



2. Between November 15 and 18, 2004, the above-captioned Transmission Providers filed requests for waiver of the Standards of Conduct or clarification that they are not subject to the Standards of Conduct. Notices of the filings were published. The Commission is granting the requests for waiver and exemption, as discussed herein.

**CenterPoint Energy Gas Transmission Company (CenterPoint) and CenterPoint Energy – Mississippi River Transmission Corporation (MRT) – Docket Nos. TS04-200-000 and TS04-193-000**

3. On November 18, 2004, CenterPoint and MRT<sup>3</sup> filed a request for clarification that CenterPoint Energy Houston Electric, LLC (Houston Electric) is not an Energy or Marketing Affiliate of CenterPoint or MRT under the Standards of Conduct. Houston Electric operates electric transmission and distribution facilities in the state of Texas, but does not generate or sell electricity or natural gas, except purchases electricity for its own use.

4. CenterPoint and MRT state that they are currently treating Houston Electric as an Energy Affiliate, but since Houston Electric's business is like a FERC jurisdictional Transmission Provider, CenterPoint and MRT request clarification that Houston Electric is not an Energy or Marketing Affiliate. They argue that Houston Electric would be a Transmission Provider's, "[b]ut for the fact that it is not a "public utility." CenterPoint and MRT assert that Houston Electric is a wires-only business that does not generate or sell electricity or natural gas, is separate from CenterPoint pipelines, and does not pose a risk that CenterPoint or MRT could convey any advantage to Houston Electric in the market for Texas-regulated transmission and distribution services.

5. CenterPoint and MRT also observe that the "'no conduit' rule prevents employees of [Houston Electric] from acting as 'conduits' to disclose CenterPoint Pipelines' transmission information to the CenterPoint Pipelines' Energy Affiliates."<sup>4</sup> Under these circumstances, CenterPoint and MRT argue that no purpose would be served by treating Houston Electric as a Marketing Affiliate or Energy Affiliate under the Standards of Conduct.

**A. Public Notice, Interventions, and Protests**

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

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<sup>3</sup> CenterPoint and MRT are Transmission Providers as that term is defined at section 358.3(a) of the Commission's regulations, 18 C.F.R. § 358.3(a) (2005).

<sup>4</sup> Request for clarification at 9.

## **B. Discussion**

### **1. Houston Electric as a Marketing Affiliate**

7. The Commission finds that Houston Electric is not a Marketing Affiliate under the Standards of Conduct. A Marketing Affiliate is a unit that “engages in marketing, sales, or brokering activities.” 18 C.F.R. § 358.3(k) (2005). CenterPoint and MRT claim that Houston Electric is not a Marketing Affiliate because it does not engage in the sale for resale of natural gas or electric energy in interstate commerce. Based upon the information provided by CenterPoint and MRT, it does not appear that Houston Electric is a Marketing Affiliate of CenterPoint and MRT.

### **2. Houston Electric as an Energy Affiliate**

8. The Commission finds that Houston Electric is not an Energy Affiliate under the Standards of Conduct. An Energy Affiliate is defined as an affiliate that “(1) engages or is involved in transmission transactions in U.S. energy or transmission markets; (2) manages or controls Transmission capacity of a Transmission Provider in U.S. energy or transmission markets; (3) buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; (4) engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets; or (5) is a local distribution division of an electric public utility Transmission Provider.” 18 C.F.R. § 358.3(d)(1)-(5) (2005).

9. CenterPoint and MRT claim that, in Order No. 2004-A, the Commission defined “engages in transmission transactions” to mean that the entity holds (or is requesting) transmission capacity on a Transmission Provider as a shipper or customer, or buys or sells transmission capacity in the secondary capacity market. CenterPoint and MRT claim that Houston Electric owns transmission facilities and provides tariff or transmission service over those facilities. They also state that Houston Electric does not “hold” or “request” capacity as a “shipper or customer,” nor does Houston Electric buy or sell such transmission capacity in the secondary capacity market.

10. CenterPoint and MRT also claim that Houston Electric is not “involved in” transmission transactions because Houston Electric does not act as an agent, asset manager, broker or in some fashion manage, control or aggregate capacity on behalf of transmission customers or shippers.”<sup>5</sup> CenterPoint and MRT claim that Houston Electric acts on its own behalf by selling transmission service directly to customers in its roles as the owner of transmission facilities and as the provider of transmission service over those facilities. They also argue that Houston Electric’s “to, from and over” transmission service at three interconnections between the Electric Reliability Council of Texas

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<sup>5</sup> Order No. 2004-A at P 44.

(ERCOT) and the Southwest Power Pool (SPP) does not alter the analysis because it was ordered by the Commission and not designed to make Houston Electric a public utility under the Federal Power Act. The Commission agrees that Houston Electric is not engaged or involved in transmission transactions in U.S. energy or transmission markets as that term is used under the Standards of Conduct.

11. CenterPoint and MRT also claim that Houston Electric does not “buy, sell, trade or administer natural gas or electric energy in U.S. energy or transmission markets” and is not, therefore, an Energy Affiliate. They assert that Texas law prohibits Houston Electric from selling electricity or otherwise participate in the market for electricity except for the purpose of buying electricity to serve its own needs. CenterPoint and MRT claim that Houston Electric does buy some electricity for its “own needs,” and thus it qualifies for the exemption under section 358.3(d)(6)(iv) of the Commission’s regulations. 18 C.F.R. § 358.3(d)(6)(iv) (2005).<sup>6</sup>

12. CenterPoint and MRT also claim that Houston Electric does not engage in any financial transactions relating to the sale or transmission of natural gas or electric energy.

13. The Commission grants the request for clarification that Houston Electric is not a Marketing or Energy Affiliate of CenterPoint or MRT. Based on the pleading, Houston Electric does not appear to engage in any of the activities of a Marketing or Energy Affiliate.

#### **Islander East Pipeline Company, L.L.C. (Islander East) – TS05-4-000**

14. On November, 15, 2004, Islander East Pipeline Company (Islander East) filed a request for a complete waiver from the Standards of Conduct until it has obtained a Water Quality Certificate (WQC) from the State of Connecticut and fulfilled other obligations that are necessary before constructing a natural gas transmission facility. In the alternative, Islander East requested 90 days from the date an order on waiver becomes final and non-appealable to comply with the requirements not waived by the Commission. Islander East accepted its FERC certificate on September 19, 2002,<sup>7</sup> but construction has not commenced because it has been unable to obtain its WQC.<sup>8</sup>

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<sup>6</sup> Under section 358.3(d)(6)(iv) of the Commission’s regulations, an affiliate is not an Energy Affiliate if it purchases natural gas or energy solely for its own consumption.

<sup>7</sup> Order on Rehearing and Issuing Certificates, *Islander East Pipeline Co., L.L.C. and Algonquin Gas Transmission Co.*, 100 FERC ¶ 61,276 (2002).

<sup>8</sup> As of September 22, 2005, the Commission noted that Islander East did not have a WQC. Letter from FERC Office of Energy Projects to Islander East’s Outside Counsel (Sept. 22, 2005), Docket No. CP01-384.

15. Islander East is a joint venture equally owned by Duke Energy Islander East Pipeline, L.L.C. and KeySpan Islander East Company, L.L.C. and managed by a management committee comprised of representatives of its owners. Currently, Islander East has no employees and is not engaged in any transmission-related activities that would lead to undue preference to an affiliate or discrimination against another entity. However, when it commences operations, Duke Energy Islander East Pipeline Company, L.L.C. will operate Islander East.

16. When completed, Islander East will consist of 50 miles of pipe extending from North Haven, Connecticut to Brookhaven, New York after crossing Long Island Sound. In addition to this facility, Islander East is authorized to lease pipeline capacity on Algonquin Gas Transmission Company's facilities. The project was supposed to be completed by November 1, 2003, but because all necessary permits have not been obtained, construction has not commenced. The Commission granted Islander East a construction extension through September 19, 2007.<sup>9</sup> Islander East is waiting for its WQC from Connecticut and a section 404 permit from the U.S. Army Corps of Engineers.

17. Islander East claims that it was unaware that Order 2004-B, which issued August 2, 2004, required unconstructed pipelines to comply with the Standards of Conduct by September 22, 2004. Islander East claims that it believed that the Standards of Conduct would not yet apply to it because it did not appear to be a Transmission Provider or natural gas company.<sup>10</sup> Additionally, Islander East does not believe that the Standards of Conduct apply to it because it does not yet *transport* gas for others as 18 C.F.R. § 358.1(a) states. Islander East argues that it should not have to comply with the Standards of Conduct before it commences operation.

#### **A. Interventions, Protests and Comments**

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

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<sup>9</sup> Letter from FERC Office of Energy Projects to Islander East's Outside Counsel (Sept. 22, 2005), Docket No. CP01-384.

<sup>10</sup> It relied on Subpart A of Part 157 and/or Subparts B or G of Part 284 that defines Transmission Provider as an "interstate natural gas pipeline *that transports gas for others*" and section 2(6) of the Natural Gas Act to indicate that it will not be a "natural gas company" until it begins transportation.

## **B. Discussion**

19. The Commission is granting Islander East a temporary waiver of the Standards of Conduct. In Order No. 2004-B, the Commission clarified that “a new pipeline will have reasonable time (30 days) after it accepts its certificate or otherwise becomes subject to the Commission’s jurisdiction (whichever comes first) to come into compliance with the Standards of Conduct. Most pipeline development is undertaken by existing natural gas companies and the Standards of Conduct would apply to the parent company in full.”<sup>11</sup> A few companies sought clarification on this point arguing that an unconstructed pipeline could not be a Transmission Provider. While the Commission agreed that not all aspects of the Standards of Conduct would apply to pipelines that had not yet been staffed or begun performing transmission functions, it went on to state that once a pipeline has begun soliciting business or negotiations concerning transmission activities, the pipeline is engaging in transmission functions and, thus, is subject to the Standards of Conduct.<sup>12</sup> The Commission also stated that the application of the Standards of Conduct would ensure that Marketing or Energy Affiliates did not receive preferential treatment or service.<sup>13</sup>

20. Islander East acknowledges that the Commission had two general principles in mind when it issued the Standards of Conduct that: (1) transmission function employees need to function independently from Marketing and Energy Affiliate employees, and (2) all transmission customers, affiliates and non-affiliates must be treated on a non-discriminatory basis so that a pipeline does not operate its system to preferentially benefit its Marketing and/or Energy Affiliates. Islander East claims that, because it has no employees and is not engaged in any transmission-related activities, it does not believe that it can violate the first principle of the Standards of Conduct. It argues that, likewise, it cannot violate principle two because it is not in operation. Islander East recognizes that a pipeline can discriminate when awarding capacity before actual operation, but claims that it was fully subscribed before it obtained its FERC certificate and cannot now accept new shippers. Thus, Islander East argues that it has no opportunity to discriminate in favor of Marketing or Energy Affiliates.

21. Based on the facts described in the pleading, the Commission is granting Islander East a temporary waiver of the Standards of Conduct because it appears that Islander East has no employees and is not currently engaging in any transmission-related activities.

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<sup>11</sup> Order No. 2004-B, 108 FERC ¶ 61,118 at P 137 (2004).

<sup>12</sup> The Commission recognizes that application of the Standards of Conduct to certificated, but not yet operating, pipelines is one of the issues raised on appeal of Order No. 2004 in the Court of Appeals.

<sup>13</sup> Order No. 2004-C, 109 FERC ¶ 61,325 at P 44-46 (2004).

The temporary waiver is granted until such time that Islander East begins undertaking transmission-related activities, such as soliciting business or negotiating transmission-related activities. These activities include, but are not limited to, negotiating firm or interruptible transportation agreements, negotiating interconnection agreements or preparing a tariff. Although Islander East claims that it is fully subscribed under precedent agreements, at some point, employees or individuals acting on behalf of Islander East will commence transmission-related activities such as finalizing firm transportation contracts, negotiating interconnection agreements, or preparing rate or tariff filings. Simultaneous with the commencement of transmission-related activities, Islander East must comply with the Standards of Conduct.<sup>14</sup>

The Commission orders:

(A) The Commission grants the request for clarification of CenterPoint and MRT, as described in the body of this order.

(B) The Commission grants Islander East a temporary waiver of the Standards of Conduct, as described in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>14</sup> Employees or individuals working on behalf of Islander East remain subject to the no-conduit rule to the extent that any affiliated Transmission Provider of Islander East is subject to the Standards of Conduct.