

ENTERGY SERVICES, INC. ON BEHALF OF  
ENTERGY ARKANSAS, INC., ENERGENCY GULF STATES LOUISIANA, L.L.C.,  
ENTERGY LOUISIANA, LLC, ENERGENCY MISSISSIPPI, INC., ENERGENCY NEW  
ORLEANS, INC., AND ENERGENCY TEXAS, INC.

COMPLIANCE PROCEDURES MANUAL

IMPLEMENTING FEDERAL ENERGY REGULATORY COMMISSION  
STANDARDS OF CONDUCT

November 23, 2009

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## I. PURPOSE AND APPLICABILITY

The Federal Energy Regulatory Commission (“FERC” or “the Commission”) has approved a set of Standards of Conduct for Transmission Providers (“Standards” or “Standards of Conduct”). Entergy Services, Inc. (“ESI”), on behalf Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc. (collectively, the “Entergy Operating Companies”), has prepared this manual (“Compliance Procedures Manual”) with procedures for implementing the Standards of Conduct.

The organization of this Compliance Procedures Manual is as follows. The section entitled “Compliance Program Overview” provides ESI’s general compliance concepts, responsibilities and controls (Section II). This section is followed by compliance discussions regarding specific Standards of Conduct requirements, including controls in place to mitigate the risk of non-compliance (Section III). [The discussions in Section III periodically refer to separate written processes, procedures, or policies. These documents can be accessed by Entergy employees via links contained at the Affiliate Rules Compliance EntergyNet site at:

<https://portal.entergy.com/EntergyNET/appmanager/EntergyNET/desktop?nfpb=true&pageLabel=pARCFERC.>]

This Compliance Procedures Manual is applicable to all employees of Entergy Corporation and its subsidiaries, as well as Entergy contractors, consultants and agents acting on behalf of Entergy<sup>1</sup> in areas covered by this Compliance Procedures Manual. It is the duty of every Entergy employee or Entergy representative to follow the letter and the spirit of the material, obligations and requirements contained in this Compliance Procedures Manual.

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<sup>1</sup> Entergy Corporation and all of its subsidiaries are collectively referred to as “Entergy” in this document.

## **II. COMPLIANCE PROGRAM OVERVIEW**

### **A. Introduction**

This Compliance Procedures Manual is a critical part of Entergy Corporation's ethics and compliance program. The Entergy ethics and compliance program is one of the key components supporting Entergy's commitment to high standards of corporate conduct. It provides a supportive structure to management, employees, contractors, consultants and agents, and showcases the commitment of senior management to an effective culture of compliance. It also sets forth the framework for action within the company. While a compliance program does not assure that all improper conduct will be eliminated, the program establishes management's expectations that employees, contractors, consultants and agents will adhere to the ethics and compliance program and will act in accordance with applicable laws, rules, regulations and company policy.

Employees of Entergy Corporation and its subsidiaries are also subject to the Entergy "Code of Entegrity", which as part of the Entergy overall ethics and compliance program sets expectations for ethical standards and compliance with laws and regulations for all employees of any Entergy Corporation subsidiary. A goal of the Code of Entegrity is to promote a culture of compliance.

Employees are expected to include regulatory compliance as an essential part of their business activities. To support this expectation, the ethics and compliance program strives to create an environment where regulatory compliance is well understood and proactively addressed.

This Compliance Procedures Manual is a part of that environment. The goal of the Entergy ethics and compliance program, as well as this Compliance Procedures Manual, is to reduce risks that could cause the organization to fail to conduct its activities and business in accordance with relevant laws and regulations or fail to act in a fair and honest manner.

Each employee must act in a manner that complies with all applicable regulatory requirements, including requirements specified in this Compliance Procedures Manual. Regulatory compliance must be an integral part of all employees' daily business activities and each employee must accept responsibility for ensuring compliance with all relevant regulatory requirements. Failure to meet these obligations may result in disciplinary action.

The Ethics & Compliance Department ("Ethics & Compliance") is responsible for the corporate oversight function for Entergy's general compliance efforts and will work with appropriate business functions to facilitate compliance with the Standards of Conduct and this Compliance Procedures Manual.

## **B. Senior Management Commitment**

Entergy's core values include the following statement: "Above all, act with integrity." This is echoed by the following quote from Chairman and CEO J. Wayne Leonard:

"We've tried to ensure that everyone at Entergy knows that we must exhibit the highest possible standards when it comes to integrity in absolutely everything we do. Not just every financial statement that we distribute. Not just in complying with every law on the books. Not just in how we treat people. But everything we do."

- J. Wayne Leonard, *Building Trust – Leading CEOs Speak Out: How They Create It, Strengthen It, Sustain It*, 2004

Senior management has further set the tone for ethical business practices:

**"We lead the industry with integrity.** We don't do the right thing to stay out of trouble or get ahead. We do the right thing because it's the right thing. Our culture demands the highest ethical standards. Entergy's sound ethical principles, along with its innovative initiatives in the community, have propelled the company to the forefront of the industry."

- Excerpt from *EntergyFACTS*, adopted by Entergy management in 2007

Based on this direction, it is clear that Entergy's strategic compliance and ethics goal is to conduct its activities and business in accordance with relevant laws and regulations and in a fair and honest manner. One of the more specific steps that has been taken by senior management to instill a culture of compliance at Entergy is the provision of adequate funds and resources for compliance via the establishment and staffing of Ethics & Compliance, a Transmission Compliance Department, a Regulatory Compliance Group within System Planning and Operations, and a significant commitment of other Legal and regulatory resources.

## **C. Supervisor Expectations and Responsibilities**

Supervisors must set an example at all times of the highest integrity, including in the supervision of employees under their management. More specifically, they must take appropriate and timely action, through reporting, discipline, or other appropriate measures, to address violations by their employees that are known or are suspected.

## **D. Individual Expectations and Responsibilities**

It is the duty of every Entergy employee or Entergy representative to follow the letter and the spirit of the applicable laws, regulations, rules and regulatory orders of every jurisdiction in which Entergy operates. Every employee has an obligation to follow the letter and the spirit of Entergy's Code of Entegrity and company policies and,

in every event, to behave according to the highest ethical and legal standards. This includes an obligation to understand and follow this Compliance Procedures Manual. The specific responsibilities of each and every Entergy employee related to this Compliance Procedures Manual include the following:

1. Help Entergy enforce this Compliance Procedures Manual.
2. Promptly notify appropriate personnel of any known, suspected or potential violations of this Compliance Procedures Manual, using the contact information included in Section II.F. below.
3. Cooperate with investigations and provide forthright responses.
4. Complete all compliance-related training on the Standards of Conduct.
5. Cooperate fully with all compliance auditing and monitoring requirements.

Any employee who fails to comply with this Compliance Procedures Manual will be subject to disciplinary action under Entergy's Discipline Policy.

## **E. Preventive Measures and Entergy's Compliance and Risk Tool**

### **1. General Controls.**

In addition to specific controls implemented to mitigate individual requirements described in Section III below, Entergy has certain general controls in place that promote compliance with applicable laws, rules, regulations and company policies, including this Compliance Procedures Manual.

- (a) **Business Unit Compliance Certifications.** Each year, senior management members are required to certify that their business unit(s) developed and maintained effective compliance processes and demonstrated due diligence in achieving an effective compliance program. The certification also includes an affirmation to continue promoting effective compliance activities within the organization.
- (b) **Annual Code of Entegrity Acknowledgment.** Annual acknowledgment of compliance with the Code of Entegrity is required of non-bargaining unit employees. Bargaining unit employees are subject to the Code of Entegrity and receive communications about the code and have access to the Code of Entegrity, but they are not required to formally acknowledge compliance.
- (c) **Training.** Ethics & Compliance delivers a training course on the Standards of Conduct to employees, contractors, consultants and agents identified as critical to maintaining compliance. At the end of training, employees must acknowledge their understanding of the Standards of Conduct. The training course is delivered as computer-based training. WebTAP, an internet-based training administration system, is the delivery method for computer-based training. The WebTAP system allows automatic assignment of training requirements based on an employee's work group, supervisory level, location, union status, and craft/non-craft job designation. Training requirements automatically update when an

employee changes jobs. WebTAP has an automatic e-mail feature to notify employees (and their supervisors) that training course completion is due. WebTAP also serves as the training reporting system, as it tracks employee-specific course completion. Ethics & Compliance maintains a delinquency process to track and monitor employees whose compliance-related training or Code of Entegrity acknowledgments are past due. The delinquency process works in conjunction with the disciplinary process for failure to comply with Code of Entegrity acknowledgment or training requirements. Failure to satisfy requirements will result in disciplinary action, up to and including employee termination.

- (d) Policies and Procedures. Ethics & Compliance coordinates with applicable business units to develop and maintain written policies and procedures that facilitate compliance with the Standards of Conduct.
- (e) Background Checks. Background checks and drug tests are required to be completed for each new employee. In addition, pursuant to North American Electric Reliability Corporation Critical Infrastructure Protection Standards, background checks are required prior to any employee or contractor being granted physical or electronic access to critical assets or critical cyber assets.

## 2. Specific Controls and Use of Entergy Compliance and Risk Tool (“ECART”).

Section III of this Compliance Procedures Manual describes measures Entergy has implemented to mitigate the risk of non-compliance with the specific requirements of the Standards of Conduct. To facilitate the implementation and testing of compliance controls, Entergy has developed a comprehensive information system for risk and compliance management called the Entergy Compliance and Risk Tool (“ECART”). A key compliance tool, ECART has been implemented to provide additional assurance of compliance and support a strong compliance culture throughout Entergy. ECART is a web-based, integrated tool designed to standardize, consolidate and manage the company’s overall compliance and risk management process as well as legal and regulatory requirements and to assist applicable business units with their daily compliance functions. It allows individual business units to keep track of requirements applicable to their respective units, as well as the controls that have been implemented to facilitate regulatory compliance. Identified control owners, therefore, can more effectively mitigate the risk of noncompliance with the requirements. For example, due dates can be specified for controls and e-mail reminders of a control can be sent to a control owner (in some cases, the reminder is itself a control).

ECART records and tracks the results of testing the effective implementation of key controls. Test designs and the identity of testers are maintained. Specific due dates can be set for tests, with reminder e-mails sent to the identified tester, allowing the timeliness of test executions to be monitored. For a failed test, the tested control is automatically tagged as “unreliable” and an issue is

automatically opened in the ECART issue module. The issue is assigned to the control owner. Until the issue is resolved and closed, the control remains tagged as unreliable. The status of controls (reliable or unreliable) and tests (past due and current) are indicated on an ECART dashboard. Controls and tests related to compliance with the Standards of Conduct requirements are captured in ECART.

## **F. Reporting and Detecting Violations**

Management at all levels encourages the identification of conditions that may not be in compliance with laws, regulations or policies, including this Compliance Procedures Manual. Upon discovery of any misconduct, Entergy will correct the problem and when necessary promptly report the offense to the correct authority. Employee inquiries or clarifications regarding the Standards of Conduct requirements should be handled through the employee's supervisory chain or an officer of the employee's business unit. It is the responsibility of each employee, agent and contractor to report known, suspected or potential instances of non-compliance with the Standards of Conduct or this Compliance Procedures Manual ("Non-Compliance Conditions"). Employees, agents and contractors shall report known, suspected or potential instances of Non-Compliance Conditions to the Entergy Ethics Line:

**Telephone Reporting: 1-888-257-3844**

**Web-Based Reporting: <https://www.compliance-helpline.com/entergyethicsline.jsp>**

Entergy emphasizes that concerns raised will be treated with respect and confidentiality. The Entergy Ethics Line is the primary avenue for employees to raise ethics concerns and is also available for use by employees seeking guidance. The toll-free Ethics Line is staffed 24 hours a day, seven days a week by a third-party vendor that ensures caller anonymity, as desired. A secure and confidential web-based reporting system, also operated by the vendor, is available as an alternate reporting method. Ethics Line cases are tracked in a secure, access-controlled database.

Under both reporting methods, the vendor forwards the information confidentially to Internal Audit Services, who will notify the responsible officer of the applicable business unit and the Associate General Counsel, Federal Energy Regulatory Affairs, or designee, of a potential Non-Compliance Condition.

The ECART system also has an issues module that is used to document identified issues, time lines for resolution and assigned resolution owners/approvers. The ECART system will automatically create a new issue any time a test of a control does not pass, and the issue will be assigned to the owner of the control for resolution. If the resolution of such an issue indicates existence of a known, suspected or potential Non-Compliance Condition, it shall be reported to the Associate General Counsel, Federal Energy Regulatory Affairs and captured in the Ethics Line database.

The Legal Services Department shall initiate an internal investigation or evaluation related to a Non-Compliance Condition, and any related misconduct, to collect all of the facts and information required to direct any additional actions and remedy the condition. Consideration should be given to whether an independent outside entity is required to assist the investigation or evaluation. Appropriate actions shall be taken to determine whether a Non-Compliance Condition exists. Such determination shall be completed as soon as reasonably practicable taking into consideration the nature of the reported known, suspected or potential Non-Compliance Condition.

## **G. Remediation of Violations**

If a determination is made through the investigation process that a Non-Compliance Condition exists, the responsible manager within the applicable business unit shall consult with the Legal Services Department and the appropriate compliance group to determine the actions necessary to address the Non-Compliance Condition, including (a) clearly documented and immediate appropriate steps to stop any misconduct or correct any Non-Compliance Condition, (b) development of an overall corrective action plan, and (c) development of any necessary communications to employees (including any communications of senior management expectations).

All violators of company policies and procedures will be subject to disciplinary action in accordance with Entergy's Discipline Policy. Inappropriate employee actions shall be presented to the appropriate level of management and the Human Resources Department for corrective action. The exact nature of discipline will depend on the nature, severity and frequency of the violation. Corrective action may take the form of counseling, suspension, termination or other varying degrees of discipline. Depending on the offense, Entergy may take immediate action up to and including termination without applying any progressive disciplinary actions.

## **H. Contacts for Questions/Guidance**

1. If you have any questions or guidance regarding the FERC regulations or this Compliance Procedures Manual, please send an e-mail to: [Helpdesk Affiliate Rules Compliance](#) (internal e-mail) or [HELPARC@entergy.com](mailto:HELPARC@entergy.com) (external internet e-mail).
2. You may also contact the Chief Compliance Officer with regards to the Compliance Procedures Manual:

<u>Name:</u>	Neal Jansonius
<u>Title:</u>	Vice President, Ethics & Compliance
<u>Telephone:</u>	(501) 377-5552 Internal 8-750-5552
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<u>Mailing address:</u>	Entergy Services, Inc.

P.O. Box 551  
Mail Stop 27B  
Little Rock, AR 72203-0551

### III. PROCEDURES

This Section III is divided into sections based on the Standards of Conduct's major areas. Each section first quotes the relevant provision(s) of the Standards of Conduct, under the heading "Regulatory Text". References are to Title 18, part 358 of the Code of Federal Regulations ("CFR").

After the regulatory text, a "Compliance Discussion" area is included. This discussion includes descriptions of Entergy's procedures and other controls in place to mitigate the risk of non-compliance with the Standards of Conduct and to facilitate occurrence of actions mandated by the Standards of Conduct.

#### A. General Principles (§ 358.2)

##### Regulatory Text

###### **18 CFR § 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.

##### Compliance Discussion

1. These are the general principles specified by the FERC for the Standards of Conduct - three affirmative obligations [§§ 358.2(a), (b) and (d)] and one obligation to refrain from taking a certain action [§ 358.2(c)]. The FERC facilitates compliance with these principles by the more specific obligations and restrictions included in other parts of the Standards.
  - a. 18 CFR § 358.2(a) mandates fair and impartial treatment to all transmission customers (no undue discrimination, nor undue preferences). 18 CFR § 358.4 (Non-Discrimination Requirements) provides more

specific obligations related to this general principle. See Section III.C. below.

- b. 18 CFR § 358.2(b) mandates independence between Transmission Function Employees and Marketing Function Employees, except where specifically permitted under the Standards. More specificity to this requirement is provided in 18 CFR § 358.5 (Independent Functioning Rule). See Section III.D. below.
  - c. 18 CFR § 358.2(c) prohibits the transfer of non-public Transmission Function Information to Marketing Function Employees. This applies to Transmission Function Employees, all other employees of Entergy, and Entergy contractors, consultants and agents acting on behalf of Entergy. The prohibition covers both direct and indirect transfers of information, and is also further discussed by 18 CFR § 358.6 (Information Sharing Restrictions). See Section III.E. below.
  - d. 18 CFR § 358.2(d) also address the disclosure of non-public Transmission Function Information to Marketing Function Employees. It mandates that equal access must be given to such information to all transmission customers, except where otherwise specifically permitted under the Standards. 18 CFR § 358.7 (Transparency Rule) mandates that the Transmission Provider must immediately post such information that was disclosed on its Internet Website. See Section III.F. below.
2. Even though the FERC provided these general principles and more specific obligations and restrictions, the FERC was careful to note that the obligations and restrictions in the Standards do not “occupy the field” for potential types of undue discrimination and undue preference and that there “are potentially an infinite number of ways undue preferences might arise, and the Standards are not intended to be exhaustive. It is possible that an entity might embark on a course of conduct not contemplated by the Standards, which could be found upon investigation to constitute a violation of the statutory undue preference prohibitions. In such case, the entity’s compliance with the Standards in other aspects would not serve as a defense.” (Order No. 717, para. 294.)
  3. All employees of Entergy, and Entergy contractors, consultants and agents acting on behalf of Entergy, have an obligation and responsibility to follow the letter and spirit of the general principles specified at 18 CFR § 358.2.
  4. All employees of Entergy, and Entergy contractors, consultants and agents acting on behalf of Entergy, shall heed the following from the FERC: “if a situation truly does appear to be a close call, that in itself should be a red flag that suggests conservatism . . . it is best to err on the side of caution.” (Order No. 717, para. 121.)
  5. Ethics & Compliance shall ensure that the Entergy Standards of Conduct training materials include the general principles specified at 18 CFR § 358.2.

## B. Applicability (§ 358.1) and Definitions (§ 358.3)

### Regulatory Text

#### **18 CFR § 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 an exemption from this part.
- (d) A transmission provider may file a request for an exemption from all or some of the requirements of this part for good cause.

#### **18 CFR § 358.3 Definitions.**

- (a) Affiliate of a specified company 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 Website 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 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 website 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.

## **Compliance Discussion**

1. Applicability. 18 CFR § 358.1 deals with the applicability of the Standards of Conduct. The Standards of Conduct are applicable to the Entergy Operating Companies, because the entities satisfy the conditions of 18 CFR § 358.1(b):
  - Each Entergy Operating Company is a public utility,
  - Each Entergy Operating Company owns and operates facilities used for the transmission of electric energy in interstate commerce (as well as facilities used to provide bundled electric service to retail customers in their franchised service territory), and
  - Each Entergy Operating Company conducts transmission transactions with Entergy Affiliates that engage in Marketing Functions.
2. Definitions. The definitions set forth in 18 CFR § 358.3 are hereby incorporated into this Compliance Procedures Manual. These definitions are critical to identifying which Entergy business functions and entities are subject to the specific requirements of the Standards of Conduct. Thus, additional discussion of the application of certain of these definitions is provided below.
3. Transmission Provider (18 CFR § 358.3(k)). The Entergy Operating Companies are public utilities that provide transmission service, and are collectively considered a Transmission Provider. The Entergy Operating Companies provide transmission service under individual transmission service agreements pursuant to a single Open-Access Transmission Tariff (“Entergy OATT”) filed on behalf of all the Entergy Operating Companies by ESI and approved by the FERC.

Pursuant to Attachment S of the Entergy OATT, the Entergy Operating Companies have contracted with an Independent Coordinator of Transmission (“ICT”) to oversee the provision of transmission service under the Entergy OATT and to oversee the provision of certain interconnection services. The Southwest Power Pool currently serves as the ICT, and its specific functions include the maintenance of the Entergy OASIS website, the grant/denial of requests for transmission service pursuant to the “Transmission Service Protocol” of

Attachment S, and the grant/denial of requests for interconnection service pursuant to the “Interconnection Service Protocol” of Attachment S.

4. Affiliates (18 CFR § 358.3(a)). The definition of Affiliate is not limited to separate legal entities. Functions or divisions within an entity can be considered an Affiliate. This is noteworthy due to Entergy's corporate structure, which includes the use of functions within the service company ESI to act as agent for the Entergy Operating Companies and other Entergy subsidiaries.
5. Marketing Functions (18 CFR § 358.3(c)) and Marketing Function Employee (§ 358.3(d)). The identification of activities and personnel that meet the definition of Marketing Functions and Marketing Function Employees are significant in that many of the restrictions imposed by the Standards of Conduct are imposed on interactions between the Marketing Function and the Transmission Function (the Transmission Function is discussed below).

### What Makes a Marketing Function Employee?

First, note that while the term Marketing Function “Employee” is used, the definition can include not only employees, but can also include contractors, consultants and agents of a Transmission Provider or Affiliate.

Combining the definitions at 18 CFR § 358.3(c) and (d), a Marketing Function Employee is one who:

- is actively and personally engaged on a day-to-day basis,
- in the sale for resale, or offers to sell, in interstate commerce of electric energy, electric capacity, demand response, virtual transactions, or financial transmission rights.

Thus a specific type of activity must be occurring and there must be a sufficient type of involvement with that activity.

The FERC makes clear that the following activities would satisfy the sale for resale part of the definition.

- Making off-system wholesale sales, even if incidental. The FERC stated that once “the utility is making wholesale sales off-system, it is no longer serving retail load but engaging in marketing transactions, and should be treated no differently than other marketers making wholesale sales.” (Order No. 717, paras. 80-81.)
- “Ancillary services, when referring to sales for resale as opposed to an integrated public utility's actions in calling on its own generation or demand response resources for ancillary services purposes.” (Order No. 717, para. 78.)
- Resale or reassignment by a transmission customer of transmission services. (Order No. 717-A, para. 33.)

The more difficult determination is around the level of involvement needed to satisfy the definition. The FERC indicated that the following involvement would rise to the level of “actively and personally engages on a day-to-day basis.”

- Regularly carrying out the details of the activity. (Order No. 717, para. 117.)
- Regularly supervising the details of the activity. (Order No. 717, para. 117.)
- Overseeing or providing input into the details of the negotiations being carried out by another employee (e.g., by editing and revising material elements of a contract). (Order No. 717, paras. 117 and 119.)
- “[T]he closer the supervisory employee is to the trading activity, the more likely it is that he will be overseeing and providing input into the trades, and not simply signing off on a deal, and thus would be considered a marketing function employee.” (Order No. 717, para. 120.)

### What Does **NOT** Make a Marketing Function Employee?

The FERC stated that the following types of activities would not, by themselves, satisfy the sales for resale part of the definition. Of course, if a person is involved in an activity that does satisfy the sale for resale part of the definition, then the person’s additional involvement in any of the below described activities does not make a difference – that part of the definition is still satisfied for that person.

- Bundled retail sales. (18 CFR § 358.3(c)(1).)
- Bids to buy, purchases, and competitive solicitations. (Order No. 717, paras. 77 and 106.)
- Generation-related resource planning. (Order No. 717, para. 147.)
- Demand response programs that a load-serving entity has established for its customers. (Order No. 717, paras. 78 and 149.)
- Ancillary services, when referring to an integrated public utility’s actions in calling on its own generation or demand response resources for ancillary services purposes. (Order No. 717, para. 78.)
- Making of transmission reservations and the scheduling of transmission. However the FERC did note that “marketing function employees making sales of energy will need to schedule transmission for such sales (at least outside of organized electric energy markets), and thus those individuals will most likely already fall within the definition of marketing function employees.” (Order No. 717, para. 79.)
- Generating operations. (Order No. 717, para. 106.)

To give more guidance on the needed level of involvement in the activity, the FERC indicated that the following involvement, by itself, would not rise to the level of “actively and personally engages on a day-to-day basis.”

- Involvement by managers and officers in corporate governance. (Order No. 717, para. 122.)
- Involvement by managers and officers in strategic and long-range planning. (Order No. 717, para. 122.)
- Development of general negotiating parameters for wholesale contracts. (Order No. 717, para. 122.)
- Signing off on the activities without having directed or organized the activities. (Order No. 717, para. 117.)
- Upper level management personnel review of contracts over a certain dollar amount, simply by virtue of that review. (Order No. 717, para. 119.)
- Approval of contracts governing a sale, or signing off on a deal negotiated or proposed by someone else, if the approver is not involved in the negotiations and does not oversee or provide input into the details of the negotiations. (Order No. 717, paras. 117 and 119.)
- Explanation of the reasons for disapproving a sales contract. (Order No. 717-A, para. 83.)
- Tangential involvement in a negotiation, such as being called in to meet the negotiating parties from the other side. (Order No. 717, para. 117.)
- Examination of a contract for conformity to legal, accounting or other requirements by attorneys, accountants and other advisors, simply by virtue of that review. (Order No. 717, para. 119.)
- De minimis involvement in Marketing Functions. (Order No. 717, para. 117.)

Here again, if a person is actively and personally engaged on a day-to-day basis in some other manner, then the person's additional involvement in any of the above described activities does not make a difference – that part of the definition is still satisfied for that person, regardless of the person's involvement in the above activities.

Many other types of activities were raised to the FERC, such as those performed by attorneys, accountants, risk management personnel, regulatory personnel, rate design personnel, forecasters, and strategic planning personnel. The Commission declined to specifically address all of them. The following quotes from Order No. 717 and Order 717-B are instructive:

- “The question of whether analysts (such as forecasters and employees who coordinate strategic planning and regulatory services) are marketing function employees can be answered by reference to the definition itself. If such analysts are not actively and personally involved on a day-to-day basis in the sale for resale of electric energy (or the other items mentioned in the definition), they are not marketing function employees.” (Order No. 717, para. 106.)
- “Again, the determination depends on the answer to a more fundamental question: do such employees function in their stated roles, or do they also actively and personally perform day-to-day . . . marketing functions? If they do not perform . . . marketing functions, they are not [considered

Marketing Function Employees]. Therefore, if an attorney is rendering legal advice, he may consult with both transmission function employees and marketing function employees. Likewise, a risk management employee may develop risk guidelines for both transmission function employees and marketing function employees. And regulatory personnel may present before regulatory bodies filings that cover both transmission and marketing issues.” (Order No. 717, para. 131.)

- “[A]n employee making business decisions about nonprice terms and conditions [of a wholesale sales contract] can be considered a ‘marketing function employee’ because that employee is actively and personally engaged in marketing functions. However, an employee who simply drafts or redrafts a contract, including non-price terms and conditions, without making business decisions is not a ‘marketing function employee.’” (Order 717-B, para. 6.)

Finally, two of the Entergy Operating Companies, Entergy New Orleans, Inc. and Entergy Gulf States Louisiana, L.L.C., own and operate local natural gas distribution divisions that offer gas retail distribution services pursuant to utility franchises at retail-regulated cost-based rates in New Orleans, Louisiana and Baton Rouge, Louisiana, respectively. Further, Entergy owns or operates various fossil power plants fueled by natural gas. Thus, Entergy personnel do perform sales for resale, or offers to sell, in interstate commerce of natural gas. It must be considered whether these personnel are thus Marketing Function Employees under the provisions of 18 CFR §§ 358.3(c)(2) and 358.3(d). Entergy, with the advice of legal counsel, has concluded that such personnel involved in the sale for resale of natural gas are not Marketing Function Employees under the definitions. This is because the definitional condition of being an “interstate pipeline” is not satisfied as Entergy does not own or operate an interstate gas pipeline.

### Application to Entergy – Who are Entergy’s Marketing Function Employees?

Based on an analysis of the definition and Entergy functions, it has been determined certain operations do engage in Marketing Function activities as defined in 18 CFR § 358.3(c)(1), and personnel within the functions have sufficient involvement with the activities to be considered Marketing Function Employees. These Marketing Function operations are located in three different areas of Entergy described below, and each is considered an Affiliate under the Standards of Conduct definition:

- The Energy Management Organization within the System Planning & Operations business unit acts on behalf of the Entergy Operating Companies. Its staff is employed by ESI, a service company that acts as agent for the Entergy Operating Companies.
- The Wholesale Business Group division within the utility Sales and Marketing business unit acts on behalf of the Entergy Operating

Companies. Its staff is employed by ESI, a service company that acts as agent for the Entergy Operating Companies.

- The Competitive Operations business unit manages assets and subsidiaries that are engaged in the sale for resale of electric energy or capacity, and is staffed with employees of Entergy Asset Management or Entergy Enterprises, Inc., a service company that acts as agent for Entergy's competitive operations.

Further, Entergy Nuclear Power Marketing, LLC contains a group that performs Marketing Functions for the competitive Entergy nuclear plants located in the northeastern and north-central United States. However, the group does not conduct transmission transactions with the Entergy Operating Companies. The FERC clarified in Order No. 717-A that employees of an affiliate who do not transact with the transmission system are not Marketing Function Employees. (Order No. 717-A, para. 16.) And thus employees of Entergy Nuclear Power Marketing, LLC are not to be considered Marketing Function Employees.

For ease of application of controls described in this Compliance Procedures Manual, Ethics & Compliance maintains a list of all Marketing Function Employees (Marketing Function Employee List). This list is found at the following link: <http://transarc.entergy.com/public/ViewList.asp?ListType=Restricted>.

Before any employee is added or removed (except in cases of employment termination) from the Marketing Function Employee List, an Employee Classification Checklist for the Purpose of Maintaining Marketing Function Employee List (Marketing Function Employee Checklist) must be completed. For System Planning & Operations, the business unit that employs most of Entergy's Marketing Function Employees, a requirement is contained within its **Personnel Change Policy** to complete the Marketing Function Employee Checklist prior to any of its employees being added or removed (except in cases of employment termination) from the Marketing Function Employee List.

If the job function of an Entergy employee meets the definition of a Marketing Function Employee, but the employee is not on the Marketing Function Employee List, the employee has an obligation to immediately notify Ethics & Compliance using one of the contacts listed in Section II.H. above.

6. Transmission Functions (18 CFR § 358.3(h)) and Transmission Function Employee (18 CFR § 358.3(i)). As noted earlier, the identification of activities and personnel that meet the definition of Transmission Functions and Transmission Function Employees are significant in that many of the restrictions imposed by the Standards of Conduct are imposed on interactions between the Transmission Function and the Marketing Function (Marketing Function is discussed above).

**What Makes a Transmission Function Employee?**

First, note that while the term Transmission Function “Employee” is used, the definition can include not only employees, but can also include contractors, consultants and agents of a Transmission Provider or Affiliate.

Per the definitions at 18 CFR §§ 358.3(f), (h) and (i), a Transmission Function Employee is one who:

- is actively and personally engaged on a day-to-day basis,
- in the planning, directing, organizing or carrying out of day-to-day operations of electric transmission, network or point-to-point service, ancillary services or other methods of electric transmission, or the interconnection with jurisdictional transmission facilities, including the granting and denying of transmission service requests.

Examples of activities considered to be part of the day-to-day operations of transmission are provided below.

- Granting and denying of transmission service requests, regardless of the duration of the service requested. (18 CFR § 358.3(h), Order No. 717-A, para. 27.)
- Short-term real-time operations. (Order No. 717, para. 40.)
- Decisions made in advance of real-time, but directed at real-time operations. (Order No. 717, para. 40.)
- Coordinating the actual physical flows of power. (Order No. 717, para. 122.)
- Isolating portions of the system to prevent cascades. (Order No. 717, para. 122.)
- Imposing transmission load relief. (Order No. 717, para. 122.)
- Performance of system impact studies. (Order No. 717-A, para. 27.)
- Determining whether the transmission system can support the requested services. (Order No. 717-A, para. 27.)
- Sale of transmission service under the Entergy OATT or pre-Order No. 888 grandfathered agreement. (Order No. 717-A, para. 33.)

### What Does NOT Make a Transmission Function Employee?

For clarification, FERC Order No. 717 describes certain roles that, by themselves, do not cause a person to be classified as a Transmission Function Employee, so long as the activities do not implicate the day-to-day operation of the transmission system.

- Long-range planning regarding the transmission system. (Order No. 717, para. 146.)
- Integrated resource planning. (Order No. 717, para. 147.)
- Generation-related resource planning. (Order No. 717, para. 147.)

- Field maintenance and construction work. (Order No. 717, para. 46.)
- Engineering work. (Order No. 717, para. 46.)
- Clerical work. (Order No. 717, para. 46.)
- Rate design work involving calculating rates to propose to the appropriate regulatory body. (Order No. 717, paras. 132 and 272.)
- Preparation of risk guidelines (Order No. 717, para. 131.)
- Service on an isolated occasion to perform a Transmission Function, generally under emergency conditions. (Order No. 717, para. 47.)
- Involvement by managers and officers in corporate governance. (Order No. 717, para. 122.)
- Involvement by managers and officers in strategic and long-range planning. (Order No. 717, para. 122.)
- Balancing load with energy or generating capacity when the balancing authority and Transmission Function are separate. (Order No. 717-A, para. 24.)

However, if the person is otherwise also actively and personally involved in the day-to-day operation of the transmission system, then the person's additional involvement in any of the above described activities does not make a difference – that person is still a Transmission Function Employee.

Many other types of activities were raised to the FERC, such as those performed by attorneys, accountants, risk management personnel, regulatory personnel, rate design personnel, and strategic planning personnel. The Commission declined to specifically address all of them. The following quote from Order No. 717 (para. 131) is useful. “Again, the determination depends on the answer to a more fundamental question: do such employees function in their stated roles, or do they also actively and personally perform day-to-day . . . transmission functions? If they do not perform . . . transmission functions, they are not [considered Transmission Function Employees].”

### Application to Entergy – Who are Entergy's Transmission Function Employees?

The Entergy Operating Companies provide transmission service and are collectively considered a Transmission Provider. On behalf of the Entergy Operating Companies, employees and other personnel of the Entergy Operating Companies or ESI perform certain services that are considered Transmission Function activities and thus they are considered Transmission Function Employees. All Transmission Function Employees, whether ESI or Entergy Operating Company personnel, are within the Entergy Transmission business unit.

For ease of application of controls described in this Compliance Procedures Manual, Ethics & Compliance maintains a list of all Transmission Function

Employees (Transmission Function Employee List). This list is found at the following link:

<http://transarc.energys.com/public/ViewList.asp?listType=Transmission>.

Before any employee is added or removed (except in cases of employment termination) from the Transmission Function Employee List, the Transmission Function Employee Classification Analysis Checklist (Transmission Function Employee Checklist) must be completed as required by the **Process to Classify Transmission Function Employees (“TFEs”) and Update the TFE List**. This process is part of the Transmission Management Manual (accessible from the Affiliate Rules Compliance EntergyNet site) and specifies general rules and responsibilities and further details.

If the job function of an Entergy employee meets the definition of a Transmission Function Employee, but the employee is not on the Transmission Function Employee List, the employee has an obligation to immediately notify Ethics & Compliance using one of the contacts listed in Section II.H. above.

7. Transmission Function Information (§ 358.3(j)). Transmission Function Information is defined as information related to the planning, directing, organizing or carrying out of day-to-day transmission operations, including the granting and denying of transmission service requests. Other examples noted by the FERC include:

- Information related to the granting or denying of transmission service requests. (18 CFR §§ 358.3(h) and (j).)
- Available transmission capability information. (Order No. 717, para. 275.)
- Price information. (Order No. 717, para. 275.)
- Curtailments information. (Order No. 717, para. 275.)
- Balancing information. (Order No. 717, para. 275.)
- Transmission customer information (any information acquired from non-affiliated transmission customers/potential customers, or developed in the course of responding to requests of transmission or ancillary service.) (18 CFR § 358.7(a)(2) and Order No. 717, para. 237.)
- Planned transmission outage information, no matter how far into the future the outage may occur. (Order No. 717-A, para. 135.)

Any questions about whether information is Transmission Function Information should be directed to one of the contacts listed in Section II.H. above.

## C. Non-discrimination Requirements (§ 358.4)

### Regulatory Text

#### **18 CFR § 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.

### Compliance Discussion

1. The Transmission Tariffs & Scheduling group (“TTS”) and the ICT are assigned responsibilities to administer the Entergy OATT. The OASIS Compliance Program Manual provides procedures to ensure that the Entergy OASIS contains standardized information relevant to the availability of transmission capacity, prices, and other information pertaining to the transmission system.
2. The Entergy OATT administrators, as well as other Entergy employees, contractors, consultants and agents, shall act in accordance with the following:
  - a. If an Entergy OATT provision relating to the sale or purchase of open access transmission service does not permit the use of discretion, then the provision shall be strictly enforced.
  - b. If an Entergy OATT provision relating to the sale or purchase of open access transmission service does permit the use of discretion, then the provision shall be applied in a fair and impartial manner that treats all transmission customers in a not unduly discriminatory manner.
3. The Entergy OATT administrators, as well as other Entergy employees, contractors, consultants and agents, shall act in accordance with the following:
  - a. No undue preferences shall be given to any person, through the Entergy OATT or otherwise, in relation to the sale or purchase of open access transmission service, including in the matter of prices, curtailments, scheduling, priority, ancillary services or balancing.

- b. All prices, curtailments, scheduling, priority, ancillary services and balancing shall be included in the transmission offerings on the Entergy OASIS and shall be available to all transmission customers without undue preference to any person.
- 4. Pursuant to Attachment S of the Entergy OATT, the ICT shall be responsible for:
  - a. Processing similar requests for transmission service in the same manner and within the same period of time.
  - b. Ensuring that all transmission service requests and transmission service schedules are available online to all authorized users of the Entergy OASIS on a non-discriminatory basis.
  - c. Maintaining an up-to-date list of interconnection requests.
- 5. TTS and the Transmission Compliance section of Transmission Regulatory Compliance provide clarification as necessary to those involved in responding to transmission service requests and to transmission service customers regarding provisions of the Entergy OATT.
- 6. Ethics & Compliance shall ensure that the Entergy Standards of Conduct training materials include the non-discrimination requirements of 18 CFR § 358.4.

## D. Independent Functioning Rule (§ 358.5)

### Regulatory Text

#### **18 CFR § 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.

### Compliance Discussion

1. The organizational structure of Entergy shall be such that the Transmission Function is a business unit that is separate from all Marketing Functions.
  - a. Entergy shall not have any employees who are engaged in both the Transmission Function and the Marketing Function.
  - b. Job assignments for Marketing Function Employees shall not include Transmission Function activities.
  - c. Job assignments for Transmission Function Employees shall not include Marketing Function activities.
2. Transmission Function Employees shall be housed in separate work areas from Marketing Function operations.
  - a. The Entergy Operating Companies' Transmission Function Employees conduct their operations at:
    - i. the Transmission System Operations Center ("SOC") in Pine Bluff, AR,
    - ii. the Transmission Operations Centers ("TOCs") in Little Rock, AR; Jackson, MS; Gretna, LA; West Monroe, LA; and Beaumont, TX,
    - iii. the Operations Department in New Orleans, LA and Jackson, MS, and

- iv. Various operations buildings within the Entergy system.
- b. The Entergy Operating Companies' Marketing Function Employees conduct their operations at facilities in the following locations:
  - i. The Woodlands, Houston and Beaumont, TX,
  - ii. New Orleans, LA, and
  - iii. Little Rock, AR.
- c. In those cities where offices of both Transmission Function Employees and Marketing Function Employees are located, the Transmission Function and Marketing Function work areas are located in separate buildings, with the exception of the Entergy Corporate Headquarters Building in New Orleans.
- d. At the Entergy Corporate Headquarters Building, building access guidelines, including controls for the issuance of building access cards, shall be documented and maintained. The guidelines shall control and restrict access by Marketing Function Employees to floors where Transmission Function Employee work areas are located.
- e. For the system control center (the SOC) and similar facilities used for transmission operations (the TOCs), building access guidelines, including controls for the issuance of building access cards, shall be documented and maintained. Access shall be limited by such restrictions as locked doors that can be accessed only with badges programmed for these buildings or by escorts.
  - i. The guidelines shall control and restrict access by Marketing Function Employees to the work areas of Transmission Function Employees.
  - ii. The protocols for access to the SOC building in Pine Bluff, any of the TOC buildings and to the Transmission Operations department's work space in New Orleans and Jackson shall be the same for Marketing Function Employees as for non-affiliated transmission customers.
- f. At locations designated as Transmission Function sites, signs shall be posted and maintained stating that site access is restricted for Marketing Function Employees.
- g. Access controls and restrictions shall be maintained for work areas in The Woodlands, where most Marketing Function Employees are located. Such access controls and restrictions include locked doors, signs posting access restrictions, and escorted access. The **System Planning and Operations Physical Visitor Access Procedure** restricts access by any Transmission Function Employees to the marketing dispatch work areas in The Woodlands, including the back-up operations center in The

Woodlands, and the back-up operations center in Navasota, Texas. This policy is part of the System Planning & Operations Compliance Policy & Procedures (accessible from the Affiliate Rules Compliance EntergyNet site) and specifies general rules and responsibilities and further details.

3. Employee Transfers. As required in 18 CFR § 358.7(f)(2), employee transfers may not be used to circumvent any provision of the Standards, including the separation of functions requirement.
  - a. Ethics & Compliance shall review a daily report of employee transfers to determine whether any transfers have occurred between the Transmission Function and any affiliated Marketing Function.
  - b. Ethics & Compliance shall coordinate implementation of the **Supplemental Employee Transfer Process** that includes special pre-transfer scrutiny for any of the below-described situations.
    - i. Transfers between a functional business unit employing Transmission Function Employees and a functional business unit employing Marketing Function Employees. Note that the process applies even if the employee transferred is not a Transmission Function Employee or a Marketing Function Employee.
    - ii. Transfers of any employee between a regulated functional business unit employing Marketing Function Employees and a competitive functional business unit employing Marketing Function Employees. Again, the process applies even if the employee transferred is not a Marketing Function Employee.
    - iii. Transfers of a Marketing Function Employee or a Transmission Function Employee to any of the following corporate work groups: Office of the Chief Risk Officer, Commercial Analytics, or Corporate Development.
    - iv. Transfers of any employee in any of the following corporate work groups - Office of the Chief Risk Officer, Commercial Analytics, or Corporate Development – to a Marketing Function Employee or a Transmission Function Employee position.

This process is maintained at the Affiliate Rules Compliance EntergyNet site.
  - c. Ethics & Compliance shall send to management personnel of the Transmission Function, Marketing Function and certain support groups a semiannual reminder of the need for them to notify Ethics & Compliance of any applicable employee transfers falling into the above categories. Such notice shall be provided within a reasonable time before the earlier of (i) the effective date of the employee transfer, as recorded in the PeopleSoft Human Resources system, or (ii) the actual date the employee starts performing functions of the new job.,

- d. In cases of special circumstances such as a transferee's transitional period or knowledge of actionable Transmission Function Information, the following risk mitigation measures shall be considered:
    - i. postponement of the transferee's transfer date to achieve a clean break,
    - ii. a cooling-off period with restrictions on the duties the transferee may perform in the new position, and
    - iii. provision of additional training of the transferee on the Standards of Conduct.
4. Ethics & Compliance shall ensure that the Entergy Standards of Conduct training materials include the independent functioning requirements.

## E. Information Sharing Restrictions (§ 358.6 and §§ 358.7(b), (c) and (h))

### Regulatory Text

#### **18 CFR § 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.

#### **18 CFR § 358.7 Transparency rule.**

- (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 website 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.
- (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.

## Compliance Discussion

1. General Rule. Subject to the exclusions described below, Entergy employees and Entergy contractors, consultants and agents acting on behalf of Entergy shall not disclose non-public Transmission Function Information to any Marketing Function Employee, directly or indirectly. See Section III.B.7. above for the definition of Transmission Function Information.
2. Marketing Function Transaction Request Exclusion. The general rule does not apply to the disclosure of information to a Marketing Function Employee related solely to a specific request for transmission service by the Marketing Function. FERC clarified that the transaction specific exemption is not limited to communications concerning requests for transmission service. The transaction specific exemption includes communications related to transportation agreements, specific interconnections and new infrastructure needed for the specific request. (Order No. 717-A, para. 125).
3. Voluntary Consent Exclusion. A transmission customer's non-public information may be disclosed to Marketing Function Employees upon the consent of the transmission customer, and the general rule does not apply, provided that:
  - a. The consent to share such non-public customer information is in writing,
  - b. The consent is voluntary and is not obtained in exchange for any preferences, either operational or rate-related, and
  - c. Communications, documentation, posting and records retention related to such non-public customer information follow the **Voluntary Consent Coordination Procedure**. This procedure is part of the Transmission Management Manual (accessible from the Affiliate Rules Compliance EntergyNet site) and specifies general rules and responsibilities and further details.
4. Reliability Standards Exclusion. Non-public Transmission Function Information pertaining to compliance with Reliability Standards approved by the FERC may be shared with Marketing Function Employees, and the general rule does not apply, provided that:
  - a. Such information sharing is limited to legitimate business needs to facilitate compliance with Reliability Standards, and
  - b. Such sharing is done pursuant to the Off-OASIS Communications Protocol Procedure ("Off-OASIS Protocols") described below. Employees shall seek guidance from one of the contacts listed in Section II.H. above for the appropriate application of this exclusion.

Note that information pertaining to compliance with Reliability Standards approved by the FERC is not per se Transmission Function Information (Order No. 717-A, para. 132.)

5. Maintain/Restore Operations and Dispatch Exclusion. Non-public Transmission Function Information necessary to maintain or restore operation of the transmission system or generating units, or that may affect the dispatch of generating units, may be shared with Marketing Function Employees, and the general rule does not apply, provided that:
  - a. There is a legitimate business need for such sharing, such as in case of an emergency, and
  - b. Such sharing is done pursuant to the Off-OASIS Protocols described below. Employees shall seek guidance from one of the contacts listed in Section II.H. above for the appropriate application of this exclusion.

Note that information necessary to maintain or restore operation of the transmission system or generating units, or that may affect the dispatch of generating units, including unit commitment information, is not per se Transmission Function Information. (Order No. 717-A, para. 132.)

6. Need to Rebuff and Report Disclosure Attempts. If someone attempts to pass Transmission Function Information to a Marketing Function Employee in violation of the general rule above, where an exclusion does not apply, the Marketing Function Employee shall refuse to receive such information and shall report the incident to one of the contacts listed in Section II.H. above.
7. Recording of Information Exchanges. The Transmission Policy, Transmission Compliance, Ethics & Compliance and Legal Services groups shall coordinate the Off-OASIS Protocols or, during emergency situations, the “Off-OASIS Communications Record Keeping Process during Emergency Circumstances” to facilitate compliance with the information sharing restrictions. The Off-OASIS Protocols establish protocols to create and retain a contemporaneous record of permitted Off-OASIS communications. The Off-OASIS Communications Record Keeping Process during Emergency Circumstances specify protocols, effective during emergency circumstances, to create and retain a record of permitted communications as soon as practicable after the emergency.
8. Information Technology Systems. The Director, Technology Delivery shall ensure that Marketing Function Employees do not have inappropriate access to Transmission Function Information through Transmission information technology systems and databases. The following data control procedures shall be maintained to prevent improper access through Transmission information technology systems and databases.

- a. The Director, Technology Delivery shall maintain an inventory of Transmission Function databases, regularly monitor user access, and verify that Marketing Function Employees are not provided access to databases containing Transmission Function Information.
  - b. Specific employees who “own” the content or business intelligence of the Transmission databases (“Information Owners”) are identified for all databases containing Transmission Function Information. The Information Owners shall be responsible for coordinating with the Director, Technology Delivery on a periodic basis to ensure the proper access of individual users to these databases.
  - c. Semi-annually, the Director, Technology Delivery shall work with the Transmission Information Owners to review the appropriateness of each individual’s continued access to databases containing Transmission Function Information.
  - d. Weekly, Transmission Security Coordination shall compare users who have access to servers and databases connected to the Energy Management System (“EMS”) or the Supervisory Control and Data Acquisition (“SCADA”) system with the employee Termination Report, the Transmission Job Change Report, and the Marketing Function Employee List. Access to EMS and SCADA is removed for users on the employee Termination Report or the Marketing Function Employee List. Furthermore, such access is removed for users who do not have a legitimate business need for the access as a result of a recent job change.
9. Joint Meetings. Order No 717-A clarified that the following types of meetings including both Transmission Function and Marketing Function Employees are not barred under the Standards of Conduct, so long as non-public Transmission Function Information is not disclosed.
- a. Joint meetings so long as the meetings do not relate to Transmission Functions or Marketing Functions. (Order No. 717-A, para. 89.)
  - b. Joint meetings as part of the development process for reliability standards. (Order No. 717-A, para. 90.)
  - c. Joint meetings to discuss ICT issues. (Order No. 717-A, para. 90.)
  - d. Joint participation in regulatory and compliance functions. (Order No. 717-A, para. 90.)
  - e. Joint meetings for disaster/outage preparedness training. (Order No. 717-A, para. 91.)

- f. Regulatory or industry proceedings or conferences. (Order No. 717-A, paras. 88 and 92.)
- 10. Training. Ethics & Compliance shall ensure that the Entergy Standards of Conduct training materials include the information sharing restrictions, as well as the requirement to follow the Off-OASIS Protocols.
- 11. Independent Functioning. Section III.D. (18 CFR § 358.5) describes the independent functioning safeguards, including physical separation of employees, and the **Supplemental Employee Transfer Process** (maintained at the Affiliate Rules Compliance EntergyNet site) that includes special pre-transfer scrutiny to ensure that employee transfers between the Transmission Function and any affiliated Marketing Function do not circumvent any provision of the Standards, as required in 18 CFR § 358.7(f)(2). These controls also serve to prevent the inadvertent and/or improper disclosure of non-public Transmission Function Information.

## F. Contemporaneous Disclosure Rule (§ 358.7(a))

### Regulatory Text

#### **18 CFR § 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 website.
  - (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 website that the information was disclosed.

### Compliance Discussion

1. Personnel who discover a potential non-authorized disclosure of non-public Transmission Function Information shall immediately notify one of the contacts listed in Section II.H. above. To the extent known, notice shall include the information disclosed, the responsible party name, the reason for the disclosure, and the date, time and place of the disclosure. This requirement applies to:
  - a. Transmission Function Employees,
  - b. Marketing Function Employees, and
  - c. Any other Entergy employee, contractor, consultant or agent.
2. Ethics & Compliance shall determine if there was an inappropriate disclosure of non-public Transmission Function Information to a Marketing Function Employee.
3. In the event of improper disclosure of non-public Transmission Function Information of the types described below, Ethics & Compliance shall prepare notice of the fact that the information was disclosed (as contrasted to a posting of the actual information that was disclosed). Such notice shall be posted using the Entergy OASIS Standards of Conduct template, following the **Entergy Information Disclosure OASIS Posting Process** (accessible at the Affiliate Rules Compliance EntergyNet site). The types of improperly disclosed Transmission Function Information about which only notice of the disclosure is to be posted include:
  - a. Non-public transmission customer information,

- b. Critical energy infrastructure information (defined as specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure (physical or virtual) that (i) may relate to details about the production, generation, transmission, or distribution of energy; (ii) could be useful to a person planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act; and (iv) may impart strategic information beyond the geographic location of the critical infrastructure); or
  - c. Any other information that FERC, by law, has determined to be subject to limited dissemination that is contained in improperly disclosed Transmission Function Information.
- 4. For any other type of non-public Transmission Function Information that has been improperly disclosed (i.e., information not described in item 3 above), the Ethics & Compliance shall coordinate the posting of the non-public Transmission Function Information actually disclosed using the Entergy OASIS Standards of Conduct template, following the **Entergy Information Disclosure OASIS Posting Process** (accessible at the Affiliate Rules Compliance EntergyNet site).
- 5. Ethics & Compliance shall ensure that the Entergy Standards of Conduct training materials include the reporting and contemporaneous disclosure requirements.

## G. Posting Affiliate Information (§ 358.7(e))

### Regulatory Text

#### 18 CFR § 358.7 Transparency rule.

- (e) Identification of affiliate information on the public Internet.
- (1) A transmission provider must post on its Internet website the names and addresses of all its affiliates that employ or retain marketing function employees.
  - (2) A transmission provider must post on its Internet website 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.

### Compliance Discussion

1. Names and Addresses of Affiliates with Marketing Function Employees.
  - a. Ethics & Compliance shall maintain and coordinate posting of a list on the Entergy OASIS of Affiliates that employ or retain Marketing Function Employees ("Affiliates that Employ/Retain MFEs List") in accordance with the process for **Posting the List of Affiliates That Employ or Retain MFEs** (accessible at the Affiliate Rules Compliance EntergyNet site).
  - b. The Legal Entity Management function shall notify Ethics & Compliance when new Affiliates are created or existing Affiliates are dissolved, so that a determination can be made whether the new Affiliates will engage in Marketing Functions (and thus should be added to the Affiliates that Employ/Retain MFEs List) or whether the dissolved Affiliates had engaged in Marketing Functions and should be removed from the Affiliates that Employ/Retain MFEs List.
  - c. The Legal Services Department is assigned responsibility to notify Ethics & Compliance when filings seeking market-based rate authority or withdrawing market-based rate authority are made for an Entergy Affiliate.
  - d. When a separate legal entity Affiliate that employs or retains Marketing Function Employees is created or eliminated (via dissolution, merger or sale of assets), Ethics & Compliance shall make a determination as to whether the Affiliates that Employ/Retain MFEs List on the Entergy OASIS requires modification and if so perform the tasks outlined in the process for **Posting the List of Affiliates That Employ or Retain MFEs**.

2. Types and Addresses of Shared Facilities. Transmission Tariffs & Scheduling, working with Transmission Policy, shall coordinate the maintenance of a list of the shared facilities in which both Transmission Function Employees and Marketing Function Employees transact their job-related activities, including the types of facilities shared and their addresses. The **Process for Posting Shared Facilities on OASIS** shall be followed to facilitate compliance with the requirement to post shared facilities. Under this process, Human Resources & Administration (“HR&A”) Department facilities data is used to identify any facilities that house both Transmission Function Employees and Marketing Function Employees. This process is part of the Transmission Management Manual (accessible from the Affiliate Rules Compliance EntergyNet site) and specifies general rules and responsibilities and further details. Any updated list of shared facilities shall be posted at the following link on the Entergy OASIS FERC Order No. 717 Standards of Conduct web page:  
[http://www.oatioasis.com/EES/EESdocs/Shared\\_Facilities.pdf](http://www.oatioasis.com/EES/EESdocs/Shared_Facilities.pdf)  
and retain the previously posted shared facilities list for a period of five years.
3. Potential Merger Partners.
  - a. Ethics & Compliance shall coordinate the Entergy OASIS posting of information concerning potential merger partners that may employ or retain Marketing Function Employees. A posting on the Entergy OASIS shall occur within seven business days of a public merger announcement.
  - b. For the purposes of this procedure, a merger announcement is defined as an announcement concerning an acquisition or merger agreement entered into for the acquisition or merger of a significant amount of assets as defined in, and consistent with, the rules and regulations of the Securities and Exchange Commission.
  - c. For the purposes of this procedure, a potential merger partner shall be defined as any party to the acquisition or merger agreement that directly disposes of or merges a significant amount of assets.
  - d. The Corporate Development Department and the Associate General Counsel – Corporate Securities have the responsibility to notify Ethics & Compliance and Transmission Compliance of a potential merger/acquisition.
  - e. Upon entering into an acquisition or merger agreement, the Entergy Office of General Counsel and the Office of Investor Relations shall immediately give written and/or electronic notice to Ethics & Compliance and Transmission Compliance. The notice shall include the name(s) of the parties to the acquisition or merger agreement, and their address(es).

- f. Investor Relations' Procedures for Compliance with Disclosure Policy for Regulation FD (Fair Disclosure) and Compliance with FERC Order No. 2004 (now Order No. 717) require notification to Ethics & Compliance and Transmission Compliance regarding any potential merger/acquisition.
- g. Immediately upon receiving the priority notice, Ethics & Compliance shall compile, or cause to be compiled, the name(s) of the parties to the acquisition or merger agreement, their address(es), and the names of their Affiliates that employ or retain Marketing Function Employees to be posted on the Entergy OASIS through a formal request to the potential merger partner(s), if needed. Further, Ethics & Compliance shall perform a diligent and good faith search for the information required to be posted from any available public sources.
- h. After receiving any requested information from the potential merger partner(s) and concluding the diligent and good faith search of available public sources, the name(s) and address(es) of potential merger partners and their Affiliates that retain or employ Marketing Function Employees shall be forwarded by Ethics & Compliance to the ICT.
- i. The ICT is assigned responsibility to post the information on the Entergy OASIS in accordance with § 358.7(e)(3). Ethics & Compliance shall act to permit the posting to be made within seven business days of the announcement of entering into a merger or acquisition agreement and records of postings shall be kept by TTS for five years. If appropriate, a link to the potential merger partner's website may be used in lieu of posting all of the information on the Entergy OASIS.
- j. In the event the acquisition or merger will not be consummated, the Entergy Office of General Counsel and the Office of Investor Relations shall provide an immediate notice as described above to Transmission Compliance and Ethics & Compliance, and Ethics & Compliance shall then notify the ICT. Upon receiving such, notice of termination status of a party, the information posted in accordance with § 358.7(e)(3) shall be removed from/updated on the Entergy OASIS by the ICT.

## H. Posting Employee Information (§ 358.7(f))

### Regulatory Text

#### **18 CFR § 358.7 Transparency rule.**

- (f) Identification of employee information on the public Internet.
- (1) A transmission provider must post on its Internet website the job titles and job descriptions of its transmission function employees.
  - (2) A transmission provider must post a notice on its Internet website 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 website 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.

### Compliance Discussion

1. Transmission Function Employees Job Titles and Job Descriptions.
  - a. Transmission Tariffs & Scheduling shall coordinate a list of job titles and job descriptions for Transmission Function Employees. This list of job titles and job descriptions shall be posted via the following link on the Entergy OASIS FERC Order No. 717 Standards of Conduct web page:.  
<http://www.oatioasis.com/EES/EESdocs/Entergy%20Transmission%20Job%20Descriptions%20090109.htm>.
  - b. Each Transmission Function manager and supervisor shall keep Transmission Tariffs & Scheduling updated regarding changes to job titles and job descriptions of Transmission Function Employees.
    - i. The term “Transmission Function” shall be included within each supervisory Transmission Function Employee’s job description.
    - ii. If necessary, Transmission Tariffs & Scheduling shall coordinate updating of job titles and job descriptions with appropriate Transmission Function personnel.
    - iii. Transmission Tariffs & Scheduling shall send the updated postings to the ICT.
    - iv. The ICT is assigned responsibility to post the updated postings on the Entergy OASIS. Transmission Tariffs & Scheduling shall act to

permit the ICT to make a posting within seven business days of a change in existing job titles and job descriptions.

- c. Whenever a Transmission Function job title or job description is revised, the manager or supervisor responsible for the revision shall immediately notify Transmission Tariffs & Scheduling of the revision.
- d. Weekly, each Transmission Function manager and supervisor shall receive a reminder to ensure that job titles and job descriptions of the Transmission Function Employees in their department or section are updated.
- e. Transmission Tariffs & Scheduling shall maintain a copy of the job titles and position descriptions posted on the Entergy OASIS in archived files for at least five years.

2. Transfers Between Transmission Function Position and Marketing Function Position.

- a. Transmission Function Employees and Marketing Function Employees are permitted to transfer between such functions (“Applicable Employee Transfers”) as long as the transfer is not used as a means to circumvent the Standards of Conduct. See Section III.D. above for a description of controls in place to monitor daily reports of personnel transfers so as to reduce the risk of circumvention of the Standards.
- b. To reduce the risk of circumvention of the Standards related to any Applicable Employee Transfer, the **Supplemental Employee Transfer Process** (maintained at the Affiliate Rules Compliance EntergyNet site) shall be followed to identify any employee transfer between any Transmission Function position and any affiliated Marketing Function position, to facilitate pre-transfer scrutiny and planning, to obtain approval from Ethics & Compliance, and as needed, the Legal Services Department, and to develop and monitor implementation of guidance.
- c. Ethics & Compliance shall coordinate the **Process for Posting on the Entergy OASIS Employee Transfers Between Transmission Function Jobs and Marketing Function Jobs** (maintained at the Affiliate Rules Compliance EntergyNet site) to facilitate the requirement to post each such transfer using the Entergy OASIS Personnel Issues Summary (Personnel) template via the following link on the Entergy OASIS FERC Order No. 717 Standards of Conduct web page:  
<https://www.oatioasis.com/cgi-bin/webplus.dll?script=/woa/woa-personnel-data-summary.wml>.

- d. Pursuant to Attachment S of the Entergy OATT, the ICT is assigned responsibility to keep the information on the Entergy OASIS for 90 days from the date of employee transfer.
- e. Transmission Tariffs & Scheduling shall retain records for five years from the date of posting of the employee transfer.

## I. Other Posting Requirements (§§ 358.7(d), (g) and (i))

### Regulatory Text

#### **18 CFR § 358.7 Transparency rule.**

- (d) Posting written procedures on the public Internet. A transmission provider must post on its Internet website current written procedures implementing the standards of conduct.
- (g) Timing and general requirements of postings on the public internet.
- (1) A transmission provider must update on its Internet website 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 website postings required by this part must be sufficiently prominent as to be readily accessible.
- (i) Posting of waivers. A transmission provider must post on its Internet website 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.

### **Compliance Discussion**

1. Posting Written Procedures. On its public Internet website, Entergy has a link to the Entergy OASIS Standards of Conduct website. This Compliance Procedures Manual is posted within the Entergy OASIS Standards of Conduct website at the following the link:  
[http://www.oatioasis.com/EES/EESdocs/Compliance\\_Plan.pdf](http://www.oatioasis.com/EES/EESdocs/Compliance_Plan.pdf)
2. Updates of Postings. Work groups identified in other parts of this Compliance Procedures Manual as being responsible for facilitating, through the ICT, specific postings required under the Standards shall:
  - a. act to provide any posting updates, due to changes, to the ICT in sufficient time to have the updates posted within seven business days of the changes, and
  - b. require the ICT to post the date on which the information was updated.

3. Suspension of Postings Due to Emergencies.

- a. Any work group identified in other parts of this Manual as being responsible for facilitating, through the ICT, specific postings required under the Standards may suspend updates to postings if emergency circumstances (such as a hurricane, flood, earthquake or fire) so severely disrupt normal business operations that it is not practicable to post the updates.
- b. If it appears likely that the severity of the disruptions is such that the posting updates will be suspended for more than one month, the work group shall notify Legal Services in sufficient time (before the one month suspension occurs) for notice to be provided to the FERC including a request for a further exemption from the posting requirements.
- c. Ethics & Compliance shall send to each work group responsible for any Standards of Conduct posting requirement an annual reminder of this requirement.

4. Prominent Postings.

- a. The information required to be posted under the Standards of Conduct shall be posted at the Entergy OASIS Standards of Conduct website.
- b. Ethics & Compliance shall maintain a link to the Entergy OASIS Standards of Conduct website on Entergy's Internet Website accessible by the general public.
- c. Such link on Entergy's general public Internet Website shall be maintained under the Affiliate Rules Compliance area (accessed under the "About Entergy" tab).

5. Posting of Waivers. The Entergy Operating Companies shall not grant a waiver of any Transmission tariff provision in favor of an Affiliate without first contacting Ethics & Compliance, Legal Services, Transmission Regulatory Commission and other Transmission groups affected by the waiver. For any questions regarding whether an act is a waiver of any Transmission tariff provision, contact Ethics & Compliance, Legal Services or Transmission Compliance.

## J. Implementation Requirements (§§ 358.8(a), (b) and (c))

### Regulatory Text

#### **18 CFR § 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 website.

### **Compliance Discussion**

1. Distribution of Written Procedures. Ethics & Compliance is responsible for distributing the Compliance Procedures Manual.
  - a. Transmission Function Employees, Marketing Function Employees, and any other employees, contractors, consultants and agents likely to have access to Transmission Function Information shall receive an electronic link to the Compliance Procedures Manual in an initial distribution.
  - b. New or transferring employees to these groups shall receive an electronic link to the Compliance Procedures Manual via training materials.

## 2. Training.

- a. The above requirement is interpreted such that training on the Standards of Conduct is not required for officers, directors, supervisory employees and other employees who are not likely to have access to Transmission Function Information.
- b. All Transmission Function Employees, Marketing Function Employees, officers, directors, supervisory employees and other employees, contractors, consultants and agents likely to have access to Transmission Function Information, and their supervisor, shall take training on the Standards of Conduct each calendar year and certify that they have been trained regarding the Standards of Conduct requirements.
  - i. Ethics & Compliance shall develop and maintain the computer-based training course and designate employees, contractors, consultants and agents required to complete the Standards of Conduct training.
  - ii. Ethics & Compliance is responsible for offering training via computer-based training and/or via classroom training. Ethics & Compliance shall keep records of the employee certifications for at least five years.
  - iii. New employees falling under the requirements in this section are required to undergo Standards of Conduct training within 30 days of beginning their employment. Supervisors are responsible for facilitating timely completion of such training by new employees
  - iv. Ethics & Compliance shall monitor the participation of employees designated to take training. If designated employees on the training list have not taken training within the allotted time period, Ethics & Compliance shall follow up with the employees, and if necessary their supervisor.
  - v. As part of their job training, Transmission Function operators who routinely interface with market participants also shall receive annual reinforcement of the requirements of the Standards of Conduct in addition to the regular Standards of Conduct training.
  - vi. Employees, contractors, consultants and agents assigned to take Standards of Conduct training shall receive an email notification of the requirement that training course completion is due.
  - vii. Ethics & Compliance shall maintain a delinquency process in conjunction with a disciplinary process for failure to comply with the Standards of Conduct training requirements.

3. Chief Compliance Officer. The Transmission Provider's designated Chief Compliance Officer, and contact information, is identified in Section II.H. of this Compliance Procedures Manual. The Chief Compliance Officer exercises due

diligence to facilitate Transmission Provider compliance with the Standards of Conduct.

## K. Books and Records (§ 358.8(d))

### Regulatory Text

#### **18 CFR § 358.8 Implementation requirements.**

- (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.

### Compliance Discussion

1. The Entergy Operating Companies (the Entergy Transmission Provider) shall maintain books and records that are separate from Affiliates that are legal entities.
2. The definition of Affiliate includes divisions that operate as a functional unit within an entity. For such divisions that employ or retain Entergy Marketing Function Employees, separate books and records are not required to be maintained.