

ALCOA POWER GENERATING INC.
(APGI)
FERC COMPLIANCE
POLICY AND PLAN

Revision No. 7.0

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TABLE OF CONTENTS

I.	INTRODUCTION.....	5
II.	OVERSIGHT AND MANAGEMENT	7
	A. General Counsel.....	7
	B. APGI Chief Compliance Officer	7
	C. Corporate Compliance Steering Committee	8
	D. Senior Manager - Critical Infrastructure and Protection.....	8
	E. Annual Budget for Compliance	9
	F. Annual Compliance Performance Objectives.....	9
III.	COMPLIANCE TRAINING, RETRAINING AND CERTIFICATION	9
IV.	REPORTING OF SUSPECTED VIOLATIONS OR COMPLIANCE FAILURES	12
	A. Duty to Report and Compliance Hotline	12
	B. Nature of Report for Incidents Not Reported on a Hotline.....	12
	C. Mechanisms to Review Reported Claims	13
V.	DISCIPLINARY CONSEQUENCES	13
	A. Failure to Report Violations.....	13
	B. Non-Compliance with FERC Requirements.....	13
VI.	COMPLIANCE REQUIREMENTS.....	14
VII.	INTERNAL COMPLIANCE AUDITS.....	14
VIII.	EXTERNAL COMPLIANCE INVESTIGATIONS.....	15
IX.	STANDARDS OF CONDUCT FOR TRANSMISSION PROVIDERS	15
	A. General Principles of Standards of Conduct.....	16
	B. Non Discrimination Requirements per 18 C.F.R. 358.4.....	16
	C. Independent Functioning Rules per 18 C.F.R. 358.5.....	16
	D. No-Conduit Rule per 18 C.F.R. 358.6	18
	E. Transparency Rule per 18 C.F.R. 358.7.....	18
	1. Contemporaneous disclosure	18
	2. Exclusions	18
	3. Voluntary consent	18
	4. Posting of written procedures.....	18
	5. Identification of affiliate and employee information	18
	6. Transfers.....	19
	7. Exclusion.....	19
	8. Posting of waivers	20
	F. Implementation and Compliance Measures per 18 C.F.R. 358.8	20
	1. Written Procedures.....	20
	2. Training	20
	3. Identification of CCO.....	20
	4. Postings	20
	5. Books and Records.....	21
X.	PART I OF THE FPA	21

	A.	FERC Requirements	21
		1. Terms of the License or Preliminary Permit per 18 C.F.R. 8.1	21
		2. Recreational Opportunities and Development at Licensed Projects	21
		3. Payment of Annual Charges for Administration and Use of Government Lands.....	22
		4. Regulations Concerning Safety of Water Power Projects and Project Works.....	22
	B.	Compliance Measures	22
XI.		SECTION 203 OF THE FPA.....	23
	A.	FERC Requirements	23
	B.	Compliance Measures.....	25
XII.		SECTION 205'S RATE FILING REQUIREMENTS.....	25
	A.	FERC Requirements	25
		1. Initial Rate Schedule Filing and Amendments to Filed Rate Schedules...25	
		2. Amendments to Contracts Actually on File with FERC	26
		3. Rate Schedule Termination or Cancellation.....	26
		4. Notice of Succession	26
	B.	Specific FERC Requirements for Entities with Market-Based Rate Authority Pursuant to Order No. 697	26
		1. Updated Market Power Analyses,.....	26
		2. Change in Status Reporting Requirements.....	27
		3. Asset Appendix	28
		4. Quarterly and Annual Change of Status Reporting Requirements Related to Sites for New Generation Capacity Development.....	28
		5. Affiliate Abuse Transactions.....	29
		6. Standard Tariff Provisions	29
	C.	Compliance Measures	30
XIII.		PROHIBITION OF ENERGY MARKET MANIPULATION per 18 C.F.R. 1c31	
	A.	FERC Requirements	31
		1. Market Manipulation Rules.....	31
		2. Market Behavior Rules.....	32
		3. Record Retention Requirements.....	32
	B.	Compliance Measures	33
XIV.		COMPLIANCE WITH ORDER NOS. 888 AND 890 AND OATT REGULATIONS.....	35
	A.	FERC Requirements	35
	B.	Compliance Measures	36
	C.	FERC Requirements	36
	D.	Compliance Measures	36
XV.		COMPLIANCE WITH ACCOUNTING, RECORD-KEEPING REQUIREMENTS.....	37
	A.	FERC Requirements	37
	B.	Compliance Measures	37
XVI.		COMPLIANCE WITH INTERLOCKING DIRECTORATE REQUIREMENTS.....	37
	A.	FERC Requirements	37

	1. Authorization for Interlocks.....	37
	2. Form 561	38
	3. Notice of Change in Status of Interlock.....	38
	B. Compliance Measures.....	39
	1. Inquiries Relating to Prospective Directors and Officers.....	39
	2. Information on Interlocking Directorates and Policies Provided to New Officers and Directors.....	40
	3. Annual Questionnaire.....	42
	4. Restrictions Based on Interlocks.....	43
XVII.	COMPLIANCE WITH FERC REPORTING REQUIREMENTS	44
	A. FERC Requirements	44
	1. Annual Charges Report.....	44
	2. Financial and Operational Reports.....	44
	(a) Form No. 1 Annual Report.....	44
	(b) Form 3-Q Quarterly Report.....	44
	(c) Form 523 - Application for Authorization of the Issuance of Securities or the Assumption of Liabilities.....	45
	(d) Form 561.....	45
	See section XVII(A)(2) above.	45
	(e) Form 714 - Annual Electric Control and Planning Area Report	45
	(f) Form 715 - Annual Transmission Planning and Evaluation Report ..	45
	(g) Form 580 - Interrogatory on Fuel and Energy Purchase Practices....	45
	(h) Form 566 - Top 20 Purchasers List	45
	(i) Cash Management Programs.....	46
	(j) Electric Quarterly Reports.....	46
	(k) Form 552 – Annual Report of Natural Gas Transactions.....	46
	B. Compliance Measures.....	47
XVIII.	REQUESTING CEII PROTECTION AND GAINING ACCESS TO CEII	47
	A. FERC Requirements	47
	1. Requesting CEII Status	47
	2. Accessing CEII.....	48
	3. Submittal of an Executed Non-Disclosure Agreement	49
	B. Compliance Measures.....	50
XIX.	COMPLIANCE WITH PUHCA 2005	51
	A. FERC Requirements	51
	1. Notification of Holding Company Status.....	51
	2. Previously Authorized Activities	51
	3. Procedures for Obtaining Exempt Wholesale Generator and Foreign Utility Company Status.....	51
	4. Accounts and Records of Holding Companies	51
	5. Accounts and Records of Service Companies.....	52
	6. Annual Reports by Service Companies.....	52
	B. Compliance Measures.....	52
XX.	COMPLIANCE WITH SECTION 215 OF THE FPA.....	53
	A. FERC Requirements	53
	B. Compliance Measures.....	54

XXI.	COMPLIANCE WITH NAESB STANDARDS.....	55
A.	FERC Requirements	55
B.	Compliance Measures	55

APGI'S FERC COMPLIANCE POLICY AND PLAN

I. INTRODUCTION

This APGI FERC Compliance Policy and Plan (the “Plan”) is intended to be an integral part of Alcoa Inc.’s (“Alcoa”) overall corporate program to remain in compliance with all laws and regulatory obligations imposed on its electric operations and those of its subsidiaries. This Plan is specifically applicable to APGI, which owns and operates electric generation and transmission assets, Alcoa Power Marketing LLC (“APM”), a wholly-owned subsidiary of APGI which is an energy marketer, and all other affiliates in which Alcoa has a controlling interest and whose operations and/or activities are in any way subject to regulation by the Federal Energy Regulatory Commission (“FERC” or the “Commission”). The Plan may be applicable to Alcoa with respect to certain FERC compliance obligations as described in the Plan but is primarily directed at APGI and other FERC jurisdictional entities. As used in the Plan, the term “Company” includes APGI and all affiliates that are described above, as applicable in the particular context.

Under the Commission’s Policy Statement on Enforcement, FERC has encouraged companies to have comprehensive internal compliance programs and to develop a culture of compliance within the organization. FERC has previously given credit to companies for cooperating in audit and enforcement matters, and has stated that it will continue to consider such conduct when deciding what penalties will be set for any violations of its regulations. On October 16, 2008, the Commission issued a Policy Statement on Compliance to provide additional guidance to the public on compliance with the Commission’s governing statutes, regulations and orders. The policy statement identifies the following hallmarks of effective compliance practices: active engagement and leadership by senior management; preventive measures appropriate to the circumstances of the company that are effective in practice; prompt detection of problems, cessation of misconduct, and voluntary reporting of a violation; and remediation of the misconduct. The policy statement emphasizes that entities will receive credit for good compliance practices, and notes that for violations that are not serious – that do not involve significant harm, risk of significant harm, or damage to the integrity of the Commission’s regulatory program, and where the company has demonstrated all elements of effective compliance practices – FERC may reduce the penalty that otherwise would apply, or even eliminate the penalty.

In March of 2010, FERC issued a Policy Statement on Penalty Guidelines, in which it developed a matrix for the imposition of penalties that are premised upon specific company behavior and its consequences. FERC’s penalty guidelines are intended to provide clarity and notice as to how the Commission would exercise its discretion in enforcement matters. Among other things, the guidelines clarify the “credit” that will be given to entities that have an effective compliance program when such entities are faced with a potential penalty. The guidelines also describe the characteristics of what FERC will consider to be an effective compliance program that would operate as a substantial mitigating factor in the application of the penalty guidelines. Most importantly, the requirements for developing a corporate culture of compliance mandate internal corporate actions and significant involvement on the part of the highest level management of the company.

As such, the Company is adopting this Plan for the following purposes:

- (a) To ensure that its operations conform to all FERC rules and regulations applicable to the Company;
- (b) To provide management with the tools to supervise employees regarding compliance with the rules and to clarify senior management's role in fostering such compliance;
- (c) To provide employees with the training, information and resources that are needed to make informed choices required by the rules and to implement other effective measures to ensure such compliance; and
- (d) To promote an organizational culture that encourages (i) ethical conduct, (ii) commitment to compliance; and (iii) the prompt detection, cessation and reporting of violations as well as implementation of remedial measures.

This Plan is designed to promote compliance by Company personnel with all applicable laws, regulations, rules or policies administered by FERC. The Plan includes a comprehensive list of compliance measures that shall be taken by the Company to comply with the Federal Power Act ("FPA") FERC regulations, and the Public Utility Holding Company Act of 2005 ("PUHCA 2005"), as applicable to the Company. More specifically, this Plan is intended to constitute a comprehensive plan for the Company's compliance with, among other things, all of the following:

- FERC regulatory reporting and filing obligations under Part I and II of the Federal Power Act;
- Affiliate interactions, including FERC's Standards of Conduct for Transmission Providers and Interlocking Directorate Requirements;
- Market interactions, including FERC's market manipulation and market behavior rules;
- NERC Reliability Standards; and
- Data retention requirements

The APGI Chief Compliance Officer shall distribute this Plan to all employees within the Company who are subject to its provisions. Employees that are subject to the Plan will be required to sign a document certifying that they have read the Plan and understand the obligations imposed on them in the Plan. The goal of the Plan is that all such employees will understand their individual obligation – and the Company's expectation that they will fulfill that obligation – to comply with federal energy regulatory requirements and to report any suspected violations or compliance failures according to Section IV of this Plan.

II. OVERSIGHT AND MANAGEMENT

A. General Counsel

The General Counsel of Alcoa, or his designee, shall have the following responsibilities with respect to compliance:

- To review and, if acceptable, approve the Plan and any amendments thereto.
- To support APGI's Chief Compliance Officer ("CCO"), as needed.
- To make adequate resources available to the CCO to support the CCO obligations under this Plan.

B. APGI Chief Compliance Officer

The CCO shall have overall responsibility for implementation, oversight, and maintenance of the Plan. The CCO, who will be part of APGI's organization, will be the contact person for the Commission Staff for APGI's compliance issues. The CCO will be responsible for coordinating the Company's implementation of this Plan and may direct others under his or her supervision to perform any of the activities required under this Plan.

The CCO under this Plan is Marion Lucas. In fulfilling the duties and responsibilities under this Plan, the CCO will report to the General Counsel. In addition, the CCO has independent access to the Company's senior management to raise compliance issues.

The CCO will be responsible for addressing internal compliance, including, but not limited to, the following:

- Maintaining a contemporaneous compliance log documenting compliance issues and their resolution, and the implementation of the Plan;
- Pro-actively support implementation of the Plan;
- Administering the standards of conduct;¹
- Providing compliance advice, including responding to questions related to the propriety of a proposed transaction;
- Investigating violations of this Plan or any Applicable Law;

¹ Under 18 C.F.R. § 358.8(c)(2), all transmission providers like APGI are required to designate a CCO who will be responsible for compliance with the standards of conduct. The CCO will be the contact person for the Commission Staff for APGI's standards of conduct compliance issues. The CCO under this Plan will be responsible for acting as the CCO required by the regulations.

- Making recommendations to the Company’s HR Department regarding disciplinary measures for employees who are found to have engaged in non-compliance;
- Conducting training required by this Plan;
- Staying abreast of changes in law or regulations that could affect compliance and providing information with respect to such changes to employees as necessary; and
- Ensuring that periodic compliance audits are conducted in accordance with this Plan.

As discussed further below, employees are required to advise the CCO or the Compliance Hotline (described in Section IV.A) immediately upon learning of any potential breach of any of the standards of conduct, or any potential violations of any other FERC regulation or requirement described in this Plan, as immediate action must be taken to correct the situation. Further, employees are required to inform the CCO when a meeting will be held where transmission function employees and marketing function employees will be present to ensure compliance with the Standards of Conduct. The CCO will be responsible for preventing the disclosure of any non-public transmission information to marketing function employees.

C. Corporate Compliance Steering Committee

APGI has established a Corporate Compliance Steering Committee with senior manager representatives from each of the APGI entities as well as the General Counsel’s designee. The Steering Committee is sponsored by the President of APGI, facilitated by the CCO and shall meet on a semi-annual basis at a minimum. The function of the Steering Committee shall be to coordinate activities across the various NERC Registered Entities, facilitate annual self-assessments, discuss outstanding issues with the NERC Regional Reliability Organizations, review upcoming compliance initiatives and allocate resources needed to proactively ensure compliance to new and changing requirements.

D. Senior Manager - Critical Infrastructure and Protection

Each NERC Registered Entity within APGI with Critical Infrastructure responsibility shall assign a single senior manager with overall responsibility and authority for leading and managing the entity’s implementation of and adherence to NERC Reliability Standards for Critical Infrastructure and Protection. The senior manager will be identified by name, title and date of designation. Changes to the senior manager will be documented within thirty days of the effective date. The senior manager may delegate authority for specific actions to a named delegate or delegates.

The senior manager or delegate(s) shall authorize and document any exception from the requirements of the cyber security policy.

E. Annual Budget for Compliance

Each Registered Entity within APGI shall identify specific budget line items in the annual budget for Compliance related activities that shall include but not be limited to: compliance training, travel and expense for compliance, costs for external compliance assessments (as applicable), development of studies for facility ratings (as applicable) and other costs required to support compliance. The budget for compliance shall be approved to ensure that adequate funds are available to implement corporate initiatives and to support compliance to NERC Reliability Standards.

F. Annual Compliance Performance Objectives

All relevant personnel within APGI shall have annual performance objectives associated with the elements of the compliance activities that they are responsible for including acting as a subject matter expert (“SME”), completing annual training and/or exercises, reviewing procedures, completing requirements within specific reliability standards and other activities as relevant to the position to support compliance. These objectives shall be an element of the annual reward and recognition performance evaluation.

III. COMPLIANCE TRAINING, RETRAINING AND CERTIFICATION

The Company is committed to performing periodic training concerning the numerous FERC regulations and requirements for those employees whose job functions warrant such regular training, in order to maintain and increase compliance. Training will be held on a wide variety of FERC matters and the information discussed will be tailored to the participating employees’ job functions. The Company has developed this written policy concerning FERC regulatory compliance training for employees that sets measurable goals for compliance and details specific consequences for non-compliance.

Additionally, FERC’s Standards of Conduct specifically require APGI and its subsidiaries to train officers, directors, supervisory employees,² transmission function and marketing function employees, and any other employee likely to become privy to transmission function information. The purpose of this training is to ensure that the improper disclosure of non-public transmission function information to the Company’s marketing function employees does not occur. As to officers, directors, and supervisory employees of the Company, the test for determining whether they should be trained on the Standards of Conduct is whether they would “be in a position to interact with both transmission function employees and marketing function employees, or be responsible for responding to any questions or concerns about the Standards of Conduct from the employees who report to them.”³ The CCO shall be responsible for determining which Company employees need to be trained for Standards of Conduct purposes.

² FERC has stated that “the [Standards of Conduct] training requirement applies to supervisory employees who supervise other employees subject to the Standards or who may come in contact with non-public transmission function information.” Standards of Conduct for Transmission Providers, Order No. 717-A, 129 FERC ¶ 61,043 at P 141 (2009). At APGI and APM this definition may cover most if not all supervisory employees.

³ Standards of Conduct for Transmission Providers, Order No. 717, 125 FERC ¶ 61,064 at P 307 (2008).

APGI's policy is to provide compliance training to new employees within 30 days of arrival. Further, specific Standards of Conduct training will be provided to new and incumbent employees as soon as possible upon their ability to gain access to non-public transmission or customer information. The training will educate employees on FERC compliance issues and how the various requirements apply to them in their current capacity at the Company and will set forth actions that such employees are required to adopt. At the end of the training, all participants will be asked to sign a verification form, in order to attest to their attendance and participation in the training, as well as their understanding of the applicable rules and regulations.

Refresher training will be conducted for incumbent employees at least once every 15 months. The refresher training serves to reemphasize the requirements concerning the Standards of Conduct, including the sharing of information, and other rules and regulations by which employees must abide when performing their job functions. After training, employees will be asked to sign a verification form. APGI has developed written procedures for its compliance training. The training procedures provide for the following:

- Notice to all employees that are subject to the training requirement of the schedule for their annual training and information regarding the "Compliance Hotline" (described in Section IV.A).
- A certification form of attendance, an agenda, outline, and handouts for the training.
- Retention of certifications of attendance, agendas, outlines, handouts, and materials used in the training conducted for a period of five years.
- Posting of training materials on an Intranet site, as well as the name of a contact person for questions regarding training. As a result, employees will have constant access to training materials should any questions arise. The CCO will encourage employees to review the materials on a regular basis.
- Training those employees who become subject to the training requirement during the period between annual training cycles as a result of new employment or a new position. Such employees shall receive a copy of the Standards of Conduct, Plan policies, and applicable procedures upon beginning to work in a position that requires training, shall complete live, taped, or online training within 30 days.
- With respect to Standards of Conduct, training shall include detailed information on the appropriate roles of transmission function employees, their ability to interact with one another and marketing function employees, and the limits of transmission-related information that may be shared by transmission function employees with agents and other third parties. Training of marketing function employees shall also include detailed information regarding the substance of the

Anti-Market Manipulation and Market Behavior Rules (described in Section XIII).

The CCO also shall be responsible for the following:

- Maintaining a list of all employees that are required to receive training.
- Notifying all such employees of the time and place for FERC regulatory compliance training, as appropriate, that shall be held at least once every 15 months.
- Providing an electronic or hard-copy of the written policy and procedures for FERC regulatory compliance training to all employees once they are notified of the time and place for such training.
- Maintaining electronic procedures for the tracking and verification of attendance and creating materials to be used during the FERC regulatory compliance training.
- Including in the training materials the information concerning the Compliance Hotline.
- Maintaining all certifications of attendance and materials used in the FERC regulatory compliance training.
- Notifying the HR Department of any employees who did not participate in the FERC regulatory compliance training, in order to promptly schedule such training.
- Making recommendations to the Departmental and Location Managers and HR Department regarding disciplinary measures for employees involved in violations of FERC standards of conduct regulations.
- Updating the training materials as warranted, based upon any modifications to the Commission's regulations or precedent, and posting any updated training materials on its Intranet.
- Assuring that the Company's training program provides adequate and effective training concerning FERC regulations.

As required by the Commission's regulations, APGI will distribute its written procedures for ensuring compliance and post them on its Internet web site.

IV. REPORTING OF SUSPECTED VIOLATIONS OR COMPLIANCE FAILURES

A. Duty to Report and Compliance Hotline

All employees are under an obligation to immediately report any information concerning a suspected violation of any FERC regulation, rule, or policy to the CCO or other appropriate individuals responsible for compliance. Because the Company encourages the full cooperation of all employees, employees will not be subject to any disciplinary action, retaliation or reprisal for reporting any information to their supervisors or senior management concerning suspected non-compliance.

The Company shall maintain a hotline that allows non-compliance information and standards of conduct concerns to be provided *anonymously* to the CCO (“Compliance Hotline”). The Company will maintain a record of calls made to the Compliance Hotline that relate to this Plan or the standards of conduct requirements, and the CCO will prepare written records documenting how issues raised by these calls were resolved. The Company may provide copies of such records or summaries thereof to FERC as warranted by the circumstances. The Company shall post on its Intranet both the Compliance Hotline telephone number and FERC’s Hotline telephone number.

B. Nature of Report for Incidents Not Reported on a Hotline

For investigative purposes, any employee who makes a non-Hotline report of a suspected incident of non-compliance of any FERC regulation should be prepared to make a written statement detailing all information and evidence known to the employee pertaining to the particular suspected violation. The employee may also be required to meet with the Company’s senior management responsible for FERC compliance upon the examination of the employee’s claims.

C. Mechanisms to Review Reported Claims

Upon the employee's oral and/or written presentation of all evidence pertaining to a suspected incident of non-compliance, the CCO and compliance officials at the Company will take prompt action to investigate the employee's claims through all reasonable means, including: (1) reviewing any documents, written or electronic correspondence, and data; and (2) interviewing other employees. The Company will also take any possible measures to stop further suspected misconduct while investigating the pending claims. If suspected non-compliance is verified by the internal investigation, the Company will then take appropriate action in order to prevent recurrence, including possible disciplinary action against the responsible employee or employees and reporting on the act of non-compliance to the appropriate regulatory authorities.

V. **DISCIPLINARY CONSEQUENCES**

A. Failure to Report Violations

FERC has stressed the importance of companies self-reporting any violations, in the event that non-compliance occurs. The Company and its employees are in the best position to detect and correct any violations of FERC regulations and policies at the Company, whether intentional or inadvertent, and the Company will be proactive in this effort.

Any employee who is found to have known of information concerning a suspected violation of any FERC regulation or requirement, yet failed to report such information, will be subject to appropriate disciplinary action, up to and including termination of employment, as permitted under governing collective bargaining agreements and other relevant contractual agreements. The Company will consider any good faith efforts actually taken by the employee to report such information that may have been hindered by other individuals. Individuals who are found to have prevented the full dissemination of information concerning a suspected violation will be subject to appropriate disciplinary action, up to and including termination of employment, as permitted under governing collective bargaining agreements and other relevant contractual agreements.

B. Non-Compliance with FERC Requirements

The Commission has numerous enforcement tools under several federal statutes that it may utilize upon a finding of non-compliance. For example, FERC can order the return of profits that were received as a result of any violation. Under the Energy Policy Act of 2005 ("EPA Act 2005"), Congress granted FERC enhanced authority to assess civil penalties for violations and has established a maximum civil penalty of \$1 million per violation for each day that it continues. Congress also expanded the scope of the criminal provisions of the federal statutes by increasing the maximum fines or maximum imprisonment time that can be imposed for certain violations that are referred to the Department of Justice for criminal prosecution.

Because of FERC's numerous enforcement tools, the Company's efforts to use internal mechanisms to ensure compliance and correct non-compliance is of utmost importance. If an employee commits any intentional violation, or a recurring and knowing violation, of the

standards of conduct or the provisions of this Plan, such violation will result in appropriate disciplinary action, up to and including termination of employment, as permitted under governing collective bargaining agreements and other relevant contractual agreements. In determining whether escalated sanctions are warranted, the employee's prior violations, if any, shall be considered. The Company will keep a record of any disciplinary actions involving employees. In the event that the disciplinary action imposed does not result in dismissal from employment, the employee shall be required to participate in remedial Compliance Training, as approved by the CCO, as a condition for continued employment.

Unless and until they participate in remedial Compliance Training described above, employees who engage in non-compliance will not be placed in positions of substantial authority, or permitted to exercise authority that could affect the Company's compliance. Positions of substantial authority shall be deemed to include the position of manager and above. Employees who have engaged in non-compliance may become eligible for positions of substantial authority if they participate in remedial Compliance Training, as directed by the CCO and their activities after such training indicates that they are not likely to engage in additional non-compliance.

VI. COMPLIANCE REQUIREMENTS

Sections IX through XXII of this Plan describe the various affirmative requirements imposed by FERC regulations on public utilities, licensees, and public utility holding companies like Alcoa. In addition, this Plan is applicable to all Company personnel and consultants who are active participants in electricity and gas markets. Those individuals will be made aware of the plan, as well as the rules and regulations that apply to their conduct.

VII. INTERNAL COMPLIANCE AUDITS

The Company will internally audit its implementation of, and compliance with, the requirements of this Plan at least once in a three year period. The CCO will retain, for five years, the results of each audit conducted and all work papers, notes, memoranda, reports, and any other documents (including any drafts) concerning the audit. For each audit performed, the Company will prepare a memorandum describing the results of the audit and any action taken in response, within 30 days of the completion of the audit.

The CCO also shall be responsible for the following:

- Mandating an internal Company audit of compliance with the Plan to determine if Company employees adhered to the Plan.
- Maintaining complete and accurate records of each audit in accordance with the Institute of Internal Auditors Standards, to the extent applicable to the audit performed.
- Reviewing each audit finding, determining which recommendations the Company will implement, and documenting in the audit record any reason for not implementing certain of the recommendations.

- Submitting its findings, as warranted, to senior management of the Company no later than 90 days after the end of each audit period.
- Requiring that the Company complete those actions required by the audit within 30 days or some other reasonable period after submission of the audit report.

VIII. EXTERNAL COMPLIANCE INVESTIGATIONS

On occasion, the reporting of information concerning a suspected or actual violation of a FERC regulation may induce the Commission to launch its own investigation to determine the extent of any non-compliance. Company policy is to fully cooperate with all such investigations. During the course of an investigation, all employees are expected to cooperate fully with Commission investigators by providing complete and accurate information. FERC has stressed the importance of an organization's cooperation with the Commission in the event that any violations occur. Any efforts by employees to hinder the investigation will subject them to appropriate disciplinary action, up to and including termination of employment, as permitted under governing collective bargaining agreements and other relevant contractual agreements.

IX. STANDARDS OF CONDUCT FOR TRANSMISSION PROVIDERS

This section addresses compliance with the Commission's Standards of Conduct, set forth in a series of FERC regulations, as applicable to the Company. The FERC's Standards of Conduct regulations are designed to ensure that "a transmission provider treats all transmission customers, affiliated and non-affiliated, on a not unduly discriminatory basis, and does 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 transmission of electric energy in interstate commerce, or with respect to the wholesale sale of electric energy in interstate commerce." To that end, the Commission's regulations require a clear separation among those employees who perform transmission functions and those who perform marketing functions, and impose limitations upon the nature of communications between these two groups of employees. All employees are expected to adhere to the standards of conduct and abide by the compliance measures described below. APCI's standard of conduct policy requires the immediate identification and prompt correction of any practices deemed by the CCO to be inconsistent with the Commission's standards of conduct or this Plan.

A. General Principles of Standards of Conduct

APGI will require and implement procedures to ensure strict compliance with the following principles:

- APGI must treat all transmission customers, affiliated and non-affiliated, on a non-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 transmission of electric energy in interstate commerce, or with respect to the wholesale sale of natural gas or of electric energy in interstate commerce.
- APGI's transmission function employees must function independently from its marketing function employees.
- APGI 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.
- APGI must provide equal access to non-public transmission function information disclosed to marketing function employees to all its transmission customers, affiliated and non-affiliated.

B. Non Discrimination Requirements per 18 C.F.R. 358.4

APGI will require and implement procedures to ensure strict compliance with the following requirements:

- APGI transmission providers 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.
- APGI transmission providers 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.
- APGI transmission providers 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).
- APGI transmission providers must process all similar requests for transmission in the same manner and within the same period of time.

C. Independent Functioning Rules per 18 C.F.R. 358.5

APGI's transmission function employees must function independently from its marketing function employees.⁴ The Company 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. The Company also is prohibited from permitting its transmission function employees to conduct marketing functions.

In order to ensure compliance with these rules, the Company will restrict and monitor the access of its marketing function employees to transmission control rooms or similar facilities and to any databases containing information regarding APGI's transmission system or transmission customers. APGI shall develop, implement, and post its written procedures regarding APGI marketing function employees' access to APGI transmission areas or databases.

With respect to the Transmission Control Room and other transmission areas, the Company shall review its facilities procedures to ensure that: (1) no marketing function employees will have access to the non public transmission areas, transmission data or transmission information; and (2) any non-affiliated persons shall be treated without discrimination.

The Transmission Control Room and transmission function are located in a separate facility from the marketing function employees. Access to the transmission facility is controlled through electronic access cards. The access card information is safeguarded and monitored. Visitors to the transmission facility must enter their information into a log book and must be escorted throughout the facility.

On a semi-annual basis, the CCO or a delegate will review a sample of electronic communications between transmission function employees and marketing function employees

⁴ For purposes of the sections of this Plan concerning the Standards of Conduct per 18 CFR 358.3, "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. Marketing functions are 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. The Commission clarified that an employee in the legal, finance or regulatory division of a jurisdictional entity, whose intermittent day-to-day duties include the drafting and redrafting of non-price terms and conditions of, or exemptions to, umbrella agreements is a marketing function employee. Additionally, if an employee responsible for contract administration "regularly carries out or supervises . . . or is actively and personally engaged" in the negotiation of power sales contracts, then he or she is considered a marketing function employee. Also note that a supervisor is not engaged in the marketing function activity, if that supervisor is "simply signing off on a deal negotiated or proposed by someone else, and is not providing input into the negotiations."

For the same purposes, "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. 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. The Commission clarified that any sale of transmission service under an open access transmission service or a pre-Order No. 888 grandfathered agreement is considered a transmission function, while any resale or reassignment of such service is considered a marketing function.

and review the visitors log book of the transmission control room. The CCO will prepare a report summarizing the review, including a description of any improper communications and remedial steps taken.

D. No-Conduit Rule per 18 C.F.R. 358.6

Under the No Conduit Rule, APGI transmission function employees are prohibited from using anyone as a conduit for the disclosure of non-public transmission function information to APGI marketing function employees. An employee, contractor, consultant or agent of APGI transmission provider, and an employee, contractor, consultant or agent of an affiliate of APGI 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.

E. Transparency Rule per 18 C.F.R. 358.7

1. Contemporaneous disclosure

The CCO will ensure that any inadvertent disclosures of non-public transmission information that are prohibited under the Standards of Conduct are promptly addressed either by a posting on the Company's Internet web site or in the case of information containing CEII, by posting notice on the Internet web site that the information was disclosed.

2. Exclusions

APGI's transmission function employees may discuss with APGI's marketing function employees a specific request for transmission service submitted by the marketing function employee. APGI is not required to contemporaneously disclose information otherwise covered by the no conduit rule if the information relates solely to a marketing function employee's specific request for transmission service.

3. Voluntary consent

A transmission customer may voluntarily consent, in writing, to allow APGI to disclose the transmission customer's non-public information to APGI's marketing function employees. If the transmission customer authorizes APGI to disclose its information to marketing function employees, the APGI 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.

4. Posting of written procedures

The CCO or a delegate will post on APGI's Internet web site the current written procedures implementing the standards of conduct.

5. Identification of affiliate and employee information

Consistent with the Commission's regulations, APGI will post on its website

- The names and addresses of all of its affiliates that employ or retain marketing function employees;
- A complete list of the employee staffed facilities shared by any of its transmission provider's transmission function employees and marketing function employees, specifying the types of facilities shared and the addresses of the facilities;
- Information concerning potential merger partners as affiliates that may employ or retain marketing function employees, within seven (7) business days after the potential merger is announced; and
- The job titles and job descriptions of its transmission function employees.
- 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, as discussed below.

6. Transfers

Any transfer of employees between the marketing function and the transmission function will be made according to standard internal employment practices. Employees transferred in such a manner must maintain the confidentiality of non-public transmission information that was acquired during their tenure in a previous assignment. Consistent with FERC's regulations, any such transfer will be posted on APCI's Internet web site within seven business days of its effective date and remain posted for a 90-day period. The information to be posted shall include the name of the transferring employee, the respective titles held while performing each function, and the effective date of the transfer. The HR Department will notify the CCO of any transfers of an employee to and from the transmission and marketing functions of the Company on or before the effective date of any transfer.

7. Exclusion

APCI transmission function employees may also share the following information with marketing function employees:

- Information pertaining to compliance with Reliability Standards approved by the Commission; and
- Information necessary to maintain or restore operation of the transmission system or generating units, or that may affect the dispatch of generating units.

If such information is disclosed, APCI 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. APCI shall make any such records 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 (5) years. The CCO shall be responsible for collecting and maintaining these records.

8. Posting of waivers

The CCO or a delegate shall post on APGI's 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 (1) business day of the act of a waiver. The CCO or a delegate 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 (5) years from the date of each act of waiver.

F. Implementation and Compliance Measures per 18 C.F.R. 358.8

1. Written Procedures

The CCO will draft and distribute the written procedures implementing the Standards of Conduct 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. The CCO or a delegate will also post such procedures on the Company's Internet web site.

2. Training

The CCO will ensure that all transmission function employees, marketing function employees, officers, directors, supervisory employees, and any other employees likely to become privy to transmission function information receive annual training on the Standards of Conduct.

The CCO will provide training on the standards of conduct to new employees in the categories listed in subparagraph 1 of this section, within the first 30 days of their employment.

The CCO will require each employee who has taken the training to certify electronically or in writing that s/he has completed the training.

3. Identification of CCO

The CCO's name and contact information shall be posted on APGI's Internet web site.

4. Postings

The CCO shall be responsible for ensuring that the postings described above are performed. Changes to Internet website postings must be performed within seven (7) business days of a change, as required by FERC regulations. 18 C.F.R. § 358.7(g).

In addition, the CCO shall require the appropriate internal corporate offices to provide the following information as it may relate to compliance under this plan:

- Notification to the CCO of a change in corporate structure within one (1) business day after the effective date of a change.
- Notification to the CCO of a change of employee status within one (1) business day after the effective date of the change.
- Identifying any organizational change Internet website postings that require correction or posting.
- Maintaining all documents related to the above section per the retention period required by FERC.

5. Books and Records

APGI will maintain its books of account and records separately from those of its affiliates that employ or retain marketing function employees. The books of such affiliates will be maintained according to FERC regulations, and these will be made available for FERC's inspection upon request.

To the extent that accounting information includes non-public transmission information, such person performing this service will keep all information confidential and will not distribute the information to non-transmission function employees. Physical access to such records will be limited through the use of the Company's standard internal security measures. In addition, any electronic records will also be secured using a personal and confidential identification and password system. Employees will receive training to recognize sensitive transmission information and understand that such information cannot be provided to non-transmission function employees.

X. PART I OF THE FPA

A. FERC Requirements

1. Terms of the License or Preliminary Permit per 18 C.F.R. 8.1

Included within each hydroelectric project license is a form of FERC's standard land use article, which requires periodic filings relating to regulation of land use within the project and conveyance of certain land interests. Licensees are required to make various filings with the Commission under this license article, including an Annual Conveyance Report concerning conveyances of easements or rights-of-way across, or leases of, projects lands in the previous year.

2. Recreational Opportunities and Development at Licensed Projects

Project lands are required to be posted as to recreational use and availability per 18 CFR 8.2. The approved recreation plan for each project, together with an indexed version of the license, has to be made available for inspection by the licensee at its local offices in the vicinity

of the project. In addition, FERC Form 80, reporting recreational use, has to be filed every sixth year.

3. Payment of Annual Charges for Administration and Use of Government Lands

Annual charges for a project must be paid no later than 45 days after rendition of a bill by the Commission. Procedures to file an appeal of the bill exist under FERC regulations.

4. Regulations Concerning Safety of Water Power Projects and Project Works

Under Part 12 of 18 CFR, FERC regulations require licensees to adopt the following safety measures:

- Compliance with any outstanding order or directive of the Regional Engineer or any other authorized Commission representative
- Reporting of safety-related conditions or incidents (including project-related deaths or serious injuries)
- Reporting modifications to projects or project works
- Maintenance of permanent project records
- Development, filing, annual review, and updating of Emergency Action Plans
- Safety Inspections by an Independent Consultant
- Other safety-related responsibilities:
 - Quality control programs
 - Installation and maintenance of monitoring instruments
 - Installation, operation, and maintenance of warning and safety devices
 - Precautions regarding power and communications lines and gas pipelines
 - Annual testing of spillway gates

B. Compliance Measures

The CCO or a delegate shall have the responsibility for filing the forms required under Part I of the FPA. All financial reporting responsibilities shall be delegated to the Company's Accounting Department. The CCO or a delegate and/or his delegates shall develop a plan to ensure that all FERC requirements concerning any licensed projects are satisfied. The Company

shall ensure that it complies with all reporting requirements for the projects by developing a plan for monitoring all statutory or regulatory deadlines.

In addition, the Yadkin division, as the only division responsible for operating a hydroelectric project, shall develop a plan to perform a comprehensive safety assessment of its water power developments. In part, this plan shall ensure the timely reporting of any safety-related incidents or injuries and any modifications to licensed projects, maintenance of permanent project records, development and updating of an Emergency Action Plan, and implementation of periodic safety inspections conducted by independent consultants. The Company shall also oversee the development, installation, and/or implementation of quality control programs, monitoring instruments, warning and safety devices, precautions concerning power and communications lines, and annual testing of spillway gates. The Company shall develop training programs for all employees tasked with monitoring the safety conditions of its water power projects.

In addition, the CCO or a delegate shall compile any waivers of or exemptions from the requirements under Part I of the FPA that have been granted to the Company, and periodically assess whether circumstances have changed that would prevent the Company from relying on a particular waiver or exemption.

XI. SECTION 203 OF THE FPA

A. FERC Requirements

The Commission is responsible for determining whether applications requesting authorization for mergers, acquisitions, and corporate consolidations are consistent with the public interest, by examining the proposed transaction's effect on competition, rates, and regulation and the potential for cross-subsidization. The Commission has exercised jurisdiction under Section 203 of the FPA broadly to require prior FERC approval for a wide variety of asset and facility transfers, either direct or indirect, without regard to whether the transfer is between two entirely independent entities or between affiliates. The Commission's regulations set out the requirements for Section 203 applications.

Advance Commission authorization is required for APGI or APM to do the following:

- Sell, lease, or otherwise dispose of the whole of its FERC-jurisdictional facilities, or any part thereof, valued in excess of \$10,000,000;
- Merge or consolidate, directly or indirectly, such facilities or any part thereof with those of any other person, by any means;
- Purchase, acquire, or take any security with a value in excess of \$10,000,000 of any other public utility; or
- Purchase, lease, or otherwise acquire an existing generation facility that has a value in excess of \$10,000,000 and that is used for wholesale sales in interstate commerce by a public utility.

In addition, no holding company in a holding company system (such as Alcoa) may purchase, acquire, or take any security with a value in excess of \$10 million of, or directly or indirectly merge or consolidate with, a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company, with a value in excess of \$10 million without first having secured Commission authorization.

The scope of transfers encompasses generation assets, power sales contracts, agreements to provide transmission service, tariffs, rate schedules, stock and other indicia of ownership. APGI's and APM's rate schedules on file with FERC or FERC jurisdictional wholesale power sales contracts in which APGI or APM is the seller are considered jurisdictional facilities and the transfer of control over such rate schedules or power sales contracts (for sellers) is a transfer of jurisdictional facilities requiring prior approval under Section 203.

Blanket authorization is extended to certain transactions that do not give rise to a change in control over a public utility.⁵ In addition, blanket authorization is also granted to holding companies (such as Alcoa) in a holding company system including a transmitting utility or electric utility to do the following, among other things:

- Purchase, acquire, or take any security of a transmitting utility or company owning, operating, or controlling only facilities used solely for (i) intrastate transmission and/or intrastate sales of electric energy or (ii) local distribution and/or sales of electric energy at retail regulated by a state commission;
- Purchase, acquire, or take any security of an electric utility company owning generating facilities totaling 100 MW or less; or
- Purchase, acquire, or take (i) any non-voting security (that does not convey sufficient veto rights over management actions so as to convey control) in a transmitting utility, electric utility company, or holding company of the same; (ii) any voting security in a transmitting utility, electric utility company, or holding company of the same if, after the acquisition, the holding company shall own less than 10 percent of the outstanding voting securities; or (iii) any security of a subsidiary company within the holding company system (provided the holding company does not borrow from or pledge/encumber the assets of any electric utility company subsidiary in connection with such acquisition).⁶

⁵ For example, the Commission's regulations provide for blanket authorization for those transactions involving an internal corporate reorganization that does not present cross-subsidization issues and does not result in the reorganization of a traditional public utility with captive customers or that owns or provides transmission service over jurisdictional facilities, and that does not present cross-subsidization issues.

⁶ Holding companies that qualify for the blanket authorization for this third category of acquisitions above must provide the Commission with a copy of one of the applicable Schedule 13 reports – Schedule 13D, 13F, or 13G, as may be appropriate – that such companies may be required to file with the Securities and Exchange Commission (“SEC”). Schedule 13G, due 10 days after the transaction, is for persons acquiring equity in the ordinary course of business and not for the purpose of changing or influencing the control of the issuer. Schedule 13D is for the use of institutional brokers and has a 45-day reporting period.

The Commission adopted certain reporting requirements for the blanket authorization for a public utility to transfer its outstanding voting securities to any person other than a holding company if, after the transfer, such person and any of its associate or affiliate companies in aggregate will own less than 10 percent of the outstanding voting interests of such public utility. Within 30 days after the end of the calendar quarter in which such transfer occurred, the public utility must file a report containing: (a) the names of all parties to the transaction; (b) identification of the pre- and post-transaction voting security holdings (and percentage ownership) in the public utility held by the acquirer and its associate or affiliate companies; (c) the date the transaction was consummated; (d) identification of any public utility or holding company affiliates of the parties to the transaction; and (e) a statement indicating that the proposed transaction will not result in cross-subsidization.

B. Compliance Measures

The Company's Legal Department shall have the responsibility for ensuring compliance with Section 203's requirements, and it shall be tasked with delegating the responsibilities to Company employees as appropriate. Company employees shall develop a plan to ensure that any proposed transactions involving the Company are examined to determine whether such transactions require Commission authorization under Section 203 of the FPA. The Legal Department shall also supervise the task of ensuring that the proper schedules are filed pursuant to the Commission's regulations, as necessary.

In addition, the Corporate Legal Department shall compile any waivers of or exemptions from the requirements under Section 203 of the FPA that have been granted to the Company, and periodically assess whether circumstances have changed that would prevent the Company from relying on a particular waiver or exemption. The Company's Legal Department shall ensure that any post-closing filings, such as Notices of Changes in status (discussed in the following section) are made.

XII. SECTION 205'S RATE FILING REQUIREMENTS

A. FERC Requirements

1. Initial Rate Schedule Filing and Amendments to Filed Rate Schedules

Under Section 205 of the FPA, FERC requires public utilities such as APGI and APM to file FERC-jurisdictional contracts in order to satisfy the requirement that a rate be on file. FERC jurisdictional contracts include contracts for wholesale power sales and also transmission services, including ancillary services. Specifically, Part 35 of the Commission's regulations sets forth the requirements for filing initial and changed rate schedules under Section 205 of the FPA.

If a public utility has market-based rate authority from FERC⁷ and has a short-form tariff on file with the Commission (as APGI and APM do), that tariff does not include the actual rate

⁷ The Commission grants market-based rate authorization for wholesale sales of electric energy, capacity and ancillary services by public utility sellers that can demonstrate that they and their affiliates lack or have adequately mitigated horizontal and vertical market power.

per MWh. Instead, the actual rates are included in the public utility's electric quarterly reports ("EQRs"), rather than in the tariff itself or in a service agreement filing. Once an initial market-based rate schedule is filed, there is no service agreement filing requirement other than the EQR submittal. The EQR filing obligation is discussed in further detail below.

2. Amendments to Contracts Actually on File with FERC

Under Section 205 of the FPA and Part 35 of the Commission's regulations, any amendment to an existing wholesale power sales agreement or transmission services agreement on file with FERC (this would not include agreements entered into pursuant to a public utility's short market-based rate schedule) must be filed with FERC at least 60 days prior to the amendment's proposed effective date. This is true, as well, for amendments to any transmission agreements on file with FERC.

3. Rate Schedule Termination or Cancellation

If a contract on file with FERC is to be terminated, a public utility must file to cancel or terminate the rate schedule or tariff at least 60 days, but not more than 120 days, prior to the date the cancellation or termination is proposed to take effect.

4. Notice of Succession

To the extent that either: (1) a public utility changes its name; or (2) its obligations as a seller under any rate schedule or tariff on file with the Commission are assumed by another, FERC's rules require that the company inform FERC of the name change/assumption within 30 days, so that the rate schedules on file under the old name will reflect the new name. To the extent that the name changes as a result of a merger or acquisition, this submittal is unrelated to the FERC requirement, mentioned above, to obtain prior approval for the transaction under Section 203 of the FPA.

B. Specific FERC Requirements for Entities with Market-Based Rate Authority Pursuant to Order No. 697

In June 2007, the Commission issued Order No. 697 (with the Final Rule and regulations effective September 18, 2007), which modified certain of the compliance obligations of entities holding market-based rate authority pursuant to Section 205. In short, Order Nos. 697: (1) collapsed the prior four-prong market-based rate authority analysis (generation market power, transmission market power, barriers to entry, and affiliate abuse); (2) altered the time frame in which updated market power analyses must be submitted by market-based rate sellers; and (3) modified the contents of the market-based rate tariffs submitted to the Commission for initial and continued approval.

1. Updated Market Power Analyses,

Prior to the effective date of Order No. 697, entities with market-based rate authority were required to file an updated market analysis within three years of the date of issuance of the Commission's order granting such sellers market-based rate authority, and every three years

thereafter. Order No. 697 revised the schedule for the submission of updated market power analyses by those sellers deemed “Category 2 Sellers.” See 18 C.F.R. § 35.36(a).

APGI and APM are deemed Category 2 Sellers in the Southeast and Central regions, and thus must satisfy the obligation in the Commission’s regulations to submit updated market power analyses based on the regional schedule set forth in Appendix D of Order No. 697.⁸ APGI and APM must file triennial updates as a transmission owner in the Southeast region and as a non-transmission owner in the Central region.⁹

Each updated market power analysis must address whether a seller has horizontal and vertical market power. The Commission adopted two indicative screens to test a seller’s horizontal market power, both of which are based on the amount of uncommitted generation capacity a seller controls. A seller is deemed to have control of generation when the seller can affect the ability of the capacity to reach the relevant market. There is a rebuttable presumption that the owner of a facility controls the capacity of that facility unless there is a contractual arrangement transferring control. The Commission requires a seller to make an affirmative statement as to whether a contractual arrangement (energy management agreement, tolling agreement, specific contractual terms, etc.) transfers control and to identify the party or parties it believes controls the generation facility. As to jointly-owned facilities, the Commission requires a seller to make an affirmative statement specifying the entity or entities that has control of the jointly-owned facility and to what extent each entity has control. Any seller making such an affirmative statement must also obtain a “letter of concurrence” from other affected entities identifying the degree to which each party controls a jointly-owned facility and submit these letters with its filing.

2. Change in Status Reporting Requirements

Under Section 205 of the FPA and FERC’s regulations, market-based rate sellers are required to make a filing that informs FERC of any change in status that FERC would have considered during the analysis of whether to grant market-based rate authority to the seller. The Commission’s regulations provide that the following constitute examples of changes in status:

- ownership or control of generation capacity that results in net increases of 100 MW or more, or of inputs to electric power production, or ownership, operation or control of transmission facilities; or

⁸ Category 2 Sellers are all those sellers that do not satisfy the requirements of Category 1 Sellers. Category 1 seller are “wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller’s generation assets; that are not affiliated with a franchised public utility in the same region as the seller’s generation assets; and that do not raise other vertical market power issues.” 18 C.F.R. §§ 35.36(a)(2), 35.37(a)(1).

⁹ The Commission granted the Company an exemption for submitted triennial updates in the Northwest region. *Alcoa Power Generating Inc.*, 131 FERC ¶ 61,177 (2010).

- affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation facilities or inputs to electric power production, affiliation with any entity not disclosed in the application for market-based rate authority that owns, operates or controls transmission facilities, or affiliation with any entity that has a franchised service area.

Any change in status must be filed no later than 30 days after the change in status occurs. FERC Order No. 652 further discusses the events which would trigger a change in status filing.¹⁰

3. Asset Appendix

The regulations implementing Order No. 697 require the submission of an “asset appendix” by market-based rate sellers each time such sellers submit either: (1) an updated market power analysis; or (2) a notification of change in status regarding a change that impacts the pertinent assets held by the seller or its affiliates with market-based rate authority. Generally, the asset appendix must identify the relevant jurisdictional assets owned or controlled by the corporate family. Appendix B of both Order No. 697 and the implementing regulations provide the information that must be contained in the required asset appendix, and such information includes the following (as applicable):

- the assets held by the filing entity and its energy affiliates with market-based rate authority (this specifically includes electric generation and transmission facilities, intrastate natural gas pipelines and/or gas storage facilities);
- the entities with ownership and/or control of the assets;
- the date control of the entity was transferred;
- the location (by balancing authority area and geographic region) of such assets; and
- the in-service date, size, and nameplate and/or seasonal rating of such assets.

The transmission facilities that are required to be included in that asset appendix are limited to those the ownership or control of which would require an entity to have an OATT on file with the Commission even if the Commission has waived the OATT requirement for a particular seller.

4. Quarterly and Annual Change of Status Reporting Requirements Related to Sites for New Generation Capacity Development

Market-based rate sellers must also comply with new reporting requirements with respect to sites for new generation capacity development. The new rules impose an ongoing obligation upon all sellers with market-based rate authority to make quarterly change in status reports with respect to certain land acquisitions. Pursuant to Order No. 697-C, the Commission now requires a seller with market-based rate authority to report on a quarterly basis the

¹⁰ See Order No. 652, 110 FERC ¶ 61,097, *on reh'g*, 111 FERC ¶ 61,413 (2005).

acquisition of control, by seller or its affiliates, of certain sites for new generation capacity development. Specifically, a seller must report sites “for which site control has been demonstrated in the interconnection process and for which the potential number of megawatts that are reasonably commercially feasible on the site or sites for new generation capacity development is equal to 100 megawatts or more.”¹¹ The quarterly reporting replaces the requirement that market-based rate sellers inform the Commission of such an acquisition within 30 days of the acquisition. The quarterly filings are due within 30 days after the end of each quarter.

5. Affiliate Abuse Transactions

In Order No. 697, FERC discontinued the consideration of affiliate abuse as a separate prong in the market-based rate analysis and codified in the Commission’s regulations an explicit requirement that any seller with market-based rate authority must comply with specific affiliate restrictions. All sellers have an obligation to abide by these restrictions as a condition of obtaining and maintaining market-based rate authority. Included in the regulations is a provision expressly prohibiting power sales between a franchised public utility with captive customers and any market-regulated power sales affiliates without first receiving Commission authorization for the transaction under Section 205.¹²

6. Standard Tariff Provisions

Appendix C of Order No. 697 provides for a series of standard provisions that must be included in all existing market-based rate tariffs. The two standard “required” provisions provide for the following:

- (1) an affirmative commitment by the seller that it shall comply with the Commission’s regulations in Part 35, Subpart H pertaining to market-based rate authority, as well as any Commission orders imposing conditions on such authority, and an acknowledgement that the failure to comply with such provisions and orders will constitute a tariff violation; and
- (2) an identification of all limitations on the seller’s market-based rate authority (including markets where the seller does not have market-based rate authority) and any

¹¹ Generally speaking, “site control” includes ownership, leasehold, development rights, and certain options and exclusivity relationships; however, the term can vary by the interconnection procedures applicable to a particular site. Under the Commission’s standard interconnection agreement, “Site Control” is established in an interconnection process when there is documentation reasonably demonstrating: (1) ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing a generating facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an exclusivity or other business relationship between an interconnection customer and the entity having the right to sell, lease or grant the interconnection customer the right to possess or occupy a site for such purpose. Entities submitting a deposit in lieu of showing “site control” in the interconnection process will also trigger the reporting requirement.

¹² Also included in the regulations are the requirements previously captured in the market-based rate “code of conduct” (concerning such areas as separation of functions, information sharing, sales of non-power goods or services, and power brokering). A code of conduct was never incorporated in either APGI or APM’s tariff, because the Commission waived the code of conduct requirement upon a determination that the Alcoa Companies do not have any captive customers. See *Alcoa Inc, et al.*, 88 FERC ¶ 61,045 (1999).

exemptions from, waivers of, or blanket authorizations under the Commission's regulations that the seller has been granted (e.g., exemption from affiliate sales restrictions, waiver of the accounting regulations, blanket authority under Part 34 for the issuance of securities and liabilities), including relevant citations to FERC orders.

Order No. 697 also provides for several standard "applicable" provisions that must be included in sellers' tariffs, to the extent such provisions are applicable based on the services provided by the seller. The provisions concern the following: (1) mitigated sales, to the extent that the seller's sales under its tariff are subject to mitigation; (2) sales of certain ancillary services in ISO/RTO markets; and (3) sales of ancillary services as a third-party provider.

Lastly, Order No. 697-A requires market-based sellers to include a provision in their tariffs regarding whether they are a category 1 or 2 seller as defined in the Commission's regulations.

From time to time, the Commission may update the standard tariff provisions for a market-based rate tariff. APM and APGI must revise their tariffs to be consistent with any future changes.

C. Compliance Measures

The CCO, in conjunction with the Company's Legal Department, shall have the responsibility of developing a plan to ensure that initial rate schedule filings and any amendments to existing contracts are filed with FERC pursuant to the deadlines imposed by FERC regulations. The CCO and the Company's Legal Department should coordinate with the appropriate managers to ensure that APGI and APM file to inform FERC of any changes in status reflecting a departure from the conditions relied upon by the Commission in granting any market-based rate authority, any termination or cancellation of any contract on file with the Commission, and any change in the Company's name or obligations under a rate schedule or tariff, as necessary. The Company's Legal Department shall also have the responsibility of complying with the reporting requirements regarding new generation sites.

In addition, the Company's Legal Department shall compile any waivers of or exemptions from the requirements under Section 205 of the FPA that have been granted to the Company, and periodically assess whether circumstances have changed that would prevent the Company from relying on a particular waiver or exemption.

The Company must be sure to include in each updated market power analysis both the horizontal and vertical market power components. The horizontal market power analysis must include the wholesale market share and pivotal supplier screens, and conform to the standardized format in Appendix A of Order No. 697 and the implementing regulations. For the vertical market power analysis, the Company must make an affirmative statement regarding APGI's OATT on file and the Long Sault Division's and the Tapoco Division's waivers of the requirement to maintain an OATT with the Commission. The Company must also indicate that APM does not have an OATT on file because it does not own, operate, or control transmission

facilities.¹³ The Company must also make an affirmative statement that neither APGI nor APM has erected, nor will erect, barriers to entry into their relevant markets.

The Company must also become familiar with the numerous affiliate restrictions contained in the Commission's regulations, as such restrictions are imposed upon all market-based rate sellers (even those that did not have a code of conduct incorporated in their market-based rate tariffs, like APGI and APM).¹⁴

The Company's Legal Department must also make sure that an "asset appendix" is created and maintained to include all relevant FERC-jurisdictional assets, accompanied by the information required by Appendix B of Order No. 697 and the implementing regulations. This asset appendix must be included in every updated market power analysis and relevant change in status notification.

XIII. PROHIBITION OF ENERGY MARKET MANIPULATION per 18 C.F.R. 1c

A. FERC Requirements

1. Market Manipulation Rules

Under Order No. 670,¹⁵ the Company is prohibited from using manipulative or deceptive devices in connection with electric or natural gas transactions. FERC stated that it will act in cases where an entity: (1) uses a fraudulent device, makes a material misrepresentation, makes a material omission when there is a duty to speak under a Commission directive, or engages in any conduct that operates as a fraud or deceit upon any other entity; (2) with the requisite scienter (an improper state of mind); (3) in connection with the purchase or sale of electric energy or the transmission of electric energy.

There is no affirmative duty of disclosure in the arm's-length, bilateral negotiations that are typical in wholesale energy markets, absent some tariff requirement or Commission directive mandating disclosure. The Commission has recognized that, in private contracts, a material misrepresentation or omission that affects only negotiations between two sophisticated parties will not necessarily result in an enforcement action. In such a case, the Commission will decide whether to pursue an enforcement action on a case-by-case basis.

¹³ The Company would also have to include a description of its ownership of, or affiliation with, any of the inputs to electric power production described above, as it becomes applicable.

¹⁴ In particular, the Company must be aware of the regulation providing that no wholesale sale of electric energy may be made between a franchised public utility with captive customers and a market-regulated power sales affiliate without first receiving Commission authorization for the transaction under Section 205. Nonetheless, this restriction should not create any compliance concern because the Company did not previously have a need to operate under a market-based code of conduct. In addition, while APGI sells power at wholesale under its tariff, and provides transmission services under an OATT, APGI does not have captive customers or franchised service territories (nor is affiliated with any jurisdictional utility that has captive customers or a franchised service territory).

¹⁵ *Prohibition of Energy Market Manipulation*, Order No. 670, 114 FERC ¶ 61,047 (2006).

2. Market Behavior Rules

In addition to its market manipulation rules, FERC also has separate Market Behavior Rules described below:

- Unit Operation: Seller will operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable power market. Compliance with Rule 1 does not require Seller to bid or supply electric energy or other electricity products unless such requirement is a part of a separate Commission-approved tariff or requirement applicable to Seller.
- Communications: Seller will provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, or Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercised due diligence to prevent such occurrences.
- Reporting: To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas price indices, Seller shall provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth by the Commission. Seller shall notify the Commission within 15 days of the effective date of this tariff provision of whether it engages in such reporting of its transactions and update the Commission within 15 days of any subsequent change to its transaction reporting status. In addition, Seller shall adhere to such other standards and requirements for price reporting as the Commission may order.
- Record Retention: Seller shall retain, for a period of five years, all data and information upon which it billed the prices it charged for the electric energy or electric energy products it sold pursuant to this tariff or the prices it reported for use in price indices.¹⁶

3. Record Retention Requirements

The Commission's regulations implementing the Market Behavior Rule related to record retention provide that market-based rate sellers such as APGI and APM must retain all data and information upon which they billed the prices charged for the electric energy sold pursuant to their market-based rate tariffs, for at least the designated five-year period, in order to

¹⁶ The record retention requirement was modified from three to five years in Order No. 667. *See Revisions to Record Retention Requirements for Unbundled Sales Service, Persons Holding Blanket Marketing Certificates, and Public Utility Market-Based Rate Authorization Holders*, 115 FERC ¶ 61,212 (2006).

“reconstruct prices charged for electricity and related products.”¹⁷ This means that sellers must retain the complete set of contractual and related documentation upon which they billed their customers for their sales made pursuant to the a market-based rate tariff, regardless of the medium in which the record is maintained (whether a handwritten or contractual document, e-mail or electronic document, or other record).

The obligation to retain records for the reconstruction of prices charged for electricity differs from the record retention requirements in Part 125 of FERC’s regulations, which are largely related to cost-of-service rate requirements. Part 125’s regulations apply to all books of account and other records prepared by or on behalf of a public utility. Part 125 provides for a schedule of records and their respective minimum periods of retention, which covers the following general categories: corporate and organizational documents; general accounting records; insurance records; operations and maintenance records; plant and depreciation records; records concerning purchase and stores; revenue accounting and collection records; tax records; deposit records; and miscellaneous records.

Part 125 also sets forth numerous other obligations concerning record retention, including the following:

- *Designation of Supervisory Official:* Each public utility subject to these regulations must designate one or more individuals with official responsibility to supervise the utility’s program for preserving and destroying records.
- *Protection and Storage of Records:* Each public utility must provide reasonable protection for those records subject to these regulations from damage by fire, floods, and other hazards.
- *Destruction of Records:* At the expiration of the retention period, public utilities may use “any appropriate method to destroy records.”
- *Premature Destruction or Loss of Records:* When a public utility destroys or loses records before the expiration of the prescribed period of retention, such entity must file with FERC a certified statement listing, as far as may be determined, the records destroyed and describing the circumstances of accidental or premature destruction or loss within 90 days from the date of discovery of the destruction.
- *Index of Records:* Each public utility must arrange, file, and index records so that such records may be readily identified and made available to Commission representatives.

B. Compliance Measures

The President of a Company subsidiary shall have the responsibility for monitoring compliance with the market manipulation rules and the Market Behavior Rules as mandated

¹⁷ *Conditions for Public Utility Market-Based Rate Authorization Holders*, Order No. 674, III FERC Stats. & Regs., Regs. Preambles ¶ 31,208 (2006).

under FERC's requirements, and the President shall be tasked with delegating the responsibilities to Company employees as appropriate. In part, Company employees shall institute mechanisms to monitor the following: scheduling, maintenance, and bid supply; the accuracy of all information submitted to the Commission and Commission-approved transmission entities; the accuracy of all information concerning transactions reported to publishers of electricity price indices; and the retention of all data and information regarding the prices charged and reported to indices, for at least five years.

The following are guidelines to be followed by all employees to ensure compliance with the market manipulation and market behavior rules:

- Outage reporting must be accurate, factual, and timely;
- Outage planning must be performed in accordance with “prudent utility practice” and should not be oriented toward attaining or influencing particular market outcomes;
- Unit commitment decisions must be made in accordance with “prudent utility practice” and should not be oriented towards attaining or influencing particular market outcomes;
- Generation operations must be performed in accordance with “prudent utility practice” and should not be oriented towards influencing particular market outcomes;
- Trading activities must be conducted on the basis of legitimate business needs or economically rational, and should not be oriented towards influencing particular market outcomes;
- Transmission reservation and scheduling must be performed in a manner expected to support legitimate trading activity and should not be oriented towards influencing particular market outcomes;
- Power schedulers must be honest and forthcoming in all communications and interactions with system operators;
- Gas scheduling and nominations must be performed with the expectation of supporting legitimate business needs and should not be oriented towards influencing particular market outcomes;
- Gas schedulers must deal with pipelines in an open and honest manner;
- Electric energy coordinators must ensure the integrity of studies in order to prevent false results that could improperly affect pricing and/or decision making;
- Electric energy coordinators must not curtail system firm or unit firm transactions for reasons not authorized by contract; and
- The Company must comply with all applicable tariffs and market rules (including market monitor requirements) of Regional Transmission Organizations in which they participate.

This includes, but is not limited to, requirements pertaining to release and resale of financial transmission rights, physical transmission rights, designation of network integration load and resources, as well as scheduling of transmission service on a point to point or network integration basis;

- The Company must not implement or change a business practice that materially alters a representation that has been made in its market-based rate filings (or other proceedings) regarding its business model (including, but not limited to, assumptions as to owned or controlled capacity);
- To the extent forward looking representations are made in connection with regulatory or transactional matters, due diligence should be exercised to assure the representations continue to be accurate and complete and that any material changes are disclosed promptly; and
- Required FERC and EIA Forms or other submissions must be as accurate and complete as possible and should not include material omissions.

With regard to record retention, the Company must retain all contracts and related records supporting their billing statements for all sales made under APGI or APM's market-based rate tariff, regardless of the medium. The Company's Legal Department should create a written document retention policy to memorialize the various categories of its documents related to its market-based sales and provide a schedule for the retention, storage, and destruction of such proprietary records. The Legal Department must also retain any documents related to any ongoing investigation or pending FERC litigation relating to the Company's rates, regardless of the date of creation. This directive should include all written, electronic, or audio materials which may relate to the issues of concern in the investigation.

The Company should incorporate the applicable requirements of Part 125 in its written document retention policy. With regard to the general requirements in Part 125, sellers must ensure that any current retention practices and procedures are consistent with and sufficient to satisfy the numerous requirements concerning such matters as storage, the premature loss or destruction of records, and indexing.

In addition, the CCO or a delegate shall compile any waivers of or exemptions from the requirements under the Market Behavior Rules that have been granted to the Company, and periodically assess whether circumstances have changed that would prevent the Company from relying on a particular waiver or exemption.

XIV. COMPLIANCE WITH ORDER NOS. 888 AND 890 AND OATT REGULATIONS

A. FERC Requirements

FERC Order Nos. 888 and 890 require public utilities owning, controlling, or operating transmission lines to file a non-discriminatory Open Access Transmission Tariff ("OATT") that offers other entities the same transmission service they provide themselves. All new transmission service must be obtained under OATTs. Public utilities with OATTs on file with

FERC must also amend their OATTs periodically in order to incorporate modifications required by FERC. Those modifications have included the addition of standard form generation interconnection agreements for large generation facilities, small generation facilities, and wind generation facilities. Once a public utility has customers under its OATT or service requests under its OATT, additional compliance issues arise.

B. Compliance Measures

The Company's Legal Department shall have the responsibility for amending the OATT as mandated under FERC's requirements, and shall be tasked with delegating the responsibilities to Company employees as appropriate. FERC regulations and precedent shall be monitored routinely by the CCO in order to be able to amend any OATT on file, as necessary, to incorporate any modifications mandated by the Commission.

In addition, the CCO or a delegate shall ensure that transmission service is provided in accordance with the terms of the OATT and shall compile any waivers of or exemptions from the requirements under Order Nos. 888 and 890 and its implementing regulations that have been granted to the Company, and periodically assess whether circumstances have changed that would prevent the Company from relying on a particular waiver or exemption. To date, the Tapoco, Colockum and Long Sault Divisions of APGI have received a waiver of the requirement to have an OATT on file, subject to standard conditions.¹⁸

C. FERC Requirements

Part 37 of the FERC regulations require each FERC-jurisdictional transmission owner or operator to establish an OASIS Internet website. The OASIS is intended to provide a process for requesting transmission service and to enable transmission providers and transmission customers to communicate requests and responses to buy and sell available transmission capacity offered under the transmission provider's OATT. The marketing functions of public utilities are required to obtain information about their affiliates transmission system for their own wholesale power transactions, such as available transmission capability, in the same way their competitors do – via an OASIS on the Internet.

D. Compliance Measures

APGI shall develop a plan for ensuring compliance with FERC regulations concerning the OASIS site. As part of this plan, APGI shall develop training to educate employees about: (1) transmission customers' access to information on OASIS; and (2) triggering events that require updates on the OASIS Internet website as soon as they become effective.

In addition, the CCO or a delegate shall compile any waivers of or exemptions from the OASIS requirements that have been granted to the Company, and periodically assess whether circumstances have changed that would prevent the Company from relying on a particular

¹⁸ *Alcoa Power Generating Inc. (Tapoco Div.)*, 120 FERC ¶ 61,037 (2007); *Alcoa Power Generating Inc.*, 131 FERC ¶ 61,177 (2010); *Alcoa Power Generating Inc. (Long Sault Div.)*, 120 FERC ¶ 61,035 (2007).

waiver or exemption. Any waiver of or exemption from the OASIS must be posted on the OASIS within the required times specified in Part 37 of FERC’s regulations. To date, the Tapoco, Colockum and Long Sault Divisions of APGI have received a waiver of the OASIS requirements under Order No. 889, subject to standard conditions.¹⁹

XV. COMPLIANCE WITH ACCOUNTING, RECORD-KEEPING REQUIREMENTS

A. FERC Requirements

Public utilities have numerous requirements related to audits and certifications of compliance with the Uniform System of Accounts (“USOA”), including the information required in the Form No. 1 (described below) and those regulations concerning the preservation of the records of public utilities and licensees, which are enumerated in detail in Parts 41, 101, and 125 of the Commission’s regulations.

B. Compliance Measures

The Company’s Director of Accounting shall be responsible for developing a plan to ensure that the Company satisfies its obligations under the Commission’s accounting and record-keeping regulations, including the filing of any forms required under the USOA. The Director of Accounting shall delegate the responsibilities to Company employees as appropriate.

In addition, the Company’s Director of Accounting, or designate, shall compile any waivers of or exemptions from the Commission’s accounting and record-keeping requirements that have been granted to the Company, and periodically assess whether circumstances have changed that would prevent the Company from relying on a particular waiver or exemption.

XVI. COMPLIANCE WITH INTERLOCKING DIRECTORATE REQUIREMENTS

A. FERC Requirements

1. Authorization for Interlocks

The officers and directors of APGI and APM may not hold simultaneous positions (called “interlocks”) in the following entities without prior FERC authorization:

- Each other;²⁰
- Another public utility;
- Any bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility; or

¹⁹ *Alcoa Power Generating Inc. (Tapoco Div.)*, 120 FERC ¶ 61,037 (2007); *Alcoa Power Generating Inc. (Long Sault Div.)*, 116 FERC ¶ 61,257 (2006); *Alcoa Power Generating Inc.*, 131 FERC ¶ 61,177 (2010).

²⁰ The Commission has granted automatic authorizations for any officer or director of a public utility to hold interlocking positions with an affiliated public utility. Only an informational filing need be submitted to FERC prior to assuming the interlocking positions.

- Any company supplying electrical equipment to APM or APGI.

While FERC will generally not authorize interlocks involving unaffiliated public utilities, there are several exceptions with respect to interlocks involving financial institutions. The process of obtaining prior authorization can take up to 60 days and it must be completed prior to the individual actually holding the interlocking position. Until recently, power marketers were exempted from these requirements by a waiver usually granted as part of the company's market-based rate authorization order. While positions assumed pursuant to such a waiver are grandfathered, new positions or changes must be authorized by FERC.

2. Form 561

The officers and directors of APM and APGI must file each year (by April 30) a report on Form 561 indicating interlocks involving:

- Any investment bank, bank holding company, foreign bank or subsidiary thereof doing business in the United States, insurance company, or other organization primarily engaged in the business of providing financial services or credit, a mutual savings bank, or a savings and loan association;
- Any entity which is authorized by law to underwrite or participate in the marketing of securities of a public utility;
- Any entity which, during any one of the three calendar years immediately preceding the filing date, purchased (for purposes other than for resale) one of the twenty largest annual amounts of electric energy sold by the public utility (or by any public utility which is part of the same holding company system) during any one of such three calendar years;
- Any entity which produces or supplies electrical equipment or coal, natural gas, oil, nuclear fuel, or other fuel, for the use of any public utility;
- Any entity covered by Section 305(b) of the FPA, which includes any other public utility; or
- Any entity which is controlled by any entity referred to above.

In addition, officers and directors of registered holding companies and their affiliates must report these types of interlocks.²¹

3. Notice of Change in Status of Interlock

In the event that an officer or director of APM or APGI resigns from, withdraws from, is assigned to other duties in lieu of, or fails to gain re-election or appointment to any of the positions for which such individual obtained FERC authorization to hold, or in the event of any other material or substantial change in such a position, the officer or director must file a notice to

²¹ The Commission has not clarified its regulations to account for the repeal of PUHCA 1935 and the fact that under PUHCA 2005 there are no registered holding companies. Until the regulations are clarified, Alcoa and its affiliates, other than APM and APGI, should not be required to comply with the reporting requirement.

FERC within 30 days after such change occurs. The notice of a change in status must provide the position, the corporation, the date of termination from the position and/or the corporation, and/or any other material or substantial change.

This requirement applies only to those positions relating to an interlock for which the officer or director of APGI and APM was required to receive Commission authorization. Thus, the requirement applies to the following:

- interlocks requiring prior Commission authorization (as described in Section A.1); and
- interlocks requiring the submission of an informational report as a condition of automatic authorization (when automatic authorization is available).²²

The requirement to file a notice of a change in status of an interlock does not apply to those interlocks that do not require Commission authorization, and are only reported to FERC on an officer or director's Form 561 (as described in Section A.2).

B. Compliance Measures

1. Inquiries Relating to Prospective Directors and Officers

Before an individual joins the Board of Directors or takes an officer position with APGI or APM, the Legal Department will determine whether that individual is already serving in the position as an officer or a director of any of the positions described above (e.g., Alcoa or another of its subsidiaries, another public utility, a financial entity, or a company supplying electrical equipment to APGI or APM). Each prospective officer and director will be informed about the scope of the definition of "public utility" under the FPA and the scope of the definition of "electrical equipment" under FERC's regulations and precedent. The Legal Department will also inform officers and directors that interlock between unaffiliated electric public utilities are typically not authorized by FERC. The Legal Department will determine whether prior FERC authorization is required and, if the Company decides to pursue the possibility of having that individual serve as a director or officer, it will apply for FERC authorization for the interlock. If

²² Automatic authorization may apply to the following interlocks:

- Officer or director of one or more other public utilities owned by the same holding company (directly or indirectly), if such holding company owns the percentage of each utility's stock required by each utility's bylaws to elect directors;
- Officer or director of two public utilities, if one utility: (a) is owned by the other, in part or in whole; and (b) owns or operates transmission or generating facilities to provide transmission service or electric power for sale to its owner, as its primary business; and
- Officer or director of more than one public utility, if such individual has already received authorization from the Commission to hold different positions of the utilities for an interlock involving affiliated public utilities.

such permission is granted, the Annual Report of Interlocking Positions (“FERC Form 561”) enables FERC to monitor the relationship between the interlocked companies.

2. Information on Interlocking Directorates and Policies Provided to New Officers and Directors

Once an individual has agreed to join APGI or APM’s Board of Directors or become an officer, he or she will be informed by the CCO or the General Counsel’s designee specifying FERC’s legal requirements and describing FERC policies. Text substantially similar to the excerpt below will be included:

Under Section 305(b) of the Federal Power Act (“FPA”), and Part 45 of the Federal Energy Regulatory Commission’s (“FERC’s”) Regulations, any person who is a prospective officer or director of a public utility (in this case, “APGI,” or “APM”) who is also serving in the position as an officer or a director of: (a) the parent company Alcoa or another of its subsidiaries; (b) any bank, trust company, banking association or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility (with certain safe harbor exceptions); (c) any company that supplies electrical equipment to a public utility, whether the supplying company be a manufacturer or dealer, or one supplying electrical equipment pursuant to a construction, service, agency or other contract; or (d) any other public utility under the FPA, must receive prior authorization from FERC to serve as a director of a public utility.

A “public utility” means any person who owns or operates facilities for the transmission of electric energy in interstate commerce or the sale of electricity at wholesale. This includes paper facilities such as a power marketer’s wholesale power sales contracts and FERC rate schedules.

With respect to electrical suppliers, generally electrical equipment is considered anything which is used in the construction, operation or maintenance of a power plant, a transmission system or a distribution network. FERC construes electrical equipment broadly. For example, FERC’s definition of electrical equipment includes communications equipment if that equipment is booked in an electric plant account due to its integral connection to the generation process.

If you are an officer or director of a company described in (a), (b), (c) or (d) above, in most instances Alcoa must file an application with FERC seeking prior approval for you to serve as an officer or director of APGI or APM. Obtaining authorization is no small matter and for certain of the above identified interlocks, it may not be possible to obtain FERC authorization for the interlock. While a request for FERC authorization is pending, the officer or director may not assume the interlocking position. Alcoa has already obtained information from you on positions that you hold currently but you must take steps to conform to FERC’s requirements if you seek to join the Board of Directors of any entity that is described by (a), (b), (c) or (d). Accordingly, please contact the Legal Department before agreeing to join any such Board or if you have any questions regarding the information that you have provided to us up to now.

On an annual basis, Alcoa will send a Questionnaire designed to obtain information from you to ensure compliance with Section 305(b) and (c) of the FPA. Section 305(c) of the FPA and Part 46 of FERC Regulations provide for an Annual Report of Interlocking Positions (“FERC Form 561”) that must be filed with FERC. That Annual Report covers a wider range of interlocking positions than the prohibition under Section 305(b) described above. The reporting requirements apply to an interlock for which no prior FERC authorization is required. In addition to the positions previously described, the Annual Report requires the reporting of any other positions with:

- any organization which produces or supplies electrical equipment or coal, natural gas, oil, nuclear fuel, or other fuel, for the use of any electric public utility; or
- companies among the 20 largest customers of Alcoa during any one of the three calendar years immediately preceding the filing date (a list of such organizations is submitted annually to the FERC); or
- any other electric public utility (including but not limited to power marketers and most merchant generators); or
- insurance companies; or
- any investment bank, bank holding company, foreign bank or subsidiary thereof doing business in the United States, or any organization primarily engaged in the business of providing financial services or credit, a mutual savings bank, or a savings and loan association; or
- any organization which is authorized by law to underwrite or participate in the marketing of securities of an electric utility; or
- any organization which is owned or controlled by any entity referred to above.

According to FERC regulations, advisory directors come within the restrictions. FERC’s approach is formulaic. If the title contains the word “director”, the individual should be treated as a director. Accordingly, even honorary titles (“advisory,” “emeritus,” etc.) carry real prohibitions.

Moreover, unless FERC has approved the interlock involving an electric equipment supplier, the APGI or APM officers and/or directors with the interlock should inform the management of the electrical equipment company that Alcoa and its subsidiaries should not be solicited for business. In addition, unless FERC has approved the interlock involving a bank or financial institution, APGI or APM officers and directors with the interlock should inform the Legal Department if the bank or financial institution is considering participating in a securities issuance for Alcoa or its subsidiaries.

Once we receive your information the Legal Department, will complete a draft of the FERC Annual Report of Interlocking Positions (“FERC Form 561”) for you under Section 305(c), if one is required, for your review and signature. If, when you review the draft, there are

any changes in your status or if you believe there is an error, please contact the Legal Department to make sure these matters are discussed and reviewed. The draft will rely on your answers to the Annual Questionnaire for Officers and Directors (Officers and Directors Proxy Statement/10k and Federal Power Act Interlocking Directorate Questionnaire) (“Questionnaire”).

In sum, your duties and responsibilities as an APGI or APM director include:

- notifying the General Counsel if you are planning to or have become an officer or director of Alcoa or another of its subsidiaries, another electric public utility, a bank, a finance company or a company that supplies electrical equipment to an electric public utility;
- carefully answering the questions in the Annual Questionnaire for Directors and Officers;
- carefully reviewing the FERC Annual Report of Interlocking Positions (“FERC Form 561”) when it is sent to you for your signature during the first quarter of each year;
- if you are a director of a bank or financial institution, making sure you understand the special restrictions for bank directors, and verifying to Alcoa that unless you have FERC authorization for this interlocking position, that you informed the Compliance Officer if the bank or financial institution is considering participating in a securities issuance for Alcoa;
- if you are a director of an electrical equipment supplier, making sure you understand the special restrictions applicable and verifying to Alcoa that, unless this interlocking position has been approved by the FERC that you have informed the management of the electrical equipment company that Alcoa and its subsidiaries should not be solicited for business; and
- if you have any questions about interlocking directorate restrictions or reporting requirements, contact the Compliance Officer.

3. Annual Questionnaire

APGI or APM will also send to its Officers and Directors a “Proxy Statement, Form 10K and Federal Power Act Interlocking Directorate Questionnaire” (“Questionnaire”). The Questionnaire will include questions that will elicit information about whether the officer or director is also the officer or director of the following types of entities:

- An investment bank, bank holding company, foreign bank or subsidiary thereof doing business in the United States; or
- Any insurance company; or

- Any other organization primarily engaged in the business of providing financial services or credit, a mutual savings bank, or a savings and loan association; or
- Any organization which produces or supplies electrical equipment or coal, natural gas, oil, nuclear fuel, or other fuel, for the use of any electric public utility; or
- Any organization which during one of the three calendar years immediately preceding purchased one of the twenty largest annual amounts of electric energy sold by the electric public utility during any one such years (a list of these customers will accompany the questionnaire); or
- Any electric public utility (including but not limited to any power marketer or merchant generator); or
- Any organization which is owned or controlled by any organization referred to above.

The Questionnaire will explain that this is an opportunity to help the Legal Department to ensure that the officers' and directors' FERC Forms 561 are accurate and that APGI and APM's officers and directors have the required approvals to hold interlocking positions. If the answer is in the affirmative, the officer or director will be asked to identify the entities. The Legal Department will file the FERC Form 561 with FERC on behalf of the officer or director before the April 30 deadline.

The Questionnaire will also note that for purposes of the FERC Form 561, electrical equipment should be considered to be anything which is used in the construction, operation or maintenance of a power plant, a transmission system, or a distribution network. The Questionnaire will emphasize that FERC construes electrical equipment broadly, and that a response should be considered broadly. The Questionnaire will note, for example, that FERC's definition of electrical equipment includes communications equipment if such equipment is booked in an electric plant account due to its integral connection to the generation process. Any response in this area will elicit a follow-up inquiry to determine with greater precision the nature of the electrical equipment.

4. Restrictions Based on Interlocks

If an interlock with an electrical equipment supplier exists, the officer and director with the interlock as well as the Alcoa Procurement Department will receive the following information each year in a letter/memorandum from the Compliance Officer:

This letter/memorandum is intended to inform you of your obligations related to the interlock between Alcoa and the following electrical equipment supply company: _____. Alcoa and its subsidiaries are not permitted to make purchases of electrical equipment manufactured by companies on whose board an APGI or APM Director sits, whether the purchases are directly from the manufacturer, its affiliate or subsidiary, or from a third

party vendor unless the interlock has been authorized by the Federal Energy Regulatory Commission in advance of the purchase

In addition, if an interlock with a bank or financial institution exists, the officer and director with the interlock, as well as the Alcoa Finance Department, will receive the following information each year in a letter memorandum from the CCO or a delegate:

This letter/memorandum is to inform you of the interlock between Alcoa and the following, _____, a bank or financial institution. To the extent the bank or financial institution identified above is involved with a securities issuance for Alcoa, the transaction must be reviewed and approved by the CCO to ensure that it is permissible under the Federal Power Act and FERC regulations.

XVII. COMPLIANCE WITH FERC REPORTING REQUIREMENTS

A. FERC Requirements

1. Annual Charges Report

On or before April 30 of each year, pursuant to Part 382 of the Commission's regulations, FERC requires public utilities that provide transmission service to submit to FERC the total megawatt hours of transmission of electric energy in interstate commerce. FERC relies on that information to assess annual charges for these entities. Annual charges that have been assessed must be paid within 45 days of the issuance of the bill, absent a petition of waiver under FERC regulations. Our Financial Accounting Services will assume responsibility for this requirement.

2. Financial and Operational Reports

(a) Form No. 1 Annual Report

Form No. 1 is a comprehensive financial and operating report submitted by major electric utilities, licensees, and others. APGI has submitted Forms No. 1 in the past. Form No. 1 is an annual report and the report is due by April 18. Our Financial Accounting Services will assume responsibility for this requirement.

(b) Form 3-Q Quarterly Report

Form 3-Q is a comprehensive quarterly financial and operating report which supplements Form 1 and is submitted for all major and non-major electric utilities and licensees who engage in the generation, transmission, distribution, or sale of electric energy. APGI has submitted Forms 3-Q in the past. Form 3-Q is due 60 days after the end of the reporting quarter. Our Financial Accounting Services will assume responsibility for this requirement.

(c) Form 523 - Application for Authorization of the Issuance of Securities or the Assumption of Liabilities

Form 523 is used by the Commission to make a determination to grant or deny authorization for public utilities and licensees to issue securities or to assume a liability. Form 523 is filed as necessary, and a report is due no later than 30 days after the sale or placement of long-term debt or equity securities or the entry into guarantees or assumptions of liabilities.

(d) Form 561

See section XVII(A)(2) above.

(e) Form 714 - Annual Electric Control and Planning Area Report

Form 714 addresses planning area data used to monitor forecasted demands by electric utility entities with fundamental demand responsibility, and to develop hourly demand characteristics. APCI has previously submitted this form. Form 714 is an annual report, and is due on or before June 1 for the immediately prior calendar year. Our Yadkin, Tapoco and Warrick Divisions in conjunction with their NERC Regional Entities will assume responsibility for this requirement.

(f) Form 715 - Annual Transmission Planning and Evaluation Report

Form 715 is required for any transmitting utility that operates integrated transmission system facilities that are rated at or above 100 kilovolts (kV). Form 715 has 6 parts that must be completed. The Commission considers the information collected by this report to be non-public Critical Energy Infrastructure Information (“CEII”). Form 715 is an annual report, due on April 1. APCI has a waiver of the requirement to submit Form 715 with respect to the Tapoco and Long Sault Divisions. Our Yadkin and Tapoco Divisions in conjunction with their NERC Regional Entities will assume responsibility for this requirement.

(g) Form 580 - Interrogatory on Fuel and Energy Purchase Practices

Form 580 is required for all jurisdictional utilities having at least one steam-electric generating station of 50 MW or greater capacity, or having an ownership interest of 50 MW or greater capacity in a jointly-owned steam-electric station. A jurisdictional utility without a cost-based tariff on file with the Commission is not required to file the form. Form 580 is a biannual report, due by November 30. Our Warrick Division will assume responsibility for this requirement.

(h) Form 566 - Top 20 Purchasers List

APCI and APM are required to list customers and their business addresses if they were one of the top twenty largest purchasers of electric energy, measured in kilowatt hours sold, for purposes other than resale, during any of three preceding calendar years. Form 566 is an annual report, due by January 31. Our Legal department in conjunction with the marketing functions will assume responsibility for this requirement.

(i) Cash Management Programs

Public utilities subject to the USOA that participate in cash management programs must file the agreements with the Commission within 10 days of the entry into the program. Changes to the cash management agreement must be filed with the Commission within 10 days of any change.

(j) Electric Quarterly Reports

All public utilities are required to electronically file EQRs summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and transaction information for short-term and long-term market-based power sales and cost-based power sales during the most recent calendar quarter. These are quarterly reports, due 30 days after the end of each calendar quarter. Our Origination, Forecasting and Analysis Department will assume responsibility for this requirement.

(k) Form 552 – Annual Report of Natural Gas Transactions

Form No. 552 collects transactional information from natural gas market participants—including a number of entities that might not otherwise be subject to FERC’s traditional Natural Gas Act jurisdiction. Market participants must fill out the form annually if: (1) they make use of a blanket sales certificate under § 284.402 or § 284.284; (2) their reportable natural gas sales were greater than 2.2 million MMBtu in the reporting year; or (3) their reportable natural gas purchases were greater than 2.2 million MMBtu in the reporting year. These reports are due by May 1 of each year for the preceding calendar year.

Although the normal reach of the Commission’s natural gas authority covers natural gas companies, pipelines, and storage field operators, FERC has applied authority given to it by the EPAct 2005 to all purchasers and sellers of natural gas in wholesale markets, including many end-users. All of these companies are required to provide an annual report regarding their natural gas purchases and sales.

In general, transactions that utilized next-day or next-month published price indices, transactions that were reported to price index publisher, or transactions that “could be reported to an index publisher,” even if the buyer or seller did not choose to do so, are reportable under the new rules. By “could be reported to an index publisher,” FERC stated that it means certain bilateral, arms-length, fixed price, physical natural gas transactions between non-affiliated companies at all trading locations. Balancing, cash-out, operational, in-kind, base or cushion gas purchases for storage facilities, some NYMEX Plus contracts, and similar transactions must be reported on Form No. 552 if they relied upon, contributed to, or could have contributed to a price index. Customers of an asset manager are not exempt from the reporting requirement.

Some—but explicitly not all—end-use transactions are excluded from the reporting obligation, *e.g.*, bundled sales made by local distribution companies at retail under a state-approved tariff. The Company must review its purchases and sales to determine whether they are reportable under FERC’s criteria. The Company must also review its sales to determine

whether any sales were made pursuant to a blanket sales certificate under FERC's rules. Even if a company's reportable purchases and sales do not meet the volumetric threshold, the company is still required to file the identification portion of the report if it made use of a blanket sales certificate.

B. Compliance Measures

The President of a Company subsidiary shall have the responsibility for filing all necessary forms under FERC's financial reporting requirements, and the President shall be tasked with delegating the responsibilities to Company employees as appropriate. Any financial reporting responsibilities shall be delegated to the accounting department. Company employees shall develop a plan and calendar to monitor all annual, quarterly, and other filing deadlines for FERC financial and operating reports. Company employees shall develop comprehensive procedures, including training of appropriate employees, to ensure that complete and accurate information concerning the Company's finances, operations, and customers is maintained and compiled by the appropriate departments within the Alcoa organization, and reported to FERC in a timely fashion.

In addition, the Company's Legal Department shall compile any waivers of or exemptions from FERC's reporting requirements that have been granted to the Company, and periodically assess whether circumstances have changed that would prevent the Company from relying on a particular waiver or exemption. The Company's Legal Department will also work with the CCO to make the appropriate individuals aware of any changes to the reporting and filings requirements.

XVIII. REQUESTING CEII PROTECTION AND GAINING ACCESS TO CEII

A. FERC Requirements

1. Requesting CEII Status

Section 388.112 of the Commission's regulations permit filing entities ("Submitting Parties") to submit a document and request privileged treatment by claiming that some or all of the information contained therein is exempt from the mandatory public disclosure requirements of the Freedom of Information Act ("FOIA"), and thus should be withheld from the public domain. A Submitting Party claiming that information warrants special treatment as Critical Energy Infrastructure Information ("CEII")²³ must file: (1) a written statement requesting CEII treatment for information contained in a document, and the justification for special treatment of

²³ "CEII" is defined in the Commission's regulations as follows: "specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under [FOIA], and (iv) does not simply give the general location of the critical infrastructure." 18 C.F.R. § 388.113(c)(1).

such information; and (2) an original plus two copies of the CEII volume, if any, filed and marked in accordance with the FERC Secretary's instructions.²⁴

2. Accessing CEII

The Commission's regulations set forth the procedures for a party to request access to documents claimed to be CEII, when such party is not an employee or agent of the owner/operator of the facility at issue ("Requesting Party").²⁵ The Requesting Party must file a signed, written request with the Commission's CEII Coordinator. The request must contain the following:

- The Requesting Party's name, title, address, and telephone number;
- The name, address, and telephone number of the person or entity on whose behalf the information is requested;
- A detailed statement explaining the particular need for and intended use of the information; and
- A statement as to the Requesting Party's willingness to adhere to limitations on the use and disclosure of the information requested.²⁶

Once the request is received, the CEII Coordinator will determine if the information is CEII, and, if it is, whether to release the documents to the Requesting Party. The CEII Coordinator will balance the Requesting Party's need for the information against the sensitivity of the information. If the Requesting Party is determined to be eligible to receive the information requested, the CEII Coordinator will determine what conditions, if any, to place on the release of the information. The CEII Coordinator will generally attempt to respond to the Requesting Party within 20 working days after receipt of the request.²⁷ However, the CEII Coordinator is not bound by the regulations to adhere to these timing guidelines.

²⁴ While a request for CEII treatment is pending, the Secretary shall place the subject documents in a "non-public file." By this action, the Commission is not making a determination on any claim of CEII status, as FERC retains the right to make determinations with regard to any claim of CEII status and it has the discretion to release information "as necessary to carry out its jurisdictional responsibilities."

²⁵ FERC's regulations provide that an owner or operator of a facility, including employees and officers of the owner/operator, may obtain CEII relating to its own facility directly from the Commission without going through the procedures outlined herein. Non-employee agents of an owner/operator of a facility may obtain CEII relating to such facility in the same manner as the owner/operator "as long as they present written authorization from the owner/operator to obtain such information."

²⁶ A Requesting Party who seeks the information on behalf of all employees of an organization should clearly state that the information is sought for the organization, that the Requesting Party is authorized to seek the information on behalf of the organization, and that all the Requesting Parties agree to be bound by a non-disclosure agreement ("NDA") that must be executed by and applied to all individuals with access to the CEII.

²⁷ The CEII Coordinator's decision denying access to CEII may be appealed by a Requesting Party to the General Counsel as a FOIA appeal pursuant to Section 388.110 of the Commission's regulations.

Pursuant to the regulations implementing Order No. 702, once a Requesting Party has been verified by Commission Staff as a “legitimate requester who does not pose a security risk,” his/her verification will be valid for the remainder of that calendar year. Such Requesting Party is not required to provide detailed information about himself or herself with subsequent requests during the calendar year. Nor is such individual required to file a NDA with subsequent requests during the calendar year because the original NDA will apply to all subsequent releases of CEII.²⁸

3. Submittal of an Executed Non-Disclosure Agreement

A Requesting Party must submit an executed NDA with the signed request for access to CEII. The model NDA provided on FERC’s website provides for the following provisions protecting CEII from unauthorized disclosure by Requesting Parties gaining access to CEII (defined as “Recipients”), among others:

- A Recipient may only discuss CEII with another Recipient of the identical CEII. A Recipient may check with the CEII Coordinator to determine whether another individual is a Recipient of the identical CEII.
- If any Recipient submits information to the Commission that includes CEII obtained under these provisions, portions of the filing containing CEII must be submitted in accordance with the Commission’s regulations.
- A Recipient of CEII may use CEII as foundation for advice provided to others, but may not disclose CEII to another individual unless that individual is an approved Recipient of the same CEII.
- A Recipient will not knowingly use CEII for an illegal or non-legitimate purpose.
- All CEII shall be maintained by a Recipient in a secure place. Access to those materials shall be limited to other Recipients of the identical material. Recipients may make copies of CEII, but such copies become CEII and subject to these same procedures. Recipients may make notes of CEII, which shall be treated as CEII notes if they contain CEII.
- Recipients must return CEII to the CEII Coordinator or destroy CEII within fifteen days of a written request by the CEII Coordinator to do so, except that CEII notes may be retained in accordance with the terms of the NDA. Within such time period, each Recipient, if requested to do so, shall also submit to the CEII Coordinator an affidavit stating that, to the best of his or her knowledge, all CEII has been returned or destroyed and that CEII notes have either been returned, destroyed or are being maintained by Recipient in accordance with the terms of the NDA.

²⁸ Such an annual certification does not eliminate the current requirement to notify the Submitting Party and provide such party an opportunity to comment on all requests for CEII. With each request, the Requesting Party will be required to provide detailed information as to why such individual needs the CEII.

2. Notifications of Request for CEII and Release of CEII

The Commission's regulations provide that when the Requesting Party claims access to a document for which CEII status has been claimed by the Submitting Party (or when FERC itself is considering the release of such information), the FERC official responsible for determining whether to release the information shall notify the Submitting Party of such request, and provide the Submitting Party with an opportunity to comment in writing on the request (at least five calendar days). The Requesting Party shall receive a copy of the notice. However, the Commission's regulations do not provide that the failure to object necessarily means that the information will be released into the public domain.

Further, according to the regulations, once the appropriate Commission official makes a decision to either deny a claim of privilege, in whole or in part, or make a limited release of CEII, notice of such decision will be provided to the Submitting Party, no less than five calendar days before disclosure. The notice will briefly explain why the Submitting Party's objections to disclosure have not been sustained by the Commission. A copy of this notice will be provided to the Requesting Party.

In Order No. 683, the Commission indicated that, in processing CEII requests, it had been the practice of FERC to issue the notice of request and opportunity to comment separately from the notice of release of a document. However, going forward, the Commission will provide the notice and opportunity to comment in the same document as the notice of release. Submitting Parties may still provide comments or input upon receiving a notice of release. The release would proceed as scheduled unless the CEII Coordinator or his or her designee receives opposition to the release, in which case the CEII Coordinator or his or her designee will issue a revised notice.²⁹

B. Compliance Measures

Pursuant to the Commission's regulations, the Company's employees may obtain CEII relating to Company facilities directly from FERC without following the procedures outlined above. The Company's Legal Department may also submit written authorization for non-employee agents to receive CEII concerning the Company. The Company must ensure that it follows the procedures set forth in the Commission's regulations when submitting any information regarding APGI's facilities that it would like treated as CEII. The Company must also ensure that it responds within the designated time period to any notices of requests for CEII and/or notices of release of CEII, to the extent that the Company opposes the release of CEII to a particular third party. Further, the Legal Department must keep an inventory of executed NDAs concerning third-party access to its CEII.

²⁹ FERC indicated that the Commission's regulations do not require the separation of the notice and opportunity to comment and notice of release. FERC indicated that when a Submitting Party opposes the release of CEII, the Commission will, by regulation, notify the Submitting Party at least five days prior to disclosure, in order to permit the party with an opportunity to respond and pursue an injunction against release in district court. Those Submitting Parties opposing release will continue to have a minimum of ten days of notice before the information is released. Order No. 683-A at PP 9-10.

XIX. COMPLIANCE WITH PUHCA 2005

A. FERC Requirements

1. Notification of Holding Company Status

Companies that meet the definition of a holding company as of February 8, 2006 were required to file Form FERC-65 to notify the Commission of their status as a holding company, no later than June 15, 2006. Holding companies formed after February 8, 2006 shall notify the Commission of their status as a holding company, no later than 30 days after their formation. Companies may, in some cases, qualify for an exemption (requiring a Form FERC-65A) or a waiver (requiring a Form FERC-65B). If there is any material change in facts that may affect an exemption or waiver granted by the Commission, the holding company must submit, within 30 days of such material change in facts, a new Form FERC-65A or FERC-65B and a written explanation as to why the material change does not affect the exemption or waiver (or notice to the Commission that the holding company no longer seeks to maintain such exemption or waiver).

2. Previously Authorized Activities

Unless otherwise prohibited by the Commission, a company may continue to engage in activities or transactions authorized under PUHCA 1935 prior to February 8, 2006, until the later of: (1) the date such authorization expires; or (2) December 31, 2007, so long as the company continues to comply with the terms of the authorization.

Holding companies that intend to rely on financing authorization orders or letters issued by the SEC must file these orders or letters with the Commission by March 10, 2006; any reports or other submissions that, pursuant to such financing authorizations, previously were filed with the SEC must instead be filed with the Commission, effective February 8, 2006.

3. Procedures for Obtaining Exempt Wholesale Generator and Foreign Utility Company Status

An exempt wholesale generator (“EWG”) or a foreign utility company (“FUCO”), or their representative, may file with the Commission a notice of self-certification demonstrating that it satisfies the definition of EWG or FUCO. In the case of EWGs, the person filing a notice of self-certification must also file a copy of the notice with the state regulatory authority of the state in which the facility is located.

4. Accounts and Records of Holding Companies

Unless otherwise granted a waiver/exemption by the Commission, every holding company must maintain and make available to the Commission its books, accounts, and other records in order to permit Commission review.

Unless otherwise granted a waiver/exemption by the Commission, beginning January 1, 2007, all holding companies must comply with the Commission’s record-retention requirements for public utilities and licensees. Until December 31, 2006, holding companies registered under

PUHCA 1935 may follow either the Commission's record-retention rules for public utilities and licensees or the SEC's record-retention rules.

5. Accounts and Records of Service Companies

Unless otherwise granted a waiver/exemption by the Commission, beginning January 1, 2007, every service company shall maintain and make available to the Commission its books, accounts, and other records, and preserve them for such periods as the Commission prescribes, in order to permit Commission review. Until December 31, 2006, service companies in holding company systems registered under PUHCA 1935 may follow either the Commission's record-retention rules or the SEC's record retention rules.

Unless otherwise granted a waiver/exemption by the Commission, beginning January 1, 2007, every service company that is not a special-purpose company (e.g., a fuel supply company or a construction company) shall maintain and make available to the Commission its books, accounts, and other records in order to permit Commission review.

Until December 31, 2006, service companies in holding company systems registered under PUHCA 1935 may follow either the Commission's USOA or the SEC's USOA.

6. Annual Reports by Service Companies

Unless otherwise granted a waiver/exemption by the Commission, every service company in a holding company system that is not a special purpose company that provides non-power goods or services to a Commission-jurisdictional public utility must file an annual report – FERC Form No. 60 – for the prior calendar year, by May 1, 2006, and by May 1 each year thereafter. The Commission may extend the deadline for the annual report if good cause is shown. Service companies in holding company systems that were exempted from the requirements of PUHCA 1935 do not have to file an annual report for calendar years 2005 and 2006.

B. Compliance Measures

The Alcoa Legal Department shall have the responsibility for filing any forms required under PUHCA 2005, including FERC-65 (notification of holding company status) and any forms required for an exemption or waiver, and the CCO shall be tasked with delegating the responsibilities to Company employees as appropriate. Company employees shall develop a plan to monitor all applicable filing, accounting, and record-retention deadlines under PUHCA 2005. In addition, Company employees shall develop comprehensive record-retention procedures, including training of appropriate employees, to ensure that Alcoa and its subsidiaries maintain all books, accounts, and other records in compliance with PUHCA 2005 and the Commission's regulations.

In addition, the Company's Legal Department shall compile any applicable waivers of or exemptions from the requirements under PUHCA 1935 and/or PUHCA 2005 that have been granted to the Company, and periodically assess whether circumstances have changed that would prevent the Company from relying on a particular waiver or exemption. Alcoa has received an

exemption from the Commission’s regulations under PUHCA 2005, and must inform the Commission of any change in circumstances that would reflect a departure from the facts that FERC relied upon in awarding the exemption.³⁰

XX. COMPLIANCE WITH SECTION 215 OF THE FPA

A. FERC Requirements

EPAct 2005 added a new Section 215 to the FPA in order to establish a system of mandatory, enforceable Reliability Standards under the oversight of the Commission. Section 215 requires that FERC certify an entity as the Electric Reliability Organization (“ERO”), responsible for developing and enforcing the Reliability Standards, subject to Commission review and approval. In July 2006, the Commission designated the North American Electric Reliability Corporation (“NERC”) as the ERO under Section 215. The ERO may delegate its enforcement responsibilities to a number of Regional Entities that will be responsible for proposing and enforcing standards for those entities in each Regional Entity’s territory.

On March 16, 2007, the Commission issued Order No. 693, in which FERC accepted 83 of the Reliability Standards proposed by NERC.³¹ These mandatory Reliability Standards shall apply to all users, owners, and operators of the bulk power system designated by NERC through its compliance registry procedures. Both monetary and non-monetary penalties may be imposed for violations of these standards, with monetary penalties potentially reaching \$1,000,000 per day of a violation. The mandatory Reliability Standards became effective on June 18, 2007. Additional reliability standards have since been approved by the Commission.

Section 215 of the FPA requires that each such user, owner, and operator of the bulk power system register with the ERO and the Regional Entity for each region within which it uses, owns, or operates bulk power system facilities, and, as such, comply with all approved Reliability Standards and report all violations of the standards to a Regional Entity. NERC developed a Compliance Registry to identify all organizations (with their functions) that are subject to certain of the requirements of the mandatory Reliability Standards. NERC has delegated to the Regional Entities the responsibility to identify the organizations in that Regional Entity’s territory that are subject to inclusion in the Compliance Registry.

The Company is currently registered with the Regional Entities as follows:

- APGI has registered with ReliabilityFirst Corporation (“RFC”) as a Generator Owner and Generator Operator, and with SERC Reliability Corporation (“SERC”) as a Purchasing-Selling Entity.
- The Tapoco Division of APGI has registered with SERC as the following: Load Serving Entity, Transmission Owner, and Transmission Operator.

³⁰ *Alcoa Inc.*, 117 FERC ¶ 61,059 (2006).

³¹ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 118 FERC ¶ 61,218 (2007).

- The Yadkin Division of APGI has registered with SERC as the following: Transmission Service Provider; Planning Authority; Transmission Operator; Transmission Owner; Transmission Planner; Load Serving Entity; Generator Owner; Generator Operator; Balancing Authority; and Resource Planner.
- APM has registered with RFC, SERC, and WECC as a Purchasing-Selling Entity.

B. Compliance Measures

On an annual basis, the Company's operational staff should review through audit the various compliance obligations applicable to the Company subsidiaries featured in the Compliance Registry, including: additional compliance registry requirements; compliance with Reliability Standards; self-assessment of Standards; self-reporting of violations to Regional Entities; and the submission of any mitigation plans. The Company's operational staff should maintain a responsibility matrix that details the applicable Reliability Standards and their associated requirements, compliance risk factors, and the Company departments responsible for each applicable Reliability Standard with which APGI divisions must comply going forward.

XXI. COMPLIANCE WITH NAESB STANDARDS

A. FERC Requirements

The North American Energy Standards Board (“NAESB”) is a non-profit standards development organization that serves as an industry forum for the development and promotion of business practice standards that promote an efficient marketplace for wholesale and retail electricity and natural gas. NAESB’s standards include business practices intended to streamline the transactional processes of the electric and natural gas industries, as well as communication protocols and related standards designed to improve the efficiency of communication within such industries. The Commission has issued several orders requiring public utilities to comply with certain of the electric standards promulgated by NAESB.

B. Compliance Measures

On an annual basis, the Company’s operational staff should review the various compliance obligations applicable to the Company, as a result of the NAESB standards incorporated in FERC’s regulations by reference. The Company’s operational staff should maintain a responsibility matrix that details the applicable NAESB electric standards and their associated requirements, and the Company departments responsible for each applicable standard with which APGI and/or APM must comply going forward.

The CCO and/or the delegate shall compile any waivers of or exemptions from the requirements of the NAESB electric standards that have been granted to the Company, and periodically assess whether circumstances have changed that would prevent the Company from relying on a particular waiver or exemption.