

transactions between itself and its marketing affiliate, Transco Energy Marketing Company (TEMCO).⁵ In § IV.I of the Settlement Agreement, the Commission prohibited “officers, directors, or employees of TEMCO [from maintaining] any office, equipment, or facility within any building in which [Transco] maintains any office, equipment, or facility.” In § IV.J the Commission ordered that “neither [Transco] nor any of its affiliated interstate pipeline entities will detail, assign, loan, or otherwise share

53291 (Dec. 28, 1990), FERC Stats. & Regs. 1986-1990 ¶ 30,908 (1990); Order No. 497-C, *order extending sunset date*, 57 FR 9 (Jan. 2, 1992), FERC Stats. & Regs., 1991-1996 ¶ 30,934 (1991), *reh'g denied*, 57 FR 5815 (Feb. 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas v. FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497-D, *order on remand and extending sunset date*, 57 FR 58978 (Dec. 14, 1992), FERC Stats. & Regs. 1991-1996 ¶ 30,958 (1992); Order No. 497-E, *order on reh'g and extending sunset date*, 59 FR 243 (Jan. 4, 1994), FERC Stats. & Regs., 1991-1996 ¶ 30,987 (1993); Order No. 497-F, *order denying reh'g and granting clarification*, 59 FR 15336 (Apr. 1, 1994), 66 FERC ¶ 61,347 (1994); and Order No. 497-G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991-1996 ¶ 30,996 (1994).

The Commission subsequently modified and renumbered the Standards of Conduct and recodified them at 18 C.F.R. Part 358. *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g and clarification*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

⁵ See 55 FERC at 61,939-40. For purposes of the Settlement Agreement, Transco admitted the facts but not the legal conclusions stated in Section II, “Factual Background,” of the Settlement Agreement. *Id.* at 61,942.

directly or indirectly on any basis any operating employee, including officers or directors, with TEMCO.”⁶

2. Following execution of the Settlement Agreement, Transco Energy Company (TEC), the then-parent of Transco and TEMCO, created a new subsidiary, Transco Gas Marketing Company (TGMC), which became the sole agent for Transco’s and TEMCO’s gas marketing activities.⁷

3. In May 1995, The Williams Company (Williams) acquired TEC and its subsidiaries. Williams transferred the management of Transco’s and TEMCO’s gas marketing activities from TGMC to a member of the Williams corporate family, Williams Energy Derivatives and Trading Company (WEDT), which became the sole agent for Transco’s and TEMCO’s gas marketing activities.

4. On five occasions between September 1995 and June 2011, Williams changed the name of the company that fulfilled WEDT’s role as the sole agent for Transco’s and TEMCO’s gas marketing activities;⁸ each of the successor companies maintained the

⁶ *Id.* at 61,944. Section V.K provides that “[t]he provisions of this [Settlement] Agreement shall apply to [Transco] and its successors and assigns and to all direct and indirect parent, subsidiary, and affiliated entities of [Transco] as to the matters described and resolved herein, including ... TEMCO ... and to the officers, directors, employees, agents, contractors and representatives, past, present and future,” *Id.* at 61,945.

⁷ The Commission accepted Transco's filing regarding the creation and function of TGMC in *Transcontinental Gas Pipe Line Corporation*, 62 FERC ¶ 61,045, at 61,247 (1993). In *East Tennessee Natural Gas Co.*, 65 FERC ¶ 61,389 at 63,065-66 (1993), the Commission found that that the sharing of directors between Transco and TGMC “is not inconsistent with the [S]ettlement [A]greement” because the shared directors were not “operating employees” of either company.

⁸ *Transco Letter Request* at 3-4. The Transco Letter Request identifies the entities that have functioned as Transco's and TEMCO's “sole agent for ... gas marketing activities” between September 1995 and June 2011: WEDT became Williams Energy Services Company (WESCO) in September 1995; WESCO became Williams Energy Marketing & Trading Company (EM&T) in September 1998; EM&T became Williams Power Company, Inc. (Williams Power) in August 2003; Williams Power became Williams Gas Marketing, Inc. (WGM) in 2007; and, finally, WGM became WPX Energy Marketing, LLC (WPX Marketing) in June 2011.

same agency authority for Transco's and TEMCO's gas marketing activities that TGMC transferred to WEDT in May 1995.⁹

5. In January 1997, Williams merged TGMC into TEMCO, and in May 2005, Williams merged TEMCO into Williams Power (one of the Williams companies that succeeded WEDT as the sole agent for Transco's and TEMCO's gas marketing activities).¹⁰

6. Transco states that in December 2011, Williams spun-off WPX Marketing, the last in the chain of Williams family companies that succeeded WEDT as the sole agent for Transco's and TEMCO's gas marketing activities, as an "independent, publicly-traded company."¹¹ Transco further states that with this spin-off, TEMCO, which Williams had previously merged into Williams Power, a predecessor to WPX Marketing, was no longer affiliated with the Williams corporate family.¹²

7. Transco states that in May 2012, Williams terminated Transco's agency relationship with WPX Marketing by having the latter assign the May 1995 agency agreement between Transco and WEDT (as successor to TGMC) to Williams Energy Resources, LLC (WER), the Williams affiliate responsible for all of Williams's gas marketing operations (including Transco's).¹³ Transco further states that following the termination of the last of its legacy gas purchase agreements, it terminated, effective March 31, 2017, the May 1995 agency agreement with WEDT that had been assigned to WER by WPX Marketing in May 2012.¹⁴

8. Enforcement states that it has reviewed the Commission's treatment of the Settlement Agreement since its approval in 1991; Transco's representations with respect to the benefits to be derived from the removal of these provisions; and the lack of impact this amendment would have on Transco's obligation to comply with the Commission's Standards of Conduct. Based on this review, Enforcement concurs in Transco's request. This amendment would permit Transco and WER, the Williams affiliate that manages

⁹ *See id.*

¹⁰ *Id.* at 4.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

Transco's gas marketing operations, to share office space as well as officers and directors. Transco asserts that these provisions in the Settlement Agreement "have become outdated and inapplicable"¹⁵ because "neither TEMCO nor any successor of TEMCO is any longer affiliated with Transco, WER, or any other company in the Williams corporate family."¹⁶

9. Transco further asserts that "even if WER could be deemed to be a successor of TEMCO" in managing Transco's gas marketing activities, §§ IV.I and IV.J "are no longer warranted [because] [n]othing remains in WER of TEMCO's marketing business to be conducted separately from the businesses of Transco and its other affiliates."¹⁷

10. Transco argues that "the requested amendment ... is in the public interest because it will enable Transco and Williams to operate more efficiently and economically, by allowing Transco and WER to share officers, directors, office space, and other facilities, without diminishing the purpose or effectiveness of the remaining terms of the Settlement Agreement or Transco's compliance with the Commission's Standards of Conduct for Transmission Providers."¹⁸ Focusing on the space-sharing prohibition in § IV.I, Transco argues that its removal "will permit Transco and Williams to realize increased efficiencies and cost savings associated with housing, operating, and maintaining IT equipment in a single environment" and "will allow Transco and Williams to reduce IT-related costs by consolidating their data centers ... resulting in an enhanced cybersecurity posture and more efficient management and monitoring of their IT assets and infrastructure."¹⁹

11. Transco also points out that "WER personnel currently share with Transco and other [Williams] affiliates telephone systems, electronic mail systems, SharePoint and related servers, cloud-based applications such as Office 365, and the wide area network which connects Williams's various locations, as well as access to servers on which corporate support-related systems reside, such as the human resources system and the financial enterprise resource planning system (which supports finance, accounting, planning and forecasting, and reporting functions). Access to the systems is subject to

¹⁵ *Id.*

¹⁶ *Id.* at 8.

¹⁷ *Id.*

¹⁸ *Id.* at 1.

¹⁹ *Id.* at 7.

strict access controls and other appropriate information security requirements as necessary to maintain compliance with the [Commission's] Standards of Conduct.”²⁰ Transco represents that “[t]hose controls will be unchanged in the event that any WER or Transco personnel are re-located after approval of the proposed amendment.”²¹

12. The Commission has previously acknowledged the efficacy of mechanisms other than strict physical separation of personnel, data, and office space to achieve the goal sought by the inclusion of §§ IV.I and IV.J in the Settlement Agreement. In 2000, the Commission approved Transco's request for clarification of the Settlement Agreement so that Transco could house in the same building its own employees and those of its then-marketing affiliate who were involved in trading and marketing commodities other than natural gas.²² In granting Transco's request, the Commission noted approvingly Transco's use of mechanisms such as “card-key access to floors” within the building that contain transportation information and “password protected computers” in order “to prevent the disclosure of non-public transportation information covered by the Commission's marketing affiliate rules” to marketing affiliate employees.²³

13. Similarly, in 2006 the Commission granted Transco's request for a partial waiver of the Settlement Agreement in order to place “disaster recovery equipment” owned by Williams Power, Transco's marketing affiliate at that time, in Transco's Houston building; and to place Transco-owned information technology equipment in a Williams-owned data center. Again, the Commission found that electronic restrictions on data access would satisfy “the concerns underlying the provision in the 1991 [Settlement] Agreement separating Transco's offices, equipment, and facilities from those of its marketing affiliate.”²⁴

14. Transco avers that it “commits to maintaining appropriate mechanisms for functional separation of marketing function employees within any shared office space, including the use of badged access to particular floors or areas of the building, access controls for IT equipment and data, and other restrictions which the Commission accepted to ‘address the concerns underlying ... the 1991 [Settlement] Agreement’ in the

²⁰ *Id.*

²¹ *Id.*

²² *Transcontinental Gas Pipe Line Corporation*, 92 FERC ¶ 61,008 (2000).

²³ *Id.* at 61,014.

²⁴ *Transcontinental Gas Pipe Line Corporation*, 116 FERC ¶ 61,170 at P 7 (2006).

previously granted clarifications and waivers of the Settlement Agreement's separation requirements, and which Transco has implemented as part of its compliance with the Standards of Conduct."²⁵

15. Transco asserts that because of "the significant changes from the circumstances that gave rise to the Settlement Agreement, there is no need to continue the economic burden of maintaining separate offices and strictly separated personnel nearly thirty years after the events that led to the Settlement Agreement."²⁶

16. The Commission has not been made aware that Transco, after receiving either the 2000 clarification or the 2006 partial waiver of §§ IV.I and IV.J, as described in the preceding paragraphs of this order, has engaged in conduct that provides an undue preference or constitutes unduly discriminatory behavior in favor of a marketing affiliate, which was the conduct that led to the inclusion of these provisions in the 1991 Settlement Agreement. Furthermore, removing these provisions does not relieve Transco of its continuing obligation to comply with the provisions of the Settlement Agreement that are unaffected by the requested amendment. Similarly, the demonstrated efficacy of the technological and other mechanisms that Williams has put in place to ensure that marketing personnel will not have access to non-public transmission data and that Transco continues to comply with the Commission's Standards of Conduct, particularly with the requirements set forth in the "independent functioning rule"²⁷ and the "no conduit rule,"²⁸ address the concerns that led to our requiring physical separation of marketing and transmission functions and personnel when the Commission approved the Settlement Agreement nearly 30 years ago.

17. These considerations support our conclusion that the proposed amendment is not inconsistent with the intent of the Settlement Agreement and that it is in the public interest to relieve Williams of the financial and administrative burdens to the efficient management of its operations engendered by complying with these requirements, which are no longer necessary given the change in factual circumstances and the continuing application of the Standards of Conduct.

²⁵ *Transco Letter Request* at 9 (footnote omitted).

²⁶ *Id.* Enforcement agrees with Transco's assertion. Regarding these changes, see P 8 and PP 11-14, *supra*.

²⁷ 18 C.F.R. § 358.5 (2018).

²⁸ 18 C.F.R. § 358.6 (2018).

The Commission finds:

The deletion of sections IV.I and IV.J of the Settlement Agreement, as proposed by Transco, is in the public interest.

The Commission orders:

Sections IV.I and IV.J of the Settlement Agreement are deleted from the Settlement Agreement.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

agent for all gas marketing activities, an arrangement the Commission approved in *East Tennessee Natural Gas Co*, 65 FERC ¶ 61,389 (1993).

In May 1995, TEC and its subsidiaries were acquired by The Williams Companies, Inc. (“Williams”), which transferred TGMC’s gas marketing functions on behalf of Transco and TEMCO to one of Williams’s corporate affiliates, Williams Energy Derivatives and Trading Company (“WEDT”). After subsequently merging TEMCO into a Williams affiliate that was a successor to WEDT as the entity managing Transco’s and TEMCO’s gas marketing activities, Williams, in December 2011, spun-off a functional successor to that affiliate as an independent, publicly-traded company under the name WPX Energy Marketing, LLC (“WPX”), which, in May 2012, transferred management of Transco’s gas marketing activities to a different, pre-existing Williams affiliate, Williams Energy Resources, LLC (“WER”). WER’s management of Transco’s gas marketing activities ended effective March 31, 2017.

Accordingly, TEMCO is no longer affiliated with Transco or any Transco affiliate within the Williams corporate family, and WER does not manage gas marketing activities on behalf of TEMCO. In light of these changed circumstances, Enforcement and Transco agree that it is no longer necessary to physically separate personnel, data, and office space, as required by Sections IV.I and IV.J of the Settlement Agreement, to achieve the purpose of the Settlement Agreement, and that Transco and its Williams affiliates should not be required to conduct their business subject to these provisions. Transco acknowledges that it remains subject to the Commission’s Standards of Conduct for Transmission Providers, 18 C.F.R. § 358 and to all other provisions of the Settlement Agreement not expressly addressed in this amendment.

Upon approval by the Commission of this amendment to the Settlement Agreement, sections IV.I and IV.J of the Settlement Agreement are hereby deleted and no longer effective.



Larry R. Parkinson
Director
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Date: 3/7/19



Joshua H. DeRienzi
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Date: 3/4/19