmission information to any Marketing or Energy Affiliate employees.

28. With respect to the employees in the Revenue Management unit, it appears that they do not engage in any activities relating to transmission customers. The Commission grants clarification that the Revenue Management unit does not appear to engage in activities which require Revenue Management to be treated as an Energy Affiliate.

C. Docket No. TS04-287-001

29. Previously on September 22, 2004, Exelon, on behalf of PECO, filed a request for clarification or, in the alternative, a partial waiver of the Standards of Conduct regarding the definition of Energy Affiliate as it relates to certain functional units involved in gas distribution activities within PECO. In addition to being an electric Transmission Provider, PECO is also a franchised retail gas distributor under the laws of the Commonwealth of Pennsylvania.¹² Exelon also sought clarification that a senior officer, Mr. Horting, who serves as PECO's Vice President - Gas, was permissibly shared.

30. On June 30, 2005, the Commission denied Exelon's request for waiver or clarification with respect to the Acquisition and Planning Unit (which is different than the Energy Acquisition unit discussed above).¹³ The Commission found that this unit undertakes all of the planning and acquisition of supplies for PECO load, schedules pipeline capacity, engages in off-system sales of gas, releases unutilized pipeline capacity and enters into asset management agreements, all of which are Energy Affiliate activities defined under section 358.3(d) of the Commission's regulations.

31. With respect to Mr. Horting, the Commission determined that it appears that Mr. Horting has transmission responsibilities, and in addition signs all contracts and master agreements related to the regulated gas supply function. The Commission did not find persuasive Exelon's argument that he is not involved in day-to-day operations because he is not involved in the gas supply negotiations. As a result, the officer cannot be shared. The Commission provided Exelon the opportunity to make a filing designating another individual to sign those contracts or to file additional information articulating why the Commission should permit Mr. Horting to perform transmission and gas supply functions.¹⁴

32. In the July 29, 2005 filing, Exelon states that it has classified Mr. Horting as an employee performing Energy Affiliate activities. Exelon states further that Mr. Horting will not have access to or receive transmission information from affiliated Transmission Providers except as provided for under the terms of sections 358.5(a) and 358.5(b) of the

¹² PECO does not own or operate any interstate gas transmission systems.

¹³ See 111 FERC ¶ 61,152, at P 33.

¹⁴ See 111 FERC ¶ 61,512, at P 34.

Standards of Conduct. In addition, Mr. Horting will not participate in portions of any meetings where such information is discussed, and will not perform transmission functions.

33. In addition, Exelon states it is continuing to evaluate the need for Mr. Horting to execute the master agreements discussed in the June 30 Order. Exelon states it reserves the right to submit additional filings with the Commission in the event that any future changes in Mr. Horting's functions with PECO Gas change any facts upon which the Commission made findings with respect to Mr. Horting in the June 30 Order.

Discussion

34. With respect to PECO's Acquisition and Planning unit, Exelon accepts the Commission's determination that the Acquisition and Planning unit is an Energy Affiliate under the Standards of Conduct.

35. The Commission is accepting Exelon's compliance filing with respect to Mr. Horting because he is no longer a shared employee. Exelon is classifying Mr. Horting as an Energy Affiliate employee and states that he (1) will not perform transmission functions; (2) will not have access to or receive transmission information from affiliated Transmission Providers except as provided for under the terms of sections 358.5(a) and 358.5(b) of the Commission's regulations; and (3) will not participate in portions of any meetings where such information is discussed. This is acceptable as Mr. Horting will be engaging only in Energy Affiliate activities.

IV. Ozark Gas Transmission, L.L.C. (Ozark) - Docket No. TS06-10-000

36. On April 5, 2006, Ozark requested reaffirmation of a case-specific clarification of the Standards of Conduct previously granted on November 26, 2004¹⁵ in order to apply the existing clarification to Ozark's current Energy Affiliates, or in the alternative, a limited waiver. Ozark also seeks a clarification pertaining to the duties of Ozark's engineer. Finally, Ozark seeks a clarification regarding whether the expertise of certain of Ozark's personnel may evaluate investment opportunities unrelated to Ozark's system. Ozark states that the request for clarification is prompted by a change in ownership of Ozark from Enogex, Inc. (Enogex) to Atlas Pipeline Mid-Continent L.L.C. (Atlas), a

¹⁵ The Commission allowed Ozark and its Energy Affiliates to share Gas Control Employees provided that those employees do not buy, sell, market, trade or administer natural gas, and are separated from, and do not act as a conduit of transmission information to Energy Affiliate employees who buy, sell, market, trade or administer natural gas. *Central New York Oil and Gas Co., LLC, et al*, 109 FERC ¶ 61,231, at P 37 (2004) (*Central New York*).

subsidiary of Atlas America, Inc. (Atlas America).¹⁶ As discussed in more detail below, the Commission is granting Ozark's requests.

37. Ozark's natural gas pipeline system consists of approximately 730 miles of facilities that run from southeast Oklahoma, through Arkansas, and culminates in the southeast corner of Missouri. For calendar year 2005, Ozark transported 48,100,000 Dth, which equates to approximately 35 percent of its design throughput capability. Ozark states that it currently has five Transmission Function employees, 13 shared employees (two of which are vacant) and supervisory executives.

38. Ozark's Energy Affiliates that operate gathering and processing facilities include Atlas, Elk City Oklahoma Pipeline, LP (Elk City) and Ozark Gas Gathering, L.L.C. (OGG). Neither Atlas nor Elk City are interconnected with or flow gas on Ozark. OGG interconnects with Ozark in Oklahoma and Arkansas at multiple points.

39. Ozark asserts that neither Atlas nor Elk City has real-time, day-to-day gas control monitoring, although each has field employees. Manual measurements are taken daily of Elk City and called in to the Atlas Senior Director of Gas Control. Ozark states that the Senior Director monitors this data as well the data that comes in from the Supervisory Control and Data Acquisition (SCADA) system, which is available at most receipt points into the Ozark pipeline. Ozark asserts that the Senior Director does not have real time data available to him, and thus delays may occur before potential problems are identified. Ozark further asserts that Atlas relies on manual measurements and does not have real-time day-to-day monitoring or SCADA data available to it for those facilities. Atlas seeks to better integrate its affiliate in order to provide efficient access to natural gas supplies.

40. Ozark asserts that the Enogex employees that have operated the common Gas Control Group have complied with the requirements of the *Central New York* order and have no role in buying, selling, marketing, brokering or trading natural gas or electricity, nor do they buy or sell transmission capacity or administer the scheduling or the nomination of transmission service. Following Ozark's transfer of ownership from Enogex to Atlas in June 2006, Ozark asserts that the Gas Control Group function will transfer to Atlas' headquarters in Tulsa, Oklahoma. Ozark states that the new shared Gas Control Group in Tulsa will have six employees because Atlas is smaller than Enogex.

41. Ozark states that after the Gas Control Group's transfer to Tulsa, it will continue to be located in secure rooms that are accessible only by a protected pass code. Ozark further states that the computer systems used by the Gas Control Group will continue to

¹⁶ Ozark is a limited liability corporation whose sole member is NOARK Pipeline system, L.P. (NOARK), which is 75% owned by Atlas and 25% owned by Southwestern Energy Pipeline Company.

be password-protected so that they are the only Energy Affiliate employees who can access Ozark's transmission or customer information. Ozark asserts that the Gas Control Group will receive no-conduit rule training and will be prohibited from sharing Ozark SCADA information with non-shared Energy Affiliate employees and OGG SCADA data with Ozark employees. Ozark states that they might share with a Transmission Engineer an unaffiliated company's day-to-day operational information related to interconnected operations.

42. Ozark asserts that the shared Gas Control Group would serve an information role only and has no economic decision-making authority; it would only be allowed to revise operations in emergency situations. Ozark states that a shared Gas Control Group would inform the commercial operations personnel about plant compression status and utilization, real time volume data accuracy and balancing, and be the central contact for all calls regarding potential safety issues and concerns. Ozark asserts that the Gas Control Group provides a single point of contact for shippers, third parties, and field maintenance employees to provide notification of any operational accidents or emergencies. Ozark contends that if the Commission denies its request for clarification, Ozark's Energy Affiliates would be forced to establish a duplicative set of computer system and office facilities and Ozark would be forced to hire additional employees.

43. Ozark also seeks clarification that a full time engineer who is a Transmission Employee can run the hydraulic model and provide the daily gas set-up to the Gas Control Group.¹⁷ Ozark states that currently, after nominations for the next day's gas flow are confirmed by the Ozark transmission function employees who sell transmission capacity and handle the scheduling and nomination of transmission service, Ozark's Transmission Engineer then establishes and provides to the Gas Control Group, the operational parameters that must be implemented to effect the proper flow and operation of the Ozark facilities. Ozark states that the Energy Affiliates' separately provide similar information to the Gas Control Group regarding the parameters of their facilities. The Gas Control Group administers each system to ensure that it operates within its own parameters.

44. Ozark states that given its relatively small size and undersubscribed status, running the hydraulic model and providing the daily gas set-up to the Gas Control Group are not full-time tasks. Ozark proposes to expand the duties of its transmission engineer to more

¹⁷ In its previous request for clarification, Ozark stated that if the operational parameters of a pipeline system needs to be modified, Ozark's transmission engineer or the transmission engineer of the affected Energy Affiliate, not the Gas Control Group, would make the modifications and decide which transaction (if any) would be altered or affected. *Id.* at P 31.

appropriately utilize the capacities of the position to include any engineering functions related to Ozark, including providing engineering for well connects and possible capacity expansions.

45. Finally, Ozark requests clarification that the President of Ozark be allowed to provide expertise to other corporate family members that are Energy Affiliates to assist in evaluating the advisability of purchasing additional pipeline or natural gas industry assets completely unrelated to Ozark and that are independent of the Ozark system. Ozark asserts that the request is limited to investment opportunities that are unrelated to Ozark and any of its expansion plans. Ozark states that denial of this request will unreasonably deny Atlas America from using corporate family assets in an optimal manner.

A. Public Notice, Interventions, and Protests

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

B. Discussion

47. The Commission reaffirms its finding in *Central New York* and extends it, under the same conditions, to Ozark's operations subsequent to its acquisition by Atlas. Specifically, Ozark and its Energy Affiliates can continue to share Gas Control Employees provided that those employees do not buy, sell, market, trade or administer natural gas, and are separated from, and do not act as a conduit of transmission information to Energy Affiliate employees who buy, sell, market, trade or administer natural gas. However, because Standards of Conduct training requirements of 18 C.F.R. § 358.4(e)(5) are not limited to no-conduit rule training, Ozark must provide training on all of the Standards of Conduct to the Gas Control Group, as well as all other employees with access to transmission information or information concerning gas or electric purchases, sales or marketing functions.

48. The Commission also grants Ozark's request to allow the transmission engineer to perform more duties for Ozark's Transmission Function. Because the transmission engineer performs duties solely for Ozark and is not a shared employee, there is no reason why the transmission engineer cannot perform additional duties for Ozark's Transmission Function.

49. Finally, the Commission grants Ozark's request for clarification that Ozark's President is allowed to provide valuation advice and expertise to Energy Affiliates concerning projects that are completely unrelated to Ozark and independent of the Ozark system. If the projects in question are unrelated to Ozark and independent of the Ozark system, the independent functioning requirement of the Standards of Conduct is not violated because there is no opportunity for the President of Ozark to provide an undue advantage to Ozark's Energy Affiliates.

V. Texas Gas Service Company (Texas Gas) - Docket No. TS05-9-000

50. On January 6, 2005, Texas Gas, a division of ONEOK, Inc., filed a request for exemption so as not to be an Energy Affiliate under the Standards of Conduct. On August 10, 2004, the Commission granted a partial waiver of the independent functioning requirement and information sharing prohibitions of the Standards of Conduct to OkTex Pipeline Company vis-à-vis its relationship with Texas Gas.¹⁸ Specifically, Texas Gas is a local distribution company (LDC) subject to local and state regulation seeking exemption from status as an Energy Affiliate. As a result, it is regulated by local jurisdictions in addition to state regulation, *i.e.*, the Railroad Commission of Texas. The Commission is granting Texas Gas's request for exemption.

A. Public Notice, Interventions and Protests

51. Atmos Energy Corporation filed a motion to intervene.

B. Discussion

52. 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 section 358.3(d)(1), (2), (3) or (4) of the Commission's regulations, except to the limited extent necessary to support on-system customer sales to engage in *de minimis* sales necessary to remain in balance under applicable pipeline tariff requirements. In other words, under § 358.3(d)(6)(v), an LDC must be regulated by a state to qualify for exemption from status as an Energy Affiliate.

53. In Order No. 2004-C, the Commission denied a generic request for clarification that LDCs regulated by local government bodies that regulate the rates, terms and conditions for retail electric and natural gas service, may also qualify for the LDC exemption.¹⁹ We stated, however, that LDCs could file a request for an individual waiver based on their individual circumstances.

54. In its request for exemption, Texas Gas argues that the rationale that supports exempting LDCs that are regulated by states from being considered Energy Affiliates is applicable to it, which is regulated by state and local authorities. Texas Gas points out that the Commission found that LDCs that are regulated by a state, provide solely retail service and engage in no off-system sales qualify for the exemption because they do not compete in competitive retail markets. Texas Gas declares that it engages in no off-

¹⁸ See *Black Marlin Pipeline Company*, 108 FERC ¶ 61,184, at P 49 (2004).

¹⁹ See Order No. 2004-C, at P 17.

system sales, provides solely retail service and the rates, terms and conditions under which it serves those retail customers are regulated by local jurisdictions, as well as by the Railroad Commission of Texas. Based on the facts presented in Texas Gas's filing, we will grant Texas Gas an exemption so that it will not be considered an Energy Affiliate with respect to the Standards of Conduct.

VI. NorthWestern Energy (NorthWestern) -- Docket No. TS04-3-001

55. On October 20, 2004, NorthWestern Energy submitted a compliance filing in response to the Commission's order²⁰ addressing NorthWestern's request for clarification of, or in the alternative a limited exemption from, Order No. 2004 regarding its gas LDC division. The Commission concluded that, although NorthWestern's LDC division may be exempt from the definition of Energy Affiliate under section 358.3(d)(6)(v) of the Commission's regulations, NorthWestern did not provide sufficient evidence for the Commission to determine whether the exemption applied. The Commission directed NorthWestern to file additional information explaining in detail whether its gas LDC division participates in any of the activities described in section 358.3(d) of the Commission's regulations. The Commission finds that the gas LDC division meets the standards for exemption.

A. Interventions, Protests and Comments

56. No interventions, protests or comments were filed.

B. Discussion

57. In its compliance filing, NorthWestern reiterates its request that the Commission exempt NorthWestern's LDC division from the definition of an Energy Affiliate or, in the alternative, grant a limited waiver to permit NorthWestern to (1) operate its interstate electric transmission and Montana intrastate natural gas distribution (and associated Hinshaw-exempt transmission and storage) systems in a common control center with employees trained in both areas but operating in only one discipline on each shift, and (2) train its scheduling employees on both electric and gas systems to ensure adequate staffing during emergencies and employee vacations. NorthWestern explains that its gas LDC division does not acquire interstate pipeline transmission capacity to purchase and resell gas for on-system customers and is regulated by the Montana Public Service Commission. NorthWestern also explains that its LDC division is not involved in any off-system transmission transactions, does not make any off-system sales, and does not manage or control transmission capacity on any interstate pipeline. NorthWestern states that, other than purchasing gas to satisfy its retail customer load, it does not buy, sell, trade, or administer natural gas in the U.S. energy or transmission markets.

²⁰ See *Alcoa Power Generating, Inc.*, 108 FERC ¶ 61,243, at P 144-45 (2004).

NorthWestern also states that its LDC division does not engage in financial transactions related to the sale or transmission of natural gas or electricity in U.S. energy or transmission markets.

58. Based on NorthWestern's representations that the gas LDC division is not engaged in any off-system sales or any of the other Energy Affiliate activities, the Commission finds that NorthWestern's LDC division meets the criteria for exemption in section 358.3(d) (6) (v) and, therefore, it is not an Energy Affiliate under Order No. 2004.²¹ Because the Commission is granting the exemption, NorthWestern's alternative waiver request is moot.

VII. Williston Basin Interstate Pipeline Company (Williston Basin) – Docket No. TS04-260-001

59. On October 20, 2004, as supplemented on November 3, 2004,²² Williston Basin submitted a compliance filing in response to the Commission's order denying Williston Basin's requests (i) to exempt seven affiliates from the definition of Energy Affiliates and (ii) to exempt 51 positions that Williston Basin shares with three of its Energy Affiliates from the independent functioning requirement of section 358.4(a) (1) of the Commission's regulations.²³ The Commission denied the requests because Williston Basin had not provided sufficient information to justify them. However, the Commission gave Williston Basin an opportunity to submit additional information supporting the requests. With regard to the request to exempt seven affiliates from the definition of Energy Affiliate, the Commission directed Williston Basin to provide information on each affiliate's activities, size, and Williston Basin's interest in the entity. Williston Basin was also required to indicate whether each affiliate has market-based rate authority and where each affiliate fits in the organizational structure. To support its request for waiver of the independent functioning requirement for the 51 employees, Williston Basin was directed to indicate why each position must be shared and how transmission and customer information will be protected if the employees are shared.

60. In its compliance filing, Williston Basin explained that it now seeks to exempt from the Standards of Conduct only three of the seven entities for which it originally sought exemption: BIV Generation Company, LLC (BIV), Colorado Power Partners (Colorado Power), and Fidelity Oil Company (Fidelity Oil). Williston Basin also

²¹ See, e.g., *Destin Pipeline Co.*, 110 FERC ¶ 61,135, at P 12 (2005).

²² In the amendment, Williston Basin explained that it sold New Avoca Gas Storage LLC to a non-affiliated third-party and, as a result, it no longer sought an exemption for New Avoca Gas Storage LLC.

²³ *Alcoa Power Generating, Inc.*, 108 FERC ¶ 61,243, at P 215-23 (2004).

provided some additional information regarding its request to share certain employees.²⁴ However, in the compliance filing, Williston Basin reduced the number of positions raised in its request from 51 to 33.

61. The Commission finds that BIV and Colorado Power are Energy Affiliates, while Fidelity Oil meets the criteria for exemption from being an Energy Affiliate. With respect to the sharing of 33 employees, the Commission finds that Williston Basin has not clearly articulated the reasons to warrant a waiver, but allows Williston Basin to submit a revised waiver request.

A. Interventions, Protests and Comments

62. No interventions, protests or comments were filed.

B. Discussion

BIV

63. Williston Basin explains that BIV owns a 138 MW natural gas fired combined-cycle generation facility located near Brush, Colorado. The facility is located in the Western Electricity Coordinating Council region (WECC). Williston Basin states that BIV is an exempt wholesale generator (EWG). BIV sells 120 MW of its capacity and energy to Public Service Company of Colorado under a long-term, market-based rate contract. Williston Basin also states that the remaining energy and capacity is “available for merchant sales.” Williston Basin states that BIV is a wholly owned subsidiary of Brush Power, LLC, which is a wholly owned subsidiary of Centennial Power, Inc., which is a wholly owned subsidiary of Centennial Energy Resources LLC. Williston Basin’s current organizational chart shows that Centennial Energy Resources LLC is a wholly owned subsidiary of Centennial Energy Holdings, Inc., which also indirectly wholly owns Williston Basin.²⁵ Williston Basin indicates that BIV has no employees. When Williston Basin submitted its first request for exemption, BIV was operated by a non-affiliated third-party contractor. That third-party contractor, Colorado Energy Management, LLC (CEM), is now affiliated with BIV. Williston Basin explains that CEM operates and maintains the facility but is neither responsible for nor involved in marketing or selling the output from the facility. Williston Basin argues that BIV should not be treated as an Energy Affiliate because it has no employees.

²⁴ In its compliance filing, Williston Basin withdrew its request to share certain employees based on its reading of Order No. 2004. This order does not address the waivers that Williston Basin withdrew.

²⁵ [Http://ebb.wbip.com/informational_postings/organizationalcharts/main.asp](http://ebb.wbip.com/informational_postings/organizationalcharts/main.asp) (Corporate Organizational Chart, Energy Affiliate dated April 20, 2006) (July 5, 2006).

64. BIV sells electric energy in the U.S. energy markets and meets the criteria as an Energy Affiliate. *See* 18 C.F.R. § 358.3(d) (2005). Williston Basin argues BIV has no employees and that the affiliated entity that operates the facility has no control over sales from the facility and thus should not be treated as an Energy Affiliate. Williston Basin's argument that BIV should not be treated as an Energy Affiliate is unpersuasive. BIV has market-based rate authority and supplies energy and capacity for resale. BIV is clearly engaged in Energy Affiliate activities. Williston Basin's argument about a lack of employees is unpersuasive. There must be some individuals who perform services for BIV, whether or not affiliated with Williston Basin or BIV, and whether or not directly employed by BIV or on behalf of BIV. Accordingly, the Commission is denying Williston Basin's request that BIV be exempt from the definition of an Energy Affiliate and reminds Williston Basin that all individuals providing services to or on behalf of BIV must be treated as if he or she is directly employed by BIV.

Colorado Power

65. Colorado Power owns a 50 MW natural gas-fired combined-cycle electric generation facility and a 25 MW natural gas-fired simple-cycle electric generation facility located near Brush, Colorado. The facilities are located in WECC. Colorado Power sells all of its capacity and energy to Public Service Company of Colorado at market-based rates pursuant to a long-term agreement. Williston Basin states that Colorado Power is an indirect wholly owned subsidiary of Brush Power, LLC, the corporate ownership of which was stated above. Williston Basin indicates that Colorado Power has no employees. As with BIV, at the time Williston Basin submitted its first request for exemption, Colorado Power was operated by a non-affiliated third-party contractor (CEM), but now, CEM is affiliated with Colorado Power. Williston Basin explains that CEM operates and maintains the facility and is neither responsible for nor involved in marketing or selling the output from the facility. Williston Basin argues that Colorado Power should not be treated as an Energy Affiliate because it has no employees.

66. Colorado Power sells electric energy in the U.S. energy markets and meets the criteria as an Energy Affiliate. *See* 18 C.F.R. § 358.3(d) (2005). Williston Basin argues Colorado Power has no employees and that the affiliated entity that operates the facilities has no control over sales from the facilities and thus should not be treated as an Energy Affiliate. Williston Basin's argument that Colorado Power should not be treated as an Energy Affiliate is unpersuasive. Colorado Power has market-based rate authority and supplies energy and capacity for resale. Colorado Power is clearly engaged in Energy Affiliate activities. Williston Basin's argument about a lack of employees is unpersuasive. There must be some individuals who perform services for Colorado Power, whether or not affiliated with Williston Basin or Colorado Power, and whether or not directly employed by Colorado Power or on behalf of Colorado Power. Accordingly, the Commission is denying Williston Basin's request that Colorado Power be exempt from the definition of an Energy Affiliate and reminds Williston Basin that all individuals

providing services to or on behalf of Colorado Power must be treated as if he or she is directly employed by Colorado Power.

Fidelity Oil

67. Williston Basin explains that Fidelity Oil is a wholly owned subsidiary of Fidelity Exploration & Production Company, which is a wholly owned subsidiary of WBI Holdings, Inc. WBI Holdings, Inc. indirectly wholly owns Williston Basin. Williston Basin states that Fidelity Oil: (1) owns certain non-operating net proceed leasehold interests for which it receives a share of the net oil production revenues; (2) owns certain non-operating overriding royalty interests for which it receives a proportionate share of the oil production royalties;²⁶ (3) is a non-operating working interest owner in certain Gulf of Mexico oil and gas properties which are operated by various non-affiliated third-party operators;²⁷ and (4) is a non-operating working interest owner in the North Willow Springs gas field in Texas, which is operated by a non-affiliated third-party.²⁸ Williston Basin argues that Fidelity Oil should not be treated as an Energy Affiliate because it does not have any employees, it does not operate any of the described interests, and it is neither responsible for nor engaged in marketing or selling product from these property interests. Williston Basin indicates that Fidelity Oil was established solely for the purpose of holding the interests described above. Based on the filing, it appears that Fidelity Oil does not, and cannot, assert any control over the production or sales from the properties.²⁹

68. It appears that although Fidelity Oil owns some oil production, royalty interests and interests in several other entities involved in gas or oil production, Fidelity Oil is purely passive with regard to the oil and gas producing properties in which it holds an interest. It appears that Fidelity Oil is not “engaged in” or “involved in” transmission transactions in U.S. energy or transmission markets, does not manage or control transmission capacity of a transmission provider in U.S. energy or transmission markets,

²⁶ The interest holdings for the oil production assets are in the Cedar Creek Anticline geological formation, which are operated by a non-affiliated third-party operator.

²⁷ Williston Basin states that all of the costs for operating this field flow through the primary third-party operator, from whom Fidelity Oil is billed a proportionate share of such operating costs and also receives a proportionate share of the revenues from these facilities.

²⁸ Fidelity Oil has a proportionate share in the operating costs and revenues of these facilities.

²⁹ Fidelity Oil should notify the Commission within 30 days if Fidelity Oil has any control rights with regard to the properties.

does not buy, sell, trade or administer natural gas or electric energy in U.S. energy or transmission markets, and does not engage in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission. 18 C.F.R. §358.3(d). Therefore, the Commission finds that Fidelity Oil is not an Energy Affiliate.

Sharing Employees

69. Williston Basin asks the Commission to allow it to share certain transmission function employees (33) with an Energy Affiliate, Fidelity Exploration and Production Company (Fidelity Exploration). Williston Basin does not describe Fidelity Exploration. However, its web site indicates that Fidelity Exploration “is engaged in natural gas and oil acquisition, exploration and production activities in the Rocky Mountain region of the United States and in and around the Gulf of Mexico.”³⁰ Williston Basin indicates that the work performed by the shared employees will be in the form of “installation services for Fidelity facilities related to well lines, metering, measurement, communications,” operation and maintenance of all Fidelity Exploration wells and gathering facilities in the Baker Field, technical expertise with regard to the construction, operation, and maintenance of certain Fidelity Exploration facilities, and certain supervisory roles over employees who perform the described tasks. Williston Basin states that the amount of time that the transmission function employees perform tasks for Fidelity Exploration is minimal and that Fidelity Exploration reimburses Williston Basin for the use of the employees. Williston Basin states that disallowing the sharing will cause Fidelity Exploration to incur additional costs to hire the expertise provided by Williston Basin’s transmission function employees and also increase the costs to Williston Basin because its costs for the employees would not be offset by reimbursement payments from Fidelity Exploration when the employees are shared.

70. Based on the information provided, the Commission is denying the request for waiver. Williston Basin does not provide sufficient information to justify the requested waiver. Order No. 2004 already permits transmission providers to share field and maintenance employees, as well as their supervisors, under certain conditions without having to obtain a waiver under section 358.4(a)(4) of the Commission’s regulations. As the Commission already pointed out in *Alcoa*, some of the employees identified in Williston Basin’s compliance filing appear to be eligible for sharing if they qualify as field and maintenance employees under Order No. 2004. Whether an employee is a transmission function employee, and ineligible for sharing, or a field and maintenance employee, and eligible for sharing, depends on the functions performed by the employee.³¹ Williston Basin should not seek a waiver or an exemption to share employees that Order No. 2004 already permits to be shared. Williston Basin may chose to evaluate the

³⁰ [Http://www.fidelityoil.com/docs/fep_profile.html](http://www.fidelityoil.com/docs/fep_profile.html) (July 5, 2006).

³¹ See also Order No. 2004 at P 105; Order No. 2004-A at P 143-46; Order No. 2004-B at P 61-62.

positions that it wants to share with its Energy Affiliate and, if desired, file a new waiver request for those employees with additional detail and information regarding those employees it proposes to share.

VIII. Attala Transmission, LLC (Attala) – Docket No. TS05-18-000

71. On June 29, 2005, Attala filed an Interconnection and Service Charge Agreement between Attala and Entergy Mississippi, Inc. (EMI). Attala is a wholly owned subsidiary of Cleco Midstream Resources LLC, which is wholly owned by Cleco Corporation. Under the interconnection agreement, Attala indicated it would own and operate facilities to interconnect a generator owned by EMI to the EMI extra high voltage transmission system. Attala indicated that the facilities consist of approximately one mile of 500 kV transmission line and a substation adjacent to the generating facility. Attala explained that it would provide interconnection services over the facilities and that EMI would be the only customer to use the facilities. Attala stated that its only asset will be the interconnection facilities. In the transmittal letter used to file the interconnection agreement, Attala argued that, if the Commission deemed the interconnection facilities to be transmission facilities, the Commission should grant Attala a complete waiver of the Standards of Conduct. On August 25, 2005, the Commission determined that the services provided over the interconnection facilities constitute transmission service, addressed the interconnection agreement, but deferred action on the request for waiver of the Standards of Conduct.³²

72. Attala cites the following factors to support its request for a complete waiver of the Standards of Conduct: (i) the interconnection facilities are limited and discrete in nature, (ii) the nature of the interconnection services provided by Attala are also limited and discrete, and (ii) Attala has neither the ability nor the economic incentive to favor its Energy Affiliates. Attala added that it can provide its interconnection service only to one customer and that customer is not any of Attala's Energy Affiliates. Attala cites to *Alcoa* in which the Commission waived compliance with the Standards of Conduct for Cross Sound Cable.³³ Attala states that it is similar to Cross Sound Cable because Attala's interconnection facilities also do not form an integrated transmission system and because Attala also has no economic incentive to favor or grant a preference to its Energy Affiliates. Finally, Attala states that, even if the Commission grants the waiver granted, all of the information required by Part 358 of the Commission's regulations with respect to Attala as a Transmission Provider will be posted on the Cleco Companies' Internet web site as a result of the Statements of Policy and Codes of Conduct filed by the Cleco Companies in compliance with the Commission's order approving the Stipulation and Consent Agreement between the Commission's Division of Enforcement, Office of

³² *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228 (2005).

³³ *Alcoa Power Generating*, 108 FERC ¶ 61,243, at P 23-25.

Market Oversight and Investigation and Cleco, Cleco Marketing & Trading LLC, Cleco Evangeline LLC and Cleco Power LLC.³⁴

A. Interventions, Protests and Comments

73. No interventions, protests or comments were filed.

B. Discussion

74. The Commission will grant the requested waiver. Attala has demonstrated that the transmission facilities it owns are discrete and limited rather than an integrated grid. *See Black Creek Hydro, Inc. et al.*, 77 FERC ¶ 61,232 (1996). The waiver will remain in effect unless and until the Commission takes action on a complaint by an entity that Attala has used its access to transmission information to benefit unfairly its affiliates' sales.

IX. The Detroit Edison Company (Detroit Edison) – Docket No. TS06-1-000

75. On October 3, 2005, Detroit Edison requested clarification (Request for Clarification), that it is not subject to the Standards of Conduct because it is not a Transmission Provider. Alternatively, Detroit Edison argues that it is eligible for waiver because it holds title to only limited and discrete transmission facilities that do not form an integrated transmission grid. The Commission is granting Detroit Edison's request for waiver of the Standards of Conduct.

76. Detroit Edison is primarily a distribution company that in 2000 transferred substantially all of its transmission assets to International Transmission Company (ITC).³⁵ Detroit Edison states that it retained title to two segments of 230 kV lines (Line Segment) associated with service to the Ford Rouge plant which is the site for Dearborn Industrial Generation (DIG). Detroit Edison states that the Line Segments which perform

³⁴ *Cleco Corp.*, 104 FERC ¶ 61,125 (2003), *modified*, 106 FERC ¶ 61,042 (2004).

³⁵ The Commission approved this transaction in *DTE Energy Co.*, 91 FERC ¶ 61,317 (2000) and Detroit Edison notified the Commission that the transaction occurred on December 5, 2000. *See DTE Energy Co.*, Docket No. EC00-86-000, Notice of Consummation (filed Dec. 15, 2000). The Commission later approved ITC's transfer of operation control over Detroit Edison's former transmission grid to the Midwest Independent Transmission Operator, Inc. (MISO). *International Transmission Co.*, 97 FERC ¶ 61,328 (2001).

a transmission function are not stand-alone facilities and are integrated into the ITC 230 kV transmission system serving the DIG facility.³⁶

77. Detroit Edison explains that MISO assumed the “functional operational control” over the Line Segments for the purposes of wholesale transmission service pursuant to an Agency Agreement, accepted by the Commission on January 29, 2004.³⁷

78. Detroit Edison argues that it should not be considered a Transmission Provider because: (1) the Line Segments are not stand-alone facilities, but are short segments integrated into and subsumed within the transmission system owned by ITC; (2) all access to the Line Segments for transmission service is provided via the MISO OATT, and MISO controls the operation of the Line Segments pursuant to the Agency Agreement; and (3) Detroit Edison receives no transmission information concerning the operation of the Line Segments except that necessary to perform its limited, MISO-directed operations function, and is precluded, under certain Commission-approved agreements from improperly disclosing such information.

79. Finally, Detroit Edison states that any limited transmission information it receives concerning the Line Segments is permissibly shared because it is necessary to maintain operations of the transmission system. *See* 18 C.F.R. § 358.5(b)(8) (2005).

A. Public Notice, Interventions, and Protests

80. On November 10, 2005, ITC filed a timely motion to intervene and request for clarification, in which it argued that, notwithstanding the Commission’s determination regarding Detroit Edison’s filing, Detroit Edison continue to be obligated to adhere to the Commission’s Standards of Conduct and not disclose transmission information obtained from ITC.³⁸

81. ITC further stated that Detroit Edison is the largest customer of transmission service on ITC’s facilities and that Detroit Edison’s distribution and generating facilities are interconnected with ITC’s facilities. According to ITC, for Detroit Edison to operate

³⁶ ITC is a Transmission Provider subject to the Standards of Conduct and posts Standards of Conduct information on its OASIS. *See* <http://oasis/midwestiso.org/documents/deco.soc.html> (July 1, 2006).

³⁷ *See Detroit Edison Co.*, Docket No. ER03-19-000 at § 2.1 (filed Oct. 4, 2002, as amended Dec. 2, 2003) (Agency Agreement).

³⁸ *See* Motion to Intervene and Request for Clarification of International Transmission Co., Docket No. TS06-1-000 at 1 (Nov. 10, 2005).

its distribution system and serve its customers in a safe and effective manner, it is necessary for ITC and Detroit Edison to continue to communicate.

82. On November 23, 2005, Detroit Edison filed a Motion for Leave to Answer and Answer. On December 1, 2005, ITC filed a Protest in which it argued that Detroit Edison had not sufficiently addressed the concerns raised in its November 10 Motion to Intervene. On December 7, 2005 Detroit Edison filed a second Motion for Leave to Answer and Answer in which it explained that a meeting took place between Detroit Edison and ITC and that they agreed that Detroit Edison was contractually obligated to treat any confidential information received from ITC in a manner consistent with Order No. 2004. Detroit Edison further explained that: (1) ITC supported the filing of the Answer; (2) the Answer adequately addressed ITC's protest; and (3) ITC did not object to Detroit Edison's Request for Clarification.

83. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. However, the Commission will accept the answers filed herein because they have provided information that assisted us in our decision-making process.

B. Discussion

84. The Commission finds that Detroit Edison is a Transmission Provider. But, consistent with the reasoning set forth in *Black Creek Hydro Inc. et al.*, the Commission finds that Detroit Edison only owns limited and discrete transmission facilities that do not form an integrated transmission grid and grants Detroit Edison a partial waiver from the Standards of Conduct.³⁹ Waiver of the Standards of Conduct does not relieve a Transmission Provider from the requirements of sections 205 and 206 of the Federal Power Act, which prohibit a Transmission provider from unduly preferential or unduly discriminatory conduct. Nor does the waiver relieve Detroit Edison of its contractual obligations to ITC or others.

The Commission orders:

(A) As discussed herein, the Commission is granting the request of High Island Offshore System, L.L.C. and Petal Gas Storage, L.L.C.

(B) As discussed herein, the Commission is granting the request of NGO Transmission, Inc. and finding moot a second request.

³⁹ 77 FERC ¶ 61,232 (1996).

(C) As discussed herein, the Commission is granting the request for waiver and accepting the compliance filing submitted by Exelon Corporation on behalf of its subsidiaries, PECO Energy Company and Commonwealth Edison Company.

(D) As discussed herein, the Commission is granting the clarification requested by Ozark Gas Transmission, L.L.C.

(E) As discussed herein, the Commission is granting Texas Gas Service Company's request that it not be treated as an Energy Affiliate.

(F) As discussed herein, the Commission is granting NorthWestern Energy's request for clarification that its LDC division meets the criteria for exemption from Energy Affiliate status and finds that Northwestern's alternative waiver request is moot.

(G) As discussed herein, the Commission is denying Williston Basin Interstate Pipeline Company's request that two affiliates (BIV and Colorado Power) not be treated as Energy Affiliates, granting its request that a third affiliate (Fidelity Oil) not be treated as an Energy Affiliate and denying its request to share 33 employees because Williston Basin did not provide sufficient information to support the sharing.

(H) As discussed herein, the Commission finds that The Detroit Edison Company is a Transmission Provider, but grants it a waiver of the Standards of Conduct.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.