



also has indirect interests in Tuscarora Gas Transmission Company and Northern Border Pipeline Company. With the exception of Tuscarora, each of these transmission systems are interconnected to TransCanada's Canadian facilities to move gas supplies from Western Canada to U.S. markets.

The NOPR proposes to adopt one set of standards of conduct to be applied uniformly to both gas and electric "transmission providers" that would govern the relationships between transmission providers and their relationships with their energy affiliates. "Energy affiliate" is broadly defined in the NOPR and would include foreign and domestic affiliated marketers, producers, gatherers, financial services companies, asset managers, generators and pipelines.

Many commenters, including INGAA, raised concerns about the definition of "energy affiliate", noting that it would appear to require transmission providers to treat affiliated transmission providers as energy affiliates. The Staff Analysis recognised the issues raised by such a broad definition, determining that communications and coordinating transactions between affiliated pipelines are not a concern the revised rules were meant to address. The Staff Analysis proposed regulatory text therefore excludes from the definition of "energy affiliate" "other affiliated regulated transmission providers."

The Staff Analysis also considered comments that foreign affiliates should be similarly excluded from the definition of energy affiliates and concluded that the final rule should clarify that the definition excludes foreign affiliates that do not participate in the U.S. energy markets. The text of the Staff Analysis defines "participation in U.S. energy markets" as "buying, selling or trading natural gas or electric energy", but the clarifying language is omitted from the Staff Analysis proposed regulatory text.

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<sup>1</sup> Notice of Proposed Rulemaking, "Standards of Conduct for Transmission Providers", *FERC Stats & Regs.*

The result for a North American pipeline company like TransCanada is ambiguity as to whether it would be treated as an energy affiliate with respect to its U.S. pipeline interests. While its operations in Canada are fully regulated by federal and provincial regulatory agencies, it is not apparently a “regulated transmission provider” as used in the exclusion to the definition of “energy affiliate” because the definition of “transmission provider” at § 358.3(a)(2) requires that the entity be a transporter under Part 157 or 284 of the Commission’s regulations. And, because the proposed regulatory language refers generally to “participation in U.S. energy markets”, it is conceivable that the Commission could take the view that shared operational efficiencies (e.g. nominations or scheduling) between TransCanada and its interconnected U.S. affiliates, business decisions with respect to infrastructure development and participation in the management committees of the U.S. entities could be perceived as “participation in U.S. energy markets”. The result would be to impose a regime on TransCanada that is far more restrictive than that imposed on affiliated U.S. pipelines.

TransCanada understands the Commission's purpose for issuing the standards of conduct was to ensure that U.S. pipeline and transmission providers do not gain U.S. market power by giving their affiliates undue preference or preferential access to information.<sup>2</sup> However, the reality is that regulated foreign affiliates will not gain any advantage in their domestic marketplace(s) from the sharing of information with U.S. transmission providers. Nor will the conveyance of such information to these foreign affiliates influence the energy and transmission markets in the U.S. Subjecting regulated foreign affiliates to these restrictions would serve no other purpose than to impede cross-border activities between regulated pipeline affiliates as well as the ability of affiliates to communicate with one another regarding important operational and

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*[Regulations Preamble]* ¶ 32,555 (2001).

business issues. Furthermore, the affiliates' overall operating costs will increase as a direct result of the communication restrictions placed upon them and the inefficiencies arising from the duplication of facilities and functions. These increases in operating costs themselves will translate into increased energy prices in the U.S. market. Surely, this was not the intended outcome of the NOPR or the Staff Analysis.

To ensure that there is no ambiguity, TransCanada proposes that the Commission revise the definition of "energy affiliate" to specifically exclude all foreign affiliates that are regulated by their respective countries' national, state or provincial regulatory equivalent of the Commission. Such a revision will put foreign transporters on equal footing with their domestic counterparts and is consistent with the Commission's objective that undue preferences to unregulated affiliates in the U.S. market not be granted. More importantly, it would promote the co-ordination of cross-border pipelines and transmission, resulting in lower overall operating costs and lower priced energy supplies to U.S. markets.

Respectfully submitted,

ON BEHALF OF TRANSCANADA PIPELINES  
LIMITED

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<sup>2</sup> Staff Analysis at 4.

June 28, 2002

**CERTIFICATE OF  
SERVICE**

I hereby certify that I have this day served the foregoing document upon the Secretary of the Federal Energy Regulatory Commission and upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Calgary, Alberta this 28 day of June 2002.

Signed: \_\_\_\_\_  
Margaret Crossen