

# FERC STANDARDS OF CONDUCT COMPLIANCE PLAN

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## Table of Contents

1.0	Purpose .....	3
2.0	Background .....	3
3.0	Scope and Applicability .....	4
4.0	Terms and Definitions .....	4
5.0	Responsibilities .....	5
6.0	Monitoring and Enforcement .....	5
7.0	Non-Discrimination Requirements (18 CFR 358.4) .....	6
7.1	General Rule (18 CFR 358.4(a-d)) .....	6
8.0	Independent Functioning Rule (18 CFR 358.5) .....	6
8.1	General Rule (18 CFR 358.5(a)) .....	6
8.2	Separation of Functions (18 CFR 358.5(b)) .....	7
9.0	No Conduit Rule (18 CFR 358.6) .....	7
9.1	Prohibited Communications .....	7
9.2	Permitted Communications/Exceptions (18 CFR 358.7(h)) .....	8
10.0	Transparency Rule (18 CFR 358.7) .....	8
10.1	Contemporaneous Disclosures (18 CFR 358.7(a)) .....	9
10.2	Posting Written Procedures on ATC's Public Internet Website (18 CFR 358.7(d)) .....	9
10.3	Identification of Affiliate Information on ATC's Public Internet Website (18 CFR 358.7(e)) .....	9
10.4	Identification of Employee Information of ATC's Public Internet Website (18 CFR 358.7(f)) .....	10
10.5	Timing and General Requirements of Postings on ATC's Public Internet Website (18 CFR 358.7(g)) .....	10
10.6	Suspension of Posting Requirements Due to Emergency Conditions (18 CFR 358.7(g)(2)) .....	10
11.0	Implementation Requirements (18 CFR 358.8) .....	11
11.1	Distribution of Compliance Plan (18 CFR 358.8(b)(2)) .....	11
11.2	Training (18 CFR 358.8(c)(1)) .....	11
11.3	Designation of Chief Compliance Officer (18 CFR 358.8(c)(2)) .....	12
11.4	Books and Records (18 CFR 358.8(d)) .....	12
12.0	APPENDIX A: FERC STANDARDS OF CONDUCT RULE .....	13

## 1.0 Purpose

This Compliance Plan identifies the procedures by which American Transmission Company LLC (“ATC”) complies with the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) Standards of Conduct. This Compliance Plan constitutes the written procedures used by ATC to implement the FERC Standards of Conduct, 18 CFR Part 358, *et seq.*, and, in particular, the Compliance Plan applies to communications involving Transmission Function Employees, including communication with employees with Transmission Function Information, and Marketing Function Employees (MFEs). All ATC Transmission Function Employees, MFEs, and Other Employees,<sup>1</sup> including but not limited to senior management and supervisory personnel, are responsible for adhering to this Compliance Plan and the FERC Standards of Conduct.

## 2.0 Background

The purpose of the FERC Standards of Conduct is to assure that transmission providers, such as ATC, do not provide preferential treatment or access to information about transmission that would unfairly benefit their own or their Affiliates’ sales to the detriment of competitive markets.

The Standards of Conduct set forth four general principles. These principles include:

1. 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.
2. A transmission provider’s transmission function employees must function independently from its marketing function employees, except as permitted in the FERC Standard of Conduct Regulations, 18 C.F.R. sec. 358, *et seq.*, or otherwise permitted by Commission Order.
3. 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 (NPTFI) to the transmission provider’s MFEs.
4. A transmission provider must provide equal access to NPTFI disclosed to MFEs to all its transmission customers, affiliated and non-affiliated, except as expressly permitted in the FERC Standard of Conduct regulations or as otherwise permitted by Commission order.

Based on these four principles, FERC Standards of Conduct effected four general rules which include the following:

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<sup>1</sup> All capitalized terms used herein are defined in Section 4.0, Terms and Conditions. Those capitalized terms that are not included in Section 4.0 shall have the meaning ascribed to them by FERC’s regulations at 18 CFR Part 358 *et seq.*

1. Non-Discrimination Requirements (See Section 7.0)
2. Independent Functioning Rule (See Section 8.0)
3. No-Conduit Rule (See Section 9.0)
4. Transparency Rule (See Section 10.0)

### 3.0 Scope and Applicability

ATC is subject to the Standards of Conduct Rules of FERC (18 CFR 385, *et seq.*). FERC has issued regulations titled “Standards of Conduct” which are codified in the Code of Federal Regulations at 18 CFR Part 358, *et seq.* The Standards of Conduct set forth legal requirements applicable to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce. The regulation designates such utilities as “transmission providers.” ATC owns and operates transmission facilities at the direction of the Midcontinent Independent System Operator, Inc. (“MISO”) and therefore, is a Transmission Provider subject to the FERC Standards of Conduct regulations. ATC receives and communicates NPTFI relating to its transmission system to both Affiliated and non-Affiliated interconnected entities in order to properly, safely and reliably operate ATC’s electric transmission system in conjunction with the interconnected electric generating, transmission and distribution system. ATC and ATC’s Affiliates and non-Affiliates must make certain that NPTFI is disseminated in accordance with FERC’s Standards of Conduct regulations and that ATC treats its affiliates in a non-unduly discriminatory or preferential manner.

### 4.0 Terms and Definitions

Capitalized terms in this Compliance Plan are defined in the FERC Standards of Conduct Rule (18 CFR 358, *et seq.*). The Standards of Conduct Rule is included in Appendix A. The following terms and definitions supplement those definitions set forth in 18 CFR Part 358. To the extent that there is any discrepancy in the definition of capitalized terms used in this Compliance Plan and in the FERC Standards of Conduct regulations, the definition set forth in the FERC Standards of Conduct will control.

**Internet Website** refers to Internet locations where ATC posts the information, by electronic means, required under 18 CFR 358. As used in ATC’s Compliance Plan, Internet Website is a reference to either ATC’s corporate public Internet Website or ATC’s web pages on the Midcontinent ISO Open Access Same Time Information System (OASIS).

**Other Employee** means an employee, contractor, consultant or agent of ATC or of an Affiliate of ATC who is not considered and classified as either a Transmission Function Employee or a MFE.

**Standards of Conduct Agreement (SOCA)** refers to an agreement entered into by ATC and its affiliated or interconnected entities that defines responsibilities and the terms and conditions under which information is exchanged between the entities to assure such exchanges are performed in accordance with the requirements of the FERC Standards of Conduct regulations. The exchange of information between ATC and its Affiliated and non-Affiliated interconnected entities shall be performed in accordance with the provisions of a Standards of Conduct Agreement (SOCA). The

SOCA also sets forth training, information exchange, and recordkeeping requirements necessary to support compliance with the FERC Standards of Conduct. The SOCA provides assurance that the information required to be exchanged between ATC and its Affiliated and non-Affiliated interconnected entities to assure the safe and reliable operation of the transmission system is performed in conformance with the FERC Standards of Conduct. The use of the SOCA provides the basis (1) for ATC to control and monitor the exchange of information, (2) to secure the required training, and (3) to demonstrate responsibilities are defined to assure conformance with the Standards of Conduct Rule and ATC's Compliance Plan. For additional information see ATC's SOCA Procedure under "*FERC Standards of Conduct*" on [PowerLine](#).

## 5.0 Responsibilities

### *ATC Employees*

All ATC employees are individually responsible for compliance with the Standards of Conduct and this Plan.

### *Chief Compliance Officer (CCO)*

Implements, maintains and monitors compliance with FERC Standards of Conduct and ATC Compliance Plan, including answering questions raised by employees and providing advice regarding compliance.

Responsible for the content of these procedures and is responsible for ensuring that these procedures comply with the FERC Standards of Conduct and any future regulations adopted by the Commission.

Provides guidance regarding compliance with the FERC Standards of Conduct to all affected employees.

Ensures proper documentation of Standards of Conduct issues and matters. Ensures that documentation is retained for requisite statutory period.

## 6.0 Monitoring and Enforcement

Employees who fail to comply with the Standards of Conduct are subject to disciplinary action, up to and including termination.

Any employee who knows of or suspects that a violation or non-compliance of the Standards of Conduct or ATC's Compliance Plan has an obligation to report such non-compliance or violation immediately. Known or suspected violations shall be reported to ATC's Chief Compliance Officer (CCO) or a supervisor or company officer who should then notify the CCO immediately. The CCO shall determine the need to, and take appropriate action to post, report and investigate the known or suspected violation.

## **7.0 Non-Discrimination Requirements (18 CFR 358.4)**

### ***7.1 General Rule (18 CFR 358.4(a-d))***

Relevant FERC Standards of Conduct regulations require transmission providers to (1) 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, (2) 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, (3) 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), and (4) to process all similar requests for transmission in the same manner and within the same period of time.

ATC transferred operational control of its transmission facilities to the Midcontinent Transmission System Operator, Inc., in 2002. MISO now provides transmission service over ATC-owned transmission facilities subject to the terms and conditions of the MISO Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff). ATC operates transmission facilities that it owns at MISO's direction. Therefore, ATC has no control over or responsibility regarding enforcement of MISO Tariff provisions, sale or provision of transmission service under the MISO Tariff, and/or processing requests for transmission service under the MISO Tariff.

## **8.0 Independent Functioning Rule (18 CFR 358.5)**

### ***8.1 General Rule (18 CFR 358.5(a))***

ATC is a stand-alone transmission company and does not own or operate any generation or distribution assets. ATC engages only in transmission operations and performs Transmission Functions as defined in section 358.3 (h) of 18 CFR 358. To perform such Transmission Functions, ATC employs Transmission Function Employees. ATC performs no Marketing Functions as defined by section 358.3(c) of 18 CFR 358 and as such ATC employs no MFEs.

ATC's Affiliated interconnected entities perform Marketing Functions and/or employ MFEs. ATC is a separate company with separate offices from its Affiliated or non-Affiliated interconnected companies. The separation of the companies and the associated separation of Transmission Function Employees from MFEs is to ensure independent functioning as required by Section 358.5(a).

ATC and ATC's Affiliated and non-Affiliated interconnected entities employ Other Employees that are neither MFEs nor Transmission Function Employees.

## **8.2 Separation of Functions (18 CFR 358.5(b))**

The CCO will maintain a list of Affiliated employees that have been identified as MFEs and assume responsibility for assuring the continued separation of Transmission and Marketing Functions and to enforce the prohibitions required by Sections 358.5(b)(1) and 358.5(b)(2).

Employees of ATC's Affiliates that have been identified as MFEs are prohibited from conducting Transmission Functions. Similarly, ATC employees that have been identified as Transmission Function Employees are prohibited from conducting Marketing Functions.

Access to each of ATC's system operations centers is strictly limited to Transmission Function Employees or other authorized employees providing support of system operations. MFEs are prohibited from gaining access to ATC's system operating centers. Access to the ATC system operations centers is positively controlled by security features and access procedures. ATC employees are prohibited from allowing MFEs to have access to ATC's System Control Centers, which are used for transmission operations.

In addition to physical separation of the Transmission Function Employees from MFEs, ATC administers computer and cyber security programs that control access to ATC's computer systems. ATC's computer security processes assure that unauthorized employees, including Affiliates' MFEs, are not able to access ATC computer systems.

## **9.0 No Conduit Rule (18 CFR 358.6)**

### **9.1 Prohibited Communications**

ATC employees shall not disclose to Affiliates' MFEs any NPTFI, except such information permitted under 18CFR 358.7(h)(2)(i) or (ii) as summarized in Section 8.2 below. ATC employees should determine whether the recipient is authorized to receive NPTFI per the FERC Standards of Conduct regulations and the applicable Standards of Conduct Agreement prior to sharing NPTFI with any Affiliate interconnected entity employees. An ATC employee should consult the ATC Marketing Function Employee List under "*FERC Standards of Conduct*" on [PowerLine](#); ask a supervisor; and/or contact Compliance and Risk Management Department to determine if a recipient is an Affiliate MFE.

ATC employees are prohibited from using any employee as a conduit of NPTFI to MFEs. ATC employees may allow MFEs to participate in meetings as long as NPTFI is not shared with MFEs. For purposes of this Compliance Plan, a "meeting" includes, but is not limited to, face-to-face meetings, telephone and conference calls.

ATC Transmission Function Employees and Other Employees are prohibited from disclosing NPTFI to any person that might act as a conduit of such non-public information to MFEs of Affiliated entities.

ATC Transmission Function Employees and Other Employees are prohibited from disclosing NPTFI to a non-Affiliated entity with the intent to provide to that non-Affiliate an unduly preferential competitive advantage in the wholesale electric marketplace.

## 9.2 Permitted Communications/Exceptions (18 CFR 358.7(h))

In the day-to-day operation of ATC's Affiliated and non-Affiliated entities' facilities and systems, the Affiliates' and non-Affiliates' Other Employees (*i.e.*, non-MFEs) may receive NPTFI and other information from ATC to assure the safe and reliable operation of the Affiliates' and non-Affiliates' facilities and transmission system and to assure compliance with the NERC Reliability Standards. To the extent that ATC provides NPTFI to Other Employees (non-MFEs), these Other Employees who receive such NPTFI are not permitted to disclose or act a conduit of such NPTFI received from ATC to the Affiliates' or non-Affiliates' Marketing Function Employees.

ATC Employees should clearly mark all e-mails, documents or other communications that contain NPTFI with the following header or another substantially similar message:

*“CONFIDENTIAL – Non-Public Transmission Function Information:*

*The information provided in this communication is confidential information and is considered non-public Transmission Function Information that relates to the status or availability of the transmission system. Under the FERC Standards of Conduct rules, this information may not be shared with marketing function employees. Persons engaged in marketing functions, as defined by the FERC Standards of Conduct rule, whether in your organization or any affiliated or unaffiliated organization, are prohibited from receiving or reviewing this information. You may share this information with persons that are not engaged in marketing functions, but you may not share this information with persons outside of your organization. If you forward this information to a person engaged in marketing functions, the Standards of Conduct may have been violated. Do not delete this notification or separate it from the information provided. If you receive this information in error, you are asked to delete or destroy any copies and to contact Doug Johnson of the American Transmission Company immediately at: [dfjohnson@atcllc.com](mailto:djohnson@atcllc.com).”*

ATC may, in its discretion, provide NPTFI to Affiliates' MFEs in accordance with 18 CFR §358.7(h)(2)(i) and (ii), provided that, in ATC's sole judgment, there are circumstances that warrant providing the NPTFI to such MFEs of Affiliated entities rather than providing such NPTFI to Other Employees of the Affiliated or non-Affiliated interconnected entities. In the event that ATC discloses such NPTFI to an Affiliates' MFEs, ATC will record those conversations and such records will be retained by ATC for a period of five (5) years following the date of such disclosure.

## 10.0 Transparency Rule (18 CFR 358.7)

In accordance with the provisions of Section 358.7 of the FERC regulations, ATC will administer and maintain an Internet Website and/or OASIS Website that is used to: 1) make contemporaneous disclosures of information, 2) post written procedures, 3) identify required Affiliate information, and 4) identify required employee information. The ATC Internet Website and/or OASIS

Websites will be organized such that the postings required by 18 CFR 358.7 will be sufficiently prominent as to be readily accessible.

The CCO will maintain ATC's public Internet Website and/or OASIS Website and assure the Internet Website and/or OASIS Website conforms to the requirements of 18 CFR 358.7 as described in Section 10 including (1) monitoring and updating informational postings to ensure that data is current and correct, consistent with the procedures described in Section 8, (2) authorizing and documenting the suspension of posting, and (3) notifying the Commission and seek approval from the Commission for the authority to continue to be exempt from the posting requirements beyond a thirty (30) day period, if necessary.

### ***10.1 Contemporaneous Disclosures (18 CFR 358.7(a))***

If NPTFI is disclosed in a manner contrary to the requirements of Section 358.6, ATC will immediately post the information which was disclosed on ATC's public Internet Website and/or OASIS Website.

If NPTFI is disclosed in a manner contrary to the requirements of Section 358.6, which involves customer information or CEII as defined in 388.113(c)(1), or any other information the Commission by law has determined to be subject to limited dissemination, ATC will immediately post notice on its Internet Website or OASIS Website that such information was disclosed. For such instances of disclosure, the specific information which was disclosed will not be posted to ATC's Internet Website/OASIS Website, but notice that information was disclosed will be posted.

As an exclusion to the contemporaneous disclosure requirement, ATC is not required to make contemporaneous disclosures for specific transaction information. In accordance with 358.7(b), ATC's Transmission Function Employees may discuss with its Affiliates' MFEs a specific request for transmission service submitted by the MFE. For such specific requests, ATC is not required to contemporaneously disclose the information otherwise covered by Section 358.6 if the information relates solely to a MFE's specific request for transmission service.

### ***10.2 Posting Written Procedures on ATC's Public Internet Website (18 CFR 358.7(d))***

ATC will post on its public Internet Website and/or OASIS Website this Compliance Plan which contains the procedures for implementing the FERC Standards of Conduct.

### ***10.3 Identification of Affiliate Information on ATC's Public Internet Website (18 CFR 358.7(e))***

ATC will post and maintain on its public Internet Website/OASIS Website the names and addresses of its Affiliates that employ and retain Marketing Function Employees.

ATC's Internet Website/OASIS Website will also include a list of the employee-staffed facilities shared by Transmission Function Employees and MFEs. If any such facilities are identified, the Internet Website/OASIS Website posted list will include a summary of the types of facilities shared and the address of the facilities. ATC does not share, and does

not anticipate sharing in the future, any facilities regularly used or occupied with any other entity, including any Affiliated entities that employ MFEs.

ATC will post on its Internet Website/OASIS Website information concerning potential merger partners as Affiliates that may employ or retain MFEs. Such public posting will be made by ATC within seven days after the potential merger is announced.

#### ***10.4 Identification of Employee Information of ATC's Public Internet Website (18 CFR 358.7(f))***

ATC will post on its Internet Website/OASIS Website the job titles and job descriptions of all employees that have been identified as Transmission Function Employees.

ATC will post a notice on its Internet Website/OASIS Website of any employee transfers that involve the transfer of a Transmission Function Employee to a position as an MFE, or any transfer of a MFE to a position as a Transmission Function Employee. The information to be posted will include: 1) the name of the transferring employee, 2) the respective titles held while performing each function (*i.e.*, as a Transmission Function Employee and as a MFE and 3) the effective date of the transfer. All such information posted regarding job transfers shall remain on ATC's Internet Website/OASIS Website for a minimum of ninety (90) days.

#### ***10.5 Timing and General Requirements of Postings on ATC's Public Internet Website (18 CFR 358.7(g))***

If any changes occur regarding the information which is required to be posted in accordance with Part 358, ATC will update its Internet Website/OASIS Website within seven days of occurrence of the change. Each time information is updated on ATC's Internet Website/OASIS Website, the date on which the update was made shall be noted on the posting.

#### ***10.6 Suspension of Posting Requirements Due to Emergency Conditions (18 CFR 358.7(g)(2))***

If ATC's business operations are severely disrupted by an emergency condition such as an ice storm, earthquake, flood, fire or hurricane, ATC may suspend the posting requirements of Part 358. The suspension of posting requirements will be authorized and documented by ATC's CCO. The authorization to suspend the posting requirements may not last for a period of more than thirty (30) days.

If ATC's CCO determines that the emergency condition will continue to severely disrupt ATC's business operations beyond thirty (30) days, ATC will notify the Commission and seek approval from the Commission for the authority to continue to be exempt from the posting requirements beyond a thirty (30) day period.

## **11.0 Implementation Requirements (18 CFR 358.8)**

In accordance with Section 358(b)(1) of the FERC Standards of Conduct, ATC has implemented measures to ensure the requirements of the “independent functioning” and the “no conduit” provisions are observed by ATC’s employees and employees of ATC’s Affiliated and non-Affiliated interconnected entities. These measures will include: 1) the administration of a Standards of Conduct Agreement (SOCA) with appropriate Affiliated and non-Affiliated interconnected entities, 2) the distribution of the ATC Compliance Plan to appropriate ATC and Affiliated company employees and posting of the Compliance Plan on ATC’s Internet Website and/or OASIS Website, 3) a training program for ATC and/or Affiliated and non-Affiliated company Transmission Function Employees, MFEs, officers, directors and any Other Employees likely to become privy to Transmission Function Information, and 4) the designation of a CCO who has responsibility for and monitors Standards of Conduct compliance.

### ***11.1 Distribution of Compliance Plan (18 CFR 358.8(b)(2))***

Section 358.8(b)(2) of the Rule requires ATC to distribute the Compliance Plan to all of its Transmission Function Employees and MFEs, officers, directors, supervisory employees and any Other Employees likely to become privy to NPTFI.

A copy of ATC’s Compliance Plan will be distributed annually to each employee required to take the annual Standards of Conduct training. The distribution of the Compliance Plan will typically occur at the time that annual Standards of Conduct training is provided. The Compliance Plan will also be available to all employees on the ATC’s Internet Website.

For those entities that have executed a SOCA with ATC, the Compliance Plan will be distributed to employees within those Affiliated and non-Affiliated entities according to the provisions of the SOCA.

### ***11.2 Training (18 CFR 358.8(c)(1))***

Per 18 CFR §358(c)(1), ATC will provide annual training on the Standards of Conduct to all ATC internal employees. This will ensure that ATC trains all of its Transmission Function Employees, officers, directors, supervisory employees, and any Other Employee likely to become privy to NPTFI. ATC will also provide annual training on the Standards of Conduct to all applicable Contingent Workers (*i.e.* vendors, contractors and consultants likely to become privy to NPTFI). Training records for both ATC internal employees and Contingent Workers are stored within the ATC Learning Management System (LMS). These training records are reviewed and updated on an as needed basis and on an annual basis.

The ATC Standards of Conduct training module will primarily be administered as computer-based training. Each ATC employee taking the computer-based training shall certify electronically that the training has been completed. As an alternative to the computer-based training, the training may be completed in a typical classroom setting or

by the employee's review of a paper copy of the training module. In such cases, the employee will certify in writing that the training has been completed.

ATC will provide training to all new ATC internal employees, and provide training to applicable Contingent Workers that have been determined by the Contingent Worker ATC manager (*i.e.* ATC Sponsor) as requiring the training. Such training for new ATC internal employees and applicable Contingent Workers will be conducted within the first thirty (30) days of employment.

The CCO will identify and maintain a list of employees and applicable Contingent Workers that must receive Standards of Conduct training and ensure that all affected employees and Contingent Workers receive the new hire training and the necessary training on an annual basis. The CCO will also develop and maintain ATC's Standards of Conduct training module.

For the Affiliated and non-Affiliated interconnected entities that have executed a SOCA with ATC, those entities are obligated to train their employees and maintain training records in accordance with the training provisions defined in the SOCA. ATC will provide its Standards of Conduct training materials to its Affiliated and non-Affiliated interconnected entities so that the entities may use it to provide training to their employees. ATC's Affiliated and non-Affiliated interconnected entities may use training materials that their entities have developed for conducting the Standards of Conduct training which ATC has reviewed and determined that such training materials are sufficient.

### ***11.3 Designation of Chief Compliance Officer (18 CFR 358.8(c)(2))***

The CCO designated by ATC is Juanita Banks, Vice President of Compliance & Risk Management. Ms. Banks reports directly to the Chairman of the Board, President and Chief Executive Officer

In the event Ms. Banks no longer acts as ATC's CCO, ATC will designate another CCO within ten (10) business days. Ms. Banks or her successor's contact information will be posted on ATC's Internet Website.

### ***11.4 Books and Records (18 CFR 358.8(d))***

As a stand-alone transmission company, and a separate business entity, ATC keeps its books and records separate from all of its Affiliates and non-Affiliates. ATC's books of accounts and records will be available for Commission inspection.

## 12.0 APPENDIX A: FERC STANDARDS OF CONDUCT RULE



### SUBCHAPTER S—STANDARDS OF CONDUCT FOR TRANSMISSION PROVIDERS

#### 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: 16 U.S.C. 717-717w, 2301-2432; 16 U.S.C. 791-825r, 2601-2645; 21 U.S.C. 9701; 42 U.S.C. 7101-7352.

SOURCE: 73 FR 63829, Oct. 27, 2008, unless otherwise noted.

##### § 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 294 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) As more fully described and implemented in subsequent sections of this part, a transmission provider must treat all transmission customers, af-

filiated 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) As more fully described and implemented in subsequent sections of this part, 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) As more fully described and implemented in subsequent sections of this part, 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) As more fully described and implemented in subsequent sections of this part, a transmission provider must provide equal access to non-public transmission function information disclosed to marketing function employees to all its transmission customers, affiliated and non-affiliated, except as permitted in this part or otherwise permitted by Commission order.

[74 FR 66182, Oct. 22, 2009]

##### § 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 § 396.1 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 Web site* 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, by a local distribution company, 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 Web site 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.

[73 FR 53829, Oct. 27, 2008, as amended at 74 FR 54482, Oct. 22, 2009]

#### § 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 Web site.

(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 § 368.113(c)(i) 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 Web site 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

### §358.7

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 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.

(d) *Posting written procedures on the public Internet.* A transmission provider must post on its Internet Web site 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 Web site the names and addresses of all its affiliates that employ or retain marketing function employees.

(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.

(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 Web site the job titles and job descriptions of its transmission function employees.

(2) A transmission provider must post a notice on its Internet Web site 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 Web site for 90 days. No such job transfer may be used as a means to circumvent any provision of this part.

### 18 CFR Ch. I (4-1-16 Edition)

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 Web site the information required by this part §58 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 §58 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 Web site 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 handwritten 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.

(1) *Posting of waivers.* A transmission provider must post on its Internet Web site 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 Web site.

(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.

### SUBCHAPTER T [RESERVED]