

NGO TRANSMISSION, INC.
Standards of Conduct, 18 C.F.R. Part 358
Written Implementation Procedures
(Updated December 11, 2008)

EXPLANATION

NGO Transmission, Inc. (NGO Transmission) is the owner and operator of a 171-mile natural gas pipeline and three interconnected storage fields. The facilities were developed primarily to transport and store natural gas on behalf of National Gas and Oil Cooperative (NGO Cooperative), an affiliated local distribution company that supplies natural gas to consumers in southeastern Ohio. Service is also provided on an interruptible basis to two other affiliates, NGO Development Corporation (NGO Development) and Producers Gas Sales, Inc. (Producers). NGO Transmission is regulated by the Federal Energy Regulatory Commission (FERC) pursuant to a certificate of public convenience and necessity issued on October 27, 2003. *See NGO Transmission, Inc.*, 105 FERC ¶ 61,138 (2003).

On October 16, 2008, FERC issued revised Standards of Conduct that are applicable to, among others, interstate natural gas pipelines that qualify as "Transmission Providers" to the extent they provide transportation service to "Marketing Affiliates." The standards seek to ensure that Transmission Providers offer service in a just, reasonable, and not unduly discriminatory manner without discriminating in favor of transmission customers that are affiliates. *See Standards of Conduct for Transmission Providers*, 125 FERC ¶ 61,064 (2008) (Order No. 717).

Although generally subject to the Standards of Conduct by virtue of its provision of transportation service to a Marketing Affiliate (*i.e.*, Producers), NGO Transmission has been granted a waiver of certain standards relating to independent functioning and information disclosure. *See High Island Offshore System, L.L.C.*, 116 FERC ¶ 61,047 at P 19 (2006). The attached written procedures were developed by NGO Transmission and posted on its website in compliance with the standards and are intended to provide customers, prospective customers, and FERC with sufficient information to evaluate NGO Transmission's compliance with the standards. Questions regarding these materials should be directed to NGO Transmission's Chief Compliance Officer:

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PART 358—STANDARDS OF CONDUCT

18 C.F.R. Part 358

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Section 358.1 Applicability.

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

Compliance - No specific procedures are required to implement this Section 358.1. NGO Transmission transports gas for others pursuant to subparts B and/or G of part 284 and conducts transmission transactions with an affiliate, Producers, that engages in marketing functions. Accordingly, NGO Transmission acknowledges that it is generally subject to the Standards of Conduct pursuant to Section 358.1(a) above. NGO Transmission has been granted a waiver of certain standards relating to independent functioning and information disclosure. *See High Island Offshore System, L.L.C.*, 116 FERC ¶ 61,047 at P 19 (2006).¹ NGO Transmission is required to notify FERC if there is any change in circumstance that might affect the waiver.

¹ Although the partial waiver was granted under a previous version of the Standards of Conduct, FERC has advised that such waivers will remain applicable under the revised standards adopted in October 2008. *See Standards of Conduct for Transmission Providers*, 125 FERC ¶ 61,064 at P 31 (2008) (Order No. 717).

Section 358.2 General principles.

- (a) 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) 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) 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) A transmission provider must provide equal access to non-public transmission function information to all its transmission function customers, affiliated and non-affiliated, except in the case of confidential customer information or Critical Energy Infrastructure Information.

Compliance - No specific procedures are required to implement this Section 358.2. The partial Standards of Conduct waiver granted to NGO Transmission applies to the independent functioning and nondisclosure principles set forth in Sections 358.2(b), (c), and (d). NGO Transmission remains subject to the nondiscrimination principles set forth in Section 358.2(a).

Section 358.3 Definitions.

- (a) Affiliate of a specified entity means:
 - (1) Another person that controls, is controlled by or is under common control with, the specified entity. An affiliate includes a division of the specified entity that operates as a functional unit.
 - (2) For any exempt wholesale generator (as defined under § 366.1 of this chapter), affiliate shall have the meaning set forth in § 366.1 of this chapter, or any successor provision.
 - (3) "Control" as used in this definition means the direct or indirect authority, whether acting alone or in conjunction with others, to direct or cause to direct the management policies of an entity. A voting interest of 10 percent or more creates a rebuttable presumption of control.
- (b) Internet 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 or physical transmission rights, all as subject to an exclusion for bundled retail sales, including sales of electric energy made by providers of last resort (POLRs) acting in their POLR capacity; and
- (2) in the case of interstate pipelines and their affiliates, the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, natural gas, subject to the following exclusions:
 - (i) Bundled retail sales,
 - (ii) Incidental purchases or sales of natural gas to operate interstate natural gas pipeline transmission facilities,
 - (iii) Sales of natural gas solely from a seller's own production,
 - (iv) Sales of natural gas solely from a seller's own gathering or processing facilities, and
 - (v) Sales by an intrastate natural gas pipeline, by a Hinshaw interstate pipeline exempt from the Natural Gas Act, or by a local distribution company making an on-system sale.
- (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 - No specific procedures are required to implement this Section 358.3. NGO Transmission meets the definition of a Transmission Provider and provides service to one affiliate, Producers, that qualifies as a Marketing Affiliate. NGO Transmission also provides service to two other affiliates that do not qualify as Marketing Affiliates: (1) NGO Cooperative, a local distribution company that solely makes bundled retail, on-system sales, which sales are exempted from the definition of marketing function pursuant to Section 358.3(c)(2)(i) and (v); and (2) NGO Development, a natural gas producer that solely makes sales from its own production, which sales are exempted from the definition of marketing function pursuant to Section 358.3(c)(2)(iii).

Section 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 - NGO Transmission will comply with these requirements when administering its FERC Gas Tariff.

Section 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 - As noted, FERC granted NGO Transmission a waiver of the independent functioning requirement set forth in this Section 358.5. Nevertheless, NGO Transmission has taken steps to functionally separate transmission function employees from marketing function employees to the maximum extent practicable. Specifically, NGO Transmission created the position of Director of Operations to oversee the performance of day-to-day transmission functions. In this position, the Director of Operations is responsible for ensuring that NGO Transmission provides service in a non-discriminatory manner that complies with FERC's rules and procedures. The Director of Operations awards capacity, facilitates capacity release, and generally administers NGO Transmission's tariff. The Director of Operations has also been appointed to the position of Chief Compliance Officer for the purposes of implementing the Standards of Conduct.

Section 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.

Compliance - Compliance with this no conduit rule is covered by the waiver granted to NGO Transmission with respect to the information disclosure prohibitions set forth in the Standards of Conduct. Nevertheless, to the maximum extent practicable, NGO Transmission will safeguard information acquired from non-affiliated transmission customers and prevent the disclosure of such information to marketing function employees.

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

- (1) Notwithstanding the requirements of §§ 358.5(a) and 358.6, a transmission provider's transmission function employees and marketing function employees may exchange certain non-public transmission function information, as delineated in § 358.7(h)(2), in which case the transmission provider must make and retain a contemporaneous record of all such exchanges except in emergency circumstances, in which case a record must be made of the exchange as soon as practicable after the fact. The transmission provider shall make the record available to the Commission upon request. The record may consist of handwritten or typed notes, electronic records such as e-mails and text messages, recorded telephone exchanges, and the like, and must be retained for a period of five years.
- (2) The non-public information subject to the exclusion in § 358.7(h)(1) is as follows:
 - (i) Information pertaining to compliance with Reliability Standards approved by the Commission, and
 - (ii) Information necessary to maintain or restore operation of the transmission system or generating units, or that may affect the dispatch of generating units.
- (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 - NGO Transmission will post the information required by this Section 358.7 on its Internet website (<www.ngotransmission.com>).

Section 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.
- (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 - NGO Transmission will comply with the requirements set forth in this Section 358.8. NGO Transmission has appointed the following individual as Chief Compliance Officer:

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