UNITED STATED OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Petition For Rulemaking of Airlines for America and the National Propane Gas Association	))	RM18-__-000

PETITION FOR RULEMAKING OF AIRLINES FOR AMERICA AND THE NATIONAL PROPANE GAS ASSOCIATION FOR ADOPTION OF AFFILIATE STANDARDS OF CONDUCT

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Pursuant to Rule 207(a)(4) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 C.F.R. § 385.207(a)(4) (2017), Airlines for America ("A4A") and the National Propane Gas Association ("NPGA") (collectively, "Petitioners") submit this Petition for Rulemaking ("Petition"), and respectfully request that the Commission issue a Notice of Proposed Rulemaking ("NOPR") applying its existing affiliate Standards of Conduct for Transmission Providers ("Standards of Conduct") regulations, 18 C.F.R. § 358 (2017), after conforming changes, to crude oil, natural gas liquids ("NGLs"), and petroleum product[1] pipelines pursuant to the Interstate Commerce Act ("ICA") Sections 1-3, 5, 7, 12, and 15. 49 U.S.C. app. §§ 1-3, 5, 7, 12, and 15 (1988).

I. INTRODUCTION

Radical changes to domestic oil production and associated changes with oil pipeline operations have led to a restructuring of how oil pipeline companies do business. These changes, including the participation of oil pipelines in the marketing of crude oil, NGLs, and petroleum products, have fostered an environment where there is a high potential for the abuse of pipeline transmission function information by a pipeline's marketing affiliates. Moreover, the lack of

[1] "Petroleum products" are defined as crude oils that have been refined, altered, or processed for use, such as fuel oil, motor gasoline, distillates, jet fuel, diluent, and/or natural gas liquids, both raw NGLs or purity products (such as propane, butane, and ethane).

regulations, and related concerns about abuses of pipeline transmission function information, has caused market participants to lose confidence that these commodity markets are operating freely and in a perfectly competitive manner. This loss of confidence, in turn, has led to slower and more cautious decision making by non-affiliated shippers on crude oil, NGL, and petroleum product pipelines concerning utilization of pipelines for transportation of these commodities. The lack of Commission regulations on this topic has therefore brought a level of inefficiency to these commodity markets. Accordingly, Petitioners request that the Commission institute a rulemaking and adopt the proposed regulations contained herein.[2] This regulation modifies the Commission's current affiliate Standards of Conduct and applies those regulations to crude oil, NGL, and petroleum product pipeline companies and their marketing affiliates.

Unlike the electric power or natural gas sectors, the use of transmission function information by an oil pipeline's marketing affiliate is not currently controlled or monitored under the Commission's regulations. As a result, crude oil, NGL, and petroleum product pipelines have started taking competitive advantage of sharing such information with their marketing affiliates in order to offer undue preferences, pay rebates, and engage in other behaviors that violate the ICA. As discussed in detail below, the Petitioners believe that circumstances demand that the Commission expand its well-established affiliate Standards of Conduct regulations to encompass crude oil, NGL, and petroleum product pipelines. The Commission has sufficient legal authority under the ICA to adopt such regulations, and good cause exists to extend the Standards of Conduct and apply those regulations to crude oil, NGL, and petroleum product pipelines.

[2] Petitioners' proposed rule applying the Commission's affiliate Standards of Conduct to crude oil, NGL, and petroleum product pipelines is included as Attachment A hereto.

This Petition includes a discussion of the background of the current affiliate Standards of Conduct regulations, including an overview of the purpose and rulemaking history of those regulations. As discussed in detail below, the purpose of the affiliate Standards of Conduct regulations is to prevent the misuse of transmission function information generated by transmission providers in ways that unduly discriminate against non-affiliated transmission customers or offer an undue preference to affiliated marketers. Further, to the extent that these abuses occur, they undermine confidence and create inefficiencies in markets.

As associations whose members are unaffiliated customers of crude oil, NGL, and petroleum product pipeline transmission services, the Petitioners have ample interest in requesting an extension of the Standards of Conduct to crude oil, NGL, and petroleum product pipelines in order to ensure that their business interests are not being negatively impacted through improper coordination between oil pipeline transmission providers and their affiliates. Extending the affiliate Standards of Conduct to apply to oil pipelines would also serve to promote competition and efficient market functioning for transportation services through increasing pricing transparency. This Petition details the Commission's legal authority to adopt the proposed regulations and gives examples of abuses that should be remedied through the Commission's action on this Petition. Together, the facts laid out in this Petition show the necessity and propriety of the Commission instituting a rulemaking to consider extending the established affiliate Standards of Conduct to crude oil, NGL, and petroleum product pipelines regulated by the Commission under the ICA.

II. COMMUNICATIONS

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III. BACKGROUND

A. The Evolving Oil Pipeline Industry Makes Adopting Affiliate Standards of Conduct Proper and Necessary

Over the last several years, the advent of new technologies and those technologies' application to new production centers have caused a revolution in petroleum production in the United States. As the Commission is well aware, there has been a dramatic increase in domestic crude oil and NGL production in recent years due in large part to advances in shale oil and gas development. According to the "U.S. Crude Oil Production to 2025" projections issued by the Energy Information Administration ("EIA") in May 2015, its "data, which reflect a combined production of crude oil and lease condensate, show a rise from 5.6 million barrels per day (bbl/d) in 2011 to 7.5 million bbl/d in 2013, and a record 1.2 million bbl/d increase to 8.7 million bbl/d in 2014."[3] The EIA reports that the recent growth in domestic crude oil production has primarily

[3] EIA, "U.S. Crude Oil Production to 2025: Updated Projection of Crude Types" (May 2015) at 1, http://www.eia.gov/analysis/petroleum/crudetypes/pdf/crudetypes.pdf.

consisted of lighter, sweet crude from tight resource formations.[4] Since the EIA's 2015 forecast the U.S. petroleum industry has expanded even more. In its "Short-Term Energy Outlook" published in January 2018, the EIA noted that "U.S. crude oil production averaged an estimated 9.3 million barrels per day (b/d) in 2017" and "is forecast to average 10.3 million b/d in 2018, which would mark the highest annual average production in U.S. history."[5]

This dramatic rise in domestic crude oil, NGL, and petroleum product production has been accompanied by significant changes in pipeline ownership and structure. Historically, many crude oil, NGL, and petroleum product pipelines were owned and operated by integrated energy companies. Today that is significantly less true, due in part to corporate spin-offs of midstream assets into independently-owned entities or sales of those assets to third parties. Simultaneously, as integrated energy companies spun-off their midstream transportation assets, these new midstream companies, along with established pipeline entities, began to engage, through affiliates, in the marketing of crude oil, NGLs, and petroleum products in addition to their transportation functions. For example, Buckeye Partners, L.P. ("Buckeye"), in addition to its pipeline transportation services, is a wholesaler of propane, gasoline, and diesel fuel to commercial customers, construction companies, and school districts.[6]

Similarly, Enbridge Inc. ("Enbridge"), whose affiliate Enbridge Energy, L.P. engages in crude oil transportation services across the U.S., provides crude oil and NGL marketing services, which includes the purchasing of NGLs and other products from pipeline systems and processing plants, shipping the same on Enbridge's pipeline facilities, and selling said commodities to

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[4] *Id.* at 2.

[5] EIA, "Short-Term Energy Outlook (STEO)" (Jan. 2017), https://www.eia.gov/outlooks/steo/pdf/steo_full.pdf.

[6] Buckeye Partners, L.P., SEC 10-K at 9-10 (2016).

wholesale customers, such as distributors, refineries, fractionators, utilities, chemical facilities and power plants.[7] Enterprise Products Partners L.P. ("Enterprise") also engages in the marketing of crude oil, NGLs, and petroleum products in order to "support the utilization and expansion of assets across [Enterprise's] midstream energy asset network by increasing the volumes handled by such assets."[8] Indeed, nearly all of the largest pipeline companies engage in some marketing of crude oil, NGLs and/or petroleum products as part of their integrated midstream transportation businesses.[9]

Still other oil pipelines that do not currently maintain affiliated marketing arms are in the process of developing marketing operations similar to the marketing businesses of companies like Buckeye, Enbridge, and Enterprise.[10] For all of the oil pipeline companies regulated by the Commission, the marketing of crude oil, NGLs, and/or petroleum products either already does or in the future may exist contemporaneously with active pipeline transportation service businesses.

In addition to transportation and marketing, many pipelines offer Commission-jurisdictional storage services for crude oil, NGLs, and petroleum products.[11] For instance,

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[7] Enbridge Inc., Annual Report at 82 (2015); *see also id.* at 13 ("Most of our customers are wholesale customers, refiners and petrochemical producers, fractionators, propane distributors and industrial, utility and power plant customers. In addition, we sell natural gas and NGLs to marketing companies at various market hubs.").

[8] Enterprise Products Partners L.P., SEC 10-K at 3 (2016); *see also id.* at 4 ("Our NGL Pipelines & Services business segment includes . . . NGL marketing activities"); *id.* at 4 ("Each of our remaining business segments benefits from the supporting role of our related marketing activities.").

[9] *See, e.g.*, Buckeye Partners, L.P., SEC 10-K (2016); ConocoPhillips, SEC 10-K (2016); Enterprise Products Partners L.P., SEC 10-K (2016); Enbridge Energy Partners L.P., SEC 10-K (2016); Marathon Petroleum Corp., SEC 10-K (2016); Kinder Morgan, Inc., SEC 10-K (2016); Plains All American Pipeline LP, SEC 10-K (2016); Sunoco Logistics Partners, L.P., SEC 10-K (2016); TransCanada, 2016 Annual Report; *see also* Excerpts from Annual SEC 10-K Reports Discussing Integrated Operations of Crude Oil, NGL, and Petroleum Products Pipelines (included as Attachment B hereto).

[10] *See, e.g.*, TransCanada, 2016 Annual Report at 50 (liquids business includes "ancillary services such as . . . a liquids marketing business to expand into other areas of the liquids business value chain."). "The liquids marketing business began operations in 2016." *Id.* at 179 ("TransCanada enters into short-term or long-term pipeline and storage terminal capacity contracts, primarily on the Company's assets, increasing the utilization of those assets and earning the market value of the capacity.").

[11] Buckeye Partners, L.P., SEC 10-K at 1 (2016); Enterprise Products Partners L.P., SEC 10-K at 2, 17, 19 (2016); Enbridge Energy Partners L.P., SEC 10-K at 1, 157 (2016); Marathon Petroleum Corp., SEC 10-K at 6, 50

Buckeye describes itself as "one of the largest independent terminalling and storage operators in the United States" using "a diversified network of integrated assets providing midstream logistic solutions, primarily consisting of the transportation, storage, processing and marketing of liquid petroleum products."[12] Pipelines often provide these storage services to their affiliates.[13] Storage services are also used in conjunction with other regulated services.[14] For example, the profitability of Enterprise's "crude oil marketing activities" is partially dependent on "those costs attributable to the use of [Enterprise] pipeline, storage and other midstream assets."[15] Sunoco describes itself as "principally engaged in the transport, terminalling and storage of crude oil, NGLs and refined products" and its NGL segment "transports, stores, and executes acquisition and marketing activities utilizing [its] complementary network of pipelines, storage and blending facilities, and strategic off-take locations."[16] Together, these statements by the pipelines make clear that these carriers see the provision of storage services to both affiliated and non-affiliated marketers as an important, integrated aspect of their business models.

(2016); Plains All American Pipeline LP, SEC 10-K at 5, 8-9, 17 (2016); Sunoco Logistics Partners, L.P., SEC 10-K at 3, 8, 10 (2016); *see also* Excerpts from Annual SEC 10-K Reports Discussing Integrated Operations of Crude Oil, NGL, and Petroleum Products Pipelines (included as Attachment B hereto).

[12] Buckeye Partners, L.P., SEC 10-K at 1 (2016).

[13] *See, e.g.*, Enbridge Energy Partners L.P., SEC 10-K at 157 (2016) ("We also record operating revenues in our Liquids segment for storage, transportation and terminalling services we provide to affiliates"); Sunoco Logistics Partners, L.P., SEC 10-K at 3 (2016) at 10 (Marcus Hook Industrial Complex "provid[es] NGLs storage and terminalling services to both affiliates and third-party customers"); *see also* Excerpts from Annual SEC 10-K Reports Discussing Integrated Operations of Crude Oil, NGL, and Petroleum Products Pipelines (included as Attachment B hereto).

[14] *See, e.g.*, Sunoco Logistics Partners, L.P., SEC 10-K at 8 (2016) ("Access to our crude oil storage facilities during a contango market allows us to improve our lease gathering margins by simultaneously purchasing crude oil inventories at current prices for storage and selling forward at higher prices for future delivery."); *see also* Excerpts from Annual SEC 10-K Reports Discussing Integrated Operations of Crude Oil, NGL, and Petroleum Products Pipelines (included as Attachment B hereto).

[15] Enterprise Products Partners L.P., SEC 10-K at 19 (2016).

[16] Sunoco Logistics Partners, L.P., SEC 10-K at 3 (2016).

Many pipelines also operate non-jurisdictional businesses that are not regulated by the Commission but are essential elements of the supply chain for crude oil, NGLs, and petroleum products. These include terminals, underground storage, and above-ground storage. Given the operational nature of some transmission systems, these unregulated assets may be integral to utilization of Commission-regulated transmission systems. Information concerning the operation of transmission systems may provide the operators of these unregulated assets an undue advantage over other competitors, to the disadvantage of the non-affiliated shippers on the transmission system.

One unfortunate result of these changes in market dynamics and consolidation of pipeline ownership in mid-stream companies is that there is a great opportunity and incentive for pipeline companies to engage in the sharing of transportation and operational information with affiliated marketing businesses. This heightened possibility of sharing transmission and related market information with affiliated marketing businesses raises the possibility of pipeline companies using this information in order to unduly discriminate against unaffiliated shippers or offer undue preferences to affiliated marketers in the same way such abuses have occurred in the electric power and natural gas industries.

Most oil pipeline companies are natural monopolies (or at the very least, entities with significant market power) and regulating related anti-competitive conduct is central to the regulatory mission of the Commission under the ICA. As noted in several major crude oil, NGL, and petroleum product company financial statements, midstream petroleum companies face competition for marketing services and utilize their marketing services as a way to increase the

utilization of their crude oil, NGL, and petroleum product pipelines and supplement their overall revenue stream.[17]

For example, in Buckeye Pipeline Company's SEC 10-K report, the pipeline notes that its merchant services segment "competes with major energy companies, their marketing affiliates and independent gatherers, investment banks that have established trading platforms, master limited partnerships with marketing businesses, and brokers and marketers of widely varying sizes, financial resources and experience."[18] Similarly, Sunoco Logistics Partners, L.P. ("Sunoco") states that its competitors for the "acquisition and marketing of crude oil, NGLs and refined products include other petroleum products pipeline companies, major integrated oil companies and their marketing affiliates, independent gatherers, banks that have established trading platforms, and brokers and marketers of varying sizes."[19]

Indeed, all crude oil, NGL, and petroleum products pipeline marketing affiliates face the same varied competition as that identified by Buckeye and Sunoco. Given the competition these pipeline-affiliated marketing businesses face from each other, there is a strong financial incentive for crude oil, NGL, and petroleum product pipelines to share transmission function information with their related marketing affiliates.

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[17] *See, e.g.*, Enterprise Products Partners L.P., SEC 10-K at 81 (2016) ("Each of our business segments benefits from the supporting role of our marketing activities. The main purpose of our marketing activities is to support the utilization and expansion of assets across our midstream energy asset network by increasing the volumes handled by such assets, which results in additional fee-based earnings for each business segment."); Enbridge Energy Partners, L.P., SEC 10-K at 13 (2016) ("We purchase and receive natural gas, NGLs and other products from pipeline systems and processing plants, including those owned by us, and sell and deliver them to wholesale customers, distributors, refiners, fractionators, chemical facilities, various third parties and end users."); *see also* Excerpts from Annual SEC 10-K Reports Discussing Integrated Operations of Crude Oil, NGL, and Petroleum Products Pipelines (included as Attachment B hereto).

[18] Buckeye Partners, L.P., SEC 10-K at 12 (2016).

[19] Sunoco Logistics Partners, L.P., SEC 10-K at 15 (2016).

Moreover, as recently identified in *Magellan Midstream Partners, L.P.*, 161 FERC ¶ 61,219 (2017) ("Magellan PDO Order"), it is common practice for a carrier's marketing affiliates to control a significant amount of capacity on the affiliated pipeline and effectively broker capacity at tariff rates ranging from below to above the tariff rate for the benefit of the bottom line of the integrated company. *Id.* at P 3. Additionally, the requests for rehearing and/or clarification filed in response to the Magellan PDO Order make clear that the coordination and interaction between pipelines and their marketing affiliates is an extremely common occurrence in the oil pipeline industry.[20] Indeed, those requests include discussions and affidavits identifying numerous circumstances of questionable conduct enabled by the sharing of information that is not available to non-affiliated shippers, including where an oil pipeline's affiliated marketing arm may engage in transporting crude oil, NGLs, or petroleum products at a loss to benefit the integrated company's overall finances.[21]

While the parties challenging the Magellan PDO Order argue that many of these transactions have legitimate business purposes unrelated to the enrichment of a marketer's affiliated pipeline, these entities' opaque motives, lack of limitation on the sharing of information (other than shipper-specific information), and secret transactions make evaluating such conduct impossible, both for the Commission and non-affiliated shippers. It can be safely assumed, however, that the financial incentive is great for pipelines and their marketing affiliates to coordinate through the intentional and unintentional sharing of commercial information to

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[20] *See* Enterprise Products Partners L.P. Request for Clarification, or in the Alternative, Rehearing, Docket No. OR17-2-000 (Dec. 22, 2017) ("Enterprise Rehearing Request"); Request for Rehearing of Medallion Pipeline Co., Docket No. OR17-2-000 (Dec. 22, 2017); Request for Clarification, or in the Alternative, Rehearing of Plains Marketing, L.P., Docket No. OR17-2-000 (Dec. 22, 2017) ("Plains Rehearing Request"); Request for Clarification, or in the Alternative, Rehearing of Magellan Midstream Partners, L.P., Docket No. OR17-2-000 (Dec. 22, 2017); *see also* Excerpts from Annual SEC 10-K Reports Discussing Integrated Operations of Crude Oil, NGL, and Petroleum Products Pipelines (included as Attachment B hereto).

[21] *See, e.g.*, Enterprise Rehearing Request at 10-17; Plains Rehearing Request at 11-21.

benefit and provide preference to the integrated company which includes the affiliated marketer. Preventing such conduct before it occurs by limiting the sharing of transmission function information between pipelines and their marketing affiliates is the main purpose of the Commission's Standards of Conduct.

An additional effect of the secrecy and self-dealing between pipelines and their marketing affiliates is the suppression of competition and the obfuscation of prices offered and paid for jurisdictional pipeline transportation services. As shown in the Magellan PDO Order, pipelines and their marketing affiliates appear to be engaging in the practice of selling transportation service, on a non-transparent basis, to some but potentially not all would-be purchasers below or above the rate listed in the pipeline's FERC-jurisdictional tariff and thereby selling transportation services at a loss or gain, on a discriminatory and preferential basis, in order to benefit the bottom line of the integrated company.[22] Such behavior, combined with the complete lack of transparency regarding what affiliate marketers are charging for shipping services on their affiliated pipelines and whether such transactions are being performed on a non-discriminatory basis, makes it impossible for non-affiliated shippers to know the best rate for transportation services to and from particular markets or to obtain a non-discriminatory rate. This lack of

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[22] Indeed, several crude oil, NGL, and petroleum product pipeline companies openly admit that their business model relies on the sharing of non-public transmission function information with their affiliated marketers. Like Magellan, these pipelines are sharing transmission function information with their affiliated marketers as a way to take advantage of regional supply and price imbalances, thus enriching their affiliated marketing companies through utilizing non-public information while simultaneously withholding such information from similarly situated, non-affiliated shippers on the pipeline. *See, e.g.*, Enterprise Products Partners L.P., SEC 10-K at 19 (2016) ("The results of operations from our crude oil marketing activities are primarily dependent upon the difference, or spread, between crude oil sales prices and the associated purchase and other costs, including those costs attributable to the use of our pipeline, storage and other midstream assets by the crude oil marketing group."); Plains All American Pipeline LP, SEC 10-K at 8 (2016) ("[W]e endeavor to address regional supply and demand imbalances for crude oil and NGL in the United States and Canada by combining the strategic location and capabilities of our transportation, terminalling, storage, processing, and fractionation assets with our supply, logistics, and distribution expertise."); Buckeye Partners, L.P., SEC 10-K at 9 (2016) ("We increase the utilization of our existing pipeline and terminalling assets by marketing refined petroleum products in certain areas served by our pipelines and terminals."); *see also* Excerpts from Annual SEC 10-K Reports Discussing Integrated Operations of Crude Oil, NGL, and Petroleum Products Pipelines (included as Attachment B hereto).

pricing information available to non-affiliated shippers makes the market for transportation services far less efficient and competitive than it should be, as shippers lack the necessary information to make rational economic decisions regarding their purchases of transportation. Adoption of the affiliate Standards of Conduct for crude oil, NGL, and petroleum product pipelines would address, or at the very least significantly curb, this problem by eliminating the ability and incentives for pipelines and their marketing affiliates to engage in anti-competitive practices. Indeed, codifying the ICA obligations through the proposed Standards of Conduct would provide a high degree of price transparency in order to ensure that all prices for transportation services would be determined by a pipeline's publicly-available tariff, thus assuring the most efficient possible market for crude oil, NGL, and petroleum product transportation.

The Petitioners recognize the constructive actions the Commission has taken to address potential abuse in the electric power and natural gas industries, including the adoption and refinement of the affiliate Standards of Conduct regulations currently enforced by the Commission. Given the expansion of the threat of affiliate abuse into the crude oil, NGL, and petroleum product sectors, Petitioners believe that the Commission should take proactive steps under the ICA to address these abuses and to ensure that the same concerns, threats, and abuses associated with other sectors of the energy industry are deterred and do not occur (or are no longer allowed to continue to occur) in the crude oil, NGL, and petroleum product industry. As detailed below, the Commission has extensive experience developing and refining the current affiliate Standards of Conduct so as to make those regulations effective yet minimally intrusive and burdensome on to the energy industry. Indeed, some pipelines have advised that they

already informally follow the Commission's existing rules.[23] For such pipelines, transitioning to formally following the Commission's Standards of Conduct would impose no additional burden.

B. The Commission Has an Established History of Developing and Refining Affiliate Standards of Conduct Regulations

The Commission has maintained a version of the Standards of Conduct for a number of years. Beginning in 1988, the Commission promulgated and adopted a version of the Standards of Conduct for the natural gas pipeline industry. Those regulations were then modified and applied to the electric industry in 1996. The Commission then combined the Standards of Conduct for the electric and natural gas industries with the adoption of Order No. 2004, as well as expanded the scope of the regulations and implemented a version of the current "corporate separation" approach to the relationship of transmission providers and their marketing arms.[24] The D.C. Circuit Court of Appeals, however, reversed and remanded Order No. 2004 in *National Fuel* on the grounds that the expansion of the Standards of Conduct to include all energy affiliates was unsupported and vacated the order as it applied to the natural gas industry.[25]

As a result of *National Fuel*, the Commission reinstituted the rulemaking for the Standards of Conduct and, in a series of orders, crafted the regulations as they exist today.[26]

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[23] *See, e.g.*, Enterprise Products Partners L.P., SEC 10-K at 4 (2016) (stating that the carrier engages in transportation of natural gas covered by the Commission's currently-effective affiliate Standards of Conduct); Enbridge Energy Partners L.P., SEC 10-K at 13 (2016) (same); ConocoPhillips, SEC 10-K at 19 (same).

[24] *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. Regulations Preambles 2001-2005 ¶ 31,155 (2003) (subsequent history omitted) ("Order No. 2004").

[25] *National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006) ("*National Fuel*").

[26] *Standards of Conduct for Transmission Providers*, Order No. 717, 125 FERC ¶ 61,064 (2008) ("Order No. 717"); *Standards of Conduct for Transmission Providers*, Order No. 717-A, 129 FERC ¶ 61,043 (2009); *Standards of Conduct for Transmission Providers*, Order No. 717-B, 129 FERC ¶ 61,123 (2009); *Standards of Conduct for Transmission Providers*, Order No. 717-C, 131 FERC ¶ 61,045 (2010); *Standards of Conduct for Transmission Providers*, Order No. 717-D, 135 FERC ¶ 61,017 (2011); *Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators*, Order No. 787, 145 FERC ¶ 61,134 (2013); *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, 150 FERC ¶ 61,211 (2015); *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807-A, 153 FERC ¶ 61,047 (2015).

During this most recent rulemaking process, the Standards of Conduct were tested and refined through the comments of numerous interested parties, and the result was a system that balanced enforceability and burden on the regulated industry with the necessity of ensuring that transmission providers with marketing affiliates were not improperly communicating so as to prevent discriminatory and/or preferential conduct to the detriment of non-affiliated transmission customers or provide an undue preference to affiliated marketing companies utilizing their affiliate's transmission services.

However, until now, application of the Commission's Standards of Conduct regulations has been limited to natural gas and electric transmission providers. Petitioners believe that sufficient legal authority and evidence of disturbing events involving affiliates and related concerns and incentives exist to justify applying the affiliate Standards of Conduct to the crude oil, NGL, and petroleum product pipeline industry.

Petitioners wish to avail themselves of the Commission's extensive expertise and rulemaking history in this area while modifying the current Standards of Conduct to fit the idiosyncrasies of the Commission's oil pipeline regulatory regime under the ICA. As explained below, the proposed Standards of Conduct for Oil Pipeline Transmission Providers build on the Commission's prior work while addressing a real need to ensure that affiliate abuse is curtailed and prevented in the oil pipeline industry.

IV. IDENTITY AND INTEREST OF PETITIONERS

A. Airlines for America ("A4A")

A4A is the nation's oldest and largest U.S. airline industry trade association. Its members and affiliated airlines account for more than 70 percent of the passenger and cargo traffic carried by U.S. airlines. Since its founding in 1936, A4A has played a major role in federal and state legislative and regulatory arenas to encourage governmental policy decisions

that foster a financially sustainable U.S. airline industry capable of meeting the nation's air travel and shipping needs, capable of competing globally, and capable of withstanding the inherently cyclical nature of this industry.

The U.S. airline industry – and the passenger and shipping customers who rely on it – is heavily dependent on interstate pipelines to deliver jet fuel for operations, more than 27,000 domestic and international flights daily. A4A's member companies[27] ship substantial volumes of jet fuel on the nation's interstate pipelines. Among the challenges faced by the U.S. airline industry are ensuring a reliable supply of jet fuel at the nation's commercial airports and the associated logistics and costs of transporting jet fuel across pipelines. U.S. airlines ship by pipeline (and consume) an estimated 15 billion gallons of jet fuel annually, or approximately 85 percent of their jet fuel requirements. Given the volumes involved and the necessity of stable access to jet fuel for continued reliable operations, airlines are inherently sensitive to disruptions in supply; even the smallest disruption can have a significant impact. Disruptions in supply lead to increased prices for jet fuel, as airlines are forced to find more expensive alternative means of jet fuel supply to counter pipeline volumes lost due to service disruptions or prorationing.

As shippers and consumers of very significant quantities of jet fuel on pipelines throughout the U.S., A4A's members, collectively and individually, have a substantial interest in ensuring that unlawful coordination between pipeline transportation and marketing affiliates does not impede access to jet fuel and/or inappropriately raise jet fuel transportation costs. Airlines thus have a substantial interest in the instant request for rulemaking and any processes arising therefrom.

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[27] Alaska Airlines, Inc.; American Airlines Group (American Airlines and US Airways); Atlas Air, Inc.; Federal Express Corporation; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Continental Holdings, Inc.; and United Parcel Service Co. Air Canada is an associate member.

B. National Propane Gas Association ("NPGA")

NPGA is the national trade association for the propane industry with a membership of approximately 3,000 companies, including 38 affiliated state and regional associations representing members in all 50 states. Although NPGA's membership is primarily composed of retail marketers of propane gas, other members of the NPGA include propane producers, transporters, and wholesalers, as well as manufacturers and distributors of associated equipment, containers, and appliances. Propane gas is used in over 18 million installations nationwide for home and commercial heating and cooking, in agriculture, in industrial processing, and as a clean air alternative engine fuel for over-the-road vehicles and industrial lift trucks. Numerous NPGA member companies are direct shippers of propane and/or direct customers or consumers of propane. Therefore, NPGA members are very sensitive to any disruption in supply and associated price increases however incurred as it relates to the acquisition of propane. Given this sensitivity, NPGA's members are directly affected when pipeline transportation and marketing affiliates collude or otherwise act in a coordinated manner to inhibit full and open access to propane volumes and/or inappropriately act in a manner that unreasonably increases the price paid for propane by NPGA members.

NPGA members thus have a substantial interest in ensuring that the Commission enacts proper regulations to prevent unlawful coordination between pipeline carriers and their marking affiliates, the instant request for rulemaking, and any processes arising therefrom.

V. REQUEST FOR RULEMAKING

A. The Commission Has Authority under the ICA to Apply Its Affiliate Standards of Conduct to Oil Pipelines

The Commission's regulatory powers under the ICA provide ample legal authority to adopt the proposed regulations. ICA Section 15(1) empowers the Commission "to determine and

prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges to be thereafter observed…and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed," including the power to issue orders enforcing its rulings. 49 U.S.C. app. § 15(1) (1988). Further, ICA Section 15(13) empowers the Commission to prohibit the dissemination of shipper information regarding the "nature, kind, quantity, destination, consignee, or routing of any property" given to a common carrier for interstate transportation. 49 U.S.C. app. § 15(13). Additionally, the ICA and related case law include broad prohibitions against "undue discrimination" by oil pipeline companies. *See* 49 U.S.C. app. §§ 1-3, 5, and 7. The anti-discrimination provisions of the ICA individually discuss the Commission's powers to prohibit all "common carriers," including oil pipeline companies, from offering special rates or rebates, causing undue discrimination or giving undue preference to specific shippers over others, and discriminating against shippers through combinations or consolidations of pipeline companies or their affiliates through mergers or other corporate combinations. Further, the ICA provides that the Commission may enforce these individual prohibitions, including provisions concerning violation of the common carrier as a result of undue discrimination against shippers, through the levying of appropriate penalties, including ordering carriers to cease, desist, or otherwise remedy their discriminatory behavior.[28] Taken together, these provisions provide all of the legal authority the Commission requires to apply its affiliate Standards of Conduct to the crude oil, NGL, and petroleum products pipeline industry.

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[28] *See* 49 U.S.C. app. § 12(1) ("The Commission is authorized and required to execute and enforce the provisions of this chapter…."); *see also Market-Based Ratemaking for Oil Pipelines*, 69 FERC ¶ 61,412, at 62,500 n.8 (1994) (explaining that the Commission has the power under ICA Section 12(1) to require a filing showing that pipelines seeking market-based rates meet threshold test rates).

Furthermore, the ICA grants the Commission the power to regulate oil pipeline companies to the extent necessary to adopt and enforce an oil pipeline affiliate Standards of Conduct. The ICA allows the Commission to regulate "all pipe-line companies" that engage in the "transportation of oil or other commodity" from "one State or Territory of the United States…to any other State or territory of the United States…." 49 U.S.C. app. §§ 1(1) and 1(3). In other words, the ICA regulates oil pipelines engaged in interstate commerce. The proposed oil pipeline affiliate Standards of Conduct regulate the behavior of crude oil, NGL, and petroleum product pipelines already subject to the Commission's jurisdiction. Further, the individual rules of the proposed Standards of Conduct focus only on the behavior of the transmission provider (*i.e.*, the interstate oil pipeline company) and do not purport to regulate specific actions of that pipeline company's marketing affiliates. Therefore, the Commission has full jurisdictional authority to enact the proposed Standards of Conduct in the same way it enacted similar Standards of Conduct for the electric power and natural gas industries.

ICA Section 15(1) grants the Commission power to review and prohibit any "unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial conduct" by crude oil, NGL, or petroleum product pipelines. 49 U.S.C. app. § 15(1). The powers granted by Section 15(1) are extremely broad and include the Commission's ability to review pipeline conduct, either through the complaint process or on the Commission's own initiative. *Id.* Under Section 15(1), the Commission may determine the legality of pipeline rates and practices and issue orders that a "carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist." *Id.* Taken together, the provisions of Section 15(1) grant the Commission the ability to review the conduct of pipelines and their marketing affiliates and then impose appropriate remedies, including the proposed

affiliate Standards of Conduct, to prevent or end conduct that the Commission determines violates the ICA.

The ICA's anti-discrimination provisions also support the Commission's power to adopt the Petitioners' proposed regulations. The Commission has broad powers to prohibit and remedy undue discrimination and undue preferences by pipelines against or in favor of particular entities, including pipeline affiliates, whether or not they are shippers. Specifically, ICA Section 3(1) states that

> It shall be unlawful for any common carriers subject to the provisions of this chapter to make, give, or cause *any* undue or unreasonable preference or advantage to *any* particular person, company, firm, corporation, association…*in any respect whatsoever*; or to subject any particular person, company, firm, corporation, association…to any undue or unreasonable prejudice or disadvantage *in any respect whatsoever*….

49 U.S.C. app. § 3(1) (emphasis added).

Based on this language from the ICA, the Commission's powers to prevent undue discrimination and undue preference are exceedingly broad and include the ability to regulate the activity contemplated in this Petition.

As the ICA states, oil pipelines are prohibited from giving "undue preference" to *any* other "company, firm, corporation, or association." *Id.* This language is broad enough to encompass discrimination in favor of an oil pipeline company's own affiliates. Indeed, such affiliate relationships are of special concern under the ICA, as oil pipelines maintain strong financial incentives to favor their own affiliates at the expense of unrelated shippers.

Furthermore, the ICA provides that such undue discrimination and undue preference is categorically prohibited "in any respect whatsoever," which would obviously encompass activities by pipeline companies to share transmission information with its marketing affiliates so as to give a competitive advantage to that affiliate in scheduling or transporting crude oil, NGLs,

or petroleum products, or in trading commodities at specific locations served by a pipeline.[29] *Id.* Given the Commission's broad powers under the ICA to prohibit and remedy undue preference and discrimination, and especially the ICA's special interest in ensuring open access and equal competition among all shippers utilizing oil pipelines, the Commission maintains ample legal authority to grant Petitioners' request and adopt regulations to ensure that relationships between oil pipelines and their marketing affiliates do not become abusive and thus violate the ICA.

In addition, ICA Section 15(13) prohibits a carrier from sharing with "any person or corporation" "any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation" without the express consent of the shipper in question. 49 U.S.C. app. § 15(13). In effect, the prohibitions of Section 15(13) act as an existing bar to certain information sharing prohibited by the Commission's current affiliate Standards of Conduct. The "no conduit" rule would make it clear that the pipeline, as a transmission provider, is prohibited from using anyone as a conduit for the disclosure of non-public transmission function information to its marketing function employees.[30] This would implement Section 15(13) as well as the non-discriminatory and non-preferential requirements of other ICA provisions. Therefore, the Commission clearly

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[29] For example, under the ICA and Commission precedent, carriers may provide non-public, aggregated (*i.e.*, non-shipper specific) volume information from a pipeline to an unregulated affiliated engaged in trading commodities. Consequently, a pipeline can presently share aggregated, non-public, total scheduled or actual flows from an origin or to a destination to an affiliate who would then have proprietary non-public information regarding the supply and demand for commodities at specific locations. Similarly, a pipeline can provide non-public, aggregated data regarding total volumes in operational storage at specific locations along its system to an affiliate engaged in trading commodities, again allowing the affiliate to have access to non-public information regarding total supply and demand at specific locations that are not available to non-affiliated entities, thus disadvantaging non-affiliated entities engaged in trading commodities at the same locations. However, even though pipelines can share certain aggregated information with marketing affiliates under the ICA, that does not mean that the act of sharing that information with a marketing affiliate for purposes gaining a competitive advantage in relation to non-affiliated shippers does not violate the anti-discrimination provisions of the ICA.

[30] *See* Attachment A at Section 6 (detailing the Petitioner's proposed no conduit rule).

has the power to adopt such a rule as part of the proposed oil pipeline affiliate Standards of Conduct.

Given the existence of ICA Section 15(13) and other provisions of the ICA, there may be some question as to the necessity of amplifying these provisions through oil pipeline affiliate Standards of Conduct. However, adopting the proposed Standards of Conduct will provide the Commission with the opportunity to review its application of the ICA, which was initially enacted over a century ago, in light of recent oil pipeline industry developments. The U.S. Code stopped publishing the ICA as it applies to oil pipelines effective in 1988 even though the ICA's applicability to oil pipelines did not change. Consequently, the ICA and its requirements, including the prohibition in Section 15(13), are difficult to locate and therefore difficult for pipeline companies and the Commission to effectively implement. Moreover, these requirements are contained in numerous provisions of the ICA. Making the prohibition and duties of the ICA affirmative by adopting the proposed affiliate Standards of Conduct rule would make these requirements clearer and their application easier and more consistent. There would be no need for pipeline companies to parse the requirements of the ICA through a detailed reading of the statute. Rather, the statutory requirements would be a clear part of the Commission's regulations applied in the context of today's operating environment, filling in details not specifically addressed by the statute itself.

It is, therefore, critical that the Commission confirm the requirements of the ICA with one clearly stated rule which sets forth the conduct that FERC will consider unduly discriminatory or preferential. This is needed given the non-transparent and selective manner in which oil pipelines have been operating. Clearly applying the ICA's provisions to the current operating environment will help to alleviate any confusion that may exist as to the requirements

of the ICA. Formalizing the requirements of the ICA through adopting the affirmative duties contained in the proposed affiliate Standards of Conduct is necessary to eliminate the apparent ongoing problem of anti-competitive coordination and conduct between pipelines and their affiliated marketers. The Magellan PDO Order and subsequent requests for rehearing and clarification of that order show that coordination between oil pipelines and their affiliated marketers is widespread.[31] In their comments and requests for rehearing, participating oil pipelines list a number of circumstances in which pipelines and affiliated marketers interact, often through the exchange of non-public transmission function information. Establishing affirmative requirements limiting the sharing of transmission function information by oil pipelines and their marketing affiliates through the adoption of the proposed affiliate Standards of Conduct would ensure that interactions between pipelines and their affiliates are not discriminatory or abusive, while simultaneously avoiding the need to examine the propriety of such relationships on a case-by-case basis.

As the Commission recognized in its adoption of the affiliate Standards of Conduct in the natural gas pipeline context, in evaluating this Petition the Commission should apply certain legal standards in allocating the burden of proof, as well as determining whether the proposed regulations are necessary and sufficiently limited in scope.[32] In terms of the burden of proof, "[w]hen similarly situated customers are accorded significantly different treatment, the regulated company must demonstrate the basis for discrimination."[33] In this case, given the information available regarding the current activities of many oil pipelines, they should be required to prove

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[31] *See also* Excerpts from Annual SEC 10-K Reports Discussing Integrated Operations of Crude Oil, NGL, and Petroleum Products Pipelines (included as Attachment B hereto).

[32] *See Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines*, 51 Fed. Reg. 41,982-42,001, at 41,984 (Nov. 20, 1986).

[33] *Id.* (citing *Pub. Serv. Co. of Indiana v. FERC*, 575 F.2d 1204, 1213 (7th Cir. 1978)).

that such regulations are not necessary given the potential for undue discrimination against similarly-situated, unaffiliated shippers.

As for examining the propriety of the regulation as a whole, the Commission has held that "[i]n examining allegedly anticompetitive restrictions, the Commission has adopted the 'least competitive restrictive alternative test' which requires consideration of (1) any negative restrictions on competition and (2) the scope and duration of the restrictions, (3) whether an advantage to the public interest exists, (4) whether any alternative courses of action are available, and (5) if there are no alternatives, whether the offending provision is severable."[34] Given that the Commission has found that the affiliate Standards of Conduct have met this test in the past, combined with the information provided in this Petition showing the legal authority and necessity of such provisions, Petitioners respectfully assert that the test detailed in *Huntingburg* is met in this case and adoption of the proposed regulations is an appropriately limited way of addressing the problem of potential discriminatory abuse by oil pipeline companies and their affiliated marketers.

B. Oil Pipelines Should Be Subject to the Same Affiliate Standards of Conduct as Apply to Natural Gas and Electric Transmission Providers

1. Oil Pipelines Perpetrate Similar Abuses as Led to the Adoption of the Commission's Natural Gas and Electric Transmission Affiliate Standards of Conduct

An examination of recent conduct by crude oil, NGL, and petroleum product pipelines illustrates the need for extending the Commission's affiliate Standards of Conduct to entities regulated under the ICA. By their own admission, crude oil, NGL, and petroleum product pipelines are currently engaging in practices similar to those used by the Commission to justify

[34] *Id.* (citing *City of Huntingburg v. FPC*, 498 F.2d 778 (D.C. Cir. 1974) ("*Huntingburg*")).

developing and enforcing affiliate Standards of Conduct for electric utilities and natural gas pipelines. These practices include (1) pipelines using their affiliate marketers to offer discounted service on their pipeline systems at non-transparent rates and terms unregulated by the Commission and not necessarily available to all shippers on the subject pipeline; (2) coordination between pipelines and affiliated marketers aimed at providing storage services to certain customers but not others in violation of the ICA's common carrier requirements; and (3) pipelines utilizing marketing affiliates to perform and profit from blending activities during the course of pipeline transportation to the detriment of shippers who traditionally performed the same blending activities once pipeline transportation was complete. Taken together, the evidence of these abuses offers ample justification for the Commission to extend their affiliate Standards of Conduct to crude oil, NGL, and petroleum product pipelines.

Evidence of pipelines coordinating with their marketing affiliates to offer preferential rates and terms of service recently came to light in Magellan Midstream Partners, L.P.'s ("Magellan") petition for declaratory order ("PDO") seeking Commission approval of a scheme through which Magellan would establish a marketing affiliate and then use that affiliate to increase usage of Magellan's underutilized pipeline capacity. *See* Magellan PDO Order at PP 4-6. In its PDO, Magellan contended that a number of other pipelines in the industry have specifically set up marketing affiliates for the purpose of funneling crude oil, NGLs, and petroleum products onto underutilized pipeline systems in a manner consistent with its PDO. Petition for Declaratory Order of Magellan Midstream Partners, L.P., Docket No. OR17-2-000 at 2-3 (Nov. 14, 2016) ("Magellan PDO").

As Magellan explained, the purpose of establishing its marketing affiliate was, like other pipelines in the industry, to utilize that marketing affiliate to facilitate buy/sell transportation

transactions whereby the marketing affiliate buys crude oil in an upstream market, transports the same crude oil on its affiliated FERC-regulated pipeline, and then sells that crude oil in a downstream market to the same party from which it bought the crude oil, but with transportation terms and rates different from the posted tariffs and tariff rates of the applicable pipeline. These terms and rates were not necessarily available to all potential shippers on the line. Magellan PDO at 2-3. Magellan's proposal sought Commission approval for the jurisdictional pipeline to charge its marketing affiliate the published tariff rate, while its proposed marketing affiliate would charge, to select shippers, a price based generally on the crude oil commodity price differential between the two markets, which would often be less than the published tariff rate on the affiliated pipeline. *Id.* at 6-7. Magellan stated that this proposal was simply seeking express Commission approval for a practice that is common throughout the crude oil, NGL, and petroleum pipeline industry.[35] *Id.*

Furthermore, Magellan's proposal sought approval "to structure agreements to facilitate transportation below published tariff rates with different effective transportation costs and terms for various parties who might otherwise need to ship on the affiliate's pipeline pursuant to the filed tariff" and stated that "different costs and terms can be tailored to the unique circumstances of each third party." Magellan PDO at 3. Magellan also admitted that its proposed scheme, which is apparently in line with current industry practices, involves pipeline marketing affiliates accepting losses on transportation in order to induce full utilization of the affiliate pipeline. *Id.* at 7. As Magellan explained, allowing marketing affiliates to set transportation rates lower than the published tariff rate for select shippers would "make good business sense to the integrated

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[35] Based on statements in other crude oil, NGL, and petroleum product pipeline SEC 10-Ks, Magellan appears to be correct that such schemes are common throughout the oil pipeline industry. *See* Note 22, *supra*; *see also* Excerpts from Annual SEC 10-K Reports Discussing Integrated Operations of Crude Oil, NGL, and Petroleum Products Pipelines (included as Attachment B hereto).

company [*i.e.*, the pipeline, marketing affiliate, and parent entity]…because the integrated company would benefit from the difference between the amount paid by the third party and the actual cost for the affiliate's pipeline to transport the crude oil." *Id.*

Shippers on Magellan's pipeline system challenged its PDO on grounds that the scheme it describes violates the non-discrimination and undue preference provisions of the ICA and the anti-rebate provisions of the Elkins Act. *See, e.g.*, Joint Motion to Intervene and Protest of Airlines for America and the National Propane Gas Association, Docket No. OR17-2-000 (Dec. 14, 2016). The Commission agreed. In its order denying Magellan's PDO, the Commission found that "[w]hile several of Magellan's requests are either a request for reconfirmation of well-established Commission precedent, or involve issues beyond the scope of the Commission's jurisdiction, taken together the transactions proposed by Magellan would violate various provisions of the ICA, primarily the ICA's prohibition on rebates." Magellan PDO Order at P 11. Further, the Commission found that Magellan's proposed scheme would violate ICA Sections 1(5), 3(1), 6(1), and 6(3). *Id.* at PP 20-22.

As Magellan readily admits, the type of coordination between FERC-jurisdictional oil pipelines and their marketing affiliates that was found unlawful by the Commission in rejecting its PDO is common throughout the oil pipeline industry. Magellan PDO at 2-4, 6-7. There is little reason to doubt Magellan's admission. Indeed, the requests for rehearing and clarification of the Magellan PDO Order suggest that these practices are even more common than Magellan represented. Additionally, the secrecy and discriminatory nature surrounding these arrangements make Commission action in extending its affiliate Standards of Conduct to oil pipelines all the more important. There is currently no way for shippers to know the content of the contracts/contacts between a pipeline marketing affiliate and shippers on the affiliated pipeline,

including whether all shippers on the line are being treated on an equal basis. Therefore, shippers have no way of evaluating or challenging such arrangements, even though – as shown by the Magellan PDO Order – they are expressly prohibited by the ICA. If such arrangements are truly as prevalent as Magellan contends (and the requests for rehearing/clarification and the pipelines' own statements suggest they are), the Commission must take action to limit the abuses that could result from these relationships. A significant step in limiting these abuses would be for the Commission to regulate this conduct through limiting the kinds of information that can be shared between an oil pipeline and its marketing affiliate. The best and most effective way to effectuate those protections would be to extend the Commission's long-established affiliate Standards of Conduct to crude oil, NGL, and petroleum product pipelines.

In addition to evidence of the coordination between oil pipelines and their marketing affiliates in order to charge unlawful rates and provide illegal preferences and rebates, evidence also exists that pipelines and their marketing affiliates are utilizing similar coordination to grant other undue preferences, allow those marketing affiliates access to services unavailable to shippers utilizing a jurisdictional pipeline's FERC tariff, and hide pipelines' true cost of service and revenues. For example, in a recent rate case involving Buckeye Pipe Line Company, L.P. ("Buckeye"), the pipeline admitted to allowing its marketing affiliate, which offered storage services in Linden, New Jersey and two other locations, preferential access to pipeline information unavailable to any other shippers. *See* Prepared Answering Testimony of Cyril J. Hahamski on Behalf of Buckeye Pipe Line Company, L.P., Docket No. OR12-28-001 at 34-41 (Oct. 7, 2014) ("Hahamski Testimony").

In its testimony, Buckeye admitted that it generated storage and rental revenues that it did not report in its FERC Account 250 declaration through its marketing affiliate, Buckeye

Terminals, LLC ("BET"). Hahamski Testimony at 34. These revenues came from BET leasing storage capacity from Buckeye at Linden Station, a storage facility in Macungie, Pennsylvania, and a storage facility in Auburn, New York. *Id.* BET then marketed and leased that storage capacity to its own customers through offering contracts allowing "the contracting party to store a specified amount of refined product in Buckeye's storage facilities at Linden Station, Auburn, or Macungie for an extended period of time in return for monthly fees." *Id.* at 35.

The only way that BET was able to offer storage to customers at these three locations was through continual coordination and sharing of information with Buckeye. As Buckeye explained, BET provided storage services on its pipeline system "on a fungible basis, whereby the customers did not receive segregated storage capacity." Hahamski Testimony at 38. Buckeye further stated that "[d]espite the fact that the [storage] contract identifies Linden Station as the storage location, Buckeye's schedulers and operators will utilize any of the available storage capacity on the [pipeline], whether at Linden Station, Auburn, and/or Macungie, to provide the storage service – that is, to always have inventory of 100,000 barrels of gasoline available at Linden Station at a customer's request." *Id.* at 40.

Thus, Buckeye and BET were required to communicate constantly and coordinate in providing storage service, since BET needed knowledge of the amount of product in the Buckeye system at any given point so as to ensure that its storage customers could receive petroleum products at the location those customers elected for storage. Indeed, Buckeye's testimony suggests that it, rather than BET, had the primary responsibility for ensuring that BET's customers could collect stored petroleum products at the contracted location. Hahamski Testimony at 40. This kind of coordination, whereby an oil pipeline provides marketing information regarding the status and contents of its system specifically to aid the business of its

marketing affiliate, while simultaneously denying the same information to non-affiliated shippers, violates the ICA's prohibition on unduly discriminatory and preferential conduct and falls squarely within the kind of behavior the Commission's established affiliate Standards of Conduct seek to prohibit.

Furthermore, Buckeye admits that its affiliate BET was leasing the pipeline's jurisdictional storage facilities that were reflected in the pipeline's rate base for itself and third-parties at prices that were not overseen by FERC or any other regulatory agency. Hahamski Testimony at 36. According to Buckeye, the storage fees assessed to BET "were based upon the prevailing market price for storage capacity at the time of contract execution, as established through the negotiation process," notwithstanding that these same jurisdictional storage costs were already being recovered by the carrier's transportation rates. *Id.* Given the lack of oversight, there is no guarantee that Buckeye treated BET equally to non-affiliated parties who may have sought to lease jurisdictional storage capacity from Buckeye as it respects terms, conditions, or price of these storage leases. Charging preferential rates or providing preferential access to an affiliate for jurisdictional services clearly violates the ICA's anti-discrimination provisions.

Additionally, by allowing BET to lease these jurisdictional storage facilities to itself and others, Buckeye utilized coordination with its marketing affiliate intentionally to create an avenue to funnel jurisdictional revenue to its affiliate so that it was not reported on the books of Buckeye pipeline and thus not included in the pipeline's Form 6, including Page 700. This reporting failure ultimately skewed the revenue/cost ratio of the pipeline and the ability to evaluate whether the pipeline was actually over-recovering its cost of service. Hahamski Testimony at 36-37. Such obfuscation abuses the pipeline-affiliate relationship in order to injure

the pipeline's other shippers, who both lack the inside knowledge shared between the pipeline and its affiliate and also cannot discern when the pipeline's rates may be unjust and unreasonable, as the pipeline's Form 6, Page 700 does not then reflect the pipeline's true cost of service and revenues.

Finally, Colonial Pipeline Company ("Colonial") and Magellan recently formed a marketing affiliate, Powder Springs Logistics LLC ("PSL"), specifically to leverage Colonial's transmission function information in order to blend butane into batches of gasoline, thus increasing the available volume of gasoline on the pipeline while simultaneously taking away shippers' ability to blend the gasoline they tendered once the pipeline transportation is complete. *See* Declaration of Nicholas Huff at PP 3-8, *Sunoco Partners Marketing & Terminals L.P. v. Powder Springs Logistics, LLC & Magellan Midstream Partners, L.P.*, C.A. No. 17-1390 (D. Del. 2017) ("Huff Declaration"). Colonial and Magellan's joint venture operates in the following manner: PSL discovers from Colonial when a batch of gasoline that can be blended is passing through Colonial's Atlanta Junction facility, blends that gasoline with butane to increase its volume, then sells the blended gasoline in excess of that delivered to Colonial's shippers to third parties as if that gasoline were its own.

As explained by George E. Warren Corp. ("GEW") in a recent complaint against Colonial targeting the activities of PSL, Colonial informed its shippers that it planned to "use its control over the product it is transporting in its pipeline to allow in-line blending of the product it is transporting (*i.e.*, the *shippers'* product)" by its non-jurisdictional affiliate PSL "for the purpose of creating excess product using the shippers' own product, which excess product *Colonial and/or its partners* will retain for themselves." Complaint at P 20, *George E. Warren Corp. v. Colonial Pipeline Co.*, Civil Action No. 2:17-cv-01205-KM-JBC (D. N.J. 2017) ("GEW

Complaint"). Colonial admitted that its aim was to utilize its non-jurisdictional marketing affiliate to "inject butane into the pipeline in Atlanta, Georgia which results in the creation of gasoline [PSL] sells to customers, with any profit or loss resulting from such sales accruing to [PSL]." Answer at P 20, *George E. Warren Corp. v. Colonial Pipeline Co.*, Civil Action No. 2:17-cv-01205-KM-JBC (D. N.J. 2017).

This scheme interferes with shippers' ability to profit from blending gasoline after transportation is complete. GEW Complaint at PP 22-24. As GEW explained, due to "Colonial's intentional dilution of the product in its pipelines, the product that GEW will receive at the end of the pipeline will no longer be sufficiently above [sic] the minimum required specification to enable GEW to blend it for its own operations and sale, as it does now and has done in the past." *Id.* at P 22. Therefore, Colonial and its marketing affiliate are acting in concert to interfere with a valuable aspect of gasoline tendered for shipment – the ability to blend that gasoline – and then misappropriating that gasoline from non-affiliated shippers for sales to third parties.

Additionally, the use of a marketing affiliate in this manner is blatantly discriminatory against Colonial's non-affiliated shippers. By blending the gasoline prior to delivery and keeping any excess volumes produced through the blending process, Colonial and Magellan are unduly discriminating against non-affiliated shippers on Colonial by taking away those non-affiliated shippers right to blend the gasoline they tender for transportation and instead giving a preference to their marketing affiliate, PSL, who reaps all the profit from sales of the additional blended gasoline generated to the detriment of unaffiliated shippers. The ICA does not allow pipelines and their marketing affiliates to collude in order to discriminate against shippers, give an improper preference to an affiliated marketer, or interfere with a shippers' property rights.

As Magellan admits, PSL would not be able to function as an enterprise, and thus discriminate against shippers on Colonial, without access to Colonial's transmission function information. In its declaration regarding the activities of PSL, Magellan states that PSL works "with Colonial to schedule and coordinate blending activities, and other PSL-related functions." Huff Declaration at P 7. Further, "PSL does not blend butane into all fungible batches of gasoline that pass through Colonial Pipeline," rather "it blends only for those batches that have margin to blend butane and in situations where gasoline has been pre-sold to a Colonial shipper." *Id.* at P 8. In other words, access to Colonial's transmission function information is integral to PSL's business model. Without knowing which batches of gasoline fall below specifications (and thus are eligible for blending with butane) and when those particular batches reach Colonial's Atlanta Junction facility, PSL could not engage in the blending and selling of excess gasoline for profit. No other entities, including Colonial's non-affiliated shippers, have access to such non-public transmission function information. These other entities, therefore, have no way to counteract or compete with PSL's blending and selling of shippers' gasoline tendered on Colonial. Such actions are therefore clearly unduly discriminatory and preferential.

2. Adoption of the Proposed Standards of Conduct for Oil Pipeline Affiliates Will Alleviate These Abuses

Adopting the proposed affiliate Standards of Conduct would curb the abuses described above by limiting the coordination between pipelines and their marketing affiliates that makes these abuses possible. As discussed above, there is evidence that crude oil, NGL, and petroleum product pipelines are currently utilizing their marketing affiliates to circumvent the requirements of the ICA through the sharing of non-public information to offer rates and terms of service unavailable to non-affiliated shippers and provide related preferences to affiliates, offer pipeline services unavailable to non-affiliated shippers, and hide their true jurisdictional cost of service

and revenues from shippers. The proposed affiliate Standards of Conduct would address each of these issues and ensure that pipelines' affiliate relationships conform to the requirements of the ICA.

For example, in the case of Magellan's proposal to allow its affiliate marketer to charge rates for transportation below the rate on file with the Commission, a practice that is – according to Magellan – prevalent in the industry, the proposed non-discrimination requirements would make clear that the pipeline, as the transmission provider, could not involve itself in a scheme aimed at circumventing its tariff rates or terms of service. Further, the independent functioning and no conduit rules would prevent the pipeline's marketing affiliate from gaining non-public transmission and/or operational information for purposes of using that information to engage in prohibited commercial transactions with shippers. If Magellan's marketing affiliate did not have information on the pipeline's volumes and when the pipeline was underutilized, then the types of transactions it sought to conduct, including offering rate discounts to induce utilization of its affiliated pipeline, would be impossible. The proposed affiliate Standards of Conduct would prohibit these kind of relationships and transactions, all while removing the onus on shippers to uncover and prove abuses hidden through secret practices and contracts.

Similarly, the proposed affiliate Standards of Conduct would prohibit the kind of behavior Buckeye admitted to engaging in and would discourage pipelines from preferring their marketing affiliates as a way to discriminate against and mislead non-affiliated shippers. As explained above, the business relationship between Buckeye pipeline and its marketing affiliate, BET, is based on the coordination of transmission and marketing functions. BET leased Buckeye's jurisdictional storage capacity and then re-leased that capacity to third parties at rates and terms outside of the Commission's oversight. Hahamski Testimony at 36. Since Buckeye's

system operates on a fungible basis and does not utilize reserved storage capacity, the only way for BET to offer these leases is through coordination with Buckeye and access to the pipeline's non-public transmission and operational/utilization information. *Id.* at 40. Buckeye never offered the opportunity to access this information to anyone other than its affiliated marketer. Similarly, this coordination between Buckeye and BET allowed Buckeye to hide its related jurisdictional revenue and skew the cost/revenue relationship that should be reported in its Form 6 from shippers on its pipeline. *Id.* at 36-37.

The proposed affiliate Standards of Conduct should address all of these issues by preventing the sharing of non-public transmission and operational information with marketing affiliates. The Standards of Conduct would force entities like BET to operate on equal footing with non-affiliated marketers/shippers by denying affiliated marketers the ability to utilize the pipeline's transmission function and operational information to benefit the marketing affiliate's business (and the integrated entity's bottom line) at the expense of non-affiliated marketers. Further, such limitations would provide disincentives for pipelines like Buckeye to game their cost of service declarations on their Form 6, Page 700. If relationships between entities like Buckeye and BET become impossible, as they would if marketers like BET no longer had access to non-public transmission function information, then pipelines will not be able to use the structure of the affiliate relationship to hide otherwise jurisdictional costs or revenues from evaluation by shippers and the Commission.

The proposed affiliate Standards of Conduct would also address the kind of discriminatory and anti-competitive conduct engaged in by Colonial, Magellan, and their marketing affiliate PSL. As discussed above, Colonial and Magellan specifically created PSL as a way to leverage Colonial's transmission and operational information. Colonial gives its

transmission function and operational information to its marketing affiliate so that PSL can then use that information to blend butane into gasoline and sell the resulting excess volume to third parties, thus injuring non-affiliated shippers on Colonial who tendered their gasoline for transportation with the expectation of blending that gasoline once transportation on Colonial was complete. PSL could not take advantage of non-affiliated shippers in this manner if it did not know of the existence of gasoline batches transported on Colonial that were below specifications and exactly when those batches entered Colonial's Atlanta Junction facility. Adopting the proposed affiliate Standards of Conduct would prevent such abuses by limiting the exchange of transmission function information between Colonial and PSL, thus making the scheme of blending and misuse of non-affiliated shippers' gasoline and then selling the excess gasoline impossible.

Overall, the application of the Commission's affiliate Standards of Conduct would not only address abuses like those detailed above, it would also serve to alleviate the problem of hidden abuses perpetrated by pipelines through the secret and unobservable transactions and contracts between pipelines and their affiliated marketers that currently characterize the industry. At the moment, neither the Commission nor non-affiliated shippers have any real insight into what kinds of practices and business arrangements exist between pipelines and their marketing affiliates or whether those practices or arrangements may violate the ICA. This lack of transparency makes it impossible for the Commission or non-affiliated shippers to challenge these practices, until or unless evidence of such practices are uncovered as they were in the examples above. Adapting the Commission's current affiliate Standards of Conduct to crude oil, NGL, and petroleum product pipelines avoids this issue altogether through shifting the responsibility for compliance away from non-affiliated shippers, who lack the necessary

information to police the pipelines' conduct, and onto the pipelines themselves, who must consistently and transparently apply the requirements of the affiliate Standards of Conduct. This places the onus of complying with the ICA where it properly belongs – on the pipelines – while simultaneously easing the burden on both non-affiliated shippers and the Commission, who would be forced to resolve any complaints about pipeline conduct and relationships with affiliated marketers.

3. Adoption of the Proposed Standards of Conduct Will Cause Little Burden for Pipeline Companies

The adoption of Petitioners proposed regulations will cause little, if any, burden on crude oil, NGL, and petroleum product pipeline companies. The lack of any appreciable burden on these companies in implementing the proposed regulations is illustrated by (1) the Commission's compliance policy statement, which encourages all regulated entities to maintain compliance procedures to ensure that business practices adhere to all applicable requirements under the ICA; and (2) the fact that almost all of these companies are integrated operations that have natural gas transportation segments in addition to their crude oil, NGL, and petroleum product operations, which therefore means that all, or at least the vast majority, of these companies already have programs and procedures in place to ensure compliance with the affiliate Standards of Conduct.[36]

The Commission's Policy Statement on Compliance ("Compliance Policy") encourages all companies subject to the Commission's regulatory requirements maintain "rigorous compliance programs that will help minimize the potential for violations of applicable

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[36] For those pipeline companies who already have programs and procedures in place to ensure compliance with the Standards of Conduct, the application of the Commission's affiliate Standards of Conduct to crude oil, NGL, and petroleum product pipelines would allow the Commission and non-affiliated shippers a mechanism to ensure current and continued compliance with the Commission's regulations while simultaneously causing no additional burden on the pipelines or their operations.

requirements."[37] The Compliance Policy gives detailed prescriptive guidance discussing the best practices for regulated entities to employ when setting up and administering a compliance program.[38] All the crude oil, NGL, and petroleum product companies implicated by this Petition have had constructive notice of the Commission's Compliance Policy for eight years. Indeed, most if not all of these pipeline companies have likely incorporated the Commission's best practices outlined in the Compliance Policy into their own internal compliance policies and procedures. Given that crude oil, NGL, and petroleum product pipeline companies should already have sophisticated compliance programs aimed at ensuring compliance with all requirements of the ICA – including ICA Sections 3(1) and 15(13) – the addition of the Petitioners' proposed regulations to those compliance policies will not cause an unreasonable burden in terms of cost or effort.

Additionally, the Commission already requires companies with natural gas transportation businesses to adhere to its existing Standards of Conduct, which requires structuring business relationships and communications so as to limit access to transmission function information by gas pipeline marketing affiliates. 18 C.F.R. § 358. Many interstate pipelines who engage in crude oil, NGL, or petroleum product marketing activities also transport natural gas and are therefore already required to adhere to the Standards of Conduct for their natural gas transportation businesses.[39] All of these companies maintain compliance procedures and an associated compliance manual in order to ensure adherence to the Commission's Standards of

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[37] *Policy Statement on Compliance*, 125 FERC ¶ 61,058, at P 1 (2008).

[38] *Id.* at PP 13-21.

[39] *See, e.g.*, Buckeye Partners, L.P., SEC 10-K (2016); Enterprise Products Partners L.P., SEC 10-K (2016); Enbridge Energy Partners L.P., SEC 10-K (2016); Marathon Petroleum Corp., SEC 10-K (2016); Kinder Morgan, Inc., SEC 10-K (2016); Plains All American Pipeline LP, SEC 10-K (2016); Sunoco Logistics Partners, L.P., SEC 10-K (2016); TransCanada, 2016 Annual Report.

Conduct as they apply to natural gas transmission and marketing. Therefore, these companies would not be unduly burdened by extending their already established natural gas Standards of Conduct policies and procedures to their crude oil, NGL, and petroleum product pipeline transportation businesses. Adapting the already existing natural gas Standards of Conduct compliance materials and practices to also cover crude oil, NGL, and petroleum product transportation and marketing would simply require revising already existing manuals and ensuring that marketing departments adhere to the Standards of Conducts for both natural gas and crude oil/petroleum products. Given the ease in which regulated companies could adopt the reforms required, the Commission should not hesitate to adopt the Petitioners' requested regulation.

VI. PROPOSED RULE

A. Structure of the Proposed Rule

The Petitioners' proposed rule is modeled after the most recent version of the affiliate Standards of Conduct with modifications to (1) eliminate references to electric utilities; (2) replace references to natural gas pipelines with references to crude oil, NGL, and petroleum product pipelines; (3) tailor the Standards of Conduct to the crude oil, NGL, and petroleum product pipeline industry through eliminating references to practices specific to electric and natural gas transportation (*e.g.*, bundled retail sales, use of Open Access Same Time Information Systems ("OASIS")); and (4) add provisions specific to prohibitions under the ICA (*i.e.*, requirements to disclose incidents of the release of shipper information in violation of ICA Section 15(13)). Petitioners retained the broad requirements of the Commission's affiliate Standards of Conduct regulations as they apply to electric and natural gas transportation providers, including rules governing non-discrimination, independent functioning, no conduit, and transparency.

Petitioners structured the proposed crude oil, NGL, and petroleum product pipeline affiliate Standards of Conduct regulation to mirror the Commission's current affiliate Standards of Conduct in order to avail themselves of the Commission's extensive work in developing these regulations as they apply to electric and natural gas transportation providers. *See* 18 C.F.R. § 358. As noted in the Commission's numerous orders on the current affiliate Standards of Conduct, the current regulations were developed, molded, and tested to provide the maximum amount of protection against transportation provider abuses of affiliate relationships while simultaneously providing an easily-enforceable and relatively unobtrusive method to regulate and enforce proper behavior by transmission providers who maintain marketing affiliates whose relationship and communication could lead to undue discrimination and other prohibited abuse.[40] Given the Commission's legal authority, examples of abuse discussed above, and positive effect that adoption of the affiliate Standards of Conduct would have on efficient market operation through increasing competition and pricing transparency, Petitioners believe that the Commission's current regulations provide an appropriate and straight-forward framework to use in applying the established affiliate Standards of Conduct to the crude oil, NGLs, and petroleum products industries regulated under the ICA.

B. Proposed Rule

The proposed rule is Attachment A hereto.

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[40] Order No. 717 at PP 2-8.

VII. CONCLUSION

For the foregoing reasons, the Commission should issue a NOPR applying its existing affiliate Standard of Conduct regulation to crude oil, NGL, and petroleum product pipeline companies in order to address the problems with the abuse of affiliate relationships in the overall oil pipeline industry.

Respectfully submitted,

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ATTACHMENT A
PROPOSED REGULATIONS

ATTACHMENT A

PART [XX]-STANDARDS OF CONDUCT

Sec.

[XX].1 Applicability.

[XX].2 General principles.

[XX].3 Definitions.

[XX].4 Non-discrimination requirements.

[XX].5 Independent functioning rule.

[XX].6 No conduit rule.

[XX].7 Transparency rule.

[XX].8 Implementation requirements.

AUTHORITY: 49 U.S.C. app. §§ 1-3, 5, 7, and 12(1).

§[XX].1 Applicability.

(a) This part applies to any interstate oil pipeline company that transports crude oil, natural gas liquids, or petroleum products pursuant to parts 340-349 of this chapter and conducts transmission transactions with an affiliate that engages in marketing functions.

(b) A transmission provider may file a request for a waiver from all or some of the requirements of this part for good cause.

§[XX].2 General principles.

(a) As more fully described and implemented in subsequent sections of this part, a transmission provider must treat all transmission customers, affiliated and non-affiliated, on a not unduly discriminatory basis, and must not make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage with respect to any transportation of crude oil, natural gas liquids, or petroleum products in interstate commerce, or with respect to the wholesale sale of crude oil, natural gas liquids, or petroleum products in interstate commerce.

(b) As more fully described and implemented in subsequent sections of this part, a transmission provider’s transmission function employees must function independently from its marketing function employees, except as permitted in this part, or otherwise permitted by Commission order.

(c) As more fully described and implemented in subsequent sections of this part, a transmission provider and its employees, contractors, consultants and agents are prohibited from disclosing, or using a conduit to disclose, non-public transmission function information to the transmission provider’s marketing function employees.

(d) As more fully described and implemented in subsequent sections of this part, a transmission provider must provide equal access to non-public transmission function information disclosed to marketing function employees to all its transmission customers, affiliated and non-affiliated, except as permitted in this part or otherwise permitted by Commission order.

§[XX].3 Definitions.

(a) *Affiliate* of a specified entity means:

(1) Another person that controls, is controlled by or is under common control with, the specified entity. An affiliate includes a division of the specified entity that operates as a functional unit.

(2) "Control" as used in this definition means the direct or indirect authority, whether acting alone or in conjunction with others, to direct or cause to direct the management policies of an entity. A voting interest of 10 percent or more creates a rebuttable presumption of control.

(b) *Internet Web site* refers to the Internet location where an interstate oil pipeline company posts the information, by electronic means, required under this part [XX].

(c) *Marketing functions* means the trading, sale, or sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, or the storage or provision of storage in interstate commerce, of crude oil, natural gas liquids, or petroleum products.

(d) *Marketing function employee* means an employee, contractor, consultant or agent of a transmission provider or of an affiliate of a transmission provider who actively and personally engages on a day-to-day basis in marketing functions.

(e) *Transmission* means the transportation in interstate commerce of crude oil, natural gas liquids, or petroleum products, the interconnection of interstate crude oil, natural gas liquids, or petroleum products pipelines with jurisdictional transmission facilities, and crude oil, natural gas liquids, or petroleum products transportation, storage, exchange or displacement service.

(f) *Transmission customer* means any eligible customer, shipper or designated agent that can or does execute a transmission service agreement or can or does receive transmission service, including all persons who have pending requests for transmission service or for information regarding transmission.

(g) *Transmission functions* means the planning, directing, organizing or carrying out of day-to-day transmission operations, including the granting and denying of transmission service requests.

(h) *Transmission function employee* means an employee, contractor, consultant or agent of a transmission provider who actively and personally engages on a day-to-day basis in transmission functions.

(i) *Transmission function information* means information relating to transmission functions.

(j) *Transmission provider* means a crude oil, natural gas liquids, or petroleum products pipeline that owns, operates or controls facilities used for the transportation of crude oil, natural gas liquids, or petroleum products in interstate commerce or for the storage of crude oil, natural gas liquids, or petroleum products.

(k) *Transmission service* means the provision of any transmission as defined in §[XX].3(e).

(l) *Waiver* means the determination by a transmission provider, if authorized by its tariff, to waive any provisions of its tariff for a given entity.

§[XX].4 Non-discrimination requirements.

(a) A transmission provider must strictly enforce all tariff provisions relating to the sale or purchase of transmission service, if the tariff provisions do not permit the use of discretion.

(b) A transmission provider must apply all tariff provisions relating to the sale or purchase of transmission service in a fair and impartial manner that treats all transmission customers in a not unduly discriminatory manner, if the tariff provisions permit the use of discretion.

(c) A transmission provider may not, through its tariffs or otherwise, give undue preference to any person in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price, curtailments, scheduling, priority, ancillary services, or balancing (*i.e.*, gains and/or losses)).

(d) A transmission provider must process all similar requests for transmission in the same manner and within the same period of time.

§[XX].5 Independent functioning rule.

(a) *General rule.* Except as permitted in this part or otherwise permitted by Commission order, a transmission provider's transmission function employees must function independently of its marketing function employees.

(b) *Separation of functions.*

(1) A transmission provider is prohibited from permitting its marketing function employees to:

(i) Conduct transmission functions; or

(ii) Have access to the system control center or similar facilities used for transmission operations that differs in any way from the access available to other transmission customers.

(2) A transmission provider is prohibited from permitting its transmission function employees to conduct marketing functions.

§[XX].6 No conduit rule.

(a) A transmission provider is prohibited from using anyone as a conduit for the disclosure of non-public transmission function information to its marketing function employees.

(b) An employee, contractor, consultant or agent of a transmission provider, and an employee, contractor, consultant or agent of an affiliate of a transmission provider that is engaged in marketing functions, is prohibited from disclosing non-public transmission function information to any of the transmission provider's marketing function employees.

§[XX].7 Transparency rule.

(a) *Contemporaneous disclosure.*

(1) if a transmission provider discloses non-public transmission function information, other than information identified in paragraphs (a)(2) and (a)(3) of this section, in a manner contrary to the requirements of §[XX].6, the

transmission provider must immediately post the information that was disclosed on its Internet Web site.

(2) If a transmission provider discloses, in a manner contrary to the requirements of §[XX].6, non-public transmission customer information, critical energy infrastructure information (CEII) as defined in §388.113(c)(1) of this chapter or any successor provision, or any other information that the Commission by law has determined is to be subject to limited dissemination, the transmission provider must immediately post notice on its Internet Web site that the information was disclosed.

(3) If a transmission provider discloses, in a manner contrary to the requirements of § [XX].6, information concerning shipments defined as unlawful under Section 15(13) of the Interstate Commerce Act, the transmission provider must immediately take steps to obtain the return of such information and immediately post on its Internet Web site how such information was disclosed.

(b) *Exclusion for specific transaction information.* A transmission provider's transmission function employee may discuss with its marketing function employee a specific request for transmission service submitted by the marketing function employee. The transmission provider is not required to contemporaneously disclose information otherwise covered by §[XX].6 if the information relates solely to a marketing function employee's specific request for transmission service.

(c) *Voluntary consent provision.* A transmission customer may voluntarily consent, in writing, to allow the transmission provider to disclose the transmission customer's non-public information to the transmission provider's marketing function employees. If the transmission customer authorizes the transmission provider to disclose its information to a marketing function employee, the transmission provider must post notice on its Internet Web site of that consent along with a statement that it did not provide any preferences, either operation or rate-related, in exchange for that voluntary consent.

(d) *Posting written procedures on the public Internet.* A transmission provider must post on its Internet Web site current written procedures implementing the Standards of Conduct.

(e) *Identification of affiliate information on the public Internet.*

(1) A transmission provider must post on its Internet Web site the names and addresses of all its affiliates that employ or retain marketing function employees.

(2) A transmission provider must post on its Internet Web site a complete list of the employee-staffed facilities shared by any of the transmission provider's transmission function employees and marketing function employees. The list must include the types of facilities shared and the addresses of the facilities.

(3) The transmission provider must post information concerning potential merger partners as affiliates that may employ or retain marketing function employees, within seven days after the potential merger is announced.

(f) *Identification of employee information on the public Internet.*

(1) A transmission provider must post its Internet Web site the job titles and job descriptions of its transmission function employees.

(2) A transmission provider must post a notice on its Internet Web site of any transfer of a transmission function employee to a position as a marketing function employee, or any transfer of a marketing function employee to a position as a transmission function employee. The information posted under this section must remain on its Internet Web site for 90 days. No such job transfer may be used as a means to circumvent any provision of this part. The information to be posted must include:

(i) The name of the transferring employee.

(ii) The respective titles held while performing each function (i.e., as a transmission function employee and as a marketing function employee), and

(iii) The effective date of the transfer.

(g) *Timing and general requirements of postings on the public Internet.*

(1) A transmission provider must update on its Internet Web site the information required by this part [XX] within seven business days of any change, and post the date on which the information was updated.

(2) In the event an emergency, such as an earthquake, flood, fire or hurricane, severely disrupts a transmission provider's normal business operations, the posting requirements in this part may be suspended by the transmission provider. If the disruption lasts longer than one month, the transmission provider must so notify the Commission and may seek a further exemption from the posting requirements.

(3) All Internet Web site postings required by this part must be sufficiently prominent as to be readily accessible.

(h) *Exclusion for and recordation of certain information exchanges.*

(1) Notwithstanding the requirements of §§[XX].5(a) and [XX].6, a transmission provider's transmission function employees and marketing function employees may exchange certain non-public transmission function information, as delineated in §[XX].7(h)(2), in which case transmission provider must make and retain a contemporaneous record of all such exchanges except in emergency circumstances, in which case a record must be made of the exchange as soon as practicable after the fact. The transmission provider shall make the record available to the Commission upon request. The record may consist of hand-written or typed notes, electronic records such as e-mails and text messages, recorded telephone exchanges, and the like, and must be retained for a period of five years.

(2) The non-public information subject to the exclusion in §[XX].7(h)(1) includes information necessary to maintain or restore operation of the transmission system.

(i) *Posting of waivers.* A transmission provider must post on its Internet Web site notice of each waiver of a tariff provision that it grants in favor of an affiliate, unless such waiver has been approved by the Commission. The posting must be made within one business day of the act of a waiver. The transmission provider must also maintain a log of the acts of waiver, and must make

it available to the Commission upon request. The records must be kept for a period of five years from the date of the each act of waiver.

§[XX].8 Implementation requirements.

(a) *Effective date.* A transmission provider must be in full compliance with the Standards of Conduct on the date it commences transmission transactions with an affiliate that engages in marketing functions.

(b) *Compliance measures and written procedures.*

(1) A transmission provider must implement measures to ensure that the requirements of §§[XX].5 and [XX].6 are observed by its employees and by the employees of its affiliates.

(2) A transmission provider must distribute the written procedures referred to in §[XX].7(d) to all its transmission function employees, marketing function employees, officers, directors, supervisory employees, and any other employees likely to become privy to transmission function information.

(c)*Training and compliance personnel.*

(1) A transmission provider must provide annual training on the Standards of Conduct to all the employees listed in paragraph (b)(2) of this section, within the first 30 days of their employment. The transmission provider must require each employee who has taken the training to certify electronically or in writing that s/he has completed the training.

(2) A transmission provider must designate a chief compliance officer who will be responsible for Standards of Conduct compliance. The transmission provider must post the name of the chief compliance officer and provide his or her contact information on its Internet Web site.

(d) *Books and records.* A transmission provider must maintain its books of account and records (as prescribed under parts 352 and 356 of this chapter) separately from those of its affiliates that employ or retain marketing function employees, and these must be available for Commission inspections.

ATTACHMENT B

EXCERPTS FROM ANNUAL SEC 10-K REPORTS

Excerpts from Annual SEC 10-K Reports Discussing Integrated Operations of Crude Oil, NGL, and Petroleum Products Pipelines

Enterprise Products Partners L.P.

"Our midstream energy operations currently include: natural gas gathering, treating, processing, transportation and storage; NGL transportation, fractionation, storage, and export and import terminals (including those used to export liquefied petroleum gases, or 'LPG,' and ethane); crude oil gathering, transportation, storage, and export and import terminals; petrochemical and refined products transportation, storage, export and import terminals, and related services; and a marine transportation business that operates primarily on the United States ('U.S.') inland and Intracoastal Waterway systems. Our assets currently include approximately 49,300 miles of pipelines; 260 MMBbls of storage capacity for NGLs, crude oil, petrochemicals and refined products; and 14 Bcf of natural gas storage capacity."
Enterprise Products Partners L.P., SEC 10-K at 2 (2016)

"Our NGL marketing activities generate revenues from merchant activities such as term and spot sales of NGLs, which we take title to through our natural gas processing activities (i.e., our equity NGL production) and open market and contract purchases. The results of operations for NGL marketing are primarily dependent on the difference between NGL sales prices and the associated purchase and other costs, including those costs attributable to the use of our other assets."
Enterprise Products Partners L.P., SEC 10-K at 5 (2016)

"We own terminals located in Houston, Midland and Beaumont, Texas and Cushing, Oklahoma that are used to store crude oil for us and our customers. Our crude oil terminals, in conjunction with other aspects of our midstream network, provide Gulf Coast refiners with an integrated system featuring supply diversification, significant storage capabilities and a high capacity pipeline distribution system that is connected to customers having an aggregate refining capacity of approximately 3.9 MMBPD."
Enterprise Products Partners L.P., SEC 10-K at 17 (2016)

"Our crude oil marketing activities generate revenues from the sale and delivery of crude oil purchased either directly from producers or from others on the open market. The results of operations from our crude oil marketing activities are primarily dependent upon the difference, or spread, between crude oil sales prices and the associated purchase and other costs, including those costs attributable to the use of our pipeline, storage and other midstream assets by the crude oil marketing group. In general, sales prices referenced in the underlying contracts are market-based and include pricing differentials for factors such as delivery location or crude oil quality. We also use derivative instruments to mitigate our exposure to commodity price risks associated with our crude oil marketing activities."
Enterprise Products Partners L.P., SEC 10-K at 19 (2016)

Buckeye Partners, L.P.

"We own and operate a diversified network of integrated assets providing midstream logistic solutions, primarily consisting of the transportation, storage, processing and marketing of liquid petroleum products. We are one of the largest independent liquid petroleum products pipeline operators in the United States in terms of volumes delivered, with approximately 6,000 miles of pipeline. We also use our service expertise to operate and/or maintain third-party pipelines and perform certain engineering and construction services for our customers. Additionally, we are one of the largest independent terminalling and storage operators in the United States in terms of capacity available for service."
Buckeye Partners, L.P., SEC 10-K at 1 (2016)

"We increase the utilization of our existing pipeline and terminalling assets by marketing refined petroleum products in certain areas served by our pipelines and terminals. The segment's customers consist principally of product wholesalers and major commercial users of refined petroleum products including gasoline, propane, ethanol, biodiesel and petroleum distillates such as heating oil, diesel fuel and kerosene."
Buckeye Partners, L.P., SEC 10-K at 9 (2016)

Enbridge Energy Partners L.P.

"We are a publicly traded Delaware limited partnership that owns and operates crude oil and liquid petroleum transportation and storage assets, and natural gas gathering, treating, processing, transportation and marketing assets in the United States of America."
Enbridge Energy Partners L.P., SEC 10-K at 1 (2016)

"We sell NGLs and crude oil at market prices on the date of sale to Enbridge and its affiliates. The sales to Enbridge and its affiliates are presented in 'Commodity sales — affiliate' on our consolidated statements of income. We also record operating revenues in our Liquids segment for storage, transportation and terminaling services we provide to affiliates, which are presented in 'Transportation and other services — affiliate' on our consolidated statements of income. We also purchase NGLs and crude oil from Enbridge and its affiliates for sale to third parties at market prices on the date of purchase. Purchases of NGLs and crude oil from Enbridge and its affiliates are presented in 'Commodity costs — affiliate' on our consolidated statements of income."
Enbridge Energy Partners L.P., SEC 10-K at 157 (2016)

Marathon Petroleum Corp.

"MPLX is a diversified, growth-oriented publicly traded master limited partnership formed by us to own, operate, develop and acquire midstream energy infrastructure assets. MPLX is engaged in the gathering, processing and transportation of natural gas; the gathering, transportation, fractionation, storage and marketing of NGLs; and the gathering, transportation and storage of crude oil and refined petroleum products. On December 4, 2015, we completed the MarkWest Merger, whereby MarkWest became a wholly-owned subsidiary of MPLX."
Marathon Petroleum Corp., SEC 10-K at 6 (2016)

"We operate this transportation and distribution system in coordination with our refining and marketing network enabling us to optimize raw material supplies and refined product distribution, and deliver important economies of scale across our platform."
Marathon Petroleum Corp., SEC 10-K at 10 (2016)

"Our midstream gathering and processing operations include: natural gas gathering, processing and transportation; and NGL gathering, transportation, fractionation, storage and marketing."
Marathon Petroleum Corp., SEC 10-K at 50 (2016)

"Our strategy is to obtain competitive prices for our products and allow operating results to reflect market price movements dictated by supply and demand. We use a variety of commodity derivative instruments, including futures and options, as part of an overall program to hedge commodity price risk. We also authorize the use of the market knowledge gained from these activities to do a limited amount of trading not directly related to our physical transactions."
Marathon Petroleum Corp., SEC 10-K at 101 (2016)

Sunoco Logistics Partners, L.P.

"We are a Delaware limited partnership which is principally engaged in the transport, terminalling and storage of crude oil, NGLs and refined products. In addition to logistics services, we also own acquisition and marketing assets which are used to facilitate the purchase and sale of crude oil, NGLs and refined products."
Sunoco Logistics Partners, L.P., SEC 10-K at 3 (2016)

"The Natural Gas Liquids segment transports, stores, and executes acquisition and marketing activities utilizing a complementary network of pipelines, storage and blending facilities, and strategic off-take locations that provide access to multiple NGLs markets."
Sunoco Logistics Partners, L.P., SEC 10-K at 3 (2016)

"Access to our crude oil storage facilities during a contango market allows us to improve our lease gathering margins by simultaneously purchasing crude oil inventories at current prices for storage and selling forward at higher prices for future delivery."
Sunoco Logistics Partners, L.P., SEC 10-K at 8 (2016)

"In addition to providing NGLs storage and terminalling services to both affiliates and third-party customers, the Marcus Hook Industrial Complex currently serves as an off-take outlet for our Mariner East 1 pipeline, and will provide similar off-take capabilities for the Mariner East 2 pipeline when it commences operations."
Sunoco Logistics Partners, L.P., SEC 10-K at 10 (2016)

Plains All American Pipeline LP

"We own and operate midstream energy infrastructure and provide logistics services for crude oil, natural gas liquids ("NGL"), natural gas and refined products. We own an extensive network of pipeline transportation, terminalling, storage, and gathering assets in key crude oil and NGL producing basins and transportation corridors and at major market hubs in the United States and Canada. Our business activities are conducted through three operating segments: Transportation, Facilities and Supply and Logistics."
Plains All American Pipeline LP, SEC 10-K at 5 (2016)

"Our principal business strategy is to provide competitive and efficient midstream transportation, terminalling, storage, processing, fractionation and supply and logistics services to producers, refiners and other customers. Toward this end, we endeavor to address regional supply and demand imbalances for crude oil and NGL in the United States and Canada by combining the strategic location and capabilities of our transportation, terminalling, storage, processing and fractionation assets with our supply, logistics and distribution expertise. We believe successful execution of this strategy will enable us to generate sustainable earnings and cash flow. We intend to manage and grow our business by:

- optimizing our existing assets and realizing cost efficiencies through operational improvements;

- using our transportation, terminalling, storage, processing and fractionation assets in conjunction with our supply and logistics activities to capture inefficiencies, address physical market imbalances, mitigate inherent risks and increase margin;
- developing and implementing growth projects that (i) address evolving crude oil and NGL needs in the midstream transportation and infrastructure sector and (ii) are well positioned to benefit from long-term industry trends and opportunities; and
- selectively pursuing strategic and accretive acquisitions that complement our existing asset base and distribution capabilities."

Plains All American Pipeline LP, SEC 10-K at 8 (2016)

"We believe that the following competitive strengths position us to successfully execute our principal business strategy: Many of our assets are strategically located and operationally flexible. The majority of our primary Transportation segment assets are in crude oil service, are located in well-established crude oil producing regions and other transportation corridors and are connected, directly or indirectly, with our Facilities segment assets. The majority of our Facilities segment assets are located at major trading locations and premium markets that serve as gateways to major North American refinery and distribution markets where we have strong business relationships. In addition, our assets include pipeline, rail, barge, truck and storage assets, which provide our customers and us with significant flexibility and optionality to satisfy demand and balance markets, particularly during a dynamic period of changing product flows."

Plains All American Pipeline LP, SEC 10-K at 8-9 (2016)

"We have an extensive network of pipeline transportation, terminalling, storage and gathering assets in key crude oil and NGL producing basins and transportation corridors and at major market hubs in the United States and Canada."

Plains All American Pipeline LP, SEC 10-K at 17 (2016)

"We pursue exchange opportunities to enhance margins throughout the gathering and marketing process. When opportunities arise to increase our margin or to acquire a grade, type or volume of crude oil or NGL that more closely matches our physical delivery requirement, location or the preferences of our customers, we exchange physical crude oil or NGL, as appropriate, with third parties. These exchanges are effected through contracts called exchange or buy/sell agreements. Through an exchange agreement, we agree to buy crude oil or NGL that differs in terms of geographic location, grade of crude oil or type of NGL, or physical delivery schedule from crude oil or NGL we have available for sale. Generally, we enter into exchanges to acquire crude oil or NGL at locations that are closer to our end markets, thereby reducing transportation costs and increasing our margin. We also exchange our crude oil to be physically delivered at a later date, if the exchange is expected to result in a higher margin net of storage costs, and enter into exchanges based on the grade of crude oil, which includes such factors as sulfur content and specific gravity, in order to meet the quality specifications of our physical delivery contracts."

Plains All American Pipeline LP, SEC 10-K at 31 (2016)

"Through our three business segments, we are engaged in the transportation, storage, terminalling and marketing of crude oil, NGL and natural gas. The majority of our activities are focused on crude oil."

Plains All American Pipeline LP, SEC 10-K at 32 (2016)