



**LS POWER DEVELOPMENT, LLC**

**DesertLink, LLC**

**Republic Transmission, LLC**

**Silver Run Electric, LLC**

**LS Power Grid New York Corporation I**

**LS Power Grid New York, LLC**

**LS POWER TRANSMISSION  
STANDARDS OF CONDUCT**

**2019**

## **I. Purpose of this document**

This document sets forth the policies and procedures (“LSP Procedures”) established by LS Power Development, LLC and its affiliates (collectively, “LS Power”) to implement the Standards of Conduct for Transmission Providers (“Standards of Conduct”) established by the Federal Energy Regulatory Commission (“FERC”) and other applicable rules and regulations.

The Standards of Conduct govern the interaction between employees whose day-to-day activities support LS Power’s electric transmission businesses – e.g., planning, directing, organizing or carrying out of transmission operations, including the granting and denying of transmission service requests (“Transmission Function Employees”) and employees whose day-to-day activities support LS Power’s competitive energy businesses – e.g., 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 (“Marketing Function Employees”), as well as employees who are not specifically Transmission Function Employees or Marketing Function Employees, but who provide general corporate support services to one or more LS Power businesses – e.g., human resources, information technology, legal, accounting, tax, audit, financial services, financial planning, corporate services, regulatory, executive management, engineering and construction services, project development and management, environmental services, lobbying, community relations, and research and development (“No-Conduit Employees”).

The LSP Procedures describe our organization’s process for compliance, and your responsibilities within that process. A complete copy of the Standards of Conduct is attached as Appendix I. LS Power will provide training, at least annually, with respect to the meaning and application of the Standards of Conduct.

Below we will discuss the purpose of the LSP Procedures, the application of the related rules to LS Power, and the application of such rules to you as an LS Power employee. Failure to comply with the rules can result in significant penalties, and additional consequential damages, such as loss of authorization to trade energy and related products at negotiated rates.

It is LS Power’s policy that every employee understand the Standards of Conduct, their role in complying with the LSP Procedures, and to act in accordance with the LS Power Code of Ethics & Regulatory Compliance Manual (the “Code of Ethics”). As set forth in the Code of Ethics, LS Power has a continuing policy of dedicating itself to honesty, integrity, and fairness in conducting all of its business and creating and supporting a culture of compliance. LS Power expects its employees to comply with all applicable laws and regulations and to act in accordance with the highest ethical standards in matters with competitors, customers, lenders, partners, vendors, regulators, and those who do business with or seek to do business with LS Power. It is most important that everyone know enough to know when to ask questions. The LSP Procedures are designed around the goal of achieving compliance by ensuring that our employees know enough to understand when a potential issue arises, and to then seek guidance. As discussed

below, such questions should be brought to our Chief Compliance Officer (the “CCO”). Any waivers or exceptions to these LSP Procedures must be approved by the CCO.

## **II. What are the Standards of Conduct?**

The Standards of Conduct are intended to prevent owners, operators and controllers of transmission from using that ownership to provide services and competitive advantages (e.g., through information sharing or cross-affiliate subsidization) to affiliates engaged in sales of energy or related products. FERC is particularly concerned that such advantages may arise if a transmission owner operates its transmission to benefit a marketing affiliate, or if a transmission owner provides competitively valuable non-public information about the state of the transmission system or the activities of transmission customers to employees executing transactions in power markets.

The Standards of Conduct are part of FERC’s process for neutralizing such competitive advantages. To accomplish its goals, the Standards of Conduct establish rules for different types of employees: (1) Transmission Function Employees, who actively and personally engage in Transmission Functions on a day-to-day basis; (2) Marketing Function Employees, who actively and personally engage in Marketing Functions on a day-to-day basis; and (3) No-Conduit Employees, who do not engage in Transmission Functions or Marketing Functions on a day-to-day basis. Generally speaking, the Standards of Conduct and other applicable rules require that:

- An owner or operator of transmission must treat all customers fairly, and not provide an advantage to affiliates.
- An owner or operator of transmission must not subsidize the business activities of affiliates engaged in the generation or sale of energy or related products – i.e., competitive energy businesses.
- An owner or operator of transmission must not provide services to competitive energy affiliates; however, certain shared corporate services are permitted.
- All costs and expenses must be properly allocated among and between transmission and generation affiliates, including for shared corporate services.
- Marketing Function Employees are not permitted to be officers or directors of transmission affiliates and Transmission Function Employees are not permitted to be officers or directors of competitive energy affiliates.
- Marketing Function Employees are not permitted to conduct Transmission Functions, and vice versa.
  - Marketing Functions include:
    - Selling power at wholesale;
    - Selling ancillary services at market-based rates;
    - Reselling physical or financial transmission rights;

- Making offers of energy, capacity, demand response, virtuals, or other products in a Regional Transmission Organization (RTO) or Independent System Operator (ISO); and
- Competitive retail sales.
- Transmission Functions include:
  - Granting or denying requests for transmission<sup>1</sup>;
  - Coordinating actual flows of power;
  - Isolating portions of the system to prevent cascades;
  - Imposing transmission loading relief; and
  - Other similar activities.
- Non-public Transmission Function Information cannot be provided, or made available, directly or indirectly, to Marketing Function Employees.
  - “Transmission Function Information” includes information related to transmission functions, such as:
    - Available transmission capacity (or similar measurements);
    - Outages;
    - The price of transmission;
    - Curtailments and balancing;
    - The grant or denial of transmission service requests;
    - Service provided to specific transmission customers;
    - Status of transmission development projects; and
    - Non-public Transmission Function Information of other Transmission Providers obtained from those Transmission Providers by Transmission Function or No-Conduit employees.

### **III. Why is LS Power subject to the Standards of Conduct?**

The Standards of Conduct apply to owners, operators and controllers of transmission subject to FERC jurisdiction that engage in transactions with affiliates that market power or related products. The following LS Power entities currently own, or are developing, FERC-jurisdictional transmission, and so are (or will be) “Transmission Providers” subject to the rules:

- DesertLink, LLC – CAISO
- Silver Run Electric, LLC – PJM

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<sup>1</sup> This includes granting or denying requests for ancillary services under the OATT and requests for interconnection, and it includes studying requests for transmission service. However, the receipt, study, and evaluation of requests for interconnection are not considered Transmission Functions so long as these activities do not implicate the day-to-day operation of a transmission system. Information related to interconnection requests, however, may still be considered non-public Transmission Function information.

- Republic Transmission, LLC – MISO
- LS Power Grid New York Corporation I<sup>2</sup> – NYISO
- LS Power Grid New York, LLC<sup>3</sup> – NYISO

The Standards of Conduct apply to all companies and employees within a corporate family that includes a Transmission Provider. So regardless of your role, the LSP Procedures apply to you, though some employees will be more affected than others.

#### **IV. How do the LSP Procedures affect me?**

The LSP Procedures apply to some extent to all officers, employees, contractors, consultants and agents of LS Power and its affiliates. How the rules apply to you depend on your employee classification. You have been informed of your classification, under the LSP Procedures, into one of three categories:

- Marketing Function Employee;
- Transmission Function Employee; or
- No-Conduit Employee.

Employee classifications are not set in stone, and they are not based on job titles. Classifications depend on what you do and how frequently you do it. If you have not been informed of your classification, or have forgotten, contact the CCO immediately. If you think you have been misclassified, or if your job functions have changed or will soon change, contact the CCO immediately. LS Power is required to track and log employee classifications.

The below lists of permitted and prohibited actions are not exhaustive. If you have any questions as to how these rules apply to you, contact the CCO immediately.

Marketing Function Employee: If you are a Marketing Function Employee it is because you actively and personally engage on a day-to-day basis in Marketing Functions, such as trading of virtuals in RTO/ISO markets or other activities described above. As a marketing function employee you:

#### **MUST NOT:**

- Engage in any Transmission Functions.
- Attempt to obtain non-public Transmission Function Information.
- Participate in activities associated with requests for interconnection that involve the use or analysis of non-public Transmission Function information or other non-public information concerning the development plans of market participants.

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<sup>2</sup> Formerly known as North America Transmission Corporation.

<sup>3</sup> Formerly known as North America Transmission, LLC.

- Attend meetings where non-public Transmission Function Information will be discussed.
- Access any transmission system control center or similar facilities used for transmission operations.

**MUST:**

- Participate in training on the LSP Procedures and the Standards of Conduct, and maintain a working knowledge and active awareness of how the rules apply to you.
- Report any receipt of Transmission Function Information or any other potential rules violations to your supervisor or the CCO.
- Seek guidance when you are uncertain as to the application of the Standards of Conduct.

**MAY:**

- Work with No-Conduit Employees.
- Interact with Transmission Function Employees in social settings or at meetings not related to Transmission or Marketing Functions (e.g., a meeting about employee benefits).

Transmission Function Employee: You are a Transmission Function Employee because you actively and personally engage on a day-to-day basis in Transmission Functions, as defined above. As a Transmission Function Employee you:

**MUST NOT:**

- Engage in any Marketing Functions.
- Give non-public Transmission Function Information directly to Marketing Function Employees, whether physically, verbally or electronically.
- Use anyone else as a conduit to give non-public Transmission Function Information to Marketing Function Employees (i.e., you cannot accomplish through others what you cannot do yourself).

**MUST:**

- Treat affiliated marketing function personnel comparably to the way that you do or would treat non-affiliates, i.e., as any other third-party market participants.
- Participate in annual training on the LSP Procedures and the Standards of Conduct, and maintain a working knowledge and active awareness of how the rules apply to you.
- Report any actual or suspected disclosure of Transmission Function Information to a Marketing Function Employee, or any other potential rules violations, to your supervisor or the CCO.
- Take care to ensure that non-public Transmission Function Information in your care is safeguarded, and not left in physical or virtual places where Marketing Function Employees may see it.
- Seek guidance when you are uncertain as to the application of the Standards of Conduct.

**MAY:**

- Have access to non-public Transmission Function Information, so long as you do not provide it, directly or indirectly, to Marketing Function Employees.
- Work with No-Conduit Employees.
- Interact with Marketing Function Employees in social settings or at meetings not related to Transmission or Marketing Functions (e.g., a meeting about employee benefits).

No-Conduit Employee: Your designation as a No-Conduit Employee means that you do not perform either Transmission or Marketing Functions. Generally, No-Conduit Employees work in areas referenced in the above definition of No-Conduit Employees, including tax, accounting, human resources, legal, and other shared corporate support services. Additionally, supervisors that do not themselves actively engage in Marketing Functions or Transmission Functions on a day-to-day basis are No-Conduit Employees and may have supervisory functions over any type of employee so long as the rules are observed. As a No-Conduit Employee you are permitted to receive Transmission Function Information, but you are prohibited from sharing it with Marketing Function Employees. This means that you:

**MUST NOT:**

- Perform Marketing Functions or Transmission Functions. If you do, you will need to be reclassified accordingly.
- Give non-public Transmission Function Information directly to Marketing Function Employees, whether physically, verbally or electronically.
- Use anyone else as a conduit to give non-public Transmission Function Information to Marketing Function Employees (i.e., you cannot accomplish through others what you cannot do yourself).

**MUST:**

- Take care to ensure that non-public Transmission Function Information in your care is safeguarded, and not left in physical or virtual places where Marketing Function Employees may see it.
- Participate in annual training on the LSP Procedures and the Standards of Conduct, and maintain a working knowledge of how the rules apply to you.
- Report any potential rules violations to your supervisor or the CCO.
- Seek guidance when you are uncertain as to the application of the Standards of Conduct.

**MAY:**

- Have access to non-public Transmission Function Information, so long as you do not provide it, directly or indirectly, to Marketing Function Employees.
- Work with both Marketing Function Employees and Transmission Function Employees, so long as you do not give Marketing Function Employees non-public Transmission Function Information.

**V. Is it ever acceptable to share Transmission Function Information with Marketing Function Employees?**

Generally speaking, the rules prevent all employees, contractors, agents, and consultants of LS Power and its affiliates from sharing non-public Transmission Function Information with Marketing Function Employees. This means that public information may be shared, but if information is publicly available, it is better as a general matter to ask the Marketing Function employee to obtain it directly from the public source, to avoid potential errors in determining whether something is publicly available. When in doubt about what to do, ask.

As to non-public Transmission Function Information, the general rule is that it cannot be provided to Marketing Function Employees, and they cannot be given access to such information. There are three very limited exceptions to this rule:

1. In response to a Marketing Function Employee's specific request for transmission service.
2. With voluntary written consent from a transmission customer.
3. To resolve certain operational situations:
  - a. to comply with North American Electric Reliability Corporation Reliability Standards; or
  - b. to maintain or restore operation of the transmission system or generating units.

Whether these rules apply to a given situation is fact-specific. Never use an exception to communicate non-public Transmission Function Information to a Marketing Function Employee without authorization from the CCO.

If a Transmission Function Employee needs to communicate with a Marketing Function Employee regarding any aspect of Transmission Function Information, such communication must be pre-cleared with the CCO or his designee. Any such communications between Transmission Function Employees and Marketing Function Employees must be logged and the CCO reserves the right to monitor such communications to ensure compliance with the LSP Procedures.

In the event of a disclosure of non-public Transmission Function Information, LS Power is obligated to post notice of the disclosure, and subject to certain exceptions, the contents of disclosure on <https://www.lspower.com/ferc-conduct-standards/>. Always immediately alert your supervisor or the CCO if you believe that a disclosure has occurred that may be unauthorized.

**VI. What happens if my job changes?**

As can be seen above, LS Power's compliance with the Standards of Conduct is highly dependent upon a system of accurate classification of employees within the three classification categories. Such a system of classification will only succeed if it is organic, and classifications and



protections are changed as job functions change. If your job functions change, particularly in a way that may affect your classification, you should talk to your supervisor or the CCO. You will be trained each year under the LSP Procedures and the Standards of Conduct, which should give you the basis for understanding the types of job function changes that should be discussed. In particular, you should raise any changes that would lead to you performing Marketing Functions, or performing Transmission Functions, if you are not already classified as performing such functions.

Classification determinations are made by the CCO in consultation with each employee's manager. You are not being asked to make such determinations. However, changes in your job functions *may* require a change to your classification, so you should bring any such changes to the attention of your supervisor or the CCO. Examples of changes that should be discussed that are particularly pertinent to our business activities would include new responsibilities with respect to transmission development or operation, generation development or operation, negotiation of power purchase or sale agreements, and marketing of energy, virtuals, or related products.

Classification does not depend on your title, it depends on what you do. So it is important to bear these rules in mind, and to watch for potential changes in your role, even if your title does not change.

## **VII. Corporate safeguards**

While our employees are our first line of defense, LS Power maintains other compliance controls to help ensure compliance with the Standards of Conduct. For example, at the time of drafting these procedures, LS Power separately maintains a Code of Ethics and the LS Power Development, LLC Employee Handbook (the "Employee Handbook"). These LSP Procedures are in addition to, and do not replace, such other compliance controls.

Violations of the LSP Procedures, the Code of Ethics or the Employee Handbook may result in disciplinary action, up to and including termination of employment.

Complaint Procedures. Employees must promptly report any customer complaint, counterparty complaint or any other alleged violation of the LSP Procedures. Complaints and suspected violations may be reported directly to the CCO, the employee's direct supervisor, human resources or to any member of the legal department. In addition, employees may report a complaint or suspected violation anonymously using LS Power's compliance platform, Schwab Compliance Technologies ("SCT"). To do so, an employee must log into SCT, then click "Anonymous Report or Complaint" under "Forms" on the home page and provide the requested information. Once the form is submitted, the employee's information is anonymized and cannot be traced back to the employee. LS Power will thoroughly investigate all complaints and alleged violations of the LSP Procedures, and will seek to fully resolve such issues in an expeditious manner. If an employee submits an Anonymous Report or Complaint form through SCT, it is critical to include as much information as possible to allow for a thorough investigation.

Training. Affected employees will be trained at least annually on the LSP Procedures and the Standards of Conduct. Affected new employees will be trained on the LSP Procedures and the Standards of Conduct within the first 30 days of employment. The CCO is required to certify annually to certain regulators that all employees have completed their periodic training.

Information Technology. LS Power will use password protection and/or independent servers, files, or folders with limited access rights, to wall off the most likely sources of Transmission Function Information. Such safeguards should be used to protect confidential and proprietary information, including non-public Transmission Function Information.

Books and Records. Transmission Providers will maintain separate books and records from LS Power competitive energy and power generation affiliates.

Physical Separation. LS Power will restrict access to offices utilized by Transmission Function Employees, any transmission control rooms or similar transmission-related facilities to the extent required. LS Power will use access or other restrictions to ensure that Marketing Function Employees do not access areas where Transmission Function Information is stored. Sites that do not employ Marketing Function Employees ordinarily will not need such protections, but due care must be taken during any visits by Marketing Function Employees.

Posting of Information on the Internet. LS Power posts the following information, as related to each of the LS Power Transmission Providers, at <https://www.lspower.com/ferc-conduct-standards/>: (1) a copy of these implementation procedures; (2) the names of all affiliates that employ or retain Marketing Function Employees;<sup>4</sup> (3) a list of employee-staffed facilities where both Marketing Function Employees and Transmission Function Employees work; (4) information about potential merger partners that may employ or retain Marketing Function Employees within seven days after the potential merger is announced; (5) job titles and descriptions of all Transmission Function Employees; and (6) notice of transfers of a Marketing Function Employee to a Transmission Function Employee or vice versa.

## **VIII. Strict Enforcement of all LS Power Transmission Provider Tariffs**

The sale and purchase of open access transmission service on the transmission facilities owned by LS Power's Transmission Providers are managed under RTO/ISO tariffs or other non-LS Power Transmission Providers' tariffs. Those entities receive, processes, study, and respond to requests for transmission service. However, the LS Power Transmission Providers are obligated to provide fair and impartial treatment to all transmission customers, including prospective transmission customers, in conducting any Transmission Functions. To the extent any LS Power

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<sup>4</sup> The following explanatory statement should also be posted: "The LSP Procedures and Standards of Conduct apply to all employees of LS Power and its affiliate, Cross-Texas Transmission. Certain employees of LS Power provide services to and/or are officers of competitive energy affiliates, though such affiliates do not have any of their own employees."

Transmission Provider manages its own tariff, it will strictly enforce all non-discretionary tariff provisions relating to the sale or purchase of transmission service, and where the tariff permits use of discretion, it will apply the provision in a fair and impartial manner.

#### **IX. The Golden Rules**

All employees should follow three simple rules to ensure compliance with the LSP Procedures and the Standards of Conduct:

1. Always be aware of your Employee Classification and how the rules apply to you;
2. Notify your supervisor and the CCO of potential job changes that may impact your employee classification; and most important of all
3. **If you ever have a question about Standards of Conduct compliance, immediately contact your supervisor or the CCO, or if you have concerns about potential non-compliance, follow the Complaint Procedures set forth above.**

The CCO, Jeff Wade, can be reached by email at [jwade@lspower.com](mailto:jwade@lspower.com) or by phone at (212) 547-2914.

**Appendix I**

**Full Text of FERC Standards of Conduct  
18 C.F.R. Part 358**

## 18 C.F.R. PART 358—STANDARDS OF CONDUCT

### § 358.1 Applicability.

- (a) This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subparts B or G of part 284 of this chapter and conducts transmission transactions with an affiliate that engages in marketing functions.
- (b) This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce and conducts transmission transactions with an affiliate that engages in marketing functions.
- (c) This part does not apply to a public utility transmission provider that is a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO). If a public utility transmission owner participates in a Commission-approved ISO or RTO and does not operate or control its transmission system and has no access to transmission function information, it may request a waiver from this part.
- (d) A transmission provider may file a request for a waiver from all or some of the requirements of this part for good cause.

### § 358.2 General principles.

- (a) As more fully described and implemented in subsequent sections of this part, a transmission provider must treat all transmission customers, affiliated and non-affiliated, on a not unduly discriminatory basis, and must not make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage with respect to any transportation of natural gas or transmission of electric energy in interstate commerce, or with respect to the wholesale sale of natural gas or of electric energy in interstate commerce.
- (b) As more fully described and implemented in subsequent sections of this part, a transmission provider's transmission function employees must function independently from its marketing function employees, except as permitted in this part or otherwise permitted by Commission order.
- (c) As more fully described and implemented in subsequent sections of this part, a transmission provider and its employees, contractors, consultants and agents are prohibited from disclosing, or using a conduit to disclose, non-public transmission function information to the transmission provider's marketing function employees.
- (d) As more fully described and implemented in subsequent sections of this part, a transmission provider must provide equal access to non-public transmission function information disclosed to marketing function employees to all its transmission customers, affiliated and non-affiliated, except as permitted in this part or otherwise permitted by Commission order.

### § 358.3 Definitions.

- (a) *Affiliate* of a specified entity means:
  - (1) Another person that controls, is controlled by or is under common control with, the specified entity. An affiliate includes a division of the specified entity that operates as a functional unit.
  - (2) For any exempt wholesale generator (as defined under §366.1 of this chapter), affiliate shall have the meaning set forth in §366.1 of this chapter, or any successor provision.

- (3) "Control" as used in this definition means the direct or indirect authority, whether acting alone or in conjunction with others, to direct or cause to direct the management policies of an entity. A voting interest of 10 percent or more creates a rebuttable presumption of control.
- (b) *Internet Web site* refers to the Internet location where an interstate natural gas pipeline or a public utility posts the information, by electronic means, required under this part 358.
- (c) *Marketing functions means:*
- (1) in the case of public utilities and their affiliates, the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, of electric energy or capacity, demand response, virtual transactions, or financial or physical transmission rights, all as subject to an exclusion for bundled retail sales, including sales of electric energy made by providers of last resort (POLRs) acting in their POLR capacity; and
  - (2) in the case of interstate pipelines and their affiliates, the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, natural gas, subject to the following exclusions:
    - (i) Bundled retail sales,
    - (ii) Incidental purchases or sales of natural gas to operate interstate natural gas pipeline transmission facilities,
    - (iii) Sales of natural gas solely from a seller's own production,
    - (iv) Sales of natural gas solely from a seller's own gathering or processing facilities, and
    - (v) On-system sales by an intrastate natural gas pipeline, by a Hinshaw interstate pipeline exempt from the Natural Gas Act, by a local distribution company, or by a local distribution company operating under section 7(f) of the Natural Gas Act.
- (d) *Marketing function employee* means an employee, contractor, consultant or agent of a transmission provider or of an affiliate of a transmission provider who actively and personally engages on a day-to-day basis in marketing functions.
- (e) *Open Access Same Time Information System* or *OASIS* refers to the Internet location where a public utility posts the information required by part 37 of this chapter, and where it may also post the information required to be posted on its Internet Web site by this part 358.
- (f) *Transmission* means electric transmission, network or point-to-point service, ancillary services or other methods of electric transmission, or the interconnection with jurisdictional transmission facilities, under part 35 of this chapter; and natural gas transportation, storage, exchange, backhaul, or displacement service provided pursuant to subparts B or G of part 284 of this chapter.
- (g) *Transmission customer* means any eligible customer, shipper or designated agent that can or does execute a transmission service agreement or can or does receive transmission service, including all persons who have pending requests for transmission service or for information regarding transmission.

- (h) *Transmission functions* means the planning, directing, organizing or carrying out of day-to-day transmission operations, including the granting and denying of transmission service requests.
- (i) *Transmission function employee* means an employee, contractor, consultant or agent of a transmission provider who actively and personally engages on a day-to-day basis in transmission functions.
- (j) *Transmission function information* means information relating to transmission functions.
- (k) *Transmission provider* means:
  - (1) Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce; or
  - (2) Any interstate natural gas pipeline that transports gas for others pursuant to subparts B or G of part 284 of this chapter.
  - (3) A transmission provider does not include a natural gas storage provider authorized to charge market-based rates.
- (l) *Transmission service* means the provision of any transmission as defined in §358.3(f).
- (m) *Waiver* means the determination by a transmission provider, if authorized by its tariff, to waive any provisions of its tariff for a given entity.

**§ 358.4 Non-discrimination requirements.**

- (a) A transmission provider must strictly enforce all tariff provisions relating to the sale or purchase of open access transmission service, if the tariff provisions do not permit the use of discretion.
- (b) A transmission provider must apply all tariff provisions relating to the sale or purchase of open access transmission service in a fair and impartial manner that treats all transmission customers in a not unduly discriminatory manner, if the tariff provisions permit the use of discretion.
- (c) A transmission provider may not, through its tariffs or otherwise, give undue preference to any person in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price, curtailments, scheduling, priority, ancillary services, or balancing).
- (d) A transmission provider must process all similar requests for transmission in the same manner and within the same period of time.

**§ 358.5 Independent functioning rule.**

- (a) *General rule.* Except as permitted in this part or otherwise permitted by Commission order, a transmission provider's transmission function employees must function independently of its marketing function employees.
- (b) *Separation of functions.*
  - (1) A transmission provider is prohibited from permitting its marketing function employees to:
    - (i) Conduct transmission functions; or
    - (ii) Have access to the system control center or similar facilities used for transmission operations that differs in any way from the access available to other transmission customers.

- (2) A transmission provider is prohibited from permitting its transmission function employees to conduct marketing functions.

**§ 358.6 No conduit rule.**

- (a) A transmission provider is prohibited from using anyone as a conduit for the disclosure of non-public transmission function information to its marketing function employees.
- (b) An employee, contractor, consultant or agent of a transmission provider, and an employee, contractor, consultant or agent of an affiliate of a transmission provider that is engaged in marketing functions, is prohibited from disclosing non-public transmission function information to any of the transmission provider's marketing function employees.

**§ 358.7 Transparency rule.**

(a) *Contemporaneous disclosure.*

- (1) If a transmission provider discloses non-public transmission function information, other than information identified in paragraph (a)(2) of this section, in a manner contrary to the requirements of §358.6, the transmission provider must immediately post the information that was disclosed on its Internet Web site.
- (2) If a transmission provider discloses, in a manner contrary to the requirements of §358.6, non-public transmission customer information, critical energy infrastructure information (CEII) as defined in §388.113(c)(1) of this chapter or any successor provision, or any other information that the Commission by law has determined is to be subject to limited dissemination, the transmission provider must immediately post notice on its Web site that the information was disclosed.

(b) *Exclusion for specific transaction information.* A transmission provider's transmission function employee may discuss with its marketing function employee a specific request for transmission service submitted by the marketing function employee. The transmission provider is not required to contemporaneously disclose information otherwise covered by §358.6 if the information relates solely to a marketing function employee's specific request for transmission service.

(c) *Voluntary consent provision.* A transmission customer may voluntarily consent, in writing, to allow the transmission provider to disclose the transmission customer's non-public information to the transmission provider's marketing function employees. If the transmission customer authorizes the transmission provider to disclose its information to marketing function employees, the transmission provider must post notice on its Internet Web site of that consent along with a statement that it did not provide any preferences, either operational or rate-related, in exchange for that voluntary consent.

(d) *Posting written procedures on the public Internet.* A transmission provider must post on its Internet Web site current written procedures implementing the standards of conduct.

(e) *Identification of affiliate information on the public Internet.*

- (1) A transmission provider must post on its Internet Web site the names and addresses of all its affiliates that employ or retain marketing function employees.
- (2) A transmission provider must post on its Internet Web site a complete list of the employee-staffed facilities shared by any of the transmission provider's transmission



function employees and marketing function employees. The list must include the types of facilities shared and the addresses of the facilities.

- (3) The transmission provider must post information concerning potential merger partners as affiliates that may employ or retain marketing function employees, within seven days after the potential merger is announced.

*(f) Identification of employee information on the public Internet.*

- (1) A transmission provider must post on its Internet Web site the job titles and job descriptions of its transmission function employees.
- (2) A transmission provider must post a notice on its Internet Web site of any transfer of a transmission function employee to a position as a marketing function employee, or any transfer of a marketing function employee to a position as a transmission function employee. The information posted under this section must remain on its Internet Web site for 90 days. No such job transfer may be used as a means to circumvent any provision of this part. The information to be posted must include:
  - (i) The name of the transferring employee,
  - (ii) The respective titles held while performing each function (*i.e.*, as a transmission function employee and as a marketing function employee), and
  - (iii) The effective date of the transfer.

*(g) Timing and general requirements of postings on the public Internet.*

- (1) A transmission provider must update on its Internet Web site the information required by this part 358 within seven business days of any change, and post the date on which the information was updated. A public utility may also post the information required to be posted under part 358 on its OASIS, but is not required to do so.
- (2) In the event an emergency, such as an earthquake, flood, fire or hurricane, severely disrupts a transmission provider's normal business operations, the posting requirements in this part may be suspended by the transmission provider. If the disruption lasts longer than one month, the transmission provider must so notify the Commission and may seek a further exemption from the posting requirements.
- (3) All Internet Web site postings required by this part must be sufficiently prominent as to be readily accessible.

*(h) Exclusion for and recordation of certain information exchanges.*

- (1) Notwithstanding the requirements of §§358.5(a) and 358.6, a transmission provider's transmission function employees and marketing function employees may exchange certain non-public transmission function information, as delineated in §358.7(h)(2), in which case the transmission provider must make and retain a contemporaneous record of all such exchanges except in emergency circumstances, in which case a record must be made of the exchange as soon as practicable after the fact. The transmission provider shall make the record available to the Commission upon request. The record may consist of hand-written or typed notes, electronic records such as e-mails and text messages, recorded telephone exchanges, and the like, and must be retained for a period of five years.

(2) The non-public information subject to the exclusion in §358.7(h)(1) is as follows:

(i) Information pertaining to compliance with Reliability Standards approved by the Commission, and

(ii) Information necessary to maintain or restore operation of the transmission system or generating units, or that may affect the dispatch of generating units.

(i) *Posting of waivers.* A transmission provider must post on its Internet Web site notice of each waiver of a tariff provision that it grants in favor of an affiliate, unless such waiver has been approved by the Commission. The posting must be made within one business day of the act of a waiver. The transmission provider must also maintain a log of the acts of waiver, and must make it available to the Commission upon request. The records must be kept for a period of five years from the date of each act of waiver.

### **§ 358.8 Implementation requirements.**

(a) *Effective date.* A transmission provider must be in full compliance with the standards of conduct on the date it commences transmission transactions with an affiliate that engages in marketing functions.

(b) *Compliance measures and written procedures.*

(1) A transmission provider must implement measures to ensure that the requirements of §§358.5 and 358.6 are observed by its employees and by the employees of its affiliates.

(2) A transmission provider must distribute the written procedures referred to in §358.7(d) to all its transmission function employees, marketing function employees, officers, directors, supervisory employees, and any other employees likely to become privy to transmission function information.

(c) *Training and compliance personnel.*

(1) A transmission provider must provide annual training on the standards of conduct to all the employees listed in paragraph (b)(2) of this section. The transmission provider must provide training on the standards of conduct to new employees in the categories listed in paragraph (b)(2) of this section, within the first 30 days of their employment. The transmission provider must require each employee who has taken the training to certify electronically or in writing that s/he has completed the training.

(2) A transmission provider must designate a chief compliance officer who will be responsible for standards of conduct compliance. The transmission provider must post the name of the chief compliance officer and provide his or her contact information on its Internet Web site.

(d) *Books and records.* A transmission provider must maintain its books of account and records (as prescribed under parts 101, 125, 201 and 225 of this chapter) separately from those of its affiliates that employ or retain marketing function employees, and these must be available for Commission inspections.