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Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

1. The Federal Energy Regulatory Commission is adding Part 358 to its regulations and revising Parts 37 and 161 of its regulations in response to the changing structure of the energy industry.¹ In this rule, the Commission adopts standards of conduct that apply uniformly to interstate natural gas pipelines and public utilities (jointly referred to as Transmission Providers) that are currently subject to the gas standards of conduct in Part 161 of the Commission's regulations and the electric standards of conduct in Part 37 of the Commission's regulations.² In light of the changing structure of the energy industry, the standards of conduct will govern the relationships between regulated Transmission Providers and all of their Energy Affiliates. The new standards of conduct will eliminate the loophole in the current regulations that do not cover a Transmission Provider's relationship with Energy Affiliates that are not marketers or merchant affiliates. The Final Rule will ensure that Transmission Providers cannot extend their market power over transmission to wholesale energy markets by giving their Energy Affiliates unduly preferential treatment.

I. Background

2. On September 27, 2001, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this proceeding.³ One hundred and fifty-five interested persons submitted comments.⁴ Several commenters requested an opportunity for an oral presentation on the matters raised in the NOPR. On April 25, 2002, the Commission published an "Analysis of

the Major Issues Raised in the Comments" (Major Issues Analysis), suggesting some possible changes to the proposals in the NOPR. The Major Issues Analysis proposed changes in the definition of an Energy Affiliate, among other things, and provided draft regulatory text.

3. The Major Issues Analysis also gave notice that the Commission would host a full-day technical conference giving interested persons the opportunity to discuss issues raised in the NOPR and the Major Issues Analysis. Approximately 200 participants attended the conference on May 21, 2002. During and following the conference, participants were encouraged to submit drafting options for regulatory text. The Commission then posted all of the proposals on its Internet Website. Since the conference, the Commission has received more than 100 additional comments, many from interested persons who previously submitted comments.

4. This Final Rule is being issued after a review of all the comments filed in this proceeding and will become effective on February 9, 2004. By February 9, 2004, each Transmission Provider is required to file with the Commission and post on the OASIS or its Internet website a plan and schedule for implementing the standards of conduct. By June 1, 2004, all Transmission Providers must comply with the standards of conduct and post procedures on the Internet that will enable customers and the Commission to determine whether Transmission Providers are in compliance with the standards of conduct requirements contained herein.

II. Current Regulations

5. The current standards of conduct restrict the ability of interstate natural gas pipelines and public utilities (Transmission Providers) to give their marketing affiliates or wholesale merchant functions undue preferences over non-affiliated customers. The Commission's goal—to prevent unduly discriminatory behavior—reflects FERC's statutory responsibilities under

the NGA and FPA.⁵ Both gas⁶ and electric⁷ standards of conduct rely on

⁵ Sections 4 and 5 of the Natural Gas Act (NGA), 15 U.S.C. 717c and 717e (2000), state that no natural gas company shall make or grant an undue preference or advantage with respect to any transportation or sale of natural gas subject to the Commission's jurisdiction. Similarly, under sections 205 and 206 of the Federal Power Act (FPA), 16 U.S.C. 824d and 824e (2000), no public utility shall make or grant an undue preference with respect to any transmission or sale subject to the Commission's jurisdiction.

⁶ Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,820 (June 1, 1988); Order No. 497–A, *order on reh'g*, 54 FR 52781 (Dec. 22, 1989), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,868 (Dec. 15, 1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (Dec. 28, 1990), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,908 (Dec. 13, 1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (Jan. 2, 1992), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,934 (Dec. 20, 1991), *reh'g denied*, 57 FR 5815 (Feb. 18, 1992), 58 FERC ¶ 61,139 (Feb. 10, 1992); *Tenneco Gas v. FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (Dec. 14, 1992), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,958 (Dec. 4, 1992); Order No. 497–E, *order on reh'g and extending sunset date*, 59 FR 243 (Jan. 4, 1994), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,987 (Dec. 23, 1993); Order No. 497–F, *order denying reh'g and granting clarification*, 59 FR 15336 (Apr. 1, 1994), 66 FERC ¶ 61,347 (Mar. 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,996 (June 17, 1994).

See also Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on reh'g*, 59 FR 52896 (Oct. 20, 1994), 69 FERC ¶ 61,044 (Oct. 14, 1994); Order No. 566–B, *order on reh'g*, 59 FR 65707 (Dec. 21, 1994), 69 FERC ¶ 61,334 (Dec. 14, 1994); and Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (Aug. 12, 1998), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,064 (July 30, 1998).

⁷ Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 31,035 (Apr. 24, 1996); Order No. 889–A, *order on reh'g*, 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,049 (Mar. 4, 1997); Order No. 889–B, *reh'g denied*, 62 FR 64715 (Dec. 9, 1997), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,253 (Nov. 25, 1997).

See also Promoting Wholesale Competition Through Open Access Non-Discrimination Transmission Services by Public Utilities; Recovery

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¹ The Commission is also making minor conforming changes in Parts 250 and 284.

² The gas standards of conduct are codified at part 161 of the Commission's regulations, 18 CFR part 161 (2003), and the electric standards of conduct are codified at 18 CFR 37.4 (2003).

³ Standards of Conduct for Transmission Providers, 66 FR 50919 (Oct. 5, 2001), IV FERC Stats. & Regs. Regulation Preambles ¶ 32,555 (Sept. 27, 2001).

⁴ *See* Appendix A for a list of commenters.