

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—

(1) With respect to a natural gas pipeline Transmission Provider, engages in “marketing and brokering” activities as those terms are defined at § 358.3(1); and

(2) With respect to an electric Transmission Provider, engages in marketing, sales or brokering activities as those terms are defined at § 358.3(e).

(1) *Marketing or brokering* under § 358.3(e) means a sale of natural gas to any person or entity by a seller that is not an interstate pipeline, except when:

(1) The seller is selling gas solely from its own production;

(2) The seller is selling gas solely from its own gathering or processing facilities; or

(3) The seller is an intrastate natural gas pipeline or a local distribution company making an on-system sale.

[Order 690, 72 FR 2432, Jan. 19, 2007, as amended at Order 690-A, 72 FR 14238, Mar. 27, 2007]

§ 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 Web site, 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 § 385.5(a) and (b) with its shared senior officers and directors 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. This provision does not apply to natural gas transmission providers.

(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 Web site.

(2) A Transmission Provider must post on its OASIS or Internet Web site, 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 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 Web site, 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 Web site 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 Con-

duct. 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 Web site, 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 Web site, 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 Web site 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.

§ 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 Web site, 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 Web site, 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 Web site 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 Web site, through access to information not posted on the OASIS or Internet Web site that is not contemporaneously available to the public, or through information on the OASIS or Internet

Web site 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 Web site, 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 Web site 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