

NICOR Gas
 Niagara Mohawk Power Corporation
 NiSource, Inc. (NiSource)
 North Carolina Utilities Commission (North Carolina Commission)
 Northeast Utilities Service Company
 Northeastern Independent Transmission Co.
 Northern States Power Company
 Northwest Natural Gas Company
 Ohio Oil & Gas Association
 Oklahoma Corporation Commission (Oklahoma Commission)
 Oklahoma Gas and Electric Company (OGE)
 Orlando Utilities Commission
 PacifiCorp
 PanCanadian Energy Services, Inc.
 PECO Energy Company
 Pennsylvania Oil & Gas Association
 Pennsylvania Public Utility Commission (Pennsylvania Commission)
 Permian Basin Petroleum Association
 Piedmont Natural Gas Company
 Pinnacle West Companies (Pinnacle West)
 Pinnacle West Capital Corporation
 PJM Industrial Customer Coalition
 Portland General Electric Company
 Portland Natural Gas Transmission System
 Potomac Edison Company
 PPL Companies
 Process Gas Consumers Group, including American Forest and Paper Association, American Iron and Steel Institute, Georgia Industrial Group, Industrial Gas Users of Florida, Florida Industrial Gas Users, U.S. Gypsum Co. (Industrials)
 Proliance Energy, LLC
 PSEG Companies
 Public Alliance for Community Energy
 Public Service Co. of Colorado
 Public Service Co. of North Carolina
 Public Utilities Commission of Ohio (Ohio Commission)
 Public Utilities Commission of Michigan (Michigan Commission)
 Puget Sound Energy, Inc.
 Questar Corporation
 Questar Market Resources, Inc.
 Questar Pipeline Co., Questar Gas Co., Questar Regulated Services Co. (Questar)
 Reliant Resource, Inc. (Reliant)
 Rural Utilities Service of the U.S. Department of Agriculture (Rural Utilities Service)
 Salt River Project
 SCANA Energy Marketing, Inc.
 SCANA Services, Inc.
 SCG Pipeline, Inc. (SCG)
 Seminole Electric Cooperative, Inc.
 Sempra Energy
 Shell Gas Transmission, LLC (Shell Gas)
 Shell Offshore, Inc. (Shell Offshore)
 South Carolina Electric & Gas Co.
 South Carolina Pipeline Corporation
 South Carolina Public Service Authority
 Southern California Edison Co.
 Southern Company Services, Inc. (Southern)
 Southwest Gas Corporation (Southwest Gas)
 Southwest Transmission Cooperative
 Southwestern Public Service Co.
 State of Arkansas
 State of Colorado
 State of Illinois
 State of New York
 State of Pennsylvania
 State of Washington
 State of Wyoming
 Superior Natural Gas Corporation

Teco Energy, Inc.
 Texas Eastern Transmission Company
 The New Power Company
 Transcanada Pipelines Limited
 Transmission Access Policy Study Group (TAPS)
 Transmission Group (Northern Natural Gas Co. *et al.*)
 Unaffiliated Marketers
 UtiliCorp United, Inc.
 United States Gypsum Company
 Upper Peninsula Power Company
 US Gypsum Corporation
 USG Pipeline Company
 Utah Associated Municipal Power Systems
 Utah Division of Public Utilities (Utah Commission)
 Vector Pipeline
 Vermont Department of Public Service (Vermont Commission)
 Viking Gas Transmission Co. (Viking)
 Virginia Natural Gas Company
 Walter Oil & Gas Corporation
 Wastach Energy Corporation
 Washington Gas Light Company
 Washington Utilities & Transportation Commission (Washington Commission)
 Wells Rural Electric Company
 West Penn Power Company
 West Virginia Energy Users Group
 Western Resources, Inc., including Kansas Power & Light (Western Resources)
 Westgas Interstate, Inc.
 Williams Companies (Williams)
 Williams Energy Marketing & Trading Co. (WEMT)
 Williston Basin Interstate Pipeline Company (Williston Basin)
 Wisconsin Electric Power Co.
 Wisconsin Gas Company
 Wisconsin Public Service Corporation
 Wyoming Independent Producers Association
 Wyoming Public Service Commission (Wyoming Commission)
 XCEL Energy Companies (Xcel)
 XCEL Energy Services, Inc.

Brownell, Commissioner, *dissenting in part*

1. The proposed changes to our standards of conduct generated a great amount of comment. There were many questions raised, clarifications requested and alternative proposals advocated. Many commenters argued that a general rule was unnecessary. I disagree. The current standards of conduct do not reflect the significant changes that have occurred in the electric and gas industries since they were first adopted. In particular, the current standards of conduct do not reflect the interplay between physical and financial transactions that is now present in the energy markets.

2. We had a lot of process and debate. After carefully considering all the comments, we revised and clarified many of the proposed changes to the current standards of conduct. The revised standards of conduct adopted in the Final Rule are a positive step toward eliminating undue discrimination and undue preferences in the provision of interstate transmission service. In particular, the Final Rule:

- Uses the same standards of conduct language for the interstate natural gas pipelines and public utility transmission providers;

- Adopts the “no conduit rule” for implementing information disclosure prohibitions (currently used by public utility transmission providers), which is more flexible than the “automatic imputation rule” (currently used by interstate natural gas pipeline transmission providers);

- Prohibits the Transmission Provider from sharing employees and information with its Energy Affiliates, including affiliated asset managers, and trading and financial affiliates;

- Prohibits the sharing of employees and information across industries (*e.g.*, between a natural gas pipeline and an affiliated generator); and

- Requires mandatory training for employees and the designation of a Chief Compliance Officer.

I support these provisions of the Final Rule.

3. The Final Rule retains the existing exemption from Order No. 497 for affiliated local distribution companies (LDCs) and the existing exemption from Order No. 889 for the bundled retail sales function. In contrast, the Final Rule eliminates the existing exemption in Order No. 497 for affiliated producers, gatherers, processors, intrastate pipelines, and Hinshaw pipelines. The facts and equity support maintaining the existing exemption for affiliated producers, gatherers, processors, intrastate pipelines, and Hinshaw pipelines. Therefore, I will dissent on this one point.

4. There is no practical distinction in the relationship between a jurisdictional pipeline and its affiliated LDCs and the relationship between a jurisdictional pipeline and an affiliated intrastate or Hinshaw pipeline that warrants applying the standards of conduct in an asymmetrical manner. Furthermore, we exempt FERC-jurisdictional transmission providers from the definition of Energy Affiliates. Consequently, for example, affiliated jurisdictional pipelines are permitted to share transmission function employees and information. Again, there appears to be no significant difference in the relationships to support disparate treatment.

5. Under the current standards of conduct, a producer is exempt when selling gas solely from its own production and an LDC is exempt if it only makes on-system sales. There does not appear to be any reason that undue discrimination and undue preferences in the provision of interstate transmission service are more likely to occur with a producer than with an LDC. Furthermore, as the Final Rule notes, there was much discussion at the May 21, 2002 conference about the possibility that expanding the standards of conduct to producers, gatherers and processors would harm deepwater operations and future off-shore development efforts.

6. Lastly, there appears to be insufficient evidence to support eliminating the exemption for affiliated producers, gatherers, and processors. The Final Rule cites *Shell Offshore Inc. v. Transcontinental Gas Pipe Line Corp.*, *et al.*, 100 FERC ¶ 61,254 (2002), *order on reh'g*, 103 FERC ¶ 61,177 (2003), *appeal filed* June 27, 2003 (D.C. Cir. No. 03–1179) as the basis for eliminating the exemption for producers, gatherers and