

Rebuttal Testimony
David J. Ries

Appendix B

**PETITION OF
MISSOURI INTERSTATE GAS, LLC
FOR WAIVER OF ORDER NO. 2004
STANDARDS OF CONDUCT**

Missouri Interstate, a small, six-mile pipeline, with no current full-time employees, requests that the application of the Standards be waived with respect to its intrastate pipeline affiliates, Missouri Pipeline Company (MPC) and Missouri Gas Company (MGC), and to its unregulated local distribution affiliate, Omega Pipeline Company (Omega). Missouri Interstate has a limited scope of operation. It has only one delivery point -- an interconnection with MPC -- its affiliate. MPC is the only firm

2

customer of Missouri Interstate, even though there is currently (and since the beginning of its operation there always has been) firm capacity available on Missouri Interstate.²

A waiver from the Commission's regulations in this instance is warranted, because the benefits to shippers associated with allowing the continued joint operation of Missouri Interstate and MPC and MGC, and sharing of administrative duties among Missouri Interstate, MPC and MGC and Omega, are substantial. The potential for harm to any shippers, or to competition is *de minimus*. Without the granting of such waivers, shippers and natural gas consumers will be harmed by the loss of economies and efficiencies of scale.

Background

Missouri Interstate and two intrastate pipelines, MPC and MGC, are wholly-owned by United Pipeline Systems, LLC, which, in turn, is wholly owned by Gateway Pipeline Company, LLC. Both MPC and MGC are regulated by the Missouri Public Service Commission. Missouri Interstate is also affiliated through common ownership with Omega, an unregulated distribution company, which distributes gas on Fort Leonard Wood, Missouri.

Missouri Interstate was certificated by the Commission in an Order issued September 25, 2002³ Missouri Interstate commenced operation in February 2003, and

² Missouri Interstate is capable of transporting up to 20,000 Mcf/d, but capacity has never been fully subscribed.

³ Missouri Interstate Gas, LLC, Order Issuing Certificates, 100 FERC ¶ 61,312 (2002); Order on Clarification and Rehearing, 102 FERC ¶ 61,172 (2003).

has been engaged in the transportation of natural gas in interstate commerce for only one year. Missouri Interstate has no direct employees and shares employees with its affiliates, including field operators and administrative office staff.

Missouri Interstate is a very small pipeline, extending from an interconnection with Mississippi River Transmission Corporation (MRT) in Illinois, approximately six miles under the Mississippi River, and connects with the western end of MPC at MPC's eastern terminus in Missouri. Missouri Interstate's only transportation customer is its affiliate, MPC, which provides only transportation service for its intrastate customers. MPC does not sell gas to its transportation customers.

Missouri Interstate was constructed to provide MPC's customers with additional sources of gas and transportation.⁴ In the first year it has been in operation, Missouri Interstate has transported less than 30,000 MMBtu of natural gas, with total revenues in 2003 below \$25,000.

Exemption for Intrastate Affiliates

Missouri Interstate's intrastate affiliates, MPC and MGC, fall within the Order No. 2004 definition of Energy Affiliate, because of their status as intrastate pipelines. Missouri Interstate requests a waiver to exempt MPC and MGC from the Energy Affiliate definition.

⁴ At the time of the construction of Missouri Interstate, St. Charles County, Missouri and the western portion of St. Louis had access to natural gas only through the Panhandle Gas Pipe Line Company (Panhandle) system. The capacity on MPC for gas delivered through the Panhandle system was and is fully subscribed.

The waiver requested herein is in the public interest. Given the extremely small operations of Missouri Interstate and the fact that it has one customer -- its affiliate MPC -- makes it more efficient for Missouri Interstate to share the coordination of operations with its intrastate affiliates. This coordination ensures the most efficient and lowest cost of service to both the customers of Missouri Interstate and MPC.

The integrated operations do not provide an opportunity for undue preference or undue discrimination against any other potential Missouri Interstate shipper.

Similarly, Missouri Interstate shares some of the same employees with Omega, a distribution system, providing distribution services on Fort Leonard Wood army base. The same management and administrative personnel are shared with Missouri Interstate and MPC and MGC. Omega does not hold capacity on either Missouri Interstate, or on MPC or MGC.

Costs of Implementing Order No. 2004 Would be Burdensome

Failure to grant Missouri Interstate a waiver would impose burdensome costs on it and would result in a duplication of services, in a situation where Missouri Interstate's existing customer would not benefit from the increased cost. Missouri Interstate estimates that it would incur incremental costs well in excess of \$200,000 per year for additional personnel (general manager, secretary, field technician and gas scheduler) and office facilities. Missouri Interstate operates on a \$2.5 million cost of service, determined by the Commission in Docket No. CP02-399, *et al.*

Missouri Interstate submits that a grant of the requested waiver is appropriate and in the public interest. The communications and operations shared among Missouri

Interstate and its affiliates are of a technical or operational nature, and not for the promotion of a business advantage for any affiliate in the competitive marketplace. The chances of Missouri Interstate gaining an undue competitive advantage in the energy markets in which its affiliates operate is effectively non-existent.

Missouri Interstate submits that its extremely small size, no full time employees, low revenues, the fact that it transports gas for only one customer that takes gas at Missouri Interstate's only delivery point, combined with the enormous costs of complying with Order No. 2004, argue strongly in favor of the waiver.

Respectfully submitted,

MISSOURI INTERSTATE GAS, LLC

Dated: March 31, 2004

By:

Michael A. Stosser
Jane E. Stelck
Heller Ehrman White & McAuliffe, LLP
Suite 300
1666 K Street, N.W.
Washington, D.C. 20006
Attorneys for Missouri Interstate Gas, LLC

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Missouri Interstate Gas, LLC) Docket No. TS04-____-000

**NOTICE OF PETITION FOR WAIVER
OF ORDER NO. 2004 STANDARDS OF CONDUCT**

Take notice that on March 31, 2004, Missouri Interstate Gas, LLC (Missouri Interstate) filed a petition for waiver of the requirements of the Standards of Conduct for Transmission Providers, Order No. 2004. Missouri Interstate states that good cause exists for granting the requested waiver, since the interstate pipeline is a small, six-mile pipeline with one receipt and one delivery point, and no current full time employees. Missouri Interstate transports gas on behalf of only one customer, its affiliated intrastate pipeline, Missouri Pipeline Company (MPC). In addition, Missouri Interstate states that replacement and duplication of the employees assigned to the affiliated companies will be extremely costly.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at <http://www.ferc.gov>, using the eLibrary (FERRIS) link. Enter the docket number including the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "eFiling" link. The Commission strongly encourages electronic filings.

Magalie R. Salas

Rebuttal Testimony
David J. Ries

Appendix C



Commissioners

STEVE GAW
Chair

CONNIE MURRAY

ROBERT M. CLAYTON III

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.state.mo.us>

ROBERT J. QUINN, JR.
Executive Director

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. PRENGER
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

April 12, 2004

Ms. Magalie R. Salas, Secretary
Office of the Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1-A
Washington, D.C. 20426

Re: Docket No. TS04-259-000
Missouri Interstate Gas, L.L.C.

Dear Ms. Salas:

Enclosed for filing in the above-captioned case is an original electronically transmitted copy of the **PROTEST AND NOTICE OF INTERVENTION** by the Missouri Public Service Commission.

Thank you for your attention to this matter.

Sincerely yours,

A handwritten signature in cursive script, reading "Lera L. Shemwell".

Lera L. Shemwell
Senior Counsel
(573) 751-7431
(573) 751-9285 (fax)

LLS:la
Enclosure
cc: Counsel of Record

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Missouri Interstate Gas, LLC

)

Docket No. TS04-259-000

**PROTEST AND NOTICE OF INTERVENTION OF THE
MISSOURI PUBLIC SERVICE COMMISSION**

Pursuant to Rules 211 and 214(a)(2) of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. §385.211 and §385.214(a)(2), the Missouri Public Service Commission ("MoPSC") hereby submits its Protest and Notice of Intervention in the above-noted docket. In support thereof, the MoPSC states:

I. SERVICE

Service of orders, pleadings, and other communications should be directed to the following persons:

Lera L. Shemwell
Senior Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-751-7431
573-751-9285 (fax)

David D'Alessandro
Kelly A. Daly
John E. McCaffery
Stinson Morrison Hecker, LLP
1150 18th Street, NW, Suite 800
Washington, D.C. 20036-3816
202-785-9100
202-785-9163 (fax)

II. BACKGROUND

On March 31, 2004, Missouri Interstate Gas, LLC ("MIG") filed a petition for waiver of the Commission's recently updated Standards of Conduct.¹ In its petition, MIG

¹ In Docket No. RM01-10, *Standards of Conduct for Transmission Providers*, the Commission issued Order No. 2004 Final Rule ("Order No. 2004"), 105 FERC ¶61,248 (November 25, 2003).

seeks a waiver to exempt it from complying with all of the Commission's new Standards of Conduct related to energy affiliates. MIG requests that the application of the Standards be waived with respect to its intrastate pipeline affiliates, Missouri Pipeline Company ("MPC") and Missouri Gas Company ("MGC"), and to its unregulated local distribution affiliate, Omega Pipeline Company ("Omega"), which distributes gas at Fort Leonard Wood. MIG, MPC and MGC are wholly owned by United Pipeline Systems, LLC, which, in turn, is wholly owned by Gateway Pipeline Company, LLC. MPC (a Hinshaw pipeline) and MGC are both regulated by the MoPSC.² MPC, MGC and Omega fall within the Commission's definition of Energy Affiliate.

In its petition, MIG states it has a limited scope of operation and is a very small pipeline. Its 6-mile system extends from an interconnection with Mississippi River Transmission Corporation (MRT) in Illinois, under the Mississippi River, connecting with the western end of MPC's system at MPC's eastern terminus in Missouri. This interconnection with MPC is MIG's only delivery point. MIG reports its only transportation customer is its affiliate, MPC, with there being firm capacity available to other potential shippers on MIG. During its first year of operation, MIG indicates it has transported less than 30,000 MMbtu of natural gas, with total revenues in 2003 below \$25,000.

MIG states that it has no direct employees and shares all of its employees with its affiliates, including field operators and administrative office staff. The same management and administrative personnel are shared by MIG, MPC, and MGC. MIG asserts that, given its extremely small operations and the fact that it has only one customer (its affiliate, MPC), it is more efficient for MIG to share the coordination of

² *Missouri Interstate Gas, LLC*, 100 FERC ¶61,312 at 62,401.

operations with its intrastate affiliates. MIG further states this coordination ensures the most efficient and lowest cost of service to the customers of MIG and its affiliates, while the integrated operations do not provide an opportunity for undue preference or undue discrimination against any other potential MIG shipper.

MIG also notes that it shares some of the same employees with Omega, and that Omega does not hold capacity on either MIG, or on MPC, or MGC.

In summary, MIG states in its Petition that the communications and operations shared among MIG and its affiliates are of a technical or operational nature, and not for the promotion of a business advantage for any affiliate in the competitive marketplace. MIG indicates the chance of it gaining an undue competitive advantage in the energy markets in which its affiliates operate is effectively non-existent.

III. ELEMENTS OF ORDER NO. 2004 PERTINENT TO THIS NOTICE OF INVENTION AND PROTEST

A. General Principles of the Commission's Standards of Conduct

The Commission specified two general principles as the basis of the new Standards of Conduct for a transmission provider when dealing with an energy affiliate:

18 CFR 358.2 (a) A transmission provider's employees engaged in transmission system operations must function independently from the transmission provider's marketing and sales employees, and from any employees of its energy affiliates.

18 CFR 358.2 (b) A transmission provider must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis, and must not operate its transmission system to preferentially benefit an energy affiliate.

B. Relevant Definitions

The Commission detailed the following definitions:

18 CFR 358.3 (a) ***Transmission provider*** means

- (2) Any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284.

18 CFR 358.3 (d) ***Energy Affiliate*** means an affiliate of a transmission provider that:

- (1) Engages in or is involved in transmission transactions in U.S. energy or transmission markets; or
- (2) Manages or controls transmission capacity of a Transmission Provider in U.S. energy or transmission markets; or
- (3) Buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or
- (4) Engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets.
- (5) An energy affiliate does not include:
 - (i) A foreign affiliate that does not participate in U.S. energy markets;
 - (ii) An affiliated Transmission Provider; or
 - (iii) A holding, parent or service company that does not engage in energy or natural gas commodity transactions or is not involved in transmission transactions in U.S. energy markets; or
 - (iv) An affiliate that purchases natural gas or energy solely for its own consumption and does not use an affiliated Transmission Provider for transmission of natural gas or energy; or
 - (v) A state-regulated local distribution company that does not make any off-system sales.

18 CFR 358.3 ***Transmission Function Employee*** means 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.

C. Separation of Functions (18 CFR 358.4 (a))

Except in emergency circumstances affecting system reliability, the transmission function employees of the Transmission Provider must function independently of the Transmission Provider's Marketing or Energy Affiliates' employees. In emergency circumstances affecting system reliability, a Transmission Provider may take whatever steps are necessary to keep the system in operation and must report to the FERC and post

to the internet, each emergency that resulted in any deviation from the standards of conduct, within 24 hours of such deviation.

The Transmission Provider is prohibited from permitting Marketing or Energy Affiliates' employees from: (i) conducting transmission system operations or reliability functions; and (ii) having access to the system control center or similar facilities used for transmission operations or reliability functions that differs in any way from the access available to other transmission customers.

However, Transmission Providers are permitted to share support employees and field and maintenance employees with their Marketing and Energy Affiliates.

D. Identifying Affiliates on the Internet (18 CFR 358.4 (b))

A Transmission Provider must post the names and addresses of its sales and marketing units and Energy Affiliates, a complete list of the facilities shared by the Transmission Provider and its marketing or sales units or any Energy Affiliates, including the types of facilities shared and their addresses, and comprehensive organizational charts showing:

- the organizational structure of the parent corporation with the relative position in the corporate structure of the Transmission Provider, marketing and sales units and any Energy Affiliates;
- the business units, job titles and descriptions, and chain of command for all positions, including officers and directors, with the exception of clerical, maintenance, and field positions for the Transmission Provider,
- the name of the business unit within the marketing or sales unit or the energy affiliate, the organizational structure in which the employee is located, the employee's name, job title and job description in the marketing or sales unit or energy affiliate, and the employee's position within the chain of command of the marketing or sales unit or energy affiliate for all employees who are engaged in transmission functions for the Transmission Provider and marketing or sales functions or who are engaged in transmission functions for the Transmission Provider and are employed by any of the Energy Affiliates,

- updated the information on its OASIS or Internet website, as applicable, required by 18 CFR 358.4(1), (2) and (3) within seven business days of any change, posting the date on which the information was updated, and
- information concerning potential merger partners as affiliates within seven days after the merger is announced.

E. Transfers of Employees (18 CFR 358.4 (c))

Employees of the transmission provider, marketing or sales unit or energy affiliates are not precluded from transferring among such functions as long as such transfer is not used as a means to circumvent the standards of conduct. Notices of any employee transfer must be posted on the Internet, as applicable.

F. Books and records (18 CFR 358.4 (d))

A transmission provider must maintain its books of accounts and records separately from those of its energy affiliates and these must be available for FERC inspections.

G. Non-discriminatory Information Access (18 CFR 358.5 (a))

The Transmission Provider must ensure that any employee of any Energy Affiliate may only have access to that information available to the Transmission Provider's transmission customers (i.e., the information posted on the internet, as applicable), and must not have access to any information about the Transmission Provider's transmission system that is not available to all users of its Internet website.

The Transmission Provider must ensure that employees of any Energy Affiliate are prohibited from obtaining information about the Transmission Provider's transmission system (including, but not limited to, information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans or similar information) through access to information not posted on its

Internet website or that is not otherwise also available to the general public without restriction.

H. Prohibited Disclosure (18 CFR 358.5 (b))

An employee of the Transmission Provider may not disclose to employees of the Transmission Provider's Energy Affiliates any information concerning the transmission system of the Transmission Provider or the transmission system of another (including, but not limited to, information received from non-affiliates or information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans, or similar information) through non-public communications conducted off of its Internet website, through access to information not posted on its Internet website that is not contemporaneously available to the public, or through information on its Internet website that is not at the same time publicly available. A Transmission Provider may not share any information, acquired from nonaffiliated transmission customers or potential nonaffiliated transmission customers, or developed in the course of responding to requests for transmission or ancillary service on its Internet website, with employees of its Energy Affiliates, except to the limited extent information is required to be posted on the Internet website in response to a request for transmission service or ancillary services.

If an employee of the Transmission Provider discloses information in a manner contrary to the requirements § 358.5(b)(1) and (2), the Transmission Provider must immediately post such information on its Internet website. A non-affiliated transmission customer may voluntarily consent, in writing, to allow the Transmission Provider to share the non-affiliated customer's information with a Marketing or Energy Affiliate. Neither a

Transmission Provider nor an employee of a Transmission Provider is permitted to use anyone as a conduit for sharing information covered by the prohibitions listed above with an Energy Affiliate. However, a Transmission Provider is permitted to share crucial operating information with its Energy Affiliates to maintain the reliability of the transmission system.

I. Implementing Tariffs (18 CFR 358.5 (c))

A transmission provider must strictly enforce all tariff provisions relating to the sale or purchase of open access transmission service, if these tariff provisions do not permit the use of discretion, apply all tariff provisions relating to the sale or purchase of open access transmission service in a fair and impartial manner that treats all transmission customers in a non-discriminatory manner. If these tariff provisions permit the use of discretion, process all similar requests for transmission in the same manner and within the same period of time, maintain a written log, available for Commission audit, detailing the circumstances and manner in which it exercised its discretion under any terms of the tariff. The information contained in this log is to be posted on the Transmission Provider's Internet website within 24-hours of when a Transmission Provider exercises its discretion under any terms of the tariff, and not, through its tariffs or otherwise, give preference to its own marketing or sales function or to any energy affiliate, over any other wholesale customer in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price, curtailments, scheduling, priority, ancillary services, or balancing).

J. Discounts (18 CFR 358.5 (d))

Any offer of a discount for any transmission service made by the transmission provider must be posted on the Transmission Provider's Internet website contemporaneously with the offer. The posting must include: the name of the customer involved in the discount and whether it is an affiliate or whether an affiliate is involved in the transaction, the rate offered; the maximum rate; the time period for which the discount would apply; the quantity of gas scheduled to be moved; the delivery points under the transaction; and any conditions or requirements applicable to the discount. The posting must remain on the Internet website for 60 days from the date of posting.

IV. INTERVENTION

The intervenor's legal name is the Public Service Commission of the State of Missouri. The MoPSC is a governmental agency created under the laws of the State of Missouri, § 386.040 MO. REV. STAT. (Supp. 2002), with jurisdiction to regulate rates and charges for the sale or distribution of natural gas to consumers in the State, § 386.250 MO. REV. STAT. (Supp. 2002). It is, therefore, a "State Commission" within the meaning of Section 1.101(k) of the Commission's general regulations.

The MoPSC wishes to intervene in this proceeding to insure that the citizens of Missouri can receive safe, adequate, and reliable natural gas service at reasonable prices with reasonable terms and conditions. MIG interconnects with Missouri Pipeline Company ("MPC"), a Missouri intrastate pipeline that serves two local distribution companies, and Missouri Gas Company ("MGC"), another Missouri intrastate pipeline serving several municipalities and a military base. Accordingly, the MoPSC has a direct

and unique interest in this proceeding and is entitled to party status upon filing this Notice of Intervention pursuant to 18 CFR §385.214(a)(2).

V. PROTEST

For the reasons detailed below, the MoPSC asks the Commission to deny MIG's request for a complete waiver of all of the Standards of Conduct, and instead provide MIG a limited waiver of only a few, select Standards.³

A. Waiver of Separation of Functions (18 CFR 358.4 (a))

MIG makes a strong case in its petition that, because of its small size and its affiliation with MPC and MGC, it is cost efficient for employees of these affiliates to handle the limited amount of day-to-day duties necessary for MIG to operate. The MoPSC agrees. It would be cost inefficient or even prohibitive to require MIG to employ a staff entirely separate from its affiliates.

➤ The MoPSC urges the Commission to grant MIG a waiver from complying with 18 CFR 358.4 (a).

B. Waiver from Identifying Affiliates on the Internet (18 CFR 358.4 (b))

The fact that MIG is a very small interstate pipeline does not provide sufficient justification for MIG to be relieved from posting required affiliate information in a public forum. To the contrary, making information regarding MIG's affiliations and shared employee information available to the public is warranted given that (1) MPC and MGC employees manage the day-to-day business of MIG, (2) MIG's only delivery point is its interconnection with MPC, and (3) nearly all of MPC's shippers are captive to MPC, and

³ It is worthy of note - On October 21, 2002, MoPSC, in its intervention to MIG's Docket No. RP03-17, had asked that prior to the commencement of service, MIG file, as required by 18 C.F.R. §161.3, its Standards of Conduct and the procedures it intended to follow to comply with those standards. However, that was never done.

some to both MPC and MGC. The cost to establish and maintain a website should not be overly burdensome, even given MIG's size. If the cost of a website is proven by MIG to create a financial burden, there are low-cost alternatives. For example, MIG could add the required information to its FERC tariff that is available to the public via the Commission's own website.

➤ The MoPSC urges the Commission to deny MIG's request for waiver of 18 CFR 358.4 (b) and require MIG to post: 1) the names and addresses of its sales and marketing units and Energy Affiliates, 2) a complete list of the facilities shared by the MIG and its marketing or sales units or any Energy Affiliates, including the types of facilities shared and their addresses, and 3) comprehensive organizational charts, as detailed in the rule, either on an internet website, in its FERC tariff, or other suitable, publicly accessible forum.

C. Waiver from Limiting and Public Disclosure of Transfers of Employees (18 CFR 358.4 (c))

As with 18 CFR 358.4 (a), it is reasonable to grant MIG a waiver of the requirement to limit the transfer of employees to and from an energy affiliate and the posting of such information when a transfer occurs. Employees of MPC and MGC handle the day-to-day operations of MIG. The employees are not transferred from one company to the other, but rather handle the MIG duties as part of their current position with the affiliate.

➤ The MoPSC urges the Commission to grant MIG a waiver from complying with 18 CFR 358.4 (c).

D. Waiver from Maintaining Separate Books and Records (18 CFR 358.4 (d))

MIG's case that it is a small, interstate pipeline and shares all of its employees with its affiliates does not support its request for a waiver from keeping separate books and records from its affiliates. To comply with MoPSC's existing affiliate transaction rules, MIG should already be doing this; therefore there would be no additional cost associated with its implementation of this standard.

➤ The MoPSC recommends the Commission deny MIG's requested waiver of 18 CFR 358.4 (d).

E. Waiver from Non-discriminatory Access to Information (18 CFR 358.5 (a))

As detailed above, the very nature of MIG's system, its relationship to its affiliates, and that an affiliate's employees manage MIG's day-to-day operations, make it unreasonable to grant MIG a waiver from this requirement, which ensures that any energy affiliate employee may only have access to information that is publicly available to all of the pipeline's potential and existing customers. Since the employees managing MIG's day-to-day operations are privy to pertinent information regarding MIG's system and operations, that same information should be made available to all other potential shippers, particularly, in this situation where all they must also be shipping customers of MPC, or both MPC and MGC. The benefits associated with providing interested parties unrestricted access to information about available transmission capability, price, curtailments, maintenance activity, capacity expansion plans, etc., greatly outweigh the minimal cost involved to do so.

➤ The MoPSC urges the Commission to deny MIG's request for waiver of 18 CFR 358.5 (a) and require MIG to provide access to all information to all potential

shipping customers either through a website, a telephone bulletin board,⁴ an informational filing with the Commission which should be available to the public via the Commission's website, or some other suitable, public forum.

F. Prohibited Disclosure (18 CFR 358.5 (b))

As with 18 CFR 358.4 (a) and (c), it is reasonable to grant MIG a waiver of the requirement to prohibit the disclosure of information to an Energy Affiliate. The day-to-day operations of MIG are handled by employees of its affiliates, MPC and MGC. There is no reasonable way to implement this rule without incurring the substantial cost of maintaining a separate staff for MIG.

➤ It is reasonable for the Commission to grant MIG a waiver from complying with 18 CFR 358.5 (b). However, as detailed above, to prevent discriminatory treatment, the MoPSC reiterates that the Commission should deny MIG's request to waive the requirements to make information regarding affiliate identity and affiliate transactions available to the public via an website, FERC tariff filings, or other suitable forum.

G. Waiver from Implementing Tariffs (18 CFR 358.5 (c))

The same concerns as detailed above are applicable to this item. The very nature of MIG's system, its relationship to its affiliates, and the use of affiliates' employees to manage MIG, make it unreasonable to grant MIG a waiver from this rule, which requires non-discriminatory application of all tariff provisions relating to the sale or purchase of open access transmission service in a fair and impartial manner that treats all transmission customers in a non-discriminatory manner. MIG should be required to

⁴ In *Total Peaking*, the Commission required the company to post on its telephonic bulletin board transactional information for each transaction with its marketing affiliate. 84 FERC ¶ 61,189 at 61,963 (1998).

process all similar requests for transmission in the same manner, and within the same period of time, as does from the affiliates whose employees manage the day-to-day activities of MIG. It is reasonable to require MIG to maintain a written log, available for Commission audit, detailing the circumstances and manner in which it exercised any discretion under any terms of MIG's tariff. It is also reasonable to expect MIG to make the log publicly available either through a website, telephone bulletin board, an informational filing with the Commission which should be available to the public via the Commission's website, or another suitable public forum. Any method of posting the information should be done within 24-hours of when MIG exercises its discretion under any terms of the tariff. MIG should not be allowed, through its tariffs or otherwise, to give preference to its own affiliates, over any other customer in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price, curtailments, scheduling, priority, or ancillary services).

➤ The MoPSC urges the Commission to deny MIG's request for waiver of 18 CFR 358.5 (c) and: 1) require MIG to revise its tariff to specifically state that MIG will not, through its tariffs or otherwise, to give preference to its own marketing or sales function or to any energy affiliate, over any other customer in matters relating to the sale or purchase of transmission service including, but not limited to, issues of price, curtailments, scheduling, priority, ancillary services, or balancing, and 2) require MIG to maintain a written log, posted for public access and available for Commission audit, detailing the circumstances and manner in which it exercised any discretion under any terms of the tariff.

H. Waiver from Publicly Posting Discounts (18 CFR 358.5 (d))

Again, MIG's small size and lack of full-time employees is not a reasonable argument for a waiver of this rule. MIG's use of affiliates' employees for management of MIG's day-to-day operations, make it even more important to require MIG to comply with this rule. It is reasonable to expect MIG to publicly post in a timely manner, and for 60 days, any and all offers of discounts for any transmission service either on an Internet website or, if an Internet website is too costly, through tariff filings with the Commission or other publicly accessible forum. It is also reasonable to require MIG to include the name of the customer involved in the discount and whether it is an affiliate or whether an affiliate is involved in the transaction; the rate offered; the maximum rate; the time period for which the discount would apply; the quantity of gas scheduled to be moved; and any conditions or requirements applicable to the discount.

Also, given the circumstances here and the fact MIG will likely receive waivers from several of the Commission's Standards of Conduct requirements, the MoPSC suggests the Commission include a specific requirement that a MIG affiliate shall not receive a rate lower than the rate it charges similarly-situated non-affiliated shippers.⁵

➤ The MoPSC recommends the Commission deny MIG's request for waiver of 18 CFR 358.5 (d) and require MIG to timely post for 60 days any and all offers of discounts for any transmission service either on an Internet website, through tariff filings with the Commission, or other publicly accessible forum. The MoPSC also urges the Commission require MIG to include in its tariff and/or a separately filed Standards of

⁵ *Total Peaking*, to allay any concerns that Total Peaking would provide preferential rate treatment to its marketing affiliate, the Commission required Total Peaking to state in its Standards of Conduct that it will not charge a marketing affiliate a rate lower than the rate it charges similarly-situated non-affiliated shippers. 87 FERC ¶ 61,092 (1999).

Conduct a statement that a MIG affiliate shall not receive a rate lower than the rate it charges similarly-situated non-affiliated shippers.

WHEREFORE, the MoPSC requests the Commission give due consideration to the concerns expressed above and grant MIG only limited waivers of 18 CFR 358.4 (a), 18 CFR 358.4 (c), and 18 CFR 358.5 (b), and deny MIG's request for waiver of 18 CFR 358.4 (b), 18 CFR 358.4 (d), 18 CFR 358.5 (a), 18 CFR 358.5 (c), and 18 CFR 358.5 (d). The MoPSC also requests the Commission require MIG to file a separate Standards of Conduct as required by 18 CFR 161.3.

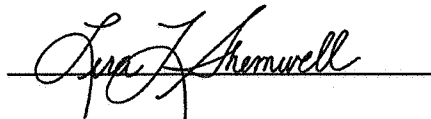
Respectfully submitted,



Lera L. Shemwell
Senior Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102
573-751-7431
575-751-9285 (fax)

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing document on all persons designated on the official service list compiled by the Secretary in this proceeding dated at Jefferson City, Missouri, this 12th day of April 2004.



Lera L. Shemwell

Submission Contents

TS04-259_NOI_and_Protest.pdf..... 1-17

Rebuttal Testimony
David J. Ries

Appendix D

108 FERC ¶ 61,011
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Bear Creek Storage Company	Docket No. TS04-51-000
Hampshire Gas Company	Docket No. TS04-5-000
KB Pipeline Company and Northwest Natural Gas Company	Docket No. TS04-4-000
MIGC, Inc.	Docket Nos. TS04-256-000, TS04-266-000
Missouri Interstate Gas LLC	Docket No. TS04-259-000
Total Peaking Services LLP	Docket No. TS04-97-000
Tuscarora Gas Transmission Company	Docket No. TS04-213-000

ORDER ON REQUESTS FOR WAIVERS FROM THE STANDARDS OF CONDUCT

(Issued July 7, 2004)

1. On November 25, 2003, the Federal Energy Regulatory Commission issued a Final Rule adopting Standards of Conduct for Transmission Providers (Order No. 2004 or Final Rule)¹ which added Part 358 and revised Parts 37 and 161 of the Commission's regulations.² 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 for a full or partial waiver of the Standards of Conduct. *See* Order No. 2004-A at P27.

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), *reh'g pending*.

² The Commission also made minor conforming changes in Parts 250 and 284.

Third, the Commission will exempt small pipelines, 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 company has separated to the maximum extent practicable from its Marketing or Energy Affiliates.³ 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 ratepayer 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 P32.

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 published 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. Bear Creek Storage Company (Bear Creek) -- Docket No. TS04-51-000

5. Bear Creek Storage Company is a jointly owned natural gas transmission provider that provides certified storage service under Part 157 of the Commission's Regulations.⁴ Bear Creek requested an exemption from the Standards of Conduct.⁵

³ 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).

⁴ Bear Creek is jointly owned by two holding companies that are subsidiaries of Southern Natural Gas Company (Southern) and Tennessee Gas Pipeline Company (TGP).

⁵ Bear Creek does not satisfy the criteria articulated by the Commission in Order No. 2004-A at P 38 for an exemption as an independent storage provider because it is interconnected with the facilities of affiliated natural gas pipelines.

6. Bear Creek stated that it is a fully subscribed Transmission Provider that serves only two customers, Southern and TGP, both of which are affiliated Transmission Providers.⁶ Bear Creek does not anticipate any expansion of its facilities. As a result, Bear Creek claims it is highly unlikely that the facility would have any direct transactional contact with any Energy Affiliates. Bear Creek further stated that it was previously exempt from the Standards of Conduct under Part 161 of the Commission's regulations due to its status as a Part 157 pipeline. In addition, Bear Creek states that it does not have an Internet website or posting obligations because it is not an open access transmission provider.

7. Bear Creek stated that it has no employees of its own and is operated by Southern's employees who perform the transmission function operations and field services. Bear Creek also points out that since it is run by Southern employees, who are subject to the Standards of Conduct and will be trained regarding Order No. 2004, there is no gap in regulation or protection if the Commission exempts it from the requirements of Order No. 2004.

A. Interventions, Protests and Comments

8. No interventions, protests or comments were filed.

B. Discussion

9. As a preliminary matter, Bear Creek does not qualify for an exemption as an independent storage provider under the criteria articulated in Order No. 2004-A because it interconnects with an affiliated Transmission Provider.

10. Under the Standards of Conduct, a Transmission Provider, such as Bear Creek, is required to function independently of its Marketing and Energy Affiliates,⁷ but is permitted to share employees with affiliated Transmission Providers.⁸ Based on its filing, Bear Creek does not appear to share any employees or facilities with any Marketing or Energy Affiliates, but shares employees with Southern, an affiliated Transmission Provider. Because the Standards of Conduct allow Transmission Providers to share

⁶ Under section 358.3(d)(6)(ii) of the Commission's regulations, to be codified at 18 C.F.R. §358.3(d)(6)(ii), an affiliated Transmission Provider is not considered an Energy Affiliate.

⁷ See sections 358.2 and 358.4(a) of the Commission's regulations, to be codified at 18 C.F.R. §§ 358.2 and 358.4(a).

⁸ Under section 358.3(d)(6)(ii) of the Commission's regulations, to be codified at 18 C.F.R. § 358.3(d)(6)(ii), an affiliated Transmission Provider is not an Energy Affiliate.

employees, Bear Creek does not need a waiver to share employees with Southern. Similarly, the information disclosure prohibitions of sections 358.5(a) and (b)(1), (2) and (3) are not triggered by the sharing of information between Bear Creek and its affiliated Transmission Provider, Southern. The Commission is, therefore, denying Bear Creek's request for waivers of the independent functioning and information sharing prohibitions of the Standards of Conduct because such waivers are unnecessary in the circumstances here.

11. The Commission is also denying waiver of the remaining Standards of Conduct. Bear Creek does not explain why it is unable to comply with the requirement to implement its tariffs in a non-discriminatory manner under section 358.5(c) of the Standards of Conduct. Although Bear Creek is fully subscribed, Bear Creek has an obligation to implement all provisions of its tariff in a non-discriminatory manner. And, although the employees of Southern are subject to the Standards of Conduct, Bear Creek is responsible for ensuring that the Standards of Conduct are observed when Southern employees are acting on Bear Creek's behalf.

12. Bear Creek claims that it would have trouble with the posting requirements of section 358.5(a) and (b) of the Commission's regulations because it does not have an Internet website. With respect to the posting requirements of 358.5(b)(2) and other posting requirements,⁹ Bear Creek has not explained why it could not obtain an Internet website or post its Standards of Conduct information on the Internet website of one of its joint owners. Bear Creek has not articulated sufficient grounds for an exemption from the posting requirements, and the Commission is denying its request.

II. Hampshire Gas Company (Hampshire) and Washington Gas Light Company (Washington Gas) - - Docket No. TS04-5-000

13. Hampshire is a storage facility located in Hampshire County, West Virginia that provides storage service under subpart A of Part 157 of the Commission's regulations solely to its affiliated local distribution company (LDC), Washington Gas.¹⁰ Hampshire requests an exemption from the Standards of Conduct and to delay the effective dates of

⁹ For example, some of the other posting requirements include: (1) identifying names and addresses of Marketing and Energy Affiliates and shared facilities under sections 358.4(b)(1) and (2); (2) posting comprehensive organizational charts and job descriptions under section 358.4(b)(3); posting written procedures implementing the Standards of Conduct under section 358.4(e); and posting potential merger partners as affiliates under section 358.4(e).

¹⁰ Both Hampshire and Washington Gas are subsidiaries of WGL Holdings Inc., a registered holding company under the Public Utility Holding Company Act of 1935 (PUHCA).

the requirements until after the Commission issues a Final Order on the instant request. And, if the request is denied, Hampshire asks the Commission to grant a minimum of 30 days from the issuance of such denial to comply with the requirements of Part 358, including the informational filings.

14. In the same pleading, Washington Gas requests clarification whether it is considered a Transmission Provider because it provides firm transportation service under section 7(f) of the Natural Gas Act (NGA) and a blanket certificate issued under section 284.224 of the Commission's regulations to Mountaineer Gas Company.¹¹

15. Hampshire's facility is comprised of a natural gas storage reservoir, a compressor station and gathering lines. Hampshire provides storage service under a Commission-approved, cost-based rate schedule. Washington Gas is its only customer and transportation from Hampshire's storage facility to the Washington Gas city gate is provided by a non-affiliated interstate pipeline.

16. Hampshire has about 10 field personnel who operate the facilities and otherwise shares employees with Washington Gas for day-to-day operations of the storage system, including the day-to-day control of injections and withdrawals.¹² Hampshire claims these employees only devote a small percentage of their time to Hampshire and it would be cost prohibitive to staff the managerial and scheduling responsibilities on a stand-alone basis. In addition, Hampshire claims that since Washington Gas is its only customer, having to post the required information would not promote the Commission's goal of preventing undue discrimination.

17. Hampshire stated that it is regulated by three state commissions (the Virginia State Corporation Commission, the Maryland Public Service Commission, and the Public Service Commission of the District of Columbia) for Washington Gas's natural gas procurement activities. Each of these commissions oversees the relationship between Washington Gas and its affiliates and has the authority to review rates and terms of service along with applying its own standards of conduct. The Commission approved the section 7(c) service provided from Hampshire to Washington Gas while the three state commissions review the storage services. As a result, Hampshire argues no regulatory gap would exist if the Commission approves Hampshire's exemption request.

¹¹ Washington Gas states that it is considering terminating its contract with Mountaineer to avoid becoming a Transmission Provider under Order No. 2004. Mountaineer asks that the Commission grant Washington Gas's request for exemption or in the alternative prevent it from unilaterally canceling the contract to avoid Commission jurisdiction.

¹² Hampshire states that it has no marketing or sales employee and shares no employees with its Marketing Affiliate, Washington Gas Energy Services (WGES).

A. Public Notice, Interventions, and Protests

18. Mountaineer Gas Company (Mountaineer) filed a motion to intervene and comments.

B. Discussion

19. As a preliminary matter, Washington Gas is not a Transmission Provider, but is an Energy Affiliate of Hampshire. In Order No. 2004-A, the Commission clarified that the holders of limited-jurisdictional certificates authorizing exchanges and NGA section 7(f) authorizations are not Transmission Providers.¹³ Therefore, the Commission is granting Washington Gas's request for clarification that it is not a Transmission Provider with respect to the service it provides under section 7(f) of the NGA.¹⁴

20. Although Hampshire does not meet the criteria to qualify for a partial exemption from the Standards of Conduct as an independent storage provider because it provides service at cost-based rates, because of its small size and limited operations, the Commission is granting Hampshire a partial waiver from the requirements of Order No. 2004. Specifically, the Commission is waiving the obligation to comply with the independent functioning requirements of section 358.4 with respect to Washington Gas (its Energy Affiliate) and is waiving the information disclosure prohibitions of section 358.5(a) and (b)(1), (2) and (3) with respect to Washington Gas. Hampshire must comply with the applicable requirements of the Standards of Conduct by September 1, 2004.

III. KB Pipeline Company and Northwest Natural Gas Company (KB Pipeline and NW Natural) -- Docket No. TS04-000

21. On January 21, 2004, KB Pipeline and its affiliated LDC, NW Natural, filed a request for an exemption from the requirements of Order No. 2004. Following issuance of Order No. 2004-A, on May 24, 2004, KB Pipeline and NW Natural specifically requested a small pipeline exemption.

¹³ Order No. 2004-A at P72.

¹⁴ Mountaineer asks that the Commission grant Washington Gas' request for exemption or in the alternative prevent it from unilaterally canceling the contract to avoid Commission jurisdiction.

22. KB Pipeline holds a Part 157 certificate¹⁵ to use its 10 percent ownership interest in the 19-mile Kelso-Beaver pipeline to transport approximately 19,300 Dth/d for its only customer, NW Natural, which engages in off-system sales on upstream, unaffiliated interstate pipelines.¹⁶ KB Pipeline is not authorized to provide transportation for any unaffiliated customers. The Kelso-Beaver pipeline is jointly owned by B-R Pipeline Company (B-R), KB Pipeline and Portland General Electric (Portland). Each of the co-owners is separately certificated to flow gas on its share of the Kelso Beaver pipeline.¹⁷

23. KB Pipeline states that it does not have any operating employees. KB Pipeline holds the certificate and performs accounting and maintenance functions for the Kelso Beaver pipeline for the benefit of the other joint owners. KB Pipeline states that these activities do not require a full time employee so NW Natural employees perform these functions.

24. KB Pipeline states that it would incur significant costs if it had to operate separately from NW Natural. Both KB Pipeline and NW Natural state that complying with the separation of function rules would be costly, difficult and exceedingly disruptive.

A. Public Notice, Interventions and Protests

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

¹⁵ See *Portland General Electric Co.*, 57 FERC ¶ 61,095 (1991), *amended*, 57 FERC ¶ 61,312 (1991).

¹⁶ As an LDC, NW Natural also provides interstate storage service with related transportation to and from storage on NW Natural's distribution system under Section 284.224 of the Commission's regulations. See *Northwest Natural Gas Co.*, 95 FERC ¶ 61,242 (2001). NW Natural's request to amend its Section 284.224 limited jurisdictional blanket certificate to allow it to use its Part 157 capacity on the Kelso-Beaver Pipeline to transport gas for its storage customers was denied. *Northwest Natural Gas Co.*, 105 ¶ 61,024 (2003).

¹⁷ *B-R Pipeline Co.*, 105 FERC ¶ 61,025 (2003 (order issuing Part 284 certificate); and *Portland General Electric Co.*, 105 FERC ¶ 61,023 (2003) (order issuing Part 284 certificate). Although Portland and B-R have been issued open access certificates for their share of the Kelso-Beaver pipeline, KB Pipeline is not authorized to provide open access service through its share of the pipeline.

B. Discussion

26. Under the Standards of Conduct, KB Pipeline would have to function independently of its Energy Affiliate, NW Natural, and would be prohibited from sharing information with NW Natural under the information disclosure prohibitions. Applying the criteria set forth in Order No. 2004-A, the Commission is granting KB Pipeline a partial exemption from the requirements of Order No. 2004 based on its small size, lack of staff and limited operations.

27. As stated in its pleadings, KB Pipeline owns 10 percent of a 19-mile pipeline, does not have any employees, is a free-flow, delivery only pipeline, and is only authorized to transport up to 19,300 Dth/day for its affiliate, NW Natural. Moreover, KB Pipeline notes that the Commission granted a similar small pipeline exemption to B-R Pipeline, a co-owner of the Kelso-Beaver pipeline in Order No. 2004-A at P31. Specifically, KB Pipeline is exempt from the independent functioning requirements of section 358.4 and the information disclosure prohibitions in section 358.5(a) and (b)(1), (2) and (3). KB Pipeline shall implement the remaining Standards of Conduct by September 1, 2004.

IV. MIGC, Inc. (MIGC) -- Docket Nos. TS04-256-000 and TS04-266-000

28. On March 12, 2004, MIGC filed a request seeking waivers that certain affiliates not be treated as Energy Affiliates. Specifically, MIGC requested that the Commission waive it from complying with the requirements of Order No. 2004 with respect to the following affiliates: (1) MGTC, Inc., (a Hinshaw/LDC); (2) Western Gas Resources-Texas, Inc. (Western Gas) (an intrastate pipeline); and (3) Mountain Gas Transportation, Inc. (Mountain Gas) (an intrastate pipeline). MIGC also requested an extension of time to comply with Order No. 2004 if the Commission denies its request.

29. Following the issuance of Order No. 2004-A, MIGC filed a request for a small pipeline exemption,¹⁸ which if granted, would moot MIGC's March 2004 request.

30. MIGC states that it owns and operates a 260-mile natural gas pipeline system in the Powder River Basin in Wyoming and transports gas for others pursuant to the Commission's regulations. MIGC states that in 2003, it had a net income of \$6.8 million and only transported 54 Bcf (6 percent contributed from MGTC) or about 3 percent of

¹⁸ The Commission previously granted MIGC a partial exemption from the former Standards of Conduct based on its small size and limited number of employees. See 58 FERC ¶ 61,141 (1992).

Wyoming's gas production. MIGC states that in 1992, it had one firm transportation customer, now it has two. MIGC also states that it has no planned expansions.¹⁹

31. MIGC states that it shares its staff with its affiliates but has to the best of its ability segregated its employees from those of its Marketing and Energy Affiliates. MIGC claims that no MIGC employees are shared with the marketing and production divisions of its Energy Affiliates. MIGC also claims that the production, marketing and gathering and processing divisions' operating employees of the Marketing and Energy Affiliates are located on separate floors from the operating employees at the shared Denver, Colorado corporate office.

32. MIGC also indicates complying with Order No. 2004 is expensive and would add substantial costs to itself and its affiliates. MIGC indicates that the total minimum estimated annual cost of \$673,000 would exceed 9 percent of MIGC's net income.

33. There is one shared individual, MIGC's Director of Pipeline Affairs (a Transmission Function Employee of MIGC) who also performs regulatory, accounting, and certain transportation contract support duties for Western Gas and Mountain Gas. Western Gas and Mountain Gas are separate from MIGC. There are no interconnections between the companies and they are remote from each other. In addition Western Gas and Mountain Gas do not have contracts for service on MIGC, do not share personnel and do not even transport gas produced from the same region.

A. Interventions, Protests and Comments

34. No motions to intervene or protests were filed.

B. Discussion

35. The Commission is denying MIGC's request to exempt MGTC, Western Gas Resources and Mountain Gas Transportation from the definition of Energy Affiliate. However, based on the statements provided in MIGC's pleadings concerning its small size, lack of staff and limited number of employees, the Commission is granting MIGC 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(a) and (b)(1), (2) and (3). MIGC must comply with the applicable requirements of the Standards of Conduct. MIGC shall implement the Standards of Conduct by September 1, 2004.

¹⁹ There have been a few verbal inquiries into their transportation capacity but MIGC states that it has not received a written request in over two years.

V. **Missouri Interstate Gas, LLC (Missouri Interstate) – Docket No. TS04-259-000**

36. Missouri Interstate is a small, six-mile pipeline, with no full-time employees that commenced operations in 2003.²⁰ Missouri Interstate petitions for a waiver from the requirements of Order No. 2004. Specifically, Missouri Interstate requests that the Commission exempt its intrastate pipeline affiliates, Missouri Pipeline Company (MPC) and Missouri Gas Company (MGC),²¹ and its unregulated local distribution affiliate, Omega Pipeline Company (Omega), from the term Energy Affiliate.²²

37. Missouri Interstate states that it has never been fully subscribed. Missouri Interstate's only delivery point is at the interconnect with MPC and the only firm transportation customer is MPC, which provides only transportation service for its intrastate customers. MPC does not sell gas to its transportation customers. In Missouri Interstate's first year of operation, it transported less than 30,000 MMBtu of natural gas with total revenues in 2003 below \$25,000. Missouri Interstate also states that Omega, the affiliated LDC, does not hold capacity on Missouri Interstate, MPC or MGC.

38. Missouri Interstate states that it has no full time staff; rather it shares field operators and administrative office staff with its affiliates. The same management and administrative personnel are shared between Missouri Interstate, MPC, MGC and Omega.

²⁰ Missouri Interstate Gas, LLC, Order Issuing Certificates, 100 FERC ¶ 61,312 (2002); *Order on Clarification and Reh'g*, 102 FERC ¶ 61,172 (2003).

²¹ Missouri Interstate, MPC, and MGC are wholly owned by United Pipeline Systems, LLC, which is owned by Gateway Pipeline Company, LLC. MPC and MGC are both regulated by the Missouri Public Service Commission.

²² Under section 248.3(d) of the Commission's regulations, an Energy Affiliate means an affiliate of a Transmission Provider that:

Engages in or is involved in transmission transactions in U.S. energy or transmission markets; or

Manages or controls transmission capacity of a Transmission Provider in U.S. energy or transmission markets; or

Buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or

Engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets.

39. Missouri Interstate requests that MPC and MGC be exempt from the definition of Energy Affiliate. Missouri Interstate argues that because MPC is its only customer it is more efficient to share in the coordination of operations, which provides for the most efficient and lowest cost of service. Missouri Interstate argues that complying with Order No. 2004 would be burdensome and result in a duplication of services. Missouri Interstate estimates that it would need to spend an additional \$200,000 a year for additional personnel and office facilities.

A. Interventions, Protests and Comments

40. The Missouri Public Service Commission (Missouri Commission) filed a protest and notice of intervention. No other interventions, protests or comments were filed.

41. The Missouri Commission urges the Commission to exempt Missouri Interstate from: (1) the requirement to maintain a separate staff due to its small size; (2) the requirement to post information about transfers between affiliates because the staff works for all the affiliates on a daily basis; and (3) the information disclosure requirements because Missouri Interstate would be unable to comply with these requirements because it shares employees with its affiliates.

42. However, the Missouri Commission urges the Commission to require Missouri Interstate to comply with: (1) the requirements to maintain separate books for the affiliates because this is a Missouri Commission requirement so no additional cost would be incurred to adhere to this part of the Order; (2) the posting requirements; (3) comply with the discount requirements; and (4) the non-discrimination provisions. And finally, the MPSC believes that Missouri Interstate should be required to include in its tariff and/or its Standards of Conduct a statement that a Missouri Interstate affiliate "shall not receive a rate lower than the rate it charges similarly-situated non-affiliated shippers."

B. Discussion

43. The Commission is denying Missouri Interstate's request to exempt MPC and MGC from the definition of Energy Affiliate. However, based on the statements in Missouri Interstate's request concerning its small size, lack of staff and limited operations, the Commission is granting Missouri Interstate a partial waiver from the requirements of Order No. 2004. Specifically, the Commission is waiving Missouri Interstate's obligation to comply with the independent functioning requirements of section 358.4 and is waiving the information disclosure prohibitions of section 358.5 (a) and (b)(1), (2) and (3) with respect to MPC and MGC. Missouri Interstate must comply with the applicable requirements of the Standards of Conduct, which will not be burdensome. Missouri Interstate shall implement the Standards of Conduct by September 1, 2004.

VI. Total Peaking Services, L.L.C. – Docket No. TS04-97-000

44. Total Peaking Services, L.L.C. (Total Peaking) operates a liquid natural gas (LNG) peak-shaving facility with a working capacity of 1.14 Bcf and related appurtenant facilities at Milford, Connecticut (the Milford Plant).²³ Total Peaking stores gas for others under a blanket transportation certificate issued under Part 284, subpart G of the Commission's regulations. Total Peaking requests that the Commission grant it a waiver of the Standards of Conduct and toll the effective dates of the requirements under 18 C.F.R. § 358.4(e)(1) until after the Commission issues a Final Order on the instant request for waiver. However, if the request is denied, Total Peaking asks the Commission to grant a minimum of 60-days from the issuance of such order to comply with the requirements of Part 358, including the informational filings.

45. Total Peaking is fully subscribed and serves only one customer, its marketing affiliate, CNEP.²⁴ CNEP sells a re-vaporized LNG peak delivery service to its affiliate, Southern Connecticut, using approximately 70 percent of the capacity CNEP has on Total Peaking and provides similar service with the remainder of its Total Peaking capacity to other non-affiliated customers. Southern Connecticut also provides displacement service from the Milford Plant across its system under a separate agreement with CNEP.

46. Total Peaking states that it does not share office space, computer systems or telephone systems with any marketing employees, including those of its affiliates. Total Peaking has no direct employees. Total Peaking is operated by non-marketing employees of its affiliated LDC, Southern Connecticut. Total Peaking states that Southern Connecticut is an Energy Affiliate under section 358.3(d) of the Standards of Conduct because Southern Connecticut engages in the purchase or sale of natural gas in U.S. markets. In addition, Southern Connecticut's LDC operations and supply control facilities are located in the same building as Total Peaking's control center and are on the same grounds as the Milford Plant. Total Peaking states that employees who are involved in purchasing and selling gas for Southern Connecticut's LDC operations have certain supervisory responsibility over Southern Connecticut employees that operate the

²³ Connecticut Energy Corp., is the parent of Southern Connecticut Gas Company, an LDC, and CNE Energy Services Group, Inc. These companies together with other Energy East companies, own LNG Storage Partners, which owns Total Peaking Service, LLC and LNG Marketing Partners, which owns CNE Peaking, LLC (CNEP), a marketing affiliate.

²⁴ Total Peaking receives gas for liquefaction and storage through the facilities of The Southern Connecticut Gas Company (Southern Connecticut), an affiliated LDC, and is connected to the pipeline facilities of Iroquois Gas Transmission System, L.P.

Milford Plant, but do not have access to protected transmission system information. Total Peaking claims that if the two entities were operated separately, the additional costs incurred by Total Peaking could make it uneconomic for it to remain in the interstate market.

47. Total Peaking states that the intent of the Part 358 Standards of Conduct is “that Transmission Providers cannot extend their market power over transmission to wholesale energy markets by giving their Energy Affiliates unduly preferential treatment.” Total Peaking argues that the Commission’s objectives to avoid abuse of market power will not be furthered by applying these new requirements to Total Peaking, but could instead cause it unnecessary expense, result in inefficient operation of its LNG storage services and could lead to the withdrawal of its facility from interstate service.

A. Public Notice, Interventions, and Protests

48. No motions to intervene or protest were filed.

B. Discussion

49. Although the Commission has determined that Total Peaking lacks market power,²⁵ it interconnects with an affiliated natural gas pipeline (Southern Connecticut). Therefore, Total Peaking does not satisfy the criteria articulated by the Commission in Order No. 2004-A at P 38 for an exemption as an independent storage provider.

50. Since the Commission has previously determined that Total Peaking is a small operation, we will grant it a partial exemption from the Standards of Conduct waive the independent functioning requirement under sections 358.2(a) and 358.4(a) of the Commission’s regulations and information sharing prohibitions under sections 358.5(a) and 358.5(b)(1), (2) and (3) of the Commission’s regulations with respect to Southern Connecticut.

51. However, the Commission is denying Total Peaking’s request for waiver of the requirement to post information on an Internet website because it would be “costly.” Total Peaking has not articulated sufficient grounds for an exemption from the information posting requirements. Although the Commission previously allowed Total

²⁵ When the Commission granted Total Peaking the authority to charge market-based rates, the Commission determined that Total Peaking could not transfer market power to an affiliate. *See Market-Based Rate Order*, 84 FERC ¶ 61,189 at 61,963. The Commission also granted Total Peaking a waiver of 18 C.F.R. § 284.10 to permit Total Peaking to use a telephone bulletin board to provide information concerning capacity, service interruptions and emergency contacts.

Peaking to use a telephonic bulletin board for the contemporaneous disclosure of information, Total Peaking has had an Internet website since 2000, and is capable of complying with the Standards of Conduct posting requirements.²⁶

VII. Tuscarora Gas Transmission Company (Tuscarora) - Docket Number TS04-213-000

52. The Commission previously granted Tuscarora certain limited waivers under the former Standards of Conduct at Part 161 of the Commission's regulations (information sharing prohibitions) because of Tuscarora's small size and the limited number of employees.²⁷ Tuscarora filed a request to maintain these limited waivers for the information disclosure prohibitions of sections 358.5(b)(1) and (2) of the Commission's regulations under the new Standards of Conduct. Tuscarora states that it intends to comply with the other requirements of the Standards of Conduct.

53. Tuscarora owns and operates a 227-mile interstate natural gas pipeline connecting PG&E Gas Transmission, Northwest Corporation and terminating at the Tracey Power Plant owned by Sierra Pacific Power Company.²⁸ Tuscarora refers the Commission to its previous Standards of Conduct pleading, in which it stated that it has nine employees and two contract employees, and three employees of its affiliate Sierra Pacific Power Company administer the off-system sales of gas to Southwest Gas Corporation.²⁹ Tuscarora states that its transmission function employees are already separate from those of its Marketing or Energy Affiliates' employees.

54. Tuscarora shares telephone equipment and a password protected Local Area Network with its Marketing Affiliate. However, operating employees of Tuscarora's Marketing and Energy Affiliates maintain separate offices in different buildings.

²⁶ [Http://totalpeaking.com/Menu/Copy_of_noncriticalnoticesbulletin.html](http://totalpeaking.com/Menu/Copy_of_noncriticalnoticesbulletin.html) and <http://totalpeaking.com/Menu/EESOrgChart2.jpg> (June 21, 2004).

²⁷ *Tuscarora Gas Transmission Company*, 94 FERC 61,325 (2001) ("March 2001 Order").

²⁸ Sierra Pacific is a gas and electric local distribution company and a subsidiary of Sierra Pacific Resources.

²⁹ Tuscarora is a Nevada partnership owned equally by a wholly-owned subsidiary of Sierra Pacific Resources and a wholly-owned subsidiary of TransCanada PipeLines Ltd.

A. Public Notice, Interventions, and Protests

55. No interventions or protests were filed.

B. Discussion

56. The Commission is granting Tuscarora's request for a partial waiver from the Standards of Conduct under Order No. 2004. Specifically, the Commission is continuing the waivers provided in 2001 and Tuscarora is not required to comply with the requirements of section 358.5(a) and (b)(1), (2) and (3) with respect to Sierra Pacific Power Company.

The Commission orders:

(A) As discussed herein, the Commission is denying Bear Creek Storage Company's request for waiver of the Standards of Conduct.

(B) As discussed herein, the Commission is granting Hampshire Gas Company's request for partial waiver of the Standards of Conduct and clarifying that Washington Gas Light Company is not a Transmission Provider.

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

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

(E) As discussed herein, the Commission is denying Missouri Interstate Gas' request to exempt its two affiliates from the definition of Energy Affiliates, but is granting Missouri Interstate a partial waiver of the Standards of Conduct.

(F) As discussed herein, the Commission is granting Total Peaking Services' request for a partial waiver of the Standards of Conduct.

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

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.