

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Jupiter Energy Corporation	Docket No. TS04-280-002
Cotton Valley Compression, L.L.C.	Docket No. TS05-10-000
Texas Eastern Transmission, LP	Docket No. TS05-3-000
Chandeleur Pipe Line Company	Docket No. TS05-19-000
Sabine Pipe Line Company	Docket No. TS05-21-000
Thumb Electric Cooperative	Docket Nos. TS05-17-000 and OA05-1-000
Discovery Gas Transmission Inc.	Docket No. TS05-15-000

ORDER ON REQUESTS FOR REHEARING AND WAIVER FROM THE
STANDARDS OF CONDUCT AND OASIS REQUIREMENTS

(Issued June 15, 2006)

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

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.*).

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 September 2005, the above-captioned Transmission Providers filed requests for waiver or clarification of the Standards of Conduct, waiver of the OASIS requirements and a request for rehearing. Notices of the filings were published. The Commission is granting the requests for waiver, clarification and rehearing, as discussed herein.

Jupiter Energy Corporation (Jupiter) – Docket No. TS04-280-002

3. On October 27, 2004, the Commission granted Jupiter's August 24, 2004 request for partial waiver of the Standards of Conduct because of Jupiter's lack of staff, small size and limited operations.² 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), Jupiter's Energy Affiliate.³ The Commission denied Jupiter's request for a waiver of the remaining Standards of Conduct with respect to the Internet website postings and non-discrimination requirements.

4. Jupiter filed a request for rehearing of the October 27 Waiver Order and requested a complete exemption from the Standards of Conduct. On February 11, 2005, the Commission stayed the application of the remainder of the Standards of Conduct pending a decision by the U.S. Court of Appeals for the Fifth Circuit on whether Jupiter's facilities are gathering facilities in *Jupiter Energy Corp. v. FERC*, Case No. 04-60041.⁴ The Commission directed Jupiter, within 30 days of the date of a final decision regarding the jurisdictional status of the facilities, to submit a compliance filing describing how it will implement the remainder of the Standards of Conduct or renew its request for waiver.

5. On April 12, 2005, the Court vacated and remanded the Commission's prior orders concerning the jurisdictional status of Jupiter.⁵ The Commission issued an *Order on*

² *American Transmission Co.*, 109 FERC ¶ 61,082 (2004) (October 27 Waiver Order).

³ Jupiter is a wholly-owned subsidiary of Unocal, a natural gas and crude oil exploration and production company.

⁴ *Destin Pipeline Co.*, 110 FERC ¶ 61,135 at P 21 (2005).

⁵ *Jupiter Energy Corp. v. FERC*, 407 F.3d 346 (5th Cir. 2005).

Remand Affirming Jurisdictional Determination in Docket No. CP03-11-004, on June 28, 2005, affirming that the primary function of Jupiter's facilities is jurisdictional transmission.⁶ As noted earlier, on July 14, 2005, Jupiter submitted another request for a complete waiver of the Standards of Conduct and a request for rehearing of the jurisdictional determination.⁷ Jupiter filed a renewed request for waiver of the Standards of Conduct on November 23, 2005.

6. Jupiter states that application of the Standards of Conduct is unnecessary, will not serve any of the purposes of the Commission's rules and is disproportionately burdensome to a pipeline that is economically marginal. Jupiter states that it is engaged in only minimal operations and that it would soon cease all operations.

7. 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 facility is a 10.2 mile, 10 3/4-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 facility 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 believes that Jupiter functions as a gathering facility that is exempt from the Commission's jurisdiction.⁸

8. Jupiter states that it holds individual certificates to provide service to three shippers, but its only customer 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 circumstances. Jupiter states that, since May 2004, Unocal has produced all of the gas transported on Jupiter. Jupiter states that it is unlikely any other shipper will seek access to Jupiter.

⁶ *Jupiter Energy Corp.*, 111 FERC ¶ 61,497 (2005).

⁷ On October 28, 2005, in Docket No. CP03-11-005, the Commission denied rehearing of the jurisdictional determination. *Jupiter Energy Corp.*, 113 FERC ¶ 61,103 (2005), *appeal pending sub nom. Jupiter Energy Corp. v. FERC*, No. 05-61173 (5th Cir. Dec. 16, 2005).

⁸ As noted earlier, the Commission rejected Jupiter's argument in Docket No. CP03-11-005.

9. Jupiter states that the burden and cost of compliance with the Standards of Conduct 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, less than \$180,000 in 2004, and zero for the first six months of 2005. The pipeline is treated as an impaired asset, with earnings not even equal to the amount of booked depreciation.

10. 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 pursuant to its blanket certificate authority.

11. Jupiter also 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 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. According to Jupiter, it should receive an exemption similar to those given to small electric utilities.

Discussion

12. Jupiter is a small pipeline that was granted a partial exemption from the Standards of Conduct in the October 27 Waiver Order because of Jupiter's lack of staff, small size and limited operations. The Commission denied Jupiter's request for waiver of the Standards of Conduct with respect to website postings and non-discrimination requirements. However, Jupiter's revenues in 2004 were less than \$180,000 and zero in the first six months of 2005.

13. Jupiter's *de facto* abandonment of service demonstrates that compliance with the Standards of Conduct places an undue burden on Jupiter. While certificated to serve three customers, Jupiter historically has only served its affiliate, Unocal, and has now stopped providing service to Unocal. The Commission therefore finds that Jupiter's extremely limited pipeline operations and service to its affiliate do not present an opportunity for discrimination and that the Internet website posting requirement in this limited instance would provide no useful information.

14. Jupiter's partial compliance with the Standards of Conduct is not, at this time, in the public interest. Notwithstanding, if Jupiter serves customers other than Unocal, it must do so on a non-discriminatory basis as required by sections 4 and 5 of the Natural Gas Act. Under these very limited, fact-specific circumstances, Jupiter's request for waiver is hereby granted. The Commission is not relinquishing jurisdiction over Jupiter by granting it a waiver of the Standards of Conduct, but recognizes that the question of our jurisdiction over Jupiter is pending before the Fifth Circuit.

Texas Eastern Transmission, LP (Texas Eastern) – Docket No. TS05-3-000

15. On October 25, 2004, Texas Eastern filed a petition requesting confirmation that certain employees are not shared employees under the Standards of Conduct and that Texas Eastern has properly categorized the employees as transmission function employees. Texas Eastern also requests that if the Commission finds that the employees are properly categorized as transmission function employees, that the Commission grant a waiver of the Standards of Conduct so that Texas Eastern may share the employees with its non-jurisdictional Energy Affiliate, Duke Energy Field Service, LP (DEFS).

16. Texas Eastern states that it is a natural gas transmission company subsidiary of Duke Energy Gas Transmission, LP (DEGT) with facilities extending from south Texas and offshore Gulf of Mexico to the mid-Atlantic and northeastern United States. DEFS buys and sells natural gas in North America and offshore, and provides a range of services to gas producers, buyers and sellers.

17. Texas Eastern states that the petition involves four employees of Duke Energy Operating Company, LLC (DEOC), a service company that provides a work force for Texas Eastern, DEFS and other Duke Energy Corporation (Duke) entities. According to Texas Eastern, the employees have job responsibilities related to both Texas Eastern facilities and to three isolated non-jurisdictional facilities owned by DEFS that are interconnected with Texas Eastern.⁹ DEOC field employees operate DEFS' non-jurisdictional facilities pursuant to operating and services agreements between DEFS and DEOC.¹⁰ Texas Eastern states that the four employees have some responsibilities related to the non-jurisdictional facilities, but that they devote less than one percent of their time annually to the operation of the non-jurisdictional facilities.

18. Texas Eastern states that the non-jurisdictional DEFS facilities are not used to conduct any Energy Affiliate activities and that, under the services agreement, the DEOC employees do not have any responsibility for any commercial activities related to the non-jurisdictional facilities.

⁹ The three DEFS facilities are: the Venice Facility, the Grand Chenier Facility and the Offshore Gathering Facility.

¹⁰ According to Texas Eastern, the operating activities include: routine testing and inspections for leaks and working condition, changing filters, calibration of meters, minor maintenance, major maintenance, and emergency services.

Public Notice, Interventions, and Protests

19. On June 30, 2005, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. filed a timely motion to intervene.¹¹

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely unopposed motion to intervene serves to make Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. parties to this proceeding.

Discussion

Categorization of employees

21. Texas Eastern requests that the Commission confirm that Texas Eastern has properly categorized the four DEOC employees as transmission function employees. Texas Eastern states that the same DEOC employees operate the non-jurisdictional facilities and the Texas Eastern facilities because the facilities are interconnected, operate in close conjunction with the Texas Eastern facilities and are nearby. Texas Eastern states that it categorizes most of the DEOC employees as field employees, but categorizes the following four as transmission function employees: a Division Manager, two Area Managers, and a Director of Technical Operations.¹²

22. With respect to the four employees, Texas Eastern states that each has the authority to shut down the Texas Eastern facilities for maintenance activities.¹³ For

¹¹ The Motion was captioned for filing in Docket No. TS05-4-000, but correctly filed in Docket No. TS05-3-000.

¹² Commission staff's review of Texas Eastern's organizational charts posted on its internet website indicates that the current structure with respect to these employees mirrors the structure described in the pleading. www.infopost.link.duke-energy.com/InfoPost/TEHhome.asp?pipe=TEH (June 1, 2006).

¹³ None of the employees has the authority to shut down the Texas Eastern facilities for economic reasons.

instance, the Division Manager¹⁴ and the Director of Technical Operations¹⁵ have the authority to shut down all of the interconnected Texas Eastern facilities. Additionally, the two Area Managers¹⁶ may shut down the Texas Eastern facilities within their areas of responsibilities for maintenance reasons.

23. Section 358.3(j) of the Commission's regulations defines a "transmission function employee" as "an employee, contractor, consultant or agent of a Transmission Provider who conducts transmission system operations or reliability functions, including, but not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing, organizing, or carrying out transmission-related operations." The Commission finds that the four DEOC employees are properly categorized by Texas Eastern as transmission function employees.

¹⁴ According to Texas Eastern, the Division Manager plans, directs, and manages the overall operations, maintenance, technical, and administrative activities for his Division on behalf of Texas Eastern. He supervises the Area Managers, has some responsibilities for financial matters and the operations and maintenance and capital budgets. The Division Manager also supervises the Director of Technical Operations. He also meets with supervisors and managers about technical issues on occasion. With respect to DEFS, the Division Manager ensures that DEOC meets its obligations pursuant to the service agreements regarding the three non-jurisdictional facilities, and he reviews the costs of services to be performed by DEOC under the service agreements.

¹⁵ Texas Eastern states that the Director of Technical Operations provides engineering, technical, and operating support to Areas, Divisions, and Departments in the following areas: Engine/Compressor Instrumentation, Compressor Operations, Storage Field Operation, Gas Measurement, Electrical Maintenance, Gas Quality, Welding and Environmental Compliance. He manages the technical staff for the South Division of Texas Eastern on behalf of Texas Eastern. With respect to DEFS, he provides resources from his staff to address problems that the field staff is unable to address. He does not have any day-to-day responsibilities with respect to the non-jurisdictional facilities.

¹⁶ Texas Eastern states that the two Area Managers have general operational responsibilities. The Area Managers assist in developing and implementing action plans to ensure the safe, reliable, and cost-effective operation and maintenance of all pipeline-related facilities. The Area Managers ensure that all applicable rules, regulations and company procedures are adhered to and implement security measures to protect company facilities and property. The Area Managers plan large-scale maintenance activities and direct emergency response and repair on behalf of Texas Eastern. With respect to DEFS, the Area Managers ensure that DEOC meets its obligations pursuant to the service agreements.

Status as Shared Employees

24. Texas Eastern requests that the Commission confirm that the four DEOC transmission function employees are not considered shared employees under the Standards of Conduct. Texas Eastern states that the four DEOC employees devote less than one percent of their time to operation of the DEFS facilities. Texas Eastern states that in light of the “negligible” time commitment relating to the non-jurisdictional facilities classifying the employees as shared employees under the Standards of Conduct would produce impractical results and would not further the goals underlying the independent functioning requirement of section 358.4(a)(1) of the Commission’s regulations.

25. The Commission finds that the four employees are shared field supervisors, but confirms that these employees may be permissibly shared under the Standards of Conduct. 18 C.F.R. § 358.4(a)(4). In Order No. 2004-A, the Commission clarified its position that “shared field personnel may include field supervisors who do not take part in advance planning for facility shut downs or are involved in shutting down facilities based on economic reasons.”¹⁷ The Commission finds that none of the identified employees plays a decisional role in planning for facility shut downs for economic reasons. With respect to the non-jurisdictional facilities, the identified employees do not appear to play any role in facility shut downs. The Division Manager ensures that DEOC meets its obligations pursuant to the service agreements regarding the three non-jurisdictional facilities, and he reviews the costs of services to be performed by DEOC under the service agreements. The Director of Technical Operations provides resources from his staff to address problems that the field staff is unable to address; he does not have any day-to-day responsibilities with respect to the non-jurisdictional facilities. The two Area Managers, with respect to DEFS, ensure that DEOC meets its obligations pursuant to the service agreements. Based on Texas Eastern’s representations, it appears that the four employees may be permissibly shared as supervisory field employees. However, like all shared employees, they are subject to the prohibition on being a conduit for sharing information with a Marketing or Energy Affiliate. *See* 18 C.F.R. §385.5(b)(7) (2005).

26. Since the Commission is determining that the four employees may be permissibly shared, the Commission finds that Texas Eastern’s request for a waiver of the Standards of Conduct is moot.

¹⁷ Order No. 2004-A at P 145.

Cotton Valley Compression, L.L.C. (Cotton Valley) – Docket No. TS05-10-000

27. On January 19, 2005, Cotton Valley Compression, L.L.C. (Cotton Valley) requested a partial exemption from the independent functioning and information disclosure prohibitions of the Standards of Conduct. In addition, Cotton Valley requested an extension of time to complete compliance with the remaining requirements under Order No. 2004.

28. Cotton Valley, owned by six natural gas producers in or around Bartlesville, Oklahoma, operates approximately 700 feet of dual 4-inch diameter pipeline that interconnects two low pressure lines.¹⁸ Cotton Valley states that when it received its Certificate of Public Convenience and Necessity¹⁹ it was not subject to the former Part 161 Standards of Conduct because the six producers that jointly owned it qualified for the “producer exemption.”²⁰ However, in Order No. 2004, the Commission eliminated the producer exemption. As a result, Cotton Valley is a Transmission Provider subject to the Standards of Conduct²¹ and the producer-owners that contract for transmission service on Cotton Valley are Energy Affiliates.²² Due to these changes, Cotton Valley requests a partial waiver of the independent functioning requirement and information disclosure prohibitions in Order No. 2004.

29. Cotton Valley states that it is a small pipeline with an annual cost of service of approximately \$533,203. Cotton Valley claims that it does not maintain any office facilities or employ any persons. It relies solely on its producer-owners to perform services for the company. This existing structure is inconsistent with the Standards of Conduct because Cotton Valley relies on its Energy Affiliates to perform services on behalf of, and to have full access to information belonging to, an affiliated Transmission Provider. To comply with these requirements of the Standards of Conduct, Cotton Valley

¹⁸ Both of which are owned by Southern Star Central Gas Pipeline (Southern Star).

¹⁹ *Cotton Valley Compression, L.L.C.*, 90 FERC ¶ 61,206 (2000), *reh’g denied*, 92 FERC ¶ 61,140 (2000).

²⁰ Former 18 C.F.R. § 161.2(c)(1) provided that a seller of natural gas did not become a marketing or brokering affiliate if the “seller is selling gas solely from its own production.”

²¹ The Standards of Conduct are applicable to “any interstate natural gas pipeline that transports gas for others pursuant to Subpart G of 284.” 18 C.F.R. § 358.1(a)(2005).

²² 18 C.F.R. §§ 358.3(d) and (k)(2005).

estimates that it would have to increase its operating and maintenance budget by 50 percent.²³

30. In support of its request, Cotton Valley states that its only shippers are its producer-owners. Cotton Valley argues that given the pipeline's small size, purpose,²⁴ and location it is unlikely that an unaffiliated entity would request service in the foreseeable future. Even if an unaffiliated entity wishes to ship on the pipeline, Cotton Valley sees no reason why the same information access and interaction would not occur. Cotton Valley argues that there is little to be gained by limiting the communication Cotton Valley has with its affiliated shippers. In addition, Cotton Valley states that most of its customer contact is conducted informally, either via telephone or in person, and requiring Cotton Valley to follow formal procedures would significantly alter this relationship. Finally, Cotton Valley argues that the separation required by the independent functioning requirement and the information disclosure prohibitions would cause undue burdens to Cotton Valley and its customers.

31. Cotton Valley requested an extension of time until March 2005 to comply with the Standards of Conduct other than those concerning independent functioning and information sharing prohibitions.

Public Notice, Interventions, and Protests

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

Discussion

33. The Commission grants Cotton Valley's requests for partial waiver from the Standards of Conduct. Specifically, the waiver applies to the provisions of sections 358.4(a) dealing with the separation of functions and sections 358.5(a) and (b)(1), (2) and (3) relating to information access and disclosure prohibitions with respect to its Energy and Marketing Affiliates. Waivers of these provisions are warranted because of Cotton Valley's small size, lack of staff, and limited operations.²⁵

²³ This includes the cost of hiring an employee and providing office space.

²⁴ This pipeline was constructed solely to facilitate deliveries into Southern Star's high pressure pipeline.

²⁵ See, e.g., *Bear Creek Storage Co.*, 108 FERC ¶ 61,011 at P 20, 27, 35, 43, 50, 56 (2004); *Black Marlin Pipeline Co.*, 108 FERC ¶ 61,184 at P 12, 24, 44, 49, 55 (2004); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243 at P 35, 41, 160, 202 (2004).

34. Cotton Valley's request for an extension of time is moot. The Commission recognizes that Cotton Valley has posted much of the information on its website required by the Standards of Conduct.²⁶ However, Cotton Valley has failed to post a sufficient organizational chart on its website. Instead, it states the names of several individuals who perform Cotton Valley responsibilities and are also officers and/or employees of its Marketing Affiliate. Cotton Valley is required, within 30 days of the date of this order to post on its Internet website its organizational structure as required by section 358.4(b)(3) of the Commission's regulations.

Chandeleur Pipe Line Company (Chandeleur) and Sabine Pipe Line Company (Sabine) – Docket Nos. TS05-19-000 and TS05-21-000

35. On August 23, 2005, and September 20, 2005,²⁷ Chandeleur and Sabine, respectively, filed requests for extension of time until October 25, 2005 to comply with section 358.4(b) of the Commission's regulations, 18 C.F.R. § 358.4(b). Section 358.4(b)(3)(iv) requires that Transmission Providers update Internet website postings under sections 358.4(b)(2)²⁸ and 358.4(b)(3)(i) and (ii)²⁹ within seven business days of any change. The companies also requested a waiver of any Commission regulation deemed necessary for granting the extension of time.

36. Sabine and Chandeleur stated that on April 11, 2005, each company posted a notice of potential merger of its parent, Chevron Corporation (Chevron), and Unocal Corporation (Unocal) through a proposed acquisition of Unocal by Chevron. Because of restrictions placed upon the merging companies by the Federal Trade Commission, Chandeleur and Sabine stated that they could not obtain and identify information needed to update the postings within seven days as required by the Standards of Conduct regarding corporate structure, shared facilities, job descriptions, and command lines until after completion of the merger. Chandeleur and Sabine stated that they would update the website postings as quickly as possible as information became available. Chandeleur and Sabine stated that they believed the request for extension of time is reasonable in light of the substantial effort required to integrate the two corporations.

²⁶ www.cottonvalleycompression.com (May 17, 2006).

²⁷ The requests for waiver were renewed on September 23, 2005 and October 5, 2005.

²⁸ Section 358.4(b)(2) requires a Transmission Provider to post a complete list of the facilities shared by a Transmission Provider and its Marketing and Energy Affiliates.

²⁹ Sections 358.4(b)(3)(i) and (ii) require a Transmission Provider to post comprehensive organizational charts and job descriptions on its Internet website, 18 C.F.R. §§ 358.4(b)(3)(i) and (ii).

Public Notice, Interventions, and Protests

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

Discussion

38. A review of each company's website postings on May 11, 2006 indicates that the postings have been updated and reflect the post-merger corporate structure, shared facilities, job descriptions and command lines. The requests of Chandeleur and Sabine are moot. No further extension of time to comply with the posting requirements of the Standards of Conduct is, therefore, necessary.

Thumb Electric Cooperative (Thumb) – TS05-17-000 and OA05-1-000

39. On July 28, 2005, Thumb filed a request for waivers from the Open Access Same Time Information Systems (OASIS) requirements established by Order No. 889,³⁰ and from the functional separation requirements of the Standards of Conduct for Transmission Providers established by Order No. 2004.

40. Thumb states that it is a small rural electric cooperative in Michigan. In support of its request, Thumb states that it meets the Commission's definition of a small electric utility, which is a utility that disposes of no more than 4 million MWh annually. In calendar year 2004, Thumb claims that it disposed of less than 140,000 MWh. Thumb further states that its facilities are limited and discrete and do not form an integrated grid. In addition, Thumb states it is not a member of a tight power pool, and that its system is not regularly utilized by others. Moreover, Thumb asserts it is not in a position to use its control of its system in a manner that would competitively disadvantage others, and it has never been the subject of a complaint relating to providing transmission service or to conduct that would violate Order No. 889 standards of conduct. Thus, Thumb concludes that it meets the criteria for a waiver of Order No. 889 under the factors the Commission

³⁰ *Open-Access Same-time Information System and Standards of Conduct*, Order No. 889, 61 Fed. Reg. 21,737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles, January 1991-June 1996 ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, 62 Fed. Reg. 12,484 (March 14, 1997), FERC Stats. & Regs., Regulations Preambles, July 1996-December 2000 ¶ 31,049 (1997), *order on reh'g*, Order No. 889-B, 81 FERC ¶ 61,253 (1997), *aff'd in part and remanded in part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

articulated in *Black Creek Hydro, Inc., et al.*, 77 FERC ¶ 61,232 (1996).³¹ Thumb concludes further that it warrants exemption from the requirements of Order No. 2004 and Part 358 of the Commission's Regulations.

41. Thumb seeks the waivers because, for the first time since issuance of Order No. 889, it received a request from a third-party generator (a wind-power project generator) for interconnection with its transmission/distribution facilities. Thumb has indicated its willingness to deliver this power and is in the process of developing the rate and terms for that service, consistent with Commission principles. Thumb states that because this is the first time it has been asked to deliver power for a third party, it had not previously needed to consider potential questions of separation of functions. Thumb states further that the timing of its request should not be a problem because section 35.28(e)(2) of the Commission's Regulations, 18 C.F.R. § 35.28(e)(2) (2005) allows a non-public utility to request a waiver of all or part of the reciprocity conditions contained in a public utility open access tariff at any time. Thumb also states that compliance with OASIS and Standards of Conduct requirements would impose a substantial logistical and financial burden upon Thumb without meaningfully furthering the Commission's objectives.

Public Notice, Interventions and Protests

42. No interventions, protests, or comments were filed.

Discussion

43. Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce is required to develop or participate in an OASIS under Order No. 889 and observe the Standards of Conduct under Order No. 2004. Since Thumb is a borrower from the Rural Utilities Service (RUS), it is generally exempt from the Commission's jurisdiction under the Federal Power Act.³² But, because it received a request from a third-party generator for

³¹ Thumb states it owns facilities operating at 69 kV and below which could be classified as either transmission or distribution under the Commission's seven-factor test. In an unrelated proceeding, the Michigan Public Service Commission (MPSC) has established a "bright line" minimum of 100 kV for classification of facilities as transmission. However, Thumb has not undertaken to obtain formal classification of its facilities by either this Commission or the MPSC, and does not presently seek such formal classification.

³² See *Dairyland Power Coop.*, 37 FPC 12 (1967), *aff'd sub nom. Salt River Project Agric. Improvement and Power District v. FPC*, 391 F.2d 470 (D.C.Cir. 1968).

interconnection, it is required to comply with Order No. 889. The Commission evaluates requests by non-public utilities for waiver of the requirements of Order No. 889 and Order No. 2004 using the same standard applicable to public utilities.³³

44. Thumb states that it disposes of less than 140,000 MWh annually and therefore meets the definition of a “small utility,” adopted by the Commission. Thumb also states it is not a member of a tight power pool and that no other circumstances are present that would indicate an exemption would not be justified. Based on the information contained its application, we find that Thumb satisfies the requirements for a waiver from the OASIS requirements of Order No. 889 and from the Standards of Conduct requirements of Order No. 2004 and Part 358 of the Commission’s Regulations. Accordingly, we will grant Thumb’s request for waiver of these requirements.³⁴

45. A waiver of the requirement to establish and maintain an information system (*i.e.*, an OASIS) remains effective until the Commission takes action in response to any complaint by an entity evaluating its transmission needs that it could not obtain from Thumb information necessary to complete its evaluation.³⁵ Similarly, a waiver from the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Thumb has used its access to transmission information to benefit unfairly Thumb’s own sales, or its affiliates’ sales.

Discovery Gas Transmission, LLC (Discovery) – Docket No. TS05-15-000

46. On May 4, 2005, Discovery filed for a limited waiver from the independent functioning requirements of sections 358.4(a) and the information access and disclosure provisions of sections 358.5(a) and (b) of the Standards of Conduct so that Discovery may provide non-public transmission information to certain representatives of Duke Energy Field Services, LP (DEFS), a co-owner of Discovery. Discovery contends that this disclosure of the non-public transmission information is necessary for the limited purpose of enabling DEFS to carry out investment oversight responsibilities both as an owner and liaison between DEFS and its parent companies.

47. Discovery is a small pipeline system operating in the Gulf of Mexico and onshore in Louisiana, subject to the Natural Gas Act. Discovery is owned by Discovery Producer Services LLC (DPS), a Delaware limited liability company which is 50 percent owned by

³³See *Sunflower Electric Power Corp.*, 87 FERC ¶ 61, 263, at 61,998 (1999).

³⁴ *Elkem Metals Co. – Alloy, L.P.*, 114 FERC ¶ 61,181 at P 13-14 (2006); *Central New York Oil and Gas Co., LLC*, 109 FERC ¶ 61,231 at P 26-27 (2004).

³⁵ *Black Creek Hydro*, 77 FERC at p. 61,941.

Williams Energy, L.L.C. and 16.67 percent owned by Williams Discovery Pipeline LLC (collectively, Williams) and 33.33 percent owned by DEFS (collectively, the Discovery Owners).³⁶ DPS also owns non-jurisdictional gathering and onshore processing facilities that are connected to the Discovery system. DEFS is a Delaware limited partnership with principal offices in Denver, Colorado, owned 69.7 percent by Duke Energy Enterprises Corporation and 30.3 percent by Phillips Gas Company. DEFS owns and operates nationally, directly or through its affiliates, a broad array of gas gathering, processing, and related services.

48. Discovery states that Williams and DEFS, as owners of Discovery, are parties to a May 15, 1998 Limited Liability Company Agreement (LLC Agreement) that imposes responsibilities on DEFS to exercise greater oversight of Discovery than is typical for non-operating owners of jointly-owned pipelines. Specifically, DEFS is required to approve all but the smallest commercial activities on Discovery. Types of deals that are subject to approval are bids and contracts for new and existing commercial activity, future system plans, proposed budgets and a review of financial information. Discovery contends that the control features of the LLC Agreement were key to DEFS' decision in 2002 to purchase its interest in DPS so as to have the tools that ensure its investment in a competitor-owned pipeline is appropriately managed.

49. Discovery asserts that in order to be able to protect its interests, DEFS requires that non-public information from Discovery be provided to manager/director level employees who have the knowledge, time and skills to effectively analyze the information that is being presented by the operator for approval. In addition, Discovery asserts that if DEFS employees find an incremental commercial transaction or facility development opportunity that could afford Discovery additional revenue (as provided in the LLC Agreement), DEFS should have the right and ability to submit such opportunities and be involved in all details of their development and administration. Discovery contends that these DEFS activities increase Discovery's ability to serve as a natural gas company in a very competitive marketplace, thus benefiting the industry as a whole.

50. Discovery asserts that, although DEFS has the right to do so under the LLC Agreement, DEFS engages in no commercial activity on the combined Discovery system at this time. Discovery states that DEFS' primary role, as an owner having very broad approval/veto power, is to assess, review and approve the commercial and operating activities that Williams performs as operator of Discovery.

³⁶ Discovery is not seeking a waiver for Williams, because Discovery states that Discovery Producer Services and Williams Discovery Pipeline are not Energy Affiliates and their employees do not perform Energy Affiliate Activities.

51. Discovery contends that from their inception, the Discovery and DPS systems were designed to operate in an efficient, integrated and coordinated fashion. Originally designed as a single, offshore gathering system, Discovery and DPS split the original configuration into two systems in response to a Commission order that part of the original system would be considered jurisdictional transmission facilities.³⁷ Discovery owns the jurisdictional transmission facilities, and DPS owns the nonjurisdictional gathering, processing and liquids facilities. The two systems operate in an integrated manner, subject to Commission regulation of Discovery. Discovery asserts that the combined systems ensure that offshore producers are offered a cost-competitive option to have their raw gas supplies gathered, processed and delivered as merchantable pipeline-quality gas to the pipeline grid.

52. Discovery states that DPS owns and operates four offshore gathering lines connected to Discovery's 30-inch, 105-mile transmission line which then transports the gas onshore to a DPS processing plant near Larose, Louisiana. DPS then re-delivers the processed gas to Discovery for final delivery to either Bridgeline Gas Distribution LLC, next to the processing plant, or to Texas Eastern Transmission, L.P., approximately 4.4 miles from the plant. In 2005, Discovery completed construction of its Market Expansion Project, extending its system approximately 20 miles and 32 miles, respectively, in two different directions to interconnect with Columbia Gulf Transmission Company, Tennessee Gas Pipeline Company, and Transcontinental Gas Pipe Line Corporation.

53. Discovery asserts that its system is materially underutilized. Discovery states that its firm subscriptions are all under the FT-2 rate schedule that is unique to offshore pipelines. Specifically, the FT-2 rate schedule is available only to shippers who commit all natural gas produced from their Outer-Continental Shelf Blocks for the life of the lease of those dedicated blocks. As a result of the long-term nature of the contracts and limited new development, Discovery's transportation market is static. In addition, Discovery asserts that it generally has been required to discount its rates for competitive reasons. Discovery asserts that neither DEFS nor Williams is a shipper on Discovery or owns any natural gas leases, reserves or production in the area of the Gulf of Mexico served by Discovery. For these reasons, Discovery contends that DEFS is unable to use non-public information to secure a competitive advantage.

54. Discovery states that DEFS designated three employees to represent its interests on Discovery and to fulfill its responsibilities under the LLC Agreement. One of those

³⁷ See *Discovery Producer Services LLC*, 78 FERC ¶ 61,194 (1997), *reh'g granted in part, denied in part*, 96 FERC ¶ 61,114 (2001), *reh'g denied, clarification granted*, 97 FERC ¶ 61,023 (2001).

employees is DEFS' Southern Division Commercial Vice President (DEFS Vice President) who currently is DEFS' sole recipient of Discovery information. Discovery states that normally the DEFS Vice President's role is limited to corporate governance and investment management matters and he does not engage in Energy Affiliate Activities under section 358.3(d).

55. Discovery states that the other two DEFS employees who are in need of Discovery transmission information are also responsible for commercial and business development opportunities for DEFS' Gulf Coast Operations, including the negotiation of gas purchase, sale and processing agreements for DEFS' assets in the Gulf Coast. Discovery states that the two employees (DEFS Commercial Representatives) "presumably" are engaged in Energy Affiliate Activities. Discovery asserts that neither the DEFS Commercial Representatives nor any other DEFS employees perform Energy Affiliate Activities in the area of the Gulf of Mexico served by Discovery.

56. Discovery asserts that the DEFS Commercial Representatives were assigned to represent DEFS' interests because reviewing the commercial activities of Discovery for approval purposes requires the ability to analyze and understand proposed commercial transactions and whether the transactions meet DEFS' internal hurdle rates. Discovery states that DEFS believes that such analysis is best performed by employees who spend most of their days engaged in this type of commercial activity and perform Energy Affiliate activities.

57. Discovery asserts that hiring an additional employee to solely do this work would be cost prohibitive and inefficient. Discovery states that DEFS Commercial Representatives devote only 15 percent of their total time to both Discovery and DPS-related management matters. The remaining 85 percent of their time is spent on other matters not related to Discovery or DPS, including, for example, negotiating processing agreements at DEFS' Brookeland processing plant in southeast Texas. Discovery contends that Discovery-related management activities would require, at most, 30 percent of one new employee's time - an employee who, to be effective at analyzing Discovery commercial/management matters, would need to be engaged the other 70 percent of the commercial work similar to the time conducted by the DEFS Commercial Representatives. DEFS does not believe that it is reasonable to employ another person whose sole responsibility would be to represent the interests of DEFS on Discovery-related matters.

58. Discovery states that prior to the implementation of Order No. 2004 on the Discovery system, DEFS was not subject to the Commission's marketing affiliate rules because DEFS is not a transportation customer on Discovery. With the implementation of Order No. 2004, however, DEFS is now an "Energy Affiliate" within the meaning of the revised regulations. Discovery states that the DEFS Commercial Representatives have received training from Discovery regarding compliance with Order No. 2004.

Further, Discovery states that DEFS has distributed Discovery's Compliance Plan to inform other employees with responsibility for Discovery of their obligations under Order No. 2004, such as accountants and senior management to whom the DEFS Vice President reports, who do not perform Energy Affiliate Activities. As a consequence, Discovery states that those employees are familiar with the no-conduit rule.

59. Discovery states that, as the ownership was structured under the LLC Agreement, each owner retained the ability to market gathering, processing and transportation services on the combined Discovery system. Consequently, in addition to the sharing of information DEFS wants to share these DEFS Commercial Representatives and DEFS Vice President with Discovery on a limited basis. In that regard, these employees would be Transmission Function Employees for that fraction of their time spent on certain Discovery activities.

60. Discovery contends that, due to the small scope of Discovery's interstate transmission operations, the fact that Discovery's customers hold capacity on a life-of-lease basis, and the lack of offshore development opportunities, it would be expensive and wasteful and redundant to hire full-time representatives who would be devoted exclusively to the ownership responsibilities of DEFS in relation to Discovery.

61. Discovery further contends that allowing the sharing of information with the two DEFS Commercial Representatives will not lead to an abuse of market power because DEFS does not contract for capacity on Discovery and no Energy Affiliate of Discovery is a Shipper. Discovery also asserts that DEFS does not own or operate any assets that interconnect with Discovery. Discovery asserts that its tariff-based service, which prohibits discriminatory treatment, provides Discovery with little ability to discriminate as its transactions are transparent to the public. Any beneficial arrangement that Discovery might make with an affiliate or other party would have to be granted to other similarly situated parties. Discovery contends that it has never received a customer complaint regarding DEFS's management.

62. Finally, Discovery contends that not granting its waiver request may chill the willingness of prospective investors in energy infrastructure to pool money for investment in new facilities. By restricting the ability of project owners to share confidential communications, Discovery would also be deprived of the guidance and oversight that might otherwise be provided by facility co-owners. Discovery concludes that a waiver is necessary in order to preserve the joint ownership structure that is necessary to support expensive offshore projects.

Public Notice, Interventions, and Protests

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

Discussion

64. In *Black Marlin Pipeline Company*,³⁸ the Commission granted Discovery a waiver of sections 358.4(a), 358.5(a) 358.5(b)(1), (2) and (3) dealing with information and access and disclosure to Midstream Gas Liquids, a business unit of Williams that performs gas nomination and scheduling work for Discovery. In granting this waiver, the Commission noted Discovery's small size, lack of staff and limited operations.³⁹ Discovery's operations appear not to have changed since the Commission granted the prior waiver of Order No. 2004. Moreover, it would be anomalous to allow a waiver for Discovery's Williams' employees and not for its DEFS employees. Accordingly, the Commission will grant Discovery a waiver of sections 358.4(a), 358.5(a) 358.5(b)(1), (2) and (3) to allow the sharing of the three DEFS employees with Discovery and the sharing of information. Discovery is required to comply with the remainder of the Standards of Conduct.

The Commission orders:

(A) The Commission grants Jupiter Energy Corporation's request for waiver, as described in the body of this order.

(B) The Commission grants Texas Eastern Transmission, LP's request for confirmation and finds that its request for waiver is moot, as described in the body of this order.

(C) The Commission grants Cotton Valley Compression, L.L.C.'s request for partial waiver from the Standards of Conduct and finds that its request for extension of time is moot, as discussed in the body of this order. Within 30 days of the date of this order, Cotton Valley must post an organizational chart as required by section 358.4(b) (2) of the Commission's regulations.

(D) The Commission finds that the request of Chandeleur Pipe Line Company and Sabine Pipeline Company is moot, as discussed in the body of this order.

(E) The Commission grants Thumb Electric Cooperative's request for waivers of the posting requirements of Order No. 889 and the Standards of Conduct, as discussed in the body of this order.

³⁸108 FERC ¶ 61,184 at P 14-25 (2004).

³⁹ *Id.* at 24.

(F) The Commission grants Discovery Gas Transmission, LLC's request for a limited waiver of the Standards of Conduct, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.