

Document title

Standards of Conduct Procedures

Document number

REG-SUBS-00002

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EXECUTIVE SUMMARY

With the passage of the Energy Policy Act of 1992, Congress set the stage for improving the competitiveness of the wholesale electricity market. Responding to allegations that transmission owners had the incentive to, and at times may, unduly discriminate in the provision of transmission services, the Federal Energy Regulatory Commission (FERC) declared its intention to require systems under its jurisdiction to provide open access to their transmission systems for wholesale transactions. Since 1992, FERC has issued a number of Notices of Proposed Rulemaking on this topic and issued key rulemaking related to the Standards of Conduct including: Order 2004 in November of 2003, Orders 888 and 889 in April of 2006, Order 890 in February of 2007, and in their most recent [Order 717](#) issued on October 16, 2008. This procedure contains Standards of Conduct implementation procedures for Progress Energy. These procedures are available via the Progress Energy Internet website as well as the PEC and PEF OASIS websites. Specific requirements governing the OASIS and Standards of Conduct can be found in the [Code of Federal Regulations, Title 18, Chapter I, Section 37](#).

This Standards of Conduct procedure provides the guidance to ensure that PEC-Transmission Operations & Planning Department (TOPD) and PEF-TOPD do not grant marketing function employees preferential treatment with regard to the provision of transmission service. Similarly, it prohibits PEC-TOPD and PEF-TOPD from discriminating against non-affiliates with regard to the provision of transmission services. In order to accomplish these goals, the Standards of Conduct prohibit PEC-TOPD and PEF-TOPD from providing any transmission function information (except for some very limited exceptions) to marketing function employees that is not publicly available to non-affiliates. To do otherwise would grant PEC's and PEF's marketing function employees preferential treatment and a competitive advantage. PEC and PEF marketing function employees reside within Efficiency & Innovative Technology (EIT) and Fuels & Power Optimization (FPO) departments.

A fundamental basis for the FERC Standards of Conduct is the belief by regulators that a transmission provider should not be allowed to leverage its transmission system to benefit its wholesale operations. Thus, PEC and PEF information regarding their transmission systems and services cannot be posted on PEC's and PEF's intranet and made available to their marketing function employees unless it is contemporaneously posted on PEC's and PEF's OASIS.

Finally, employees engaged in transmission operations and any other employees who have access to transmission function information cannot act as a conduit nor use anyone as a conduit for sharing such transmission function information with marketing function employees.

Implementation Procedures

I. Responsibility for Compliance

A. Chief Compliance Officer

1. The Vice President-Legal & General Counsel of Progress Energy Service Company, LLC has been designated as the Chief Compliance Officer.
2. The Chief Compliance Officer is responsible for establishing and maintaining the overall framework to support Progress Energy's compliance with the Standards of Conduct including: ensuring employee training is conducted; knowledgeable persons are readily available to answer questions pertaining to the Standards of Conduct; procedures are in place to ensure separation of transmission function employees from marketing function employees; all required information postings occur in a timely manner; and coordinating audits and investigations with FERC Commission Staff, as well as duties to ensure that PEC and PEF comply with the Standards of Conduct.
3. The Chief Compliance Officer is located in the Progress Energy Building ("PEB") at 410 South Wilmington Street, PEB 17, Raleigh, North Carolina, Telephone: (919) 546-5362.

B. Additional Standards of Conduct Legal Support

1. In addition to the Chief Compliance Officer, Progress Energy has designated a corporate attorney in the Legal Department to support Standards of Conduct compliance (who can be contacted at 919-546-6794). A back-up resource (who can be contacted at 919-546-6830) has also been identified to support Standards of Conduct compliance. These individuals are also located in the Progress Energy Building ("PEB") at 410 South Wilmington Street, Raleigh, North Carolina.

C. Individual Employee Responsibility

1. Each Progress Energy employee is responsible for abiding by the Standards of Conduct. The methods by which the employees are made aware of the Standards of Conduct requirements and the associated training requirements are identified in this procedure.

II. Progress Energy Implementation Procedures

A. Written Procedures

1. These procedures are designed to provide guidance to Progress Energy employees to enable the successful compliance with FERC's Standards of Conduct requirements set forth in FERC Order 717 and subsequent orders.
2. The Legal Department shall ensure that these procedures are updated as needed, and that the posting of the procedures is updated accordingly.
3. The Legal Department shall also ensure that the written procedures are distributed to all Progress Energy transmission function employees, marketing function employees, officers, directors, supervisory employees, and any other employees likely to become privy to transmission function information.

B. Employee and Information Classification

1. Transmission Definitions & Applicability
 - i. Transmission function means the planning, directing, organizing or carrying out of day-to-day transmission operations, including the granting and denying of transmission service requests.
 - ii. 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.
 - iii. Transmission function information means information relating to transmission functions.
 - iv. PEC and PEF perform these transmission functions within PEC-TOPD and PEF-TOPD primarily through transmission function employees located at the PEC-TOPD and PEF-TOPD Energy Control Centers.
2. Marketing Definitions & Applicability
 - i. Marketing functions means the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, of electric energy or capacity, demand response, virtual transactions, or financial or physical transmission rights, all as subject to an exclusion for bundled retail sales.
 - ii. Marketing function employee means an employee, contractor, consultant or agent of PEC or PEF or of an affiliate of PEC or PEF who actively and personally engages on a day-to-day basis in marketing functions.
 - iii. PEC and PEF perform these marketing functions within the Power Trading Operations and Portfolio Management organizations of FPO and in the following organizations of EIT: PEF Renewables and Wholesale Power; PEC Renewables and Wholesale Power; and Strategy Structuring and Analysis.
3. Supervisors, Managers and Corporate Executives
 - i. As can be seen by the below guidance in this section that shall to be used to determine if specific

Progress Energy supervisors, managers or corporate executives would be classified as either transmission function employees or marketing function employees, the classification is very dependent upon the roles and responsibilities these individuals hold within their organizations. The classification of these positions shall be made by the Progress Energy line organizations. The Progress Energy line organization shall consult with the Legal Department, as needed, when these it is unclear on how to classify certain individuals.

- ii. Managers and supervisors, as well as officers and directors, who do not personally and actively engage in transmission and marketing functions on a day-to-day basis, are not transmission function employees or marketing function employees. However; managers and supervisors, as well as officers and directors, who personally and actively engage in transmission and marketing functions on a day-to-day basis are transmission function employees or marketing function employees.
- iii. Managers, supervisors and corporate executives who set negotiating parameters for contracts or who review, approve or execute contracts, but do not oversee or provide input into the details of negotiations or negotiate contracts, are not transmission or marketing function employees. However; managers, supervisors and corporate executives oversee or provide input into the details of negotiations or negotiate contracts, are transmission or marketing function employees.
- iv. Managers, supervisors and corporate executives who are involved in corporate governance and strategic and long-range planning are not transmission or marketing function employees.

4. Gas Definitions & Applicability

- i. FERC Order 717 changed the applicability of the Standards of Conduct such that our Progress Energy gas traders will no longer be considered “marketing function employees.”

5. Transmission Planning & Applicability

- i. In the FERC Order 717, FERC stated that they did not consider transmission planning as a transmission function. However, within the above definition of transmission functions, FERC stated that one of the transmission functions was the granting or denying of transmission service requests. However, FERC also stated in Order 717 that the preparation of system impact studies would not be considered a transmission function. Therefore, the transmission planners within Progress Energy could support the study of the longer term transmission service requests, perform the appropriate studies, as needed, and provide recommendations back to the PEC-TOPD and PEF-TOPD ECC transmission function employees located at the ECCs who would make the final decision to grant or deny the service to the transmission customers. Therefore the Progress Energy transmission planning employees, located within the PEC-TOPD and PEF-TOPD Transmission Planning organizations would, as a general rule, not be classified as transmission function employees. However, these organizations shall review the particular job functions of their employees to make the final classification determinations in these areas, with consultation with the Legal Department as necessary.
- ii. Based on the above, the transmission planning information will not be deemed to be covered by

the Standards of Conduct requirements. However, the transmission planning information continues to be subject to the FERC Order 890 transmission planning principles which define and ensure the comparable treatment of this planning information.

6. Other Progress Energy Functions & Applicability

i. Integrated Resource Planning

1. FERC Order 717 specifically stated that employees supporting the integrated resource planning activities within a company would not be classified as transmission or marketing function employees.

ii. Rate Design and Risk Management Functions & Applicability

1. FERC Order 717 provides clarity that these positions would not be considered transmission or marketing function employees.

C. Exclusions of Data Exchange and Recordation Requirements

1. Because of the refined definitions of transmission and marketing function employees contained within Order 717, FERC believed that there would be much fewer occasions in which the transmission and marketing function employees would need to interact. FERC also imposed restrictions on those interactions as identified in the next section.

2. Exclusions of Data Exchange

- i. The only non-public information that can be shared between PEC and PEF transmission function employees and PEC and PEF marketing function employees include the following:

1. Information pertaining to compliance with Reliability Standards approved by FERC, and
2. Information necessary to maintain or restore operation of the transmission system or generating units, or that may affect the dispatch of generating units.

3. Recordation Requirements

- i. When the above information is exchanged, PEC-TOPD or PEF-TOPD is responsible for making and retaining 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. Recordation of real-time system data, such as real-time generation, is not required to be separately recorded or retained.
- ii. PEC-TOPD and PEF-TOPD shall be responsible for keeping records that identify the exchanges of information. These records shall include: a log of when the exchanges took place (date/time), subject matter of the exchange, parties involved in the information exchange, and reference to any additional supporting information regarding the exchange (such as hand-written or typed notes, electronic records such as e-mails and text messages, and recorded telephone exchanges).
- iii. The above information must be maintained for five years.

D. Restrictions on Transmission and Marketing Function Employee Interactions

1. FERC has placed stringent requirements upon the interaction of transmission and marketing function employees. These interactions shall be limited to only the necessary discussion of information that fall within the exclusions of data exchange discussed above and to social activities.
2. PEC and PEF transmission and marketing function employees shall follow these restrictions on interaction.

E. Non-Discrimination

1. PEC and PEF shall strictly enforce the provisions of the open access transmission tariffs in a fair and impartial manner, unless the provisions provide for the use of discretion, and shall respond to all similar requests for transmission service in the same manner and within the same period of time.
2. Employees engaged in the transmission function will not: give marketing function employees transmission function information or access to transmission function information unless comparable access is provided on a contemporaneous basis to all non-affiliated transmission customers; give marketing function employees preferential treatment; or unduly discriminate against non-affiliates.
3. PEC/PEF's marketing function employees will have access to only that information available (posted on OASIS) to PEC/PEF's open access transmission customers.
4. PEC/PEF's marketing function employees will not have access to any information regarding the transmission system, including but not limited to, information about available transmission capability, price, curtailments, storage, and balancing, or similar information that is not posted on PEC/PEF OASIS or otherwise available to the general public without restriction.
5. Employees engaged in PEC/PEF's transmission function will not divulge information regarding operation and status of the PEC/PEF transmission systems or the transmission system of another entity to marketing function employees other than via PEC/PEF's OASIS.
6. PEC/ PEF transmission function employees are permitted to communicate with PEC/PEF's marketing function employees concerning the marketing function employees specific transmission service requests. Also, the PEC/PEF transmission function employees are permitted to communicate with PEC/PEF's marketing function employees if another transmission customer has voluntarily consented to allow the PEC/PEF transmission provider to disclose its information to the PEC/PEF marketing function employee, provided that the transmission customer consents in writing, and the PEC/PEF transmission provider posts a notice on its Internet/OASIS websites, along with a statement that PEC/PEF transmission did not provide any operational or rate-related preferences to the customer in exchange for that consent.

F. Independent Functioning Rule

1. PEC and PEF employees engaged in the transmission function will function independently from PEC and PEF employees engaged in the marketing function.
2. Employees engaged in the marketing function are prohibited from conducting transmission functions.

G. No Conduit Rule

1. PEC and PEF employees, contracts, and consultants shall not use anyone as a conduit for the disclosure of non-public transmission function information to marketing function employees. This no conduit requirement applies to non-public transmission function information about any transmission system, not just the Progress Energy transmission systems.

H. Training

1. The Standards of Conduct training shall include instruction on:
 - i. Employee and Information Classification
 - ii. Exclusions of Data Exchange and Recordation Requirements
 - iii. Restrictions on Transmission and Marketing Function Employee Interactions
 - iv. Non-Discrimination
 - v. Independent functioning
 - vi. No-conduit provisions
 - vii. Standards of Conduct Violations
 - viii. Posting requirements
2. People Who Must Be Trained
 - i. All PEC, PEF, and Progress Energy employees who are classified as either a transmission function employee or a marketing function employee must receive the Standard of Conduct training.
 - ii. Progress Energy will furthermore require additional employees to be trained if those individuals come in contact with transmission function information. These individuals will need to understand the no-conduit rules within the Standards of Conduct. Since this determination is organization to organization specific, a list of the various positions within the organizations will be developed that require this Standards of Conduct training. This list shall be provided to the Legal Department.
 - iii. Contractors who are performing work that necessitates the interaction with transmission function employees or marketing function employees will also be subject to the Standards of Conduct training requirements.
3. Training Requirements
 - i. All personnel identified above shall complete the required training annually by a predetermined date set by the Legal Department. Upon completion of the annual training, each employee and contractor shall print a copy of the Certificate of Completion and provide it to his/her supervisor

(or other designated company employee in the case of contractors) to be placed in the files for retention (e.g. employee's personnel file for company employees).

- ii. New employees hired whose job function is identified in Sections II.H.2 above or employees transferring from a position that is not required to complete the Standards of Conduct training to a position that is required to complete the training shall be required to take the training within 30 days of their initial employment or transfer. Similarly, new contractors must receive the Standards of Conduct training within 30 days of their employment or appointment. Each Department Head who has transmission or marketing function employees in their organization shall notify each new or transferred employee and their supervisor that the employee must receive the Standards of Conduct training. The notification shall contain the Progress Energy intranet link to the Standards of Conduct training module.
 - iii. The manager of employees and/or contractors who are required to complete the Standards of Conduct training shall ensure that the annual training is completed by the deadline for completion.
 - iv. Annually, three months prior to the anniversary of the effective date of the Standards of Conduct training requirement, the Legal Department shall send to all employees who are required to complete the Standards of Conduct training an e-mail or other electronic communication containing the Progress Energy intranet link to the Standards of Conduct training module. The e-mail or other electronic communication shall instruct the employees to complete the training by a predetermined date. A copy of the e-mail or other electronic communication shall also be sent to the employee's department manager, section manager and supervisor, as applicable.
 - v. On an annual basis, the Human Resource Department shall provide to the Legal Department the following information for all employees that are required to have the Standards of Conduct training:
 1. The name, job title and department of each new employee hired by Progress Energy and
 2. The name, job title and department of each employee who has been reclassified or who is transferring from a position not required to complete the Standards of Conduct training to a position that is required to complete the training.
 - vi. The Legal Department shall have access to an electronic database to monitor the completion of training by all required employees.
4. All certificates of completion will be maintained in each employee's personnel file for a period of five years.
 5. The Legal Department shall ensure that the Standards of Conduct training module is updated, as needed.

I. Standards of Conduct Violations

1. If a violation is reported to the Legal Department either directly or indirectly, the Legal Department shall contact the PEC or PEF Posting Custodian and require immediate posting of the violation as long as such posting would not cause further or undue harm to any transmission customer.

2. The violation posting shall include: (i) the date and time of the violation; (ii) a brief description of the violation; and (iii) what corrective action has been taken or is being taken to prevent the recurrence of such violation.
3. Once a violation has been reported, the Legal Department shall file a report of the violation with FERC.

J. Document Retention

1. PEC-TOPD and PEF-TOPD shall ensure that information is retained to demonstrate that PEC and PEF are in compliance with the Standards of Conduct. This information includes, but is not limited to, Standards of Conduct communications and procedures, transmission information, posting of waivers, confidential customer information, confidential systems operation information, OASIS posting information, facilities management information, and corporate security information.
2. All such information shall be retained for a period of five years and shall be made available for review by FERC, if requested.
3. Corporate recorded information shall be managed from creation through ultimate disposition based on applicable government regulations, industry standards, and sound business practices. Progress Energy has developed Functional Retention Schedules that identify records based on the function they support. Some records impact many departments (i.e., administrative type such as Personnel Records), while others impact only one department (its core business.)
4. Functional Retention Schedules are reviewed by each Department's Records Coordinator, and approved by appropriate Department Management (more than one, if necessary.) Changes to an established Functional Retention Schedule are driven by the need to identify a new record, an amendment to an existing record, or a deletion of a record because its function ceases to exist within the Company.
5. The Corporate Records Services staff establishes corporate standards and provides expertise to execute these standards. The services available include: retention scheduling, consultation on information management projects, media conversions, self-assessments, and purging of records.
6. The Chief Audit Executive in the Audit Services Department shall periodically audit these document retention requirements.

K. Physical Separation

1. The PEC and PEF Manager-Property/Projects positions within the Corporate Services Department provide PEC-TOPD and PEF-TOPD transmission function employees, respectively, separate physical facilities from EIT and FPO marketing function employees. Separate facilities shall be either separate buildings or separate floors in multi-floor buildings.
2. Access to the office locations of PEC-TOPD and PEF-TOPD Energy Control Centers (ECCs) shall be restricted such that all marketing function employees in EIT and FPO shall not be allowed access to these locations. The Manager-Corporate Security shall issue all employees identification access cards to

prohibit access by all marketing function employees to such locations.

3. PEC-TOPD and PEF-TOPD transmission function employees shall not give PEC/PEF marketing function employees access to the Energy Control Centers or similar facilities used for transmission operations or reliability functions that differ in any way from the access available to other transmission customers.
4. By request of the Legal Department, Progress Energy's information technology department shall restrict electronic access to PEC and PEF transmission function information to transmission function employees and any other employees who have a business need to access such information.

5. Discussion

As indicated by the Progress Energy Internet/OASIS posted addresses of the Progress Energy affiliates that employ or retain marketing function employees, the transmission and marketing functions have been separated.

The transmission function employees reside within PEC-TOPD and PEF-TOPD and are located at the Carolinas and Florida Energy Control Centers.

PEC's and PEF's marketing function employees reside within the EIT and FPO organizations. EIT and FPO organizations are responsible for marketing PEC's and PEF's bulk power on the wholesale market and for purchasing power at wholesale for resale to PEC's and PEF's native load customers. EIT is responsible for longer-term power purchases and sales and FPO is responsible for shorter term purchases and sales.

The physical addresses of the Carolinas and Florida Energy Control Centers and the physical locations of the EIT and FPO marketing function employees are posted, as required, on the Progress Energy Internet/OASIS.

L. Books and Records

1. Each Controller for PEC and PEF shall ensure that PEC's and PEF's transmission functions' books and records are maintained separately from the marketing functions.
2. All books and records shall be retained in accordance with the retention procedures discussed in Section II.J above.

M. Postings Requirements

1. FERC requires the following information to be posted on the Progress Energy's public Internet website. However, FERC has provided guidance in previous industry orders that gives the transmission providers the option of just providing a link on the public Internet websites to the publically available information on the transmission provider websites. PEC and PEF shall post the below information on the Progress Energy Internet and/or the PEC and/or PEF OASIS websites, but will ensure that the information is publically available via electronic links from these locations. Unless otherwise stated in the below section,

the Department Heads for PEC-TOPD and PEF-TOPD shall assign a designee and a backup who shall be responsible for ensuring that the following information is posted on the Progress Energy Internet and the OASIS of PEC and/or PEF (this function is called the Posting Custodian below):

- i. Contemporaneous disclosure of non-public transmission information
 1. If a Progress Energy employee disclosed non-public transmission function information to a marketing function employee, then the Posting Custodian must immediately post this information, however, if the non-public information that was disclosed contained confidential transmission customer information and/or CEII information, then the Posting Custodian would only post a notice that an improper disclosure had occurred.
- ii. Standards of Conduct Implementation Procedures
 1. The Legal Department shall be responsible for ensuring that the Standards of Conduct implementation procedures are kept up-to-date and the latest revision of the procedures are posted.
- iii. Identification of affiliate information
 1. The names and addresses of all Progress Energy affiliates that employ or retain marketing function employees must be posted.
 2. A complete list of the employee-staffed facilities shared by any of transmission function employees and marketing function employees must be provided.
 3. The Legal Department shall be responsible for ensuring that information is posted concerning potential merger partners that may employ or retain marketing function employees. This posting shall be made within seven days after the potential merger is announced.
- iv. Identification of employee information
 1. Job titles, employee names, and job descriptions of Progress Energy's transmission function employees must be posted.
 2. 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 shall be posted and remain on the Internet website and OASIS for 90 days. The posted information should include the name of the transferring employee, the respective titles held while performing the transmission or marketing function position, and the effective date of the transfer. The transferring of employees should not act as a conduit to share transmission function information with marketing function employees.
- v. Waivers
 1. Waiver means the determination by PEC or PEF in the provision of transmission service, if authorized by its tariff, to waive any provisions of its tariff for a given entity.
 2. A log of all waivers, if granted in favor of an affiliate and not approved by a FERC order, shall be posted.
 3. Posting of waivers must be made within one business day of the act of a waiver.

2. Timing and General Posting Requirements

- i. Unless different requirements are explicitly stated in the above section, the information required to be posted must be updated on the Progress Energy Internet/OASIS within seven days of the change. The posting must include the date on which the information was updated.
- ii. In the event of an emergency, such as an earthquake, flood, fire or hurricane, severely disrupts Progress Energy's transmission operations, the posting requirements in this section may be suspended. If the disruption lasts longer than one month, PEC or PEF transmission operations shall notify the Legal Department and the Legal Department shall notify FERC.

N. Audits

1. The Chief Audit Executive in the Audit Services Department shall periodically audit PEC's, PEF's and the Energy Affiliates' compliance with:
 - i. The separations requirements of the Standards of Conduct;
 - ii. The training requirements of the Standards of Conduct;
 - iii. The posting requirements of the Standards of Conduct, and
 - iv. The document retention requirements of the Standards of Conduct.
2. The Chief Audit Executive shall audit on a periodic basis the compliance of PEF and PEC on the obligation to not grant the marketing function undue preferential treatment or unduly discriminate against non-affiliates.
3. The Chief Audit Executive shall perform all audits of the Standards of Conduct in accordance with Progress Energy's Internal Audit Policy (Listed as Document No. ADM-HOCO-00002 on Progress Energy's Intranet website).

III. FERC Standards of Conduct for Transmission Providers Regulatory Text

PART 358—STANDARDS OF CONDUCT

Sec.

§ 358.1 Applicability.

§ 358.2 General principles.

§ 358.3 Definitions.

§ 358.4 Non-discrimination requirements.

§ 358.5 Independent functioning rule.

§ 358.6 No conduit rule.

§ 358.7 Transparency rule.

§ 358.8 Implementation requirements.

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 358.1 Applicability.

- (a) This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subparts B or G of part 284 of this chapter and conducts transmission transactions with an affiliate that engages in marketing functions.
- (b) This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce and conducts transmission transactions with an affiliate that engages in marketing functions.
- (c) This part does not apply to a public utility transmission provider that is a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO). If a public utility transmission owner participates in a Commission-approved ISO or RTO and does not operate or control its transmission system and has no access to transmission function information, it may request a waiver from this part.
- (d) A transmission provider may file a request for a waiver from all or some of the requirements of this part for good cause.

§ 358.2 General principles.

- (a) 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 natural gas or transmission of electric energy in interstate commerce, or with respect to the wholesale sale of natural gas or of electric energy in interstate commerce.
- (b) 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) 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) A transmission provider must provide equal access to non-public transmission function information to all its transmission function customers, affiliated and non-affiliated, except in the case of confidential customer information or Critical Energy Infrastructure Information.

§ 358.3 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) For any exempt wholesale generator (as defined under § 366.1 of this chapter), affiliate shall have the meaning set forth in § 366.1 of this chapter, or any successor provision.

(3) "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 website refers to the Internet location where an interstate natural gas pipeline or a public utility posts the information, by electronic means, required under this part 358.

(c) Marketing functions means:

(1) in the case of public utilities and their affiliates, the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, of electric energy or capacity, demand response, virtual transactions, or financial or physical transmission rights, all as subject to an exclusion for bundled retail sales, including sales of electric energy made by providers of last resort (POLRs) acting in their POLR capacity; and

(2) in the case of interstate pipelines and their affiliates, the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, natural gas, subject to the following exclusions:

(i) Bundled retail sales,

(ii) Incidental purchases or sales of natural gas to operate interstate natural gas pipeline transmission facilities,

(iii) Sales of natural gas solely from a seller's own production,

(iv) Sales of natural gas solely from a seller's own gathering or processing facilities, and

v) Sales by an intrastate natural gas pipeline, by a Hinshaw interstate pipeline exempt from the Natural Gas Act, or by a local distribution company making an on-system sale.

(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) Open Access Same Time Information System or OASIS refers to the Internet location where a public utility posts the information required by part 37 of this chapter, and where it may also post the information required to be posted on its Internet website by this part 358.

(f) Transmission means electric transmission, network or point-to-point service, ancillary services or other methods of electric transmission, or the interconnection with jurisdictional transmission facilities, under part 35 of this chapter; and natural gas transportation, storage, exchange, backhaul, or displacement

service provided pursuant to subparts B or G of part 284 of this chapter.

- (g) 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.
- (h) 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.
- (i) 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.
- (j) Transmission function information means information relating to transmission functions.
- (k) Transmission provider means:
 - (1) Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce; or
 - (2) Any interstate natural gas pipeline that transports gas for others pursuant to subparts B or G of part 284 of this chapter.
 - (3) A transmission provider does not include a natural gas storage provider authorized to charge market-based rates.
- (l) Transmission service means the provision of any transmission as defined in § 358.3(f).
- (m) Waiver means the determination by a transmission provider, if authorized by its tariff, to waive any provisions of its tariff for a given entity.

§ 358.4 Non-discrimination requirements.

- (a) A transmission provider must strictly enforce all tariff provisions relating to the sale or purchase of open access 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 open access 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).
- (d) A transmission provider must process all similar requests for transmission in the same manner and within the same period of time.

§ 358.5 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.

§ 358.6 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.

§ 358.7 Transparency rule.

- (a) Contemporaneous disclosure.
 - (1) If a transmission provider discloses non-public transmission function information, other than information identified in paragraph (a)(2) of this section, in a manner contrary to the requirements of § 358.6, the transmission provider must immediately post the information that was disclosed on its Internet website.
 - (2) If a transmission provider discloses, in a manner contrary to the requirements of § 358.6, 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 website that the 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 § 358.6 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 marketing function employees, the transmission provider must post notice on its Internet website of that consent along with a statement that it did not provide any preferences, either operational 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 website 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 website the names and addresses of all its affiliates that employ or retain marketing function employees.
 - (2) A transmission provider must post on its Internet website 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 on its Internet website the job titles and job descriptions of its transmission function employees.

(2) A transmission provider must post a notice on its Internet website 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 website 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 website the information required by this part 358 within seven business days of any change, and post the date on which the information was updated. A public utility may also post the information required to be posted under part 358 on its OASIS, but is not required to do so.

(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 website 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 §§ 358.5(a) and 358.6, a transmission provider's transmission function employees and marketing function employees may exchange certain non-public transmission function information, as delineated in § 358.7(h)(2), in which case the 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 § 358.7(h)(1) is as follows:

(i) Information pertaining to compliance with Reliability Standards approved by the Commission, and

(ii) Information necessary to maintain or restore operation of the transmission system or generating units, or that may affect the dispatch of generating units.

(i) Posting of waivers. A transmission provider must post on its Internet website 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 each act of waiver.

§ 358.8 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 §§ 358.5 and 358.6 are observed by its employees and by the employees of its affiliates.

(2) A transmission provider must distribute the written procedures referred to in § 358.7(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. The transmission provider must provide training on the standards of conduct to new employees in the categories 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 website.

(d) Books and records. A transmission provider must maintain its books of account and records (as prescribed under parts 101, 125, 201 and 225 of this chapter) separately from those of its affiliates that employ or retain marketing function employees, and these must be available for Commission inspections.