

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standards of Conduct for Transmission
Providers

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§

Docket No. RM01-10

**POST-CONFERENCE COMMENTS OF
DUKE ENERGY GAS TRANSMISSION CORPORATION**

Pursuant to the “Notice of Agenda for Technical Conference,” issued by the Federal Energy Regulatory Commission (“FERC” or “Commission”) on May 17, 2002, as revised June 13, 2002, Duke Energy Gas Transmission Corporation (“DEGT”) submits these comments with respect to the Commission Staff’s April 25, 2002 “Staff Analysis of the Major Issues Raised in the Comments” (“Staff Analysis”).¹

DEGT owns interests in Alliance Pipeline L.P. (“Alliance”) and Maritimes & Northeast Pipeline, L.L.C. (“Maritimes”), both of which have Canadian/U.S. operations. DEGT recommends that the Commission, in any final rule, adopt regulatory text making clear that interstate pipelines may freely communicate with their affiliates in Canada and Mexico, provided those affiliates are subject to appropriate regulation. DEGT specifically endorses the following language, which has been proposed in comments filed in this proceeding by Maritimes:

(ii) the definition of energy affiliate excludes . . . [;] and (3) affiliates that are engaged in natural gas or electric transmission activities for others, which activities are regulated by the state, provincial or national regulatory boards of the country outside the United States in which such affiliate’s facilities are located.

In support hereof, DEGT states as follows:

¹ The Staff Analysis and Technical Conference concerned the Commission’s Notice of Proposed Rulemaking (“NOPR”) to modify its standards of conduct applicable to natural gas pipelines and transmitting public utilities and their affiliates. Standards of Conduct for Transmission Providers, IV FERC Stats. & Regs., Regulations Preambles ¶ 32,555 (Sept. 27, 2001).

RM01-10

POSITION SUMMARY

DUKE ENERGY GAS TRANSMISSION CORPORATION

DEGT recommends that the Commission, in any final rule, adopt regulatory text making clear that interstate pipelines may freely communicate with their affiliates in Canada and Mexico, provided those affiliates are subject to appropriate regulation. DEGT specifically endorses the following language, which has been proposed in comments filed in this proceeding by Maritimes:

(ii) the definition of energy affiliate excludes . . . [;] and (3) affiliates that are engaged in natural gas or electric transmission activities for others, which activities are regulated by the state, provincial or national regulatory boards of the country outside the United States in which such affiliate's facilities are located.

Staff has proposed to exclude from the definition of "energy affiliate" those affiliates "engaging in or involved in transmission transactions" outside "U.S. energy and transmission markets." While this is a step in the right direction, DEGT's further language is needed because Staff's proposed exclusion of foreign affiliates, found at Section 358.3(d)(i), does not make clear that foreign affiliates engaging in closely coordinated, cross-border activities such as nomination, scheduling and construction may continue to engage in such activities. Specifically, it is unclear that such affiliates will avoid being classified as affiliates "engaging in or involved in transmission transactions in U.S. energy and transmission markets" for purposes of the "energy affiliate" definition. Due to their proximity and, in some cases, their interconnection with U.S. transmission facilities, Canadian and Mexican affiliates are arguably involved in transmission transactions "in U.S. energy or transmission markets."

The integration and coordination of U.S. transmission providers with their Canadian and Mexican counterparts offers major operational efficiencies and is consistent with the goal of delivering the lowest priced energy supplies to U.S. markets. Among other things, such integrated activities offer greater operational ease to the shipper, access to wider and more diversified supply areas, access to export markets (in the case of Mexico), and significantly lower overall operating costs due to economies of scale.

Subjecting Canadian or Mexican transportation and storage affiliates to restrictions on communications and employment practices would serve no purpose, would be a disservice to shippers, and would constitute bad policy. These cross-border affiliate relationships do not involve the transfer of information from a regulated to an unregulated entity. At the same time, imposing the proposed rigid employment and communication rules will be highly expensive to implement, will be burdensome, will eliminate economies of scale and will potentially inhibit gas trade, all of which will frustrate U.S. energy policy.

I. COMMENTS

A. A Bright Line Exemption for Cross-Border Foreign Affiliates Should be Adopted.

Establishing a clear and reliable exemption for cross-border foreign transmission affiliates is essential for regulatory clarity. The Commission should avoid adopting regulations that in any way hinder the close coordination of cross-border pipeline affiliates. The Staff has appropriately attempted to exclude foreign affiliates from the definition of “energy affiliates,” thereby preventing application of the harsh and restrictive communication rules otherwise applicable between transmission providers and their energy affiliates. Staff’s proposed regulatory text change, while a step in the right direction, does not completely clarify the relationship between U.S. interstate pipeline companies and their Canadian and Mexican counterparts.

Staff has proposed to exclude from the definition of “energy affiliate” those affiliates “engaging in or involved in transmission transactions” outside “U.S. energy and transmission markets.” DEGT’s further language is needed because Staff’s proposed exclusion of foreign affiliates, found at Section 358.3(d)(i), does not make clear that foreign affiliates engaging in closely coordinated, cross-border activities such as nomination, scheduling and construction may continue to engage in such activities. Specifically, it is unclear that such affiliates will avoid being classified as affiliates “engaging in or involved in transmission transactions in U.S. energy and transmission markets” for purposes of the “energy affiliate” definition. Due to their proximity and, in some cases, their interconnection with U.S. transmission facilities, Canadian and Mexican affiliates are arguably involved in transmission transactions “in U.S. energy or transmission markets.”

A Canadian or Mexican transmission facility, regulated by either of those countries' functional equivalents of the FERC or state PUC, could potentially qualify as an "other affiliated regulated transmission provider" under the exclusion for such entities at Section 358.3(d)(ii)(1). However, the definition of "transmission provider," found at Section 358.3(a)(2), limits "transmission providers" to entities transporting "pursuant to subpart A of part 157 or subparts B or G of part 284." Foreign providers of transmission services thus cannot be included under this exemption, since no foreign affiliate operates under any section of the FERC's regulations.

Given this lack of clarity, DEGT recommends that a company that is regulated by federal, provincial or state entities in its respective country should be unambiguously excluded from the definition of "energy affiliate." The language recommended by DEGT and quoted above can readily be added to the list of exclusions in Section 358.3(d)(ii). This new clause would specifically exclude, from the definition of "energy affiliate," cross-border relationships between regulated U.S. transmission providers and their Canadian and Mexican affiliates, where those affiliates are regulated by the National Energy Board ("NEB"), the Comisión Reguladora de Energía ("CRE") or the appropriate Mexican state or Canadian provincial agency. DEGT's proposed revision is straightforward and provides regulatory certainty in keeping with the spirit of the proposed rules, which is to target for regulation only those affiliate relationships in which market power may be transferred.

B. Cross-border coordination should be encouraged.

The integration and coordination of U.S. transmission providers with their Canadian and Mexican counterparts offers major operational efficiencies and is consistent with the goal of delivering the lowest priced energy supplies to U.S. markets. Among other things, such integrated activities offer greater operational ease to the shipper, access to wider and more diversified supply areas, access to export markets (in the case of Mexico), and significantly

lower overall operating costs due to economies of scale. These sorts of integrated cross-border activities are already occurring to a significant extent and should be encouraged to continue and further develop.

Two prime examples of closely coordinated Canadian/U.S. cross-border affiliates include Alliance and Maritimes. These and other jointly functioning U.S./Canada and U.S./Mexico entities offer coordinated services in conjunction with their interconnected foreign pipeline and storage affiliates. Shippers are thus provided seamless service through coordinated marketing, customer service, scheduling, nomination and billing.

Although the issue is best understood in the context of physically interconnected systems such as Alliance and Maritimes, beneficial cross-border coordination is not just limited to facilitation of gas imports or exports at the border. It is desirable and efficient for jurisdictional companies in the U.S. and their affiliates in Canada and Mexico to operate in an integrated manner with respect to a broad range of activities. For example, it may be efficient and in the best interests of U.S. shippers for a U.S. pipeline to be allowed to provide storage that is located in Canada in order to enhance the services offered to its U.S. customers. This is true even where the Canadian and U.S. activities are not physically connected by affiliated pipelines. By like token, the customers of a Canadian pipeline could need seamless service from a U.S. pipeline or storage provider.

Subjecting Canadian or Mexican transportation and storage affiliates to restrictions on communications and employment practices would serve no purpose, would be a disservice to shippers, and would constitute bad policy. These cross-border affiliate relationships do not involve the transfer of information from a regulated to an unregulated entity. At the same time, imposing the proposed rigid employment and communication rules will be highly expensive to

implement, will be burdensome, will eliminate economies of scale and will potentially inhibit gas trade, all of which will frustrate U.S. energy policy.

**II.
CONCLUSION**

WHEREFORE, for the reasons stated above, DEGT urges the Commission to clarify the status of cross-border affiliates, and to adopt the revised regulatory text provided above.

Respectfully submitted,

Rodney E. Gerik
Associate General Counsel
Steven E. Hellman
Assistant General Counsel
Duke Energy Gas Transmission Corporation
P.O. Box 1642
Houston, Texas 77251-1642

Henry S. May, Jr.
Catherine O’Harra
Vinson & Elkins L.L.P
2300 First City Tower
1001 Fannin
Houston, TX 77002-6760
(713) 758-2292

ATTORNEYS FOR DUKE ENERGY GAS
TRANSMISSION CORPORATION

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CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of June, 2002, served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Catherine O'Harra