

FERC STANDARDS OF CONDUCT
COMPLIANCE MANUAL

SMOKY MOUNTAIN TRANSMISSION LLC

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I. Overview of Compliance Policy

When the Federal Energy Regulatory Commission (FERC) implemented open access transmission, it also adopted Standards of Conduct (SOC) with which transmission providers must comply. As FERC explained upon proposing the SOC: “We do not believe that open access non-discriminatory transmission services can be completely realized until we remove real-world obstacles that prevent transmission customers from competing effectively with the Transmission Provider. One of these obstacles is unequal access to transmission information.” The SOC are designed to prevent a transmission owner/provider from acquiring and using its knowledge of the transmission system to give its own marketing operations (or those of an affiliate) an advantage over competitors in the marketplace. To that end, the SOC are tailored to limit the direct and indirect flow of transmission-related information to what FERC has identified as the “Marketing Function.”

Smoky Mountain Transmission LLC (Company) is committed to ensuring compliance with the SOC, as described in the relevant regulations (18 C.F.R. Part 358) and various orders that FERC has issued, including Order. Nos. 717 and 717A-D.

The Company must treat all transmission customers, affiliated and non-affiliated, on a not unduly discriminatory basis, and must not grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage with respect to the transmission of electric energy in interstate commerce. Transmission Function Employees must conduct business independently from Marketing Function Employees. The Company must provide equal access to non-public Transmission Function Information disclosed to Marketing Function Employees to all transmission customers (unless protected from disclosure pursuant to 358.7(a)(2), as discussed below).

To comply with the explicit requirements of the SOC, and to promote a culture of compliance, the Company’s management, employees and agents will:

- Understand and comply with all SOC requirements;
- Follow established procedures for ensuring compliance;
- Where appropriate, provide suggestions for improvement;
- Report to the General Counsel’s office all suspected violations or concerns regarding compliance with these SOC; and
- Cooperate fully in investigations of potential violations.

This Compliance Manual describes the Company’s compliance program. It identifies the key procedures necessary to ensure that a formal compliance program is in place, which will maximize the probability of compliance with the SOC and allow the Company to manage compliance risk.

Company affiliates that own or operate other transmission facilities will adopt their own compliance manual, which may be similar or identical to this Compliance Manual. For specific procedures and requirements applicable to any transmission affiliate, that affiliate’s compliance manual should be consulted.

II. Definitions

Company: Smoky Mountain Transmission LLC

Critical Energy Infrastructure Information (CEII): FERC has defined CEII as specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that (1) relates details about production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (4) does not simply give the general location of the critical infrastructure.

FERC: The Federal Energy Regulatory Commission.

General Counsel: Senior Vice-President, Legal Services & General Counsel, or his or her designee, for Brookfield Renewable Energy Group.

Internet Web Site: The internet location where the Company posts the information required under 18 C.F.R Part 358. All postings must be sufficiently prominent as to be readily accessible. (18 C.F.R. § 358.7(g)(3).)

Marketing Function: 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, excluding bundled retail sales.

Marketing Function Employee: 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.

Sponsor: A manager or supervisor responsible for relaying requests for access to the Chief Compliance Officer, in accordance with Section VII of this Compliance Manual, from employees and non-employees.

Support Personnel: Personnel who provide support services but do not perform any Transmission Functions or Marketing Functions, including but not limited to human resources, information technology, building maintenance, equipment service technicians, and administrative personnel (*i.e.*, field, maintenance and construction workers, as well as engineers and clerical workers, who are not involved in the day-to-day operations of the transmission system). Support Personnel may provide assistance to both Transmission Function and the Marketing Function personnel.

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

Transmission Function Information: Information relating to Transmission Functions.

Transmission Function Employee: An employee, contractor, consultant or agent of a transmission provider who actively and personally engages on a day-to-day basis in Transmission Functions.

III. Management Structure

A. Chief Compliance Officer

At all times, the Company will have an individual in the position of Chief Compliance Officer (CCO). (18 C.F.R. § 358.8(c)(2).) The CCO is the individual ultimately responsible for compliance with all SOC requirements, including the procedures and requirements described in this Compliance Manual. The CCO reports directly to the Chief Operating Officer of the relevant operating region of the Brookfield Renewable Energy Group.

An individual may simultaneously hold the CCO position at the Company while also holding other management positions at the Company or positions that do not include Marketing Functions at non-power marketing affiliates in the Brookfield corporate family.

B. Delegation of Compliance Responsibilities

The CCO is permitted, at his/her discretion, to delegate particular tasks to others. Notwithstanding the delegation of any particular task, the CCO retains full responsibility for compliance with all SOC requirements.

IV. Independent Functioning

The Company will adhere to the independent functioning requirement of the SOC by maintaining both a physical and a functional separation between its electric Transmission Function Employees and all affiliated Marketing Function Employees. Physical separation shall be maintained by limiting access to areas housing Transmission Function Information to Transmission Function Employees and designated non-Marketing Function Employees who have received FERC SOC training. Functional separation shall be maintained by prohibiting Marketing Function Employees from conducting Transmission Functions, prohibiting Transmission Function Employees from conducting Marketing Functions, and limiting electric transmission system operations to Transmission Function Employees.

Transmission Function Employees and Marketing Function Employees will be located in separate physical locations. Anyone seeking access to the Transmission Functions area and control center, other than Transmission Function Employees and management employees with duties or responsibilities that include transmission, must request access and satisfy the appropriate security checks and appropriate training before access can be granted pursuant to Section VII of this Compliance Manual. Marketing Function Employees are not permitted to perform Transmission Functions or access Transmission Function Information. (18 C.F.R. § 358.5(b)(1); 18 C.F.R. § 358.6.) Transmission Function Employees are not permitted to

perform Marketing Functions or disclose non-public Transmission Function Information to Marketing Function Employees. (18 C.F.R. § 358.5(b)(2); 18 C.F.R. § 358.6.)

Non-public Transmission Function Information may not be disclosed to Marketing Function Employees. Marketing Function Employees are not permitted any access to non-public Transmission Function Information on the Company's computer network at any time.

V. No Conduit Rule

Employees of the Company and its affiliates working with or on behalf of Transmission Function Employees may not act as a conduit to communicate non-public Transmission Function Information to Marketing Function Employees. (18 C.F.R. § 358.6.) Non-employees, including contractors, consultants, agents and others working with or on behalf of Transmission Function Employees may not act as a conduit to communicate non-public Transmission Function Information to Marketing Function Employees. (18 C.F.R. § 358.2(c); 18 C.F.R. § 358.6)

The Company implements this requirement, in part, by providing training on the SOC requirements, including this rule, to both Company and non-Company employees (*i.e.*, contractors, consultants, or agents) in accordance with this Compliance Manual. (18 C.F.R. § 358.8(c)(1); 18 C.F.R. § 358.8(b)(2).)

VI. No Undue Discrimination/Preference

To the extent open access services are being provided over Company facilities, the Company will strictly enforce all tariff provisions relating to the sale or purchase of such service. (18 C.F.R. § 358.4(a).) If the tariff provisions permit the use of discretion, the Company shall exercise such discretion in a fair and impartial manner that treats all transmission customers in a not unduly discriminatory or preferential manner. (18 C.F.R. § 358.4(b).)

The Company 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). (18 C.F.R. § 358.4(c).)

The Company must process all similar requests for transmission in the same manner and within the same period of time. (18 C.F.R. § 358.4(d).)

If the Company grants a waiver of a tariff provision in favor of an affiliate, it must post on its Internet Web Site notice of that waiver within one business day of the act of a waiver. In addition, a log of such waivers must be kept and made available to FERC upon request. Records of a waiver must be maintained for five years from the date of each act of waiver. (18 C.F.R. § 358.7(i).)

VII. Limitations on Access

A. Requests For Access

Any individual who is not a Transmission Function Employee or a management employee with duties or responsibilities that include Transmission Functions, must submit to the CCO, through a Sponsor, a "Request to Access" before accessing Transmission Function Information or entering the physical location where Transmission Functions occur.

The CCO will review each request (and consult the General Counsel as necessary) to determine whether the requesting individual: (a) may be permitted access to Transmission Function Information under FERC's regulations and the requirements described in this Manual; and (b) has satisfied the FERC training requirement.

If both criteria are met, the request may be approved by the CCO. If the CCO determines that the requesting individual may be permitted to access the information but he/she has not completed the required SOC training, he/she must complete such training before access may be permitted. The CCO will notify the requesting individual of the need to complete SOC training.

Consistent with the term "Transmission Functions" as defined by FERC and used herein, any employee or other individual (*e.g.*, an outside attorney or consultant) that is not planning, directing, organizing or carrying out day-to-day transmission operations does not need to request access to transmission related information.

Notwithstanding these requirements regarding access, individuals that are not otherwise subject to training under the SOC, as provided in this Compliance Manual, may visit the physical location where Transmission Functions occur without receiving training, provided that beforehand: (a) the CCO is informed; and (b) the individual is provided a brief explanation of the SOC and, specifically, the prohibition against sharing with Marketing Function Employees any non-public Transmission Function Information observed in the physical location.

B. Recordation of Access

The CCO will maintain a log of employees and non-employees who have access to Transmission Function Information and/or physical locations where the Transmission Functions occurs, whether such access is due to an individual's employment in a position that is part of the Transmission Functions or because that individual has been granted access pursuant to a request.

VIII. Transparency Rules

The CCO will ensure the following information is posted on the Company's Internet Web Site:

A. Shared Facilities

Employee-staffed facilities shared by Transmission Function Employees and Marketing Function Employees must be posted to the Company's Internet Web Site. The posting must include the types of facilities shared and addresses of the facilities. (18 C.F.R. § 358.7(e)(2).)

B. Potential Merger Partners

Within seven (7) days of a merger announcement, information concerning the potential merger partners as affiliates that may employ or retain marketing function employees must be posted. (18 C.F.R. § 358.7(e)(3).)

C. Employee Transfers

Any transfer of a Transmission Function Employee to a position as a Marketing Function Employee must be posted on Company's Internet Web Site no later than seven (7) business days after the transfer occurred.

Any transfer of a Marketing Function Employee to a position as a Transmission Function Employee must be posted on Company's Internet Web Site no later than seven (7) business days after the transfer occurred.

Such postings will include:

- The name of the transferring employee;
- The title that the employee held just before the transfer occurred;
- The title that the employee held just after the transfer occurred; and
- The effective date of transfer.

Information about transfers must remain on the Internet Web Site for 90 days.

(18 C.F.R. § 358.7(f)(2).)

To ensure postings are made within the required time, the Company's human resources department will notify the CCO of any employees transferring into or out of a position as a Transmission Function Employee within 24 hours of the transfer occurring.

D. Job Titles and Descriptions

Job titles and job descriptions of Transmission Function Employees must be posted on the Company's Internet Web Site. (18 C.F.R. § 358.7(f)(1).)

E. Procedures for Implementing SOC

This Compliance Manual, which contains the written procedures for implementing the SOC, will be posted on the Company's Internet Web Site. (18 C.F.R. § 358.7(d).) A copy of this Compliance Manual will be distributed to all Transmission Function Employees, Marketing Function Employees, officers, directors, supervisory employees, and any other employees likely to become privy to Transmission Function Information. (18 C.F.R. § 358.8(b)(2).)

F. Affiliate Information

The names and addresses of all affiliates that employ or retain Marketing Function Employees must be posted on the Company's Internet Web Site. (18 C.F.R. § 358.7(e)(1).)

G. CCO Contact Information

The name and contact information of the CCO must be posted on the Company's Internet Web Site. (18 C.F.R. § 358.8(c)(2).)

Posting of information on the Company Internet Web Site must be made within seven (7) business days after any change, along with the date that the information was updated. (18 C.F.R. § 358.7(g)(1).)

IX. Contemporaneous Disclosure Requirements

If a Transmission Function Employee (or anyone else) discloses non-public Transmission Function Information to a Marketing Function Employee, he or she must inform the CCO as soon as such disclosure is recognized. The CCO will consult the General Counsel if necessary and determine whether the disclosed information needs to be posted. If the CCO determines that the information needs to be posted, and it is not Critical Energy Infrastructure Information (CEII) or subject to limitations on dissemination under law, the Company must immediately post the disclosed information on its Internet Web Site. If the disclosed information is Critical Energy Infrastructure Information or subject to limitations on dissemination under law, the Company must immediately post on its Internet Web Site notice of the fact that the information was disclosed, but the information itself must not be posted. (18 C.F.R. § 358.7(a).)

X. Emergency Situations

Notwithstanding the requirement to maintain both a physical and a functional separation between Company's Transmission Function Employees and all Marketing Function Employees at the Company or its affiliates, the Company may take whatever steps are necessary to maintain electric transmission system reliability during emergency circumstances. If Transmission Function Employees and Marketing Function Employees must exchange non-public Transmission Function Information under emergency circumstances, the Transmission Function

Employee must make a record of the exchange as soon as practicable after the emergency circumstance has subsided. *See* Section XII for further information regarding recordation of information exchanges between Transmission Function Employees and Marketing Function Employees. In addition, posting requirements under the SOC may be suspended during emergency circumstances. *See* Section XI for further information regarding posting requirements under emergency circumstances.

XI. Emergency Deviations

If an emergency such as an earthquake, flood, fire, or hurricane, severely disrupts the Company's normal business operations, the posting requirements described herein may be suspended. If the disruption lasts longer than one month, the Company must notify FERC. The Company may ask FERC for a further exemption from the posting requirements. (18 C.F.R. § 358.7(g)(2).)

XII. Recordation of Certain Information Exchanges

Notwithstanding any other limitation in the SOC or this Compliance Manual, Transmission Function Employees and Marketing Function Employees may exchange: (a) non-public information pertaining to compliance with reliability standards approved by FERC; and (b) non-public information necessary to maintain or restore operation of the transmission system or generating units, or that may affect the dispatch of generating units. (18 C.F.R. § 358.7(h).)

The Transmission Function Employee must make a contemporaneous record of these exchanges except in emergency circumstances, in which case he or she must create the record as soon as practicable after the fact. Records may consist of hand-written or typed notes, electronic records (including emails and text messages), recorded telephone calls, and other similar documentation. The record shall be retained for five (5) years. (18 C.F.R. § 358.7(h).)

XIII. Books and Records

The Company's books of account and records are maintained separately from those of its affiliates that employ or retain Marketing Function Employees. These books of account and records must be made available to FERC inspection upon request. (18 C.F.R. § 358.8(d).)

XIV. Compliance Measures

The Company will track the data associated with SOC compliance, including the following measures:

- Company employees trained;
- Transmission Function Employees trained;
- Marketing Function Employees trained;
- Non-employees trained; and
- Postings pursuant to the Contemporaneous Disclosure Requirements.

XV. Training

The Company must train employees so that they understand how to comply with the SOC. This includes Transmission Function Employees, Marketing Function Employees, and also officers, directors, supervisory employees, and any other employee likely to become privy to Transmission Function Information as may be determined by the CCO. The CCO shall determine whether any non-employees (such as contractors, consultants, or agents of Company) will either actively and personally engage on a day-to-day basis in Transmission Functions or Marketing Functions, or are likely to become privy to Transmission Function Information, in which case such non-employees shall receive SOC training.¹ Support Personnel are not required to receive SOC training.

For each employee that requires SOC training in accordance with this Section XV, the Company will provide such training within 30 days of commencement of employment. The CCO shall require each employee and non-employee to sign a document or certify electronically that he or she has participated in the training. Further training and re-certification must be completed on an annual basis. (18 C.F.R. § 358.8(c).)

The human resources department will notify the CCO of any incoming Transmission Function Employee (whether a new hire or transfer from a position as a Marketing Function Employee) no later than three (3) business days from the commencement of employment or transfer. The CCO will promptly determine whether SOC training is required and immediately notify the employee or non-employee of the SOC training requirements and the 30 day time-frame to complete certification.

A log of all identified employees and non-employees will be maintained by the CCO in which the following information will be kept:

- Name;
- Department;
- Date of employment start; and
- Date of certification.

For non-employees the following will also be maintained in addition to the above:

- His/her company name;
- Contact information;
- Beginning and ending service dates; and
- Brief description of the nature of the service being provided.

Employees who have separated from the company prior to the FERC training requirement deadline and who have not completed the training will be removed from the training database and documented appropriately.

¹ If non-employees provide proof that they have received the appropriate SOC training from another transmission provider within the last year, then further SOC training would not be required until the next annual Company training. Such non-employees shall still receive a copy of the written procedures within 30 days of obtaining the position in which the individual will either actively and personally engage on a day-to-day basis in Transmission Functions or Marketing Functions, or will likely become privy to Transmission Function Information.

XVI. Internal Reviews

At the direction of the General Counsel, the CCO may initiate an internal review of Company's compliance with the SOC, including its adherence to the policies and procedures described in this Compliance Manual. When an internal review identifies a compliance issue, the General Counsel and CCO will work with other management personnel and the appropriate employees to consider any recommendations to resolve the issue and, if necessary, revise the Compliance Manual accordingly.

XVII. Compliance Monitoring

FERC may periodically perform a formal audit of Company's compliance status. In conjunction with the General Counsel, the CCO will oversee and coordinate the audit process and make necessary arrangements to identify individuals with whom FERC desires to meet, and to provide records and data requested. The CCO will work with the FERC audit team to schedule meetings, provide work space, supply documentation and other support necessary to conduct the audit. All communications between the FERC audit team and Company shall occur (a) through the CCO or (b) with the CCO's knowledge and approval, to ensure proper tracking of compliance status for open items. The CCO will report on any findings from the audit and distribute the final audit report to senior management and those personnel responsible for functions related to any issues raised in the report.

XVIII. Compliance Manual Review and Revision

Whenever modifications to FERC's regulations or orders otherwise issued by FERC change the legal requirements for compliance with the SOC, the CCO in conjunction with the General Counsel will modify this Compliance Manual within a reasonable period of time.

Notwithstanding the foregoing, the CCO in conjunction with the General Counsel will initiate a comprehensive review of this Compliance Manual at least every three years.

Cross Reference: FERC Regulations and Compliance Manual Sections

Regulation	Compliance Manual Provision
18 C.F.R. § 358.1	-----
18 C.F.R. § 358.2	Sections III, IV, V, VIII
18 C.F.R. § 358.3	-----
18 C.F.R. § 358.4	Section V
18 C.F.R. § 358.5	Section III
18 C.F.R. § 358.6	Section IV
18 C.F.R. § 358.7	Sections V, VII, VIII, X, XI
18 C.F.R. § 358.8	Sections II, VII, XII, XIV

18 C.F.R. § 358—STANDARDS OF CONDUCT

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§ 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) As more fully described and implemented in subsequent sections of this part, 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) 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.

§ 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 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.

§ 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 § 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 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 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. 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 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 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 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 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