

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Black Marlin Pipeline Company
Discovery Gas Transmission LLC
Honeoye Storage Corporation
and KeySpan LNG, LP
Nornew Energy Supply, Inc.
ONEOK, Inc.
Trans-Union Interstate Pipeline, L.P.

Docket No. TS04-230-000
Docket No. TS04-172-000
Docket No. TS04-257-000

Docket No. TS04-258-000
Docket Nos. TS04-7-000 and 001
Docket No. TS04-1-000

ORDER ON REQUESTS FOR WAIVERS FROM THE STANDARDS OF CONDUCT

(Issued August 10, 2004)

1. On November 25, 2003, the Commission issued a Final Rule adopting Standards of Conduct for Transmission Providers (Order No. 2004 or Final Rule).¹ 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).
2. In Order No. 2004-A, the Commission established the parameters for waivers, partial waivers, or exemptions. First, the Commission will grant exemptions only for good cause. *See* Order No. 2004-A at P29. Second, the Commission will review the merits of each exemption request to determine whether a Transmission Provider qualifies

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, 107 FERC ¶ 61,032 (2004), Order No. 2004-B, 108 FERC ¶ 61,118.

for a full or partial waiver of the Standards of Conduct. *See* Order No. 2004-A at P 27. Third, small pipelines may qualify for a partial waiver based on the size of the company, the number of employees and level of interest in transportation on the pipeline, and, where appropriate, whether the pipeline has separated to the maximum extent practicable from its Marketing or Energy Affiliates.² *See* Order No. 2004-A at P30. Fourth, the Commission, upon application, will exempt independent storage companies that are not interconnected with the facilities of affiliated pipelines, cannot exercise market power, have no exclusive franchise, no captive ratepayers, no cost-of-service, no guaranteed rate of return, and no ability to cross-subsidize at-risk businesses with rate-payer contributions. *See* Order No. 2004-A at P38. Finally, Order No. 2004 does not limit the time for filing requests for exemptions or waivers. *See* Order No. 2004-A at P 32.

3. Between February 9 and May 21, 2004, the above-captioned Transmission Providers filed requests for exemption, waiver and partial waiver. Notice of the filings was issued on June 2, 2004, with comments, protests and interventions due on June 16, 2004.

4. The Commission is granting and denying the requests for waiver and exemption as discussed herein.

I. Black Marlin Pipeline Company (Black Marlin) - Docket Number TS04-230-000

5. Black Marlin filed a request for an exemption from the Standards of Conduct under Order No. 2004 or, in the alternative, a partial exemption of only sections 358.4 (a) (separation of functions) and 358.5(a) and (b) (information access and disclosure prohibitions). Black Marlin stated that the Commission previously permitted it to remove all references to Black Marlin's Marketing Affiliates from its tariff because it was not providing and had no plans to provide any transmission service to a Marketing Affiliate.³

² These are the same criteria the Commission used in determining whether small pipelines qualified for partial exemptions from the requirements of Order No. 497. *See, e.g., Ringwood Gathering Company*, 55 FERC ¶ 61,300 (1991).

³ In a June 27, 2003 letter order, the Commission approved Black Marlin's proposal to remove all references to Black Marlin's Marketing Affiliates from its tariff. *Black Marlin Pipeline Company*, 103 FERC ¶ 61,370 (2003).

6. Black Marlin is wholly owned by Williams Field Services Group, Inc. (WFSG), which in turn is wholly owned by The Williams Companies, Inc. (Williams). Black Marlin states that its system is a 16-inch, 75-mile pipeline that flows in only one direction from offshore receipt points to one interconnection point with Houston Pipeline, KM Ship Channel and Union Carbide, none of which are affiliates of Black Marlin. Black Marlin further states that there are no processors or processing facilities on Black Marlin's system and upstream of its three delivery points there is a separation facility owned by Black Marlin. Black Marlin asserts that none of the production delivered into Black Marlin's system is owned by Black Marlin or any affiliate of Black Marlin.

7. Black Marlin asserts that it has no firm transportation agreements and only seven interruptible transportation agreements, none of them with affiliates. Black Marlin further contends that it has no market power because its system is not fully subscribed (its average throughput in 2003 was 42,300 MMBtu per day compared with a full capacity of 160,000 MMBtu per day), and it did not operate at maximum throughput on any day from 2001 through 2003. Black Marlin asserts that it has to discount its capacity to attract customers.

8. Black Marlin states that it does not have any of its own employees, but that its facilities are managed by five full time equivalent persons that are either independent contractors or are shared with Williams's employees from the Midstream and Gas Liquids business unit. This unit also operates a gathering facility that is interconnected with Black Marlin and is owned by WFSG. Black Marlin contends that the gatherer does not perform functions that would make it an Energy Affiliate, as that term was clarified regarding gatherers in Order No. 2004-A. Specifically, Black Marlin states that the gatherer does not engage in any transmission transactions or control transmission capacity on Black Marlin or otherwise. Black Marlin further states that the gatherer does not buy or sell any gas on or in any way related to Black Marlin or its operations. According to Black Marlin, the gatherer only purchases and sells gas for purposes incidental to its processing operations at locations distant from and unrelated to Black Marlin. Black Marlin states that the gatherer does not engage in trading natural gas or in financial transactions. Black Marlin asserts that the gatherer gathers an average of approximately 8,000 Dth of gas per day for delivery to Black Marlin.

9. Black Marlin states that it utilizes a gas nomination and scheduling software system operated by Williams's Midstream Gas and Liquids business unit, which is also used for nominations and scheduling on affiliated, non-jurisdictional gathering systems, as well as on Discovery Gas Transmission LLC, a transmission affiliate of Black Marlin's (see Docket No. TS04-172 below). With regard to its communications with its gathering affiliate, Black Marlin states that it coordinates and resolves shipper nomination and scheduling and the launching, frequency and velocity of pigging

operations. Black Marlin asserts that this is information that is allowed to be shared with its Energy Affiliate to maintain the operation of the transmission system citing section 358.5(b)(8) and Order No. 2004-A at P78.

10. Finally, Black Marlin estimates that the cost of compliance with the Standards of Conduct would be \$2.25 million to \$3 million in start-up costs and \$350,000 to \$700,000 annually, which would increase Black Marlin's annual cost of service by over 15 percent.

A. Public Notice, Interventions, and Protests

11. No interventions or protests were filed.

B. Discussion

12. The Commission is granting Black Marlin's request for a partial waiver from the Order No. 2004 Standards of Conduct, specifically the provisions of sections 358.4 (a) dealing with separation of functions and sections 358.5(a) and (b) (1), (2) and (3) relating to information access and disclosure prohibitions with respect to Midstream Gas and Liquids. The Commission considers that waivers of these provisions are warranted because of Black Marlin's small size, limited staff and limited operations.

13. However, the Commission is denying Black Marlin's request for a waiver of the remaining Standards of Conduct. Black Marlin does not explain why it is unable to comply with the other provisions of the Standards of Conduct, such as the requirement to implement its tariffs in a non-discriminatory manner (section 358.5(c)). For example, Black Marlin asserts that it has a large amount of capacity available on its system. It must award this capacity in a non-discriminatory fashion. Moreover, Black Marlin has not articulated a reason why it could not comply with the internet posting requirements of the Standards of Conduct. By September 1, 2004, Black Marlin shall comply with the remaining Standards of Conduct for which it has not received a waiver.

II. Discovery Gas Transmission LLC (Discovery) - Docket NO. TS04-172-000

14. On February 9, 2004, Discovery filed a request for an exemption from the Standards of Conduct, or in the alternative, a partial exemption of sections 358.4 (a) (separation of functions) and 358.5(a) and (b) (information access and disclosure

prohibitions).⁴ Following the issuance of Order No. 2004-A, on May 28, 2004, Discovery supplemented its filing and requested a small pipeline exemption. Discovery states that it was previously not subject to the former Standards of Conduct because it did not transport gas for its Marketing Affiliates.⁵

15. Discovery's system is currently a 105 mile pipeline, with four gathering laterals, that flow in only one direction from offshore receipt points through an affiliated processing plant near Larose, Louisiana, to two delivery points: one with Texas Eastern Transmission LP (Texas Eastern) and one with Bridgeline Gas Distribution LLC. The Commission recently approved an expansion project that would extend Discovery's system a total of 52 miles in two different directions to interconnect with Columbia Gulf Transmission Company, Gulf South Pipeline Company, LP, Tennessee Gas Pipeline Company and Transcontinental Gas Pipe Line Company.⁶ Discovery's affiliate, DPS, owns and operates gathering facilities and the above-mentioned processing plant that are connected to Discovery's system.

16. Discovery asserts that it has nine firm transportation agreements and seven interruptible transportation agreements. While none of these agreements is with a Marketing Affiliate, one of the agreements is with Eni Petroleum (Eni), an Energy Affiliate. Discovery argues that Eni is not in a position to gain any advantage over non-affiliated entities because the agreement is a long term, life-of-lease commitment at a fixed price. Discovery also asserts that Eni is planning to end its affiliation with the pipeline as of June 1, 2004.

⁴ Discovery is wholly owned by Discovery Producer Services LLC (DPS), which is 50 percent owned by Williams Energy L.L.C., 33.3 percent by Duke Energy Field Services, LP and 16.7 percent by Eni BB Pipeline L.L.C. Williams Energy, L.L.C. is wholly owned by Mapco, Inc., which is in turn wholly owned by Williams. The general partner of Duke Energy Field Services, LP is Duke Energy Field Services, LLC, which is owned approximately 70 percent by Duke Energy Corporation (Duke) and 30 percent by

ConocoPhillips. Eni BB Pipeline, L.L.C. is wholly owned by Eni Marketing, Inc., which is in turn wholly owned by Eni Petroleum, Inc. (Eni Petroleum).

⁵ *Discovery Gas Transmission LLC*, 103 FERC ¶ 61,301 (2003).

⁶ *Discovery Gas Transmission LLC*, 107 FERC ¶ 61,124 (2004).

17. Discovery further contends that it has no market power because its system is not fully subscribed. Discovery asserts that its average throughput in 2003 was 282,000 Dth per day compared with a full capacity of 600,000 Dth per day. Discovery states that it collected about \$18 million in revenue for 2003. Discovery contends that following the completion of its expansion project, it is still expected to deliver far less than capacity, 302,000 Dth per day. Discovery states that all but one of its transportation agreements is at a discounted rate.

18. Discovery states that business decisions are made by a management committee of the DPS owners, while day-to-day operations are managed by DPS's contractor, Williams Energy L.L.C. Discovery states that neither Discovery nor DPS has any of its own employees but that its facilities are operated with a small, integrated staff of 50 full-time equivalents, who are either independent contractors or are shared with Williams's employees from the Midstream and Gas Liquids business unit.

19. Discovery also states that DPS, Discovery's gathering and processing affiliate, does not perform functions that would make it an Energy Affiliate, as that term was clarified regarding gatherers in Order No. 2004-A. Specifically, Discovery states that DPS purchases gas only for compressor fuel and to replace plant thermal reductions on its processing operation and for other incidental operational purposes including the cash-out of Discovery's shipper imbalances.⁷ Discovery further states that DPS does not engage in trading natural gas or in financial transactions. DPS gathers natural gas for delivery to Discovery and processes raw gas delivered by Discovery to DPS's Larose plant. Discovery and DPS coordinate and resolve shipper nominations, scheduling, and the launching, frequency and velocity of pigging operations. Discovery states that information sharing and sharing of personnel with DPS is necessary because it has only raw gas coming into the processing plant and that its slug catcher is designed for coordinated operations. Discovery contends that these are the types of efficiencies of corporate integration that the Commission desired to maintain in Order No. 2004-A. Order No. 2004-A, P 134.

20. Discovery states that Discovery and DPS utilize a gas nomination and scheduling software system operated by Williams' Midstream Gas and Liquids business unit. Gas scheduling, gas control and engineering services for Discovery are performed by shared personnel of the Midstream and Gas Liquids Business units.

⁷ In Order No. 2004-B, the Commission stated that gatherers and processors may purchase gas for operational purposes and make *de minimus* sales as required from time to time to remain in balance. See section 358.3(d)(6)(vi) and Order No. 2004-B at P 30.

21. Discovery states that the producer-customers on Discovery and DPS generally execute life of lease commitments in connection with the transportation and gathering service contracts. The producers enter into the agreements at agreed-upon rates consistent with the economics of their major investments underlying offshore productions and competitive alternatives in the area. Discovery asserts that the production from the reserves is not driven by daily market demand or prices but rather by maximum production flows over the life of the reserves.

22. Finally, Discovery estimates that the cost of compliance with the Standards of Conduct would be \$3 million in one-time costs and \$2 million annually.

A. Public Notice, Interventions, and Protests

23. No interventions or protests were filed.

B. Discussion

24. The Commission will grant Discovery's request for a partial waiver from the Order No. 2004 Standards of Conduct, specifically the provisions of sections 358.4(a) of the Commission's regulations dealing with separation of functions and sections 358.5 (a) and (b)(1), (2) and (3) of the Commission's regulations dealing with information access and disclosure with respect to Midstream Gas and Liquids. The Commission considers that waivers of these provisions are warranted because of Discovery's small size, lack of staff and limited operations.

25. However, the Commission denies Discovery's request for a waiver of the remaining Standards of Conduct. Discovery does not explain why it is unable to comply with the other provisions of the Standards of Conduct, such as the requirement to implement its tariffs in a non-discriminatory manner (section 358.5(c)). For example, Discovery asserts that it has a large amount of capacity available on its system. It must award this capacity in a non-discriminatory fashion. Moreover, Discovery has not articulated a reason why it could not comply with the Internet posting requirements of the Standards of Conduct. By September 1, 2004, Discovery shall implement the remaining Standards of Conduct for which it has not received a waiver.

III. Honeoye Storage Corporation (Honeoye) and KeySpan LNG, LP (KLNG) – Docket No. TS04-257-000

26. Honeoye and KLNG request limited exemptions from Order No. 2004 related to the development and distribution of written procedures implementing the standards of conduct, the training of employees on those procedures and posting organizational charts and job descriptions.⁸ In addition, Honeoye states that although Consolidated holds 28.8 percent of its equity, Consolidated does not “control” Honeoye as that term is defined in section 358.3(b)(1) of the Commission’s regulations.

27. Honeoye operates a 6 Bcf underground storage facility in Ontario County, New York with a maximum withdrawal capacity of 55,000 Dth per day under Parts 157 and 284 of the Commission’s regulations. The Commission granted Honeoye market-based rate authority for the Part 284 portion of its storage field.⁹ The facility is interconnected with the Tennessee Gas Pipeline System, and Honeoye does not otherwise own, operate, or control any interstate pipeline capacity that permits the flow of gas into or out of its storage facility or any other interstate pipeline or electric transmission facilities.

28. KLNG operates a 600,000 barrel maximum storage capacity above-ground liquefied natural gas (LNG) storage facility in Providence, Rhode Island under Part 284 of the Commission’s regulations.¹⁰ The storage tank is not connected to the interstate pipeline grid so all customers must make arrangements to truck supply from points

⁸ *Honeoye Storage Corp.*, 91 FERC ¶ 62,165 (2000). Keyspan Corporation and its affiliates, including KeySpan Energy Development Corporation (KEDC), own 52.14 percent of the voting securities of Honeoye and Consolidated Edison of New York, Inc. (Consolidated) owns 28.8 percent of the voting securities of Honeoye. The remaining equity is owned by various other non-affiliated parties.

⁹ *Id.* At 64,287.

¹⁰ KLNG is a limited partnership held entirely by (KEDC). KEDC is a holding company that does not engage in transactions in natural gas commodity or electric transmission markets.

between Providence Gas Company and Algonquin Gas Transmission Company. Because KLNG is not connected to the transmission grid, the Commission has previously exempted it from numerous requirements until such time that it does interconnect with the grid.¹¹

A. Public Notice, Interventions and Protests

29. PSEG Companies filed a timely motion to intervene. No other comments or protests were filed.

B. Discussion

30. As a preliminary matter, we will address Honeoye's claim that Consolidated does not have "control" over Honeoye, even though Consolidated holds 28 percent of the voting securities in Honeoye.¹² Honeoye claims that Consolidated and KeySpan along with its affiliates are competitors in a variety of businesses. Honeoye also claims, without additional explanation, that under Honeoye's corporate structure, Consolidated cannot cause Honeoye to take any action or refrain from taking any action in the ordinary course of business without the affirmative support of KEDC. The Commission finds that Honeoye has failed to adequately rebut the presumption of control because it has not provided sufficient documentation or explanation that supports its argument that Consolidated does not have control of Honeoye.

31. With respect to their requests for a limited exemption, Honeoye and KeySpan state that they are and will continue to be in compliance with the functional separation and non-discrimination requirements of Order No. 2004 and will designate a Chief Compliance Officer. However, they are requesting limited exemptions related to posting

¹¹ Previously, the KLNG facility was known as Algonquin LNG, L.P. *See also*, Algonquin LNG, Inc., 86 FERC ¶ 61,285, in which the Commission granted KLNG a waiver from the then GISB standard nomination timeline with respect to its trucking operations and vapor deliveries by displacement. KLNG has filed an application under sections 3 and 7 of the NGA to upgrade and expand the LNG facilities. *See* Docket Nos. CP04-223-000 and CP04-293-000.

¹² Under section 358.3(c) of the Commission's regulations, control is defined as including, but not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.

detailed organization charts, the development and distribution of written procedures implementing the standards of conduct, and the training of employees on those procedures.

32. Honeoye and KeySpan argue that because the facilities in question are small, stand-alone storage entities in which they do not own, operate, or control interstate pipeline or transmission capacity, they do not pose any risk to the competitive markets that the Standards of Conduct are meant to address. In addition, they state that none of Honeoye's or KeySpan's affiliates own or operate any interstate pipeline capacity that connects to either facility.

33. Honeoye also states it is a fully functioning stand-alone facility that does not rely on any KeySpan or Con Ed entity for any support services, shares no employees, information technology equipment or software and has no electronic connection to either company. Honeoye adds that two KEDC officers and one Consolidated officer sit on Honeoye's Board of Directors. KLNG relies upon KEDC and KeySpan Corporate Services Company for support services and KLNG employees are electronically connected with other KeySpan companies through the intranet and e-mail server. Honeoye and KLNG claim that neither shares any employees or officers with any Energy Affiliate.

34. Petitioners argue that to fully comply with the Standards of Conduct would cost approximately \$8,000 for Honeoye and about \$50,000 for KLNG. The petitioners argue that the informational rules are mere formalities and that the cost is unnecessary. Petitioners want to avoid the costs that require them to make a *pro forma* demonstration with the substantive rules with which they already comply.

35. The Commission will grant KLNG's request for an exemption. KLNG is not interconnected to the interstate transmission grid nor to the facilities of an affiliate.

36. With respect to Honeoye, the Commission denies the request for partial exemption. Honeoye has not articulated sufficient justification for a partial exemption from the Standards of Conduct. The requirement to post organizational charts, to create, post and distribute written procedures implementing the Standards of Conduct and train employees is not overly burdensome. Moreover, the employees of Honeoye must be trained regarding the Standards of Conduct in order to treat their respective Energy Affiliates in an appropriate manner.

IV. Nornew Energy Supply, Inc. (NES) – Docket No. TS04-258-000

37. NES filed a request for waiver, or in the alternative partial waiver, of the independent functioning requirements of the Order No. 2004 Standards of Conduct. NES explains that Strata Management Corporation has three wholly-owned subsidiaries, including NES, Nornew Inc. (Nornew), an oil and gas and production company, and Norse Pipeline LLC (Norse), a non-jurisdictional gathering system. NES also seeks clarification that Strata, Norse and Nornew are not Energy Affiliates as that term is defined under section 358.3(d). NES argues that Strata, a service company, is not an Energy Affiliate because it does not engage in energy or natural gas commodity markets and is not involved in transmission transactions in U.S. energy markets. NES also states that Norse and Nornew should not be considered Energy Affiliates because do not they do not engage in energy or natural gas trading activities on NES.

38. NES's pipeline system consists of approximately 26 miles of pipeline with two receipt points from Norse and Tennessee Gas Pipeline Company (Tennessee) and a single delivery point at Jamestown Board of Public Utilities' (BPU) Samuel A. Carlson Generating Station.¹³ BPU is NES's sole shipper under a 20-year fixed price contract.

39. NES explains that it does not have any employees, but that it is operated by employees of Strata and its other affiliates. Strata has six employees who provide general administrative and managerial support for NES and its affiliates, including contracting, construction, billing, accounting, taxes, and regulatory compliance and reporting.

40. NES states that Nornew, in addition to its production of oil and gas in the Appalachian Basin, also owns and operates two small gathering systems. NES claims that Nornew has four full-time and two part-time employees who supervise its exploration, production and gathering activities. Except for an office manager and secretary, Nornew's employees are field personnel involved in natural gas exploration and development and maintenance and operation of related gathering systems. Two Nornew employees also provide technical support for NES concerning construction, inspection, maintenance and operation of NES's pipeline and appurtenant facilities.

¹³ The 26 miles include 14.67 miles of the Mayville Line 12-inch pipeline segment, connecting to a 4.56-mile, 8-inch Mayville Line segment connecting to a 7.63-mile, 8-inch pipeline NES built to the Carlson Station. The facilities enable NES to receive natural gas from Norse in Mayville, New York and Ellery, New York and from Tennessee in Mayville, New York. 98 FERC ¶ 61,018 at 61,031 (2002).

41. NES explains that Norse is a gatherer of natural gas in New York and Pennsylvania and has six employees. Norse personnel handle gas nominations and scheduling and perform field services including inspection, maintenance, and operation of Norse's and NES's pipelines and appurtenant equipment to assure system safety.

A. Public Notice, Interventions, and Protests

42. No interventions, protests or comments were filed.

B. Discussion

43. As a preliminary matter, based on NES's statements, the Commission finds that Strata is not an Energy Affiliate under section 358.3(d) of the Standards of Conduct since it is a service company that does not engage in energy or natural gas commodity markets and is not involved in transmission transactions in U.S. energy markets. The Commission also finds that Nornew is an Energy Affiliate since, as a producer of natural gas it buys, sells, trades, or administers natural gas in U.S. energy or transmission markets. It is unclear, based on NES's limited description of Norse's gathering activities whether Norse is an Energy Affiliate. NES must submit additional information detailing the activities of Norse if it wants the Commission to provide additional clarification on whether Norse is an Energy Affiliate.

44. The Commission grants NES's request for partial waiver of the Standards of Conduct. Specifically, the provisions of section 358.4(a) dealing with separation of functions and sections 358.5(a) and (b) (1), (2) and (3) relating to information access and disclosure prohibitions with respect to Norse and Nornew. The Commission considers that waivers of these provisions are warranted because of NES's small size, lack of staff and limited operations. By September 1, 2004, NES shall comply with the remaining Standards of Conduct for which it has not received a waiver.

V. ONEOK, Inc. (ONEOK) – Docket Nos. TS04-7-000 and 001

45. ONEOK filed a request for partial exemption from Order No. 2004 on February 5, 2004.¹⁴ Following the issuance of Order No. 2004-A, on May 12, 2004, ONEOK requested a small pipeline exemption for OkTex.

¹⁴ Initially, ONEOK sought a partial exemption to allow OkTex Pipeline Company (OkTex), a natural gas Transmission Provider, to continue sharing operating personnel with its affiliated LDCs Oklahoma Natural Gas Company (ONG) and Texas Gas Service Company (TGS).

46. ONEOK states that OkTex is the only Commission-jurisdictional entity in the ONEOK family of companies.¹⁵ ONEOK submits that OkTex is a small pipeline that has no employees of its own and is already physically and functionally separated from ONEOK's Marketing and Energy Affiliates, including all LDC divisions which make off-system sales or engage in the activities described in 18 C.F.R. § 358.3(d)(1), (2), (3), or (4). OkTex consists of eleven discrete and separate pipeline segments totaling 110 miles that serve Oklahoma, Texas, New Mexico, and crosses the United States/Mexico border. OkTex has an annual throughput of approximately 43.8 Bcf with an overall annual load factor of approximately 10.7 percent. OkTex's annual gas operating revenue for 2003 was approximately \$1.4 million and its net utility revenue was approximately \$377,000.

47. ONEOK states that the operational, administrative, regulatory, and field maintenance services for OkTex are performed by employees of its affiliated LDCs, ONG and TGS. ONEOK states that neither LDC makes any off-system sales or holds or manages interstate pipeline capacity for any purpose other than to serve its retail customers. ONEOK estimates that the one-time cost of compliance with the Standards of Conduct could be as much as \$30,000 and the ongoing cost of compliance may be as much as \$12,500 per year. If the Commission denies the request for partial exemption, ONEOK estimates that the cost of OkTex operating as a stand alone company would be over \$650,000 in the first year and over \$600,000 annually thereafter. ONEOK contends that because of OkTex's miniscule size, location, and abundant excess capacity, OkTex has neither the incentive nor the ability to provide any undue treatment to unfairly benefit any affiliates or exercise market power.

A. Public Notice, Interventions, and Comments

48. No interventions, protests or comments were filed.

B. Discussion

49. Based on the statements in ONEOK's pleading concerning OkTex's small size, lack of employees and limited operations, the Commission is granting OkTex 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 and is waiving the information disclosure prohibitions of section 358.5

¹⁵ ONEOK is a diversified company involved in oil and gas production and natural gas marketing, processing, gathering, storage, transmission and distribution, primarily in the mid-continent areas of the United States.

(a) and (b)(1), (2) and (3) with respect to ONG and TGS. OkTex must comply with the remaining requirements of the Standards of Conduct. OkTex shall implement the Standards of Conduct that have not been waived by September 1, 2004.

VI. Trans-Union Interstate Pipeline, L.P. (Trans-Union) – Docket No. TS04-1-000

50. On January 7, 2004, Trans-Union filed a request for exemption from the Standards of Conduct based on the unique nature of its operations and physical configuration. In the alternative, Trans-Union requested an interim waiver that is effective while it provides service to Union Power Partners, L.P. (UPP), its affiliated electric natural gas-fired generator, and that Trans-Union be permitted to request and justify a further waiver in its eventual tariff filing for open access transportation.¹⁶

51. Trans-Union states that it was not subject to the former Standards of Conduct under Part 161 of the Commission's regulations because it holds a Part 157 certificate¹⁷

and did not provide service to any Marketing Affiliates.¹⁸ Trans-Union submits that its system consists of 41.4 miles of 30-inch diameter pipeline. In addition, Trans-Union states that it provides plant-line type service from two upstream pipelines for delivery to its only customer, UPP, at the terminus of the Trans-Union pipeline in El Dorado, Arkansas (Trans-Union's only delivery point).¹⁹ UPP has subscribed for most of Trans-Union's firm capacity on a long-term basis. Trans-Union also states that the pipeline was constructed for the exclusive purpose of transporting gas to UPP, and the efficient and reliable operation of both facilities depends on seamless coordination between the facilities.

¹⁶ On February 9, 2004, Trans-Union filed a statement that it was deferring the submission of an implementation plan pending Commission action on its request for exemption.

¹⁷ See *Trans-Union Interstate Pipeline, L.P.*, 92 FERC ¶ 61,066 (2000), *order on clarification*, 93 FERC ¶ 61,115 (2000).

¹⁸ The Commission also accepted Trans-Union's *pro forma* tariff language defining its ability to interact and communicate with UPP. *Trans-Union*, 104 FERC ¶ 61,315 at P 22-23 (2003).

¹⁹ Trans-Union explains that it does not qualify for the "plant line" exception to the Commission's jurisdiction because the pipeline crosses a state boundary.

52. Trans-Union argues that the functional separation required by the Standards of Conduct would not result in any meaningful benefits and may cause harm to Trans-Union, its affiliated power plant, and potential third-parties that may contract for service on Trans-Union as part of generation tolling arrangements with the power plant. Trans-Union contends that the only unaffiliated third-parties that are likely to contract for capacity on Trans-Union are shippers that enter into generation tolling arrangements with UPP, and under such arrangements, UPP will continue to provide for operational coordination for gas deliveries to the plant and be the operator of the delivery point on Trans-Union's system. The third-party would own title to the gas delivered to UPP and contract for capacity on Trans-Union (most likely as part of a capacity release from UPP).

53. Trans-Union claims that it must be able to coordinate its operations with those of UPP to operate in an efficient, reliable and safe manner, since the load profile of a gas-fired electric generating facility is unpredictable and considerably different from that of traditional gas users. It states that Trans-Union does not operate any compression or storage facilities that would enable it to actively manage flow variances and any resulting imbalances. In addition, it states that the flow variances cannot be mitigated by the flow rates of other customers with complementary load patterns. Trans-Union submits that the costs of complying with the Standards of Conduct appear to be substantial. Since Trans-Union does not currently have any employees of its own, to comply with Order No. 2004 Trans-Union would have to hire new employees or shift employees from UPP, isolate any control systems and install any necessary intra-office security equipment to protect the separation of systems.

A. Public Notice, Interventions, and Comments

54. No interventions, protests or comments were filed.

B. Discussion

55. The Commission denies Trans-Union's request for a full waiver of the Standards of Conduct and its alternative request for an interim waiver. However, based on Trans-Union's statements concerning its small size, lack of its own employees, and limited operations, the Commission is granting Trans-Union a partial waiver from the requirements of Order No. 2004. Specifically, with respect to UPP, the Commission is waiving Trans-Union's obligation to comply with the independent functioning requirement of section 358.4(a) and is waiving the information disclosure prohibitions of section 358.5 (a) and (b)(1), (2) and (3). Trans-Union must comply with the standards for which it has not received a waiver by September 1, 2004.

The Commission orders:

(A) As discussed herein, the Commission is granting Black Marlin Company's request for partial waiver of the Standards of Conduct.

(B) As discussed herein, the Commission is granting Discovery Gas Transmission's request for partial waiver of the Standards of Conduct.

(C) As discussed herein, the Commission is granting the request of KeySpan LNG for waiver of the Standards of Conduct and is denying Honeoye Storage Corporation's request for waiver of the Standards of Conduct.

(D) As discussed herein, the Commission is granting Nornew Energy Supply's request for partial waiver of the Standards of Conduct.

(E) As discussed herein, the Commission is granting ONEOK's request for partial waiver of the Standards of Conduct.

(F) As discussed herein, the Commission is granting Trans-Union's request for partial waiver of the Standards of Conduct.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.