

## Written Procedures Implementing the Standards of Conduct for Transmission Providers

October 1<sup>st</sup>, 2024

The Federal Energy Regulatory Commission (“FERC”) revised its Standards of Conduct for Transmission Providers (“the Standards”) in October, 2008 in FERC Order No. 717. These Written Procedures cite the applicable Standards (highlighted in text boxes below) and explain the actions MEAG Power has taken in consideration of them. The complete Standards are included in the Appendix to this document.

The Standards apply to public utilities that own, operate, or control transmission facilities used for the transmission of electric energy in interstate commerce. In addition, the Standards apply to non-public utilities that have reciprocity open access tariffs.

### § 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.

Transactions with MEAG Power’s transmission customers are conducted solely through MEAG Power’s OASIS. Information for transmission customers (such as MEAG Power’s tariff, rates, service application procedure, interconnection procedure, etc.) is available on MEAG Power’s OASIS. No undue preference is granted for any customer.

### § 358.2 General principles (continued).

(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.

At MEAG Power, transmission function employees are located in the Transmission Department. Certain MEAG Power employees within the Bulk Power Operations Department perform certain marketing function activities. MEAG Power does not have a marketing affiliate. It performs energy sales transactions and marketing function activities through an energy management company, Alliance for Cooperative Energy Services Power Marketing LLC (“ACES”), located in Raleigh, NC. The transmission function employees of MEAG Power operate independently from employees of ACES that perform energy



management and marketing function activities and any MEAG Power employees who perform marketing function activities.

**§ 358.2 General principles (continued).**

(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.

MEAG Power's Standards of Conduct training places emphasis on the "no conduit" rule, instructing employees not to act as a conduit to the extent that they receive non-public transmission information. All MEAG Power personnel who have access to information about transmission, energy, power, gas or marketing functions have been trained in the Standards and have certified as such.

**§ 358.2 General principles (continued).**

(d) ... A transmission provider must provide equal access to non-public transmission function information to all its transmission function customers, affiliated and nonaffiliated, except in the case of confidential customer information or Critical Energy Infrastructure Information.

Transactions with MEAG Power's transmission customers are conducted solely through MEAG's OASIS. Information for transmission customers (such as MEAG's tariff, rates, service application procedure, interconnection procedure, etc.) is available on MEAG's OASIS. No undue preference is granted for any customer.

**§ 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.

**§ 358.3 Definitions (continued).****(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. On-system sales by an intrastate natural gas pipeline, by a Hinshaw interstate pipeline exempt from the Natural Gas Act, or by a local distribution company operating under section 7(f) of the Natural Gas Act.

This version of FERC's Standards of Conduct made a major change in the above definition: "buying" activities are no longer considered a part of the marketing function. The removal of purchases from the definition of marketing functions frees companies to conduct the informational exchanges necessary to engage in integrated resource planning, and eliminates the difficulties which might otherwise be experienced by executive personnel who have overall procurement responsibilities that include both transmission and marketing.

**§ 358.3 Definitions (continued).**

**(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.

The phrases "actively and personally engaged" and "day-to-day" significantly change the impact of the Standards of Conduct on MEAG Power. If an employee regularly carries out or supervises the details of activities, he or she is actively and personally engaged in them; if he or she merely signs off on activities

without having directed or organized them, he or she is not personally engaged in them. Thus, for example, supervisors who are not involved in the negotiation of a gas or electric energy sale, and who do not oversee or provide input into the details of the negotiations being carried out by another employee, but rather simply approve the contract governing the sale, are not marketing function employees. Furthermore, a minimal involvement in transmission and marketing functions will not render a person a transmission or marketing function employee. Therefore, a supervisor who on rare occasions has tangential involvement in a negotiation, such as being called in to meet the negotiating parties from the other side, is not thereby rendered a marketing function employee. This “employee functional” approach is a key change to the Standards of Conduct: now, only marketing function employees (as defined above) must function independently from transmission function employees (defined below).

**§ 358.3 Definitions (continued).**

(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 planning, directing, organizing or carrying out day-to-day transmission operations, including the granting and denying of transmission service requests.

The above definition of transmission functions is directed at short-term real-time operations, including those decisions made in advance of real-time but directed at real-time operations. It does not include long-range planning. At MEAG Power, a number of employees who were considered transmission function employees under the previous versions of the Standards of Conduct will no longer fit the definition. This significant change to the Standards of Conduct will ease the regulatory burden for many employees whose primary job is long-range planning, transmission line design, etc. See also the next definition.

**§ 358.3 Definitions (continued).**

(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.

Field, maintenance and construction workers, as well as engineers and clerical workers, are not normally involved in the day-to-day operations of the transmission system. Therefore, they would not fall within the definition of transmission function employee, unless in addition to functioning in their stated capacity they also engaged in the day-to-day operation of the transmission system.

**§ 358.3 Definitions (continued).**

(j) Transmission function information means information relating to transmission functions.

Examples of transmission function information include available transmission capability, price, curtailments, storage, and balancing. MEAG Power's planned maintenance outages are also considered transmission function information, as maintenance outages can affect available transmission capability.

Rate design, in and of itself, is not a transmission function under the Standards. Transmission customer information is a subset of transmission function information, as it is submitted in connection with a request for transmission service.

**§ 358.3 Definitions (continued).**

(k) Transmission provider means any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce...

(l) Transmission service means the provision of any transmission as defined in § 358.3(f).

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

Transactions with MEAG's transmission customers are conducted solely through MEAG's OASIS. No undue preference is granted for any customer.

**§ 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.

MEAG Power's transmission function employees are located in the Transmission Department. Certain MEAG Power employees within the Bulk Operations Department perform marketing function activities. MEAG Power does not have a marketing affiliate. It performs energy sales transactions and marketing function activities through an energy management company, ACES. The transmission function employees of MEAG Power operate independently from ACES and any MEAG Power employees who perform marketing function activities.

**§ 358.5 Independent functioning rule (continued).**

(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.

MEAG Power does not operate a transmission system control center. MEAG Power's transmission function personnel, who work within the physical confines of the MEAG Transmission Monitoring Center (MTMC), are responsible for scheduling transactions, administering MEAG's Open Access Transmission Tariff ("OATT"), executing transmission service agreements, posting information on the OASIS, and other related activities. Because the MTMC can possess non-public transmission information, MEAG Power's marketing function employees are denied access to the MTMC.

ACES personnel who perform energy management and marketing function activities and MEAG Power personnel who perform marketing function activities do not engage in transmission functions.

**§ 358.5 Independent functioning rule (continued).**

(b) Separation of functions (continued).

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

MEAG Power's transmission function personnel are responsible for scheduling transactions, administering its Open Access Transmission Tariff ("OATT"), executing transmission service agreements, posting

information on the OASIS, and other related activities; they do not engage in marketing function activities.

**§ 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.

MEAG Power's Standards of Conduct training emphasizes the "no conduit" rule, instructing employees not to act as a conduit to the extent that they receive non-public transmission information. All personnel who have access to information about transmission, energy, power, gas or marketing functions have been trained in the Standards and have certified as such. In addition, a copy of these Written Procedures has been supplied to all affected employees and to ACES.

**§ 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.

All affected personnel have received copies of these Written Procedures, the Standards, and other materials that provide a meaningful understanding of the Standards' requirements. All of those employees have been trained in the Standards and understand that they are expected to comply with them. In the event of an unauthorized disclosure of non-public transmission function information, the information that was disclosed will be posted on the MEAG Power internet web site. If non-public transmission customer information, critical energy infrastructure information (CEII), or any other information that the Commission determines to be subject to limited dissemination is disclosed, an appropriate disclosure notification will be posted on the MEAG Power internet website.

**§ 358.7 Transparency rule (Continued).****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.

**§ 358.7 Transparency rule (Continued).****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.

An area has been provided on MEAG Power's Internet web site for posting voluntary consent information.

**§ 358.7 Transparency rule (Continued).****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.

A copy of these Written Procedures has been posted on MEAG Power's Internet web site.

**§ 358.7 Transparency rule (Continued).****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.



MEAG Power does not have a marketing affiliate. It performs energy sales transactions and marketing function activities through an energy management company, ACES.

**§ 358.7 Transparency rule (Continued).**

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

- 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.

MEAG Power's headquarters building is shared by both transmission function employees and marketing function employees. (At MEAG Power, certain non-public transmission function information as defined in § 358.3 is available in the MEAG Transmission Monitoring Center (MTMC) or its backup, which is staffed on a 24/7/365 basis by personnel who have been trained in FERC's Standards of Conduct for Transmission Providers. A limited amount of other non- public transmission function information (including planned transmission maintenance outages which have not yet been posted on MEAG's OASIS) is developed and stored in other areas of the transmission department. All MEAG transmission function employees have been directed to keep non-public transmission function information secured in locked filing cabinets or on computer equipment appropriately secured by passwords.)

MEAG Power also operates a transmission training center in another city. The training center includes backup facilities that would permit the MTMC and/or Bulk Power Operations to conduct business if facilities in the headquarters building are not available due to emergency conditions. The backup transmission function and marketing function facilities are physically separated.

Relevant information about shared facilities has been posted on MEAG Power's Internet web site.

**§ 358.7 Transparency rule (Continued).**

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

- 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.

Although this possibility is remote, a provision has been made to post the relevant information on MEAG Power's Internet web site.

**§ 358.7 Transparency rule (Continued).****(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.

Relevant information about transmission function employees has been posted on MEAG Power's Internet web site.

**§ 358.7 Transparency rule (Continued).****(f) Identification of employee information on the public Internet (Continued).**

(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.

A provision has been made to post the relevant information on MEAG Power's Internet web site.

**§ 358.7 Transparency rule (Continued).****§ 358.7 (g) Timing and general requirements of postings on the public Internet (Continued).**

- 1) § 358.7 (g) 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.

**§ 358.7 Transparency rule (Continued).****§ 358.7 (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.

FERC has eliminated the “corporate separation” approach to the Standards of Conduct, and transmission function employees are no longer barred from interacting with all the employees of a marketing or ACES (only marketing function employees).

Therefore, occasions where transmission function employees legitimately need to interact with employees barred from doing so under the Independent Functioning Rule are greatly reduced from earlier versions of the Standards. This is especially true in the critical areas of reliability and generation dispatch, as marketing function personnel rarely engage in these activities. However, to cover any isolated circumstances that may remain, such as in the case of smaller utilities whose employees may perform multiple job duties, the above exclusion to the Independent Functioning Rule and the No Conduit Rule ensures that where certain critical functions are concerned, employees should not hesitate to interact with one another for fear of violating the Standards. This exclusion does not implicate the processing of transmission service requests from an affiliate, which is permissible. While transmission function employees and marketing function employees may talk about personal matters, which certainly need not be recorded, they are required to function independently from one another with respect to their work activities.

If MEAG Power transmission function employees and marketing function employees need to discuss information concerning MEAG's compliance with NERC Reliability Standards, appropriate records of the discussion will be made and kept for five years.

**§ 358.8 Implementation requirements.****(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.

These Written Procedures are posted on the MEAG Power Internet web site and will be updated as necessary. Electronic copies of the Standards and these Written Procedures have been provided to all affected employees of the Transmission Provider and to ACES.

Training for affected MEAG Power employees is conducted using a computer-based application or in a classroom presentation format. For employees who use the computer-based training, an electronic acknowledgement form attesting to their training is recorded. Employees who receive classroom training sign a (paper) acknowledgement attesting to their training. All affected personnel will be trained on a recurring basis to reinforce the Standards and provide any necessary updated information. All new or transferred employees who will by virtue of their positions be subject to the Standards will undergo training within 30 days.

**358.8 Implementation requirements (Continued).****(c) Training and compliance personnel.**

- 3) 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.
- 4) 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.
- 5) 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

MEAG Power's Chief Compliance Officer is Doug Lego, Senior Vice President of Transmission. He is



responsible for the administration of the Standards and for ensuring that appropriate personnel are trained in the Standards. To carry out activities related to these responsibilities, the Chief Compliance Officer has designated a representative who will undertake day-to-day compliance-related tasks. Among other duties, the Chief Compliance Officer (through his designee) will organize training to ensure that employees understand issues related to the Standards and know how to avoid violations of the Standards. In addition, the Chief Compliance Officer (through his designee) will monitor employment changes of affected personnel to ensure that transfers from a transmission function to a marketing function or to ACES, or vice versa, are posted on the MEAG Power Internet web site. The designee is also available to address questions or issues that employees may have concerning appropriate conduct under the Standards. Employees are encouraged to contact their supervisors or the designated representative of the Chief Compliance Officer if they have questions about the Standards or if they suspect any violation (even if inadvertent) has occurred. Suspected violations must be reported immediately so that appropriate disclosures can be made in a timely manner.

Contacts for Standards of Conduct related questions:

**Chief Compliance Officer**

Doug Lego  
Senior Vice President of Transmission  
770-563-0378

**\*Designated representative**

Rebika Yitna  
Manager of Regulatory Compliance  
770-661-2704

*\*Please call with routine questions  
concerning Standards of Conduct issues*

**358.8 Implementation requirements (Continued).**

**(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.

MEAG Power maintains separate books and records from ACES.

## **APPENDIX**

### **Code of Federal Regulations**

#### **Title 18: Conservation of Power and Water Resources PART 358**

#### **STANDARDS OF CONDUCT**

##### **§ 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 nonaffiliated, 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. On-system sales by an intrastate natural gas pipeline, by a Hinshaw interstate pipeline exempt from the Natural Gas Act, or by a local distribution company operating under section 7(f) of the Natural Gas Act.
- 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. 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.