

SUBCHAPTER S—STANDARDS OF CONDUCT FOR TRANSMISSION PROVIDERS

PART 358—STANDARDS OF CONDUCT

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SOURCE: Order 2004, 68 FR 69157, Dec. 11, 2003, unless otherwise noted.

§ 358.1 Applicability.

(a) This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.

(b) This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce.

(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 facilities and has no access to transmission, customer or market information covered by § 358.5(b), it may request an exemption from this part.

(d) A Transmission Provider may file a request for an exemption from all or some of the requirements of this part for good cause.

[Order 2004, 68 FR 69157, Dec. 11, 2003, as amended by Order 2004–A, 69 FR 23587, Apr. 29, 2004]

§ 358.2 General principles.

(a) A Transmission Provider's employees engaged in transmission system operations must function independent from the employees of its Marketing and Energy Affiliates.

(b) A Transmission Provider must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis, and must not operate its transmission system to preferentially benefit its Marketing or Energy Affiliates.

[Order 2004–A, 69 FR 23587, Apr. 29, 2004]

§ 358.3 Definitions.

(a) *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 subpart A of part 157 or 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 that is not interconnected with the jurisdictional facilities of any affiliated interstate natural gas pipeline, has no exclusive franchise area, no captive rate payers and no market power.

(b) *Affiliate* means:

(1) Another person which controls, is controlled by or is under common control with, such person. An Affiliate includes a division that operates as a functional unit, and

(2) For any exempt wholesale generator, as defined under Section 32(a) of the Public Utility Holding Company Act of 1935, as amended, the same as provided in Section 214 of the Federal Power Act.

(c) *Control* (including the terms “controlling,” “controlled by,” and “under common control with”) as used in this part and § 250.16 of this chapter, includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.

(d) *Energy Affiliate* means an affiliate of a Transmission Provider that:

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(1) Engages in or is involved in transmission transactions in U.S. energy or transmission markets; or

(2) Manages or controls transmission capacity of a Transmission Provider in U.S. energy or transmission markets; or

(3) Buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or

(4) Engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets.

(5) An LDC division of an electric public utility Transmission Provider shall be considered the functional equivalent of an Energy Affiliate, unless it qualifies for the exemption in § 358.3(d)(6)(v).

(6) An Energy Affiliate does not include:

(i) A foreign affiliate that does not participate in U.S. energy markets;

(ii) An affiliated Transmission Provider or an interconnected foreign affiliated natural gas pipeline that is engaged in natural gas transmission activities which are regulated by the state, provincial or national regulatory boards of the foreign country in which such facilities are located.

(iii) A holding, parent or service company that does not engage in energy or natural gas commodity markets or is not involved in transmission transactions in U.S. energy markets;

(iv) An affiliate that purchases natural gas or energy solely for its own consumption. “Solely for its own consumption” does not include the purchase of natural gas or energy for the subsequent generation of electricity.

(v) A State-regulated local distribution company that acquires interstate transmission capacity to purchase and resell gas only for on-system sales, and otherwise does not engage in the activities described in §§ 358.3(d)(1), (2), (3) or (4), except to the limited extent necessary to support on-system sales and to engage in *de minimus* sales necessary to remaining in balance under applicable pipeline tariff requirements.

(vi) A processor, gatherer, Hinshaw pipeline or an intrastate pipeline that makes incidental purchases or sales of *de minimus* volumes of natural gas to remain in balance under applicable

pipeline tariff requirements and otherwise does not engage in the activities described in §§ 358.3(d)(1), (2), (3) or (4).

(e) *Marketing, sales or brokering* means a sale for resale of natural gas or electric energy in interstate commerce. Sales and marketing employee or unit includes:

(1) An interstate natural gas pipeline’s sales operating unit, to the extent provided in § 284.286 of this chapter, and

(2) A public utility Transmission Provider’s energy sales unit, unless such unit engages solely in bundled retail sales.

(3) Marketing or sales does not include incidental purchases or sales of natural gas to operate interstate natural gas pipeline transmission facilities.

(f) *Transmission* means natural gas transportation, storage, exchange, backhaul, or displacement service provided pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter; and electric transmission, network or point-to-point service, reliability service, ancillary services or other methods of transportation or the interconnection with jurisdictional transmission facilities.

(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) *Open Access Same-time Information System or OASIS* refers to the Internet location where a public utility posts the information, by electronic means, required by part 37 of this chapter.

(i) *Internet Web site* refers to the Internet location where an interstate natural gas pipeline posts the information, by electronic means, required by §§ 284.12 and 284.13 of this chapter.

(j) *Transmission Function employee* means an employee, contractor, consultant or agent of a Transmission Provider who conducts transmission system operations or reliability functions, including, but not limited to, those who are engaged in day-to-day duties

and responsibilities for planning, directing, organizing or carrying out transmission-related operations.

(k) *Marketing Affiliate* means an Affiliate as that term is defined in § 358.3(b) or a unit that engages in marketing, sales or brokering activities as those terms are defined at § 358.3(e).

[Order 2004, 68 FR 69157, Dec. 11, 2003, as amended by Order 2004-A, 69 FR 23587, Apr. 29, 2004; Order 2004-B, 69 FR 48386, Aug. 10, 2004; Order 2004-C, 70 FR 291, Jan. 4, 2005]

§ 358.4 Independent functioning.

(a) *Separation of functions.* (1) Except in emergency circumstances affecting system reliability, the transmission function employees of the Transmission Provider must function independently of the Transmission Provider's Marketing or Energy Affiliates' employees.

(2) Notwithstanding any other provisions in this section, in emergency circumstances affecting system reliability, a Transmission Provider may take whatever steps are necessary to keep the system in operation. Transmission Providers must report to the Commission and post on the OASIS or Internet website, as applicable, each emergency that resulted in any deviation from the standards of conduct, within 24 hours of such deviation.

(3) The Transmission Provider is prohibited from permitting the employees of its Marketing or Energy Affiliates from:

(i) Conducting transmission system operations or reliability functions; and

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

(4) Transmission Providers are permitted to share support employees and field and maintenance employees with their Marketing and Energy Affiliates.

(5) Transmission Providers are permitted to share with their Marketing or Energy Affiliates senior officers and directors who are not "Transmission Function Employees" as that term is defined in § 358.3(j). A Transmission Provider may share transmission information covered by § 358.5(a) and (b) with its shared senior officers and di-

rectors provided that they do not participate in directing, organizing or executing transmission system operations or marketing functions; or act as a conduit to share such information with a Marketing or Energy Affiliate.

(6) Transmission Providers are permitted to share risk management employees that are not engaged in Transmission Functions or sales or commodity Functions with their Marketing and Energy Affiliates.

(b) *Identifying affiliates on the public Internet.* (1) A Transmission Provider must post the names and addresses of Marketing and Energy Affiliates on its OASIS or Internet website.

(2) A Transmission Provider must post on its OASIS or Internet website, as applicable, a complete list of the facilities shared by the Transmission Provider and its Marketing and Energy Affiliates, including the types of facilities shared and their addresses.

(3) A Transmission Provider must post comprehensive organizational charts showing:

(i) The organizational structure of the parent corporation with the relative position in the corporate structure of the Transmission Provider, Marketing and Energy Affiliates;

(ii) For the Transmission Provider, the business units, job titles and descriptions, and chain of command for all positions, including officers and directors, with the exception of clerical, maintenance, and field positions. The job titles and descriptions must include the employee's title, the employee's duties, whether the employee is involved in transmission or sales, and the name of the supervisory employees who manage non-clerical employees involved in transmission or sales.

(iii) For all employees who are engaged in transmission functions for the Transmission Provider and marketing or sales functions or who are engaged in transmission functions for the Transmission Provider and are employed by any of the Energy Affiliates, the Transmission Provider must post the name of the business unit within the marketing or sales unit or the Energy Affiliate, the organizational structure in which the employee is located, the employee's name, job title and job description in the marketing or

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sales unit or Energy Affiliate, and the employee's position within the chain of command of the Marketing or Energy Affiliate.

(iv) The Transmission Provider must update the information on its OASIS or Internet website, as applicable, required by §§ 358.4(b)(1), (2) and (3) within seven business days of any change, and post the date on which the information was updated.

(v) The Transmission Provider must post information concerning potential merger partners as affiliates within seven days after the potential merger is announced.

(vi) All OASIS or Internet website postings required by part 358 must comply, as applicable, with the requirements of § 37.6 or §§ 284.12(a) and (c)(3)(v) of this chapter.

(c) *Transfers.* Employees of the Transmission Provider, Marketing or Energy Affiliates are not precluded from transferring among such functions as long as such transfer is not used as a means to circumvent the Standards of Conduct. Notices of any employee transfers between the Transmission Provider, on the one hand, and the Marketing or Energy Affiliates, on the other, must be posted on the OASIS or Internet website, as applicable. The information to be posted must include: the name of the transferring employee, the respective titles held while performing each function (*i.e.*, on behalf of the Transmission Provider, Marketing or Energy Affiliate), and the effective date of the transfer. The information posted under this section must remain on the OASIS or Internet website, as applicable, for 90 days.

(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 Energy Affiliates and these must be available for Commission inspections.

(e) *Written procedures.* (1) By February 9, 2004, each Transmission Provider is required to file with the Commission and post on the OASIS or Internet website a plan and schedule for implementing the standards of conduct.

(2) Each Transmission Provider must be in full compliance with the Standards of Conduct by September 22, 2004.

(3) The Transmission Provider must post on the OASIS or Internet web site, current written procedures implementing the standards of conduct in such detail as will enable customers and the Commission to determine that the Transmission Provider is in compliance with the requirements of this section by September 22, 2004 or within 30 days of becoming subject to the requirements of part 358.

(4) Transmission Providers will distribute the written procedures to all Transmission Provider employees and employees of the Marketing and Energy Affiliates.

(5) Transmission Providers shall train officers and directors as well as employees with access to transmission information or information concerning gas or electric purchases, sales or marketing functions. The Transmission Provider shall require each employee to sign a document or certify electronically signifying that s/he has participated in the training.

(6) Transmission Providers are required to designate a Chief Compliance Officer who will be responsible for standards of conduct compliance.

[Order 2004, 68 FR 69157, Dec. 11, 2003, as amended by Order 2004-A, 69 FR 23588, Apr. 29, 2004; Order 2004-B, 69 FR 48386, Aug. 10, 2004; Order 2004-C, 70 FR 291, Jan. 4, 2005]

§ 358.5 Non-discrimination requirements.

(a) *Information access.* (1) The Transmission Provider must ensure that any employee of its Marketing or Energy Affiliate may only have access to that information available to the Transmission Provider's transmission customers (*i.e.*, the information posted on the OASIS or Internet website, as applicable), and must not have access to any information about the Transmission Provider's transmission system that is not available to all users of an OASIS or Internet website, as applicable.

(2) The Transmission Provider must ensure that any employee of its Marketing or Energy Affiliate is prohibited from obtaining information about the Transmission Provider's transmission

system (including, but not limited to, information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans or similar information) through access to information not posted on the OASIS or Internet website or that is not otherwise also available to the general public without restriction.

(b) *Prohibited disclosure.* (1) An employee of the Transmission Provider may not disclose to its Marketing or Energy Affiliates any information concerning the transmission system of the Transmission Provider or the transmission system of another (including, but not limited to, information received from non-affiliates or information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans, or similar information) through non-public communications conducted off the OASIS or Internet website, through access to information not posted on the OASIS or Internet website that is not contemporaneously available to the public, or through information on the OASIS or Internet website that is not at the same time publicly available.

(2) A Transmission Provider may not share any information, acquired from non-affiliated transmission customers or potential non-affiliated transmission customers, or developed in the course of responding to requests for transmission or ancillary service on the OASIS or Internet website, with employees of its Marketing or Energy Affiliates, except to the limited extent information is required to be posted on the OASIS or Internet website in response to a request for transmission service or ancillary services.

(3) If an employee of the Transmission Provider discloses information in a manner contrary to the requirements of § 358.5(b)(1) and (2), the Transmission Provider must immediately post such information on the OASIS or Internet Web site.

(4) A non-affiliated transmission customer may voluntarily consent, in writing, to allow the Transmission Provider to share the non-affiliated

customer's information with a Marketing or Energy Affiliate. If a non-affiliated customer authorizes the Transmission Provider to share its information with a Marketing or Energy Affiliate, the Transmission Provider must post notice on the OASIS or 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.

(5) A Transmission Provider is not required to contemporaneously disclose to all transmission customers or potential transmission customers information covered by § 358.5(b)(1) if it relates solely to a Marketing or Energy Affiliate's specific request for transmission service.

(6) A Transmission Provider may share generation information necessary to perform generation dispatch with its Marketing and Energy Affiliate that does not include specific information about individual third party transmission transactions or potential transmission arrangements.

(7) Neither a Transmission Provider nor an employee of a Transmission Provider is permitted to use anyone as a conduit for sharing information covered by the prohibitions of §§ 358.5(b)(1) and (2) with a marketing or Energy Affiliate. A Transmission Provider may share information covered by §§ 358.5(b)(1) and (2) with employees permitted to be shared under §§ 358.4(a)(4), (5) and (6) provided that such employees do not act as a conduit to share such information with any Marketing or Energy Affiliates.

(8) A Transmission Provider is permitted to share information necessary to maintain the operations of the transmission system with its Energy Affiliates.

(c) *Implementing tariffs.* (1) A Transmission Provider must strictly enforce all tariff provisions relating to the sale or purchase of open access transmission service, if these tariff provisions do not permit the use of discretion.

(2) A Transmission Provider must apply all tariff provisions relating to the sale or purchase of open access

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transmission service in a fair and impartial manner that treats all transmission customers in a non-discriminatory manner, if these tariff provisions permit the use of discretion.

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

(4) The Transmission Provider must maintain a written log, available for Commission audit, detailing the circumstances and manner in which it exercised its discretion under any terms of the tariff. The information contained in this log is to be posted on the OASIS or Internet Web site within 24 hours of when a Transmission Provider exercises its discretion under any terms of the tariff.

(5) The Transmission Provider may not, through its tariffs or otherwise, give preference to its Marketing or Energy Affiliate, over any other wholesale customer 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) *Discounts.* Any offer of a discount for any transmission service made by the Transmission Provider must be posted on the OASIS or Internet website contemporaneous with the time that the offer is contractually binding. The posting must include: the name of the customer involved in the discount and whether it is an affiliate or whether an affiliate is involved in the transaction, the rate offered; the maximum rate; the time period for which the discount would apply; the quantity of power or gas upon which the discount is based; the delivery points under the transaction; and any conditions or requirements applicable to the discount. The posting must remain on the OASIS or Internet website for 60 days from the date of posting.

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