UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Destin Pipeline Company	Docket No. TS04-53-002
Energy West Development	Docket No. TS05-2-001
Jupiter Energy Corp	Docket No. TS04-280-001
ONEOK, Inc. and OkTex Pipeline Company	Docket Nos. TS04-7-002 and -003

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

(Issued February 11, 2005)

1. On November 25, 2003, the Commission issued a Final Rule adopting *Standards of Conduct for Transmission Providers* (Order No. 2004 or Final Rule).[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]

2. Between August 2, 2004 and December 22, 2004, each of the above-captioned Transmission Providers filed either: a request for an extension of time to comply with the Standards of Conduct; a request for rehearing or clarification of a previous Commission Order, or made a compliance filing. Notices of the filings were published. The Commission is granting and denying the requests as discussed herein. This order benefits customers by applying the Standards of Conduct, as necessary, to ensure that Transmission Providers operate without undue discrimination or preference.

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[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, III FERC Stats. & Regs. ¶ 31,161 (2004), 107 FERC ¶ 61,032 (2004), *order on reh'g*, Order No. 2004-B, III FERC Stats. & Regs. ¶ 31,166 (2004), 108 FERC ¶ 61,118 (2004), *order on reh'g*, Order No. 2004-C, 109 FERC ¶ 61,325 (2004).

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

Destin Pipeline Company, L.L.C. (Destin) – Docket No. TS04-53-002

3. This case concerns Destin's request for a second extension of time to comply with the separation of functions requirement of section 358.4(a) and information sharing prohibitions of sections 358.8(a) and (b) of the Standards of Conduct. Destin is a 225-mile interstate natural gas pipeline company. BP Pipelines (North America) Inc. ("BP") owns an interest in Destin.

4. On August 2, 2004, Destin filed a request for a limited extension of time until December 1, 2004, to comply with the separation of functions requirement of section 358.4(a) and information sharing prohibitions of sections 358.8(a) and (b) of the Standards of Conduct. Destin stated that the extension of time would apply only to the corporate-wide integration of one of BP's data systems, SAP. SAP, an accounting and reporting platform, is used by Destin and other BP subsidiaries that are Energy Affiliates. On October 27, 2004, the Commission granted Destin's request, until December 1, 2004, to comply with the requirements of sections 358.4(a) and 358.5(a) and (b) of the Standards of Conduct with respect to the SAP data system.[3]

5. On November 29, 2004, Destin filed a request for a further limited extension of time to comply with the separation of functions requirement of section 358.4(a) and information sharing prohibitions of sections 358.5(a) and (b) of the Standards of Conduct. Destin states that BP has been working to implement SAP, but the testing indicates several flaws with the new software. Destin states that the software will not be operational by December 1, 2004. Destin requests an extension of time, until March 1, 2005, for Destin to implement the software modifications necessary to restrict formally its Energy Affiliates from accessing Destin's financial and accounting information in the SAP. Destin states that it continues, in the interim, to have in place measures to ensure that its Energy Affiliates will not have access to the financial and accounting information that is in SAP.

6. The Commission is granting Destin a further limited extension of time, until March 1, 2005, to comply with the separation of functions requirement of section 358.4(a) and information sharing prohibitions of sections 358.5(a) and (b) of the Standards of Conduct with respect to the SAP system. Accordingly, Destin shall have until March 1, 2005 to implement the software necessary to restrict its Energy Affiliates from accessing any of Destin's financial and accounting information that is in SAP. In the interim, Destin shall maintain procedures to monitor and record access to Destin-related financial information and accounting information contained in SAP. Destin shall report any instances of unauthorized access of information contained in SAP to the Commission and shall notify the Commission of the date the system software is in place.

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[3] *American Transmission Co. LLC,* 109 FERC ¶ 61,082 at P 26 (2004).

Energy West Development, Inc. (Energy West) – Docket No. TS05-2-001

7. On October 15, 2004, Energy West filed a request for exemption from the Standards of Conduct. In the October 15th filing, Energy West states that it is a wholly owned subsidiary of Energy West, Inc. (EWI), with one delivery point, an interconnection with Northwestern Energy. Energy West also stated that it is affiliated with Energy West Wyoming (EWW), a local distribution company (LDC) under the jurisdiction of the Wyoming Public Service Commission (WYPSC). Energy West stated that EWW does not engage in off-system sales on non-affiliated transmission providers. Energy West also requested that the Commission exempt EWW from the definition of an Energy Affiliate. Energy West states that its only customer is its [Energy Wests's] Marketing Affiliate, Energy West Resources (EWR).

8. On November 26, 2004, the Commission denied Energy West's request for exemption from the Standards of Conduct because Energy West did not provide sufficient information for the Commission to determine whether it is a small pipeline that qualifies for a partial exemption from the Standards of Conduct.[4] The Commission stated that Energy West had not explained the extent to which the pipeline is utilized, the number of employees, how it operates in conjunction with EWW or EWR with respect to the independent functioning requirements of section 358.4(a) or the information sharing prohibitions of sections 358.5(a) and 358.5(b)(1), (2), and (3). Additionally, the Commission stated that while Energy West stated that its LDC affiliate, EWW, does not engage in off-system sales on non-affiliated Transmission Providers, Energy West did not state whether EWW engages in any other Energy Affiliate activities. The Commission required Energy West to submit a compliance filing clearly articulating whether EWW engages in any of the activities described in sections 358.3(d)(1), (2), (3) or (4).

A. Compliance Filing

9. Energy West submitted a compliance filing on December 22, 2004. Energy West clarified that it is a 29-mile pipeline owned by Energy West Development. The rated capacity is 15,000 MMBTU's per day. Energy West states that it has one firm transportation contract with its Marketing Affiliate, EWR, that is set to expire in June 2005. Energy West explains that EWW is not a shipper on the Energy West pipeline. EWR is the gas supplier for EWW under a contract approved by the WYPSC. EWW currently has a contract with EWR to supply all of its natural gas needs. Energy West states that all gas is transported from the wells either through transmission lines owned by EWW or from producers' gathering lines to the EWW transmission lines.

10. Energy West states that there are five employees of EWW that allocate portions of their time maintaining the Energy West pipeline. All costs incurred by those employees on behalf of Energy West are directly assigned to Energy West. Energy West states that

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[4] *Central New York Oil and Gas Co. LLC*, 109 FERC ¶ 61,231 at P 10-12 (2004).

there is complete separation between Energy West and EWR. Energy West is located in Cody, Wyoming and EWR is located in Great Falls, Montana. There is no sharing of employees, office space, computer equipment or telecommunications systems. Energy West states that it does not provide or conduct any transmission system operations or reliability functions nor does it have access to Energy West's system control center.

11. Energy West states that: EWW does not engage in and is not involved in transmission transactions in U.S. energy or transmission markets; and EWW does not manage or control transmission capacity of a transmission provider, does not buy, sell, trade or administer natural gas in any transmission market and does not engage in financial transactions relating to the sale or transmission of natural gas in a natural gas transmission market.

B. Discussion

12. Although Energy West is a small pipeline that would qualify for a partial exemption from the Standards of Conduct vis-à-vis its relationship with its affiliated LDC, EWW, such a partial exemption is not necessary. Energy West has demonstrated that EWW is not an Energy Affiliate because EWW satisfies the criteria in section 358.3(d)(6) of the Standards of Conduct. Under section 358.3(d)(6), an Energy Affiliate does not include a state-regulated LDC that acquires interstate transmission capacity to purchase and resell gas only for on-system customers, and 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 sales and to engage in *de minimus* sales necessary to remaining in balance under applicable pipeline tariff requirements. Energy West has demonstrated that EWW is not an Energy Affiliate, and, thus, a partial exemption is not required because the Standards of Conduct do not govern the relationship between Energy West and EWW.

Jupiter Energy Corporation (Jupiter) – Docket No. TS04-280-001

13. On November 23, 2004, Jupiter filed a request for rehearing of the Commission's October 27, 2004 "Order on Requests for Waivers from the Standards of Conduct" (October 27th Waiver Order).[5] In the October 27th Waiver Order, the Commission granted Jupiter's request for partial waiver of the Standards of Conduct because of Jupiter's lack of staff, small size and limited operations. The waiver applied to the separation of functions requirements of section 358.4(a) and the information access and disclosure prohibitions of sections 358.5(a)(1) and (2) and (b) (1), (2) and (3) with respect to Union Oil Company of California (Unocal).[6] The Commission denied Jupiter's

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[5] *American Transmission Co.*, 109 FERC ¶ 61,082 (2004).

[6] Jupiter is a wholly owned subsidiary of Unocal, a natural gas and crude oil exploration and production company.

request for a waiver of the remaining Standards of Conduct with respect to website postings and non-discrimination requirements. The Commission was not persuaded by Jupiter's argument that the Internet website postings and the nondiscrimination requirements are of "no interest to anyone" and "no purpose would be served" by application of the Standards.

14. In its request for rehearing, Jupiter requests a complete exemption from the Standards of Conduct. Jupiter states that application of the Standards of Conduct is unnecessary, will not serve any of the purposes of the Commission's rule, and is disproportionately burdensome to a pipeline that is economically marginal. Jupiter states that it is currently engaged in only minimal operations and will soon cease all operations pending Commission action on the request for rehearing. Jupiter also requests a stay of the application of Order No. 2004 pending the Commission's final determination of the issues presented.

15. Jupiter's facilities consist of two short pipelines that begin at an offshore Unocal production platform (Platform 39A) and a separation and dehydration facility. The first pipeline is a 10.2 mile, 10 ¾-inch pipeline that receives gas at Platform 39A and transports the gas to an interconnection at the shoreline with Tennessee Gas Transmission Company (Tennessee). The second pipeline is a 3.2 mile, 8 5/8-inch pipeline that receives gas at Platform 39A and transports the gas to a sub-sea interconnection with Transcontinental Gas Pipeline Corporation (Transco). Jupiter states that it is the only Transmission Provider owned by Unocal. Jupiter states that it has functioned essentially as part of the Unocal gathering system that feeds into Platform 39A and the related production operations since it was acquired by Unocal in 1997. Jupiter states that Unocal and Jupiter believe that Jupiter functions as a gathering facility that is exempt from the Commission's jurisdiction.[7]

16. Jupiter states that it holds individual certificates to provide service to three shippers, but its only customer for over 12 years has been its affiliate, Unocal. Jupiter states that the Commission has repeatedly exempted Jupiter from many applicable general policies requiring only that Jupiter notify the Commission of changed

[7] Jupiter states that it made the argument that Jupiter functions as a gathering facility that is exempt from the Commission's jurisdiction in Docket No. CP03-13 and the Commission denied the petition. The decision is currently on review in the United States Court of Appeals for the Fifth Circuit. *See Jupiter Energy Corp*., 103 FERC ¶ 61,184 (2003), *reh'g denied*, 106 FERC ¶ 61,170 (2004), *appeal pending*, *Jupiter Energy Corp. v. FERC*, Case No. 04-60041 (5th Circuit).

circumstances.[8] Jupiter states that since May 2004, Unocal has produced all of the gas transported on Jupiter. In 2003, Unocal produced over 97.5% of the gas transported by Jupiter and purchased the remaining amounts prior to transportation on Jupiter. Jupiter states that it is unlikely that any other shipper will seek access to Jupiter.

17. In support of the request for rehearing and complete exemption from the Standards of Conduct, Jupiter states that the burden and cost of compliance outweigh the benefits of continued operation. Jupiter states that it has a capacity of approximately 150 MMcf per day with a maximum actual flow of approximately 110 MMcf per day. In 2003, Jupiter's gross revenue was less than $275,000.

18. Jupiter states that the cost of training relevant employees is the most burdensome element of full compliance. Jupiter claims that the only portion of Jupiter currently being used is a small diameter pipeline, which it intends to abandon by the end of 2004 pursuant to its blanket certificate authority. After the sale, Jupiter will not transport any gas until the Commission acts on the request for rehearing.

19. Jupiter states that none of the purposes of Order No. 2004 will be furthered by the application of the Standards of Conduct to Jupiter. Although Jupiter is certificated to serve three customers, Jupiter's only shipper is Unocal and it claims there is no prospect of new potential shippers. Jupiter also states that it is impossible for Jupiter to provide undue preferences to Unocal or an affiliate since there is only one customer.

20. Jupiter argues that a full exemption is warranted because the Commission gives full exemptions to storage providers with market-based rates not located on affiliated pipelines[9] and to small electric utilities that (1) own, operate or control only limited and discrete transmission facilities or (2) own, operate or control an integrated transmission grid that is not part of a tight power pool.[10] According to Jupiter, it should receive an exemption similar to those given to small electric utilities.

Discussion

21. The Commission recognizes that the issue of whether the facilities in question are gathering facilities is an issue pending before the U.S. Court of Appeals for the Fifth Circuit in *Jupiter Energy Corp. v. FERC,* Case No. 04-60041. While the Commission

[8] *See Jupiter Energy Corp.*, 52 FERC ¶ (61,064 (1990) (Jupiter was not required to develop the generally required rates for blanket certificate transportation on the Outer Continental Shelf); *Jupiter Energy Corp.*, 60 FERC ¶ 61,044 (1992) (Jupiter was not required to comply with Order No. 636).

[9] *See Central New York Oil and* Gas *Co., LLC,* 109 FERC ¶ 61,231 (2004).

[10] *See Alcoa Power Generating Inc*., 108 FERC ¶ 61,243 (2004).

believes the facilities are properly certificated, the Commission finds that good cause exists to stay the application of the remainder of the Standards of Conduct pending affirmation by the Court particularly because Jupiter has indicated that it may be submitting an abandonment application in the near future. Therefore, within 30 days of the date of a final decision regarding the jurisdictional status of the facilities, Jupiter must submit a compliance filing describing how it will implement the remainder of the Standards of Conduct or renew its request for waiver.

ONEOK, Inc and OkTex Pipeline Company (OkTex) - Docket Nos. TS04-07-002 and -003

22. On August 10, 2004, the Commission granted ONEOK's request for a partial small pipeline exemption for its subsidiary natural gas Transmission Provider, OkTex.[11] Specifically, the Commission waived the requirement to comply with the independent functioning requirement of section 358.4(a) and to comply with the information disclosure prohibitions of sections 358.5(a) and (b)(1), (2) and (3) with respect to its affiliated local distribution companies (LDCs) Oklahoma Natural Gas Company (ONG) and Texas Gas Service Company (TGS). The Commission required OkTex to comply with the remaining Standards of Conduct for ONG and TGS.

23. On August 30, 2004, ONEOK/OkTex requested clarification, rehearing, or reconsideration of the Commission's August 2, 2004 decision in Order No. 2004-B that an LDC that engages in financial hedging transactions is an Energy Affiliate. If its request is denied, OkTex requests that the Commission clarify that OkTex's partial waiver of the Standards of Conduct will not be lost if ONG and/or TGS engage in non-speculative financial hedging activities undertaken solely in connection with their procurement of gas supply for on-system customers.

24. On January 6, 2005, OkTex submitted a supplemental filing stating that its parent company, ONEOK, acquired Northern Plains Natural Gas Company, LLC. (Northern Plains).[12] OkTex requests the Commission to confirm that the recent acquisition of Northern Plains does not change the underlying facts supporting the Commission's August 10, 2004 partial waiver for OkTex. OkTex claims that it is functionally and physically separated from the Northern Plains companies and their Energy Affiliates. OkTex states that it does not share services with any Energy Affiliates, but will still be operated by its LDC affiliate, ONG.

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[11] *Black Marlin Pipeline Company*, 108 FERC ¶ 61,184 at P 45-47 (2004).

[12] OkTex explains that Northern Plains includes interest in other FERC-jurisdictional Transmission Providers such as Northern Border Pipeline Company, Midwestern Gas Transmission Company and Viking Gas Transmission Company.

Discussion

25. OkTex's requests for rehearing or clarification of its partial wavier are moot because in Order No. 2004-C, the Commission stated that it will allow LDCs to participate in financial transactions necessary for price risk management solely for the benefit of on-system retail customers without becoming Energy Affiliates.[13]

26. With respect to ONEOK's acquisition of Northern Plains, the Commission agrees with OkTex that the underlying facts supporting the August 10, 2004 partial waiver for OkTex have not changed. Thus, OkTex is not required to comply with the independent functioning requirement of section 358.4(a) or the information disclosure prohibitions of section 358.5(a)(and (b)(1), (2), and (3) with respect to ONG and TGS. OkTex is required to comply with the remaining requirements of the Standards of Conduct. OkTex has not requested nor demonstrated any reasons why the prior partial waiver should be extended to apply to its relationship with any Marketing or Energy Affiliate that it is now affiliated with as a result of ONEOK's acquisition of Northern Plains.

The Commission orders:

(A) As discussed herein, the Commission is granting Destin Pipeline Company's request for an extension of time to March 1, 2005.

(B) As discussed herein, Energy West Development's local distribution company affiliate, Energy West Wyoming, is not an Energy Affiliate.

(C) As discussed herein, the Commission is granting Jupiter Energy's request for a stay.

(D) As discussed herein, the Commission is granting ONEOK's and OkTex Pipeline Company's request for clarification.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

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[13] *Standards of Conduct for Transmission Providers*, 109 FERC ¶ 61,325 at P 12 (2004).