

Bulletin MD11-24A041, Revision 02, dated April 11, 2001.

(1) For airplanes identified as Group 1 in the service bulletin: Replace the support bracket with a new bracket, and relocate the support clamp of the wire bundle, per Figure 3 of the service bulletin. The grommet around the lower edge of the feed-through must be installed as indicated in Figure 3 of the service bulletin.

(2) For airplanes identified as Group 2 in the service bulletin: Install a grommet around the lower edge of the feed-through; replace the support bracket with a new bracket; and relocate the support clamp of the wire bundle, per Figure 2 of the service bulletin.

*Condition 2: Any Damaged or Chafed Wire*

(c) If any damaged or chafed wire is detected during the detailed visual inspection required by paragraph (a) of this AD, before further flight, do the actions specified in paragraph (c)(1) or (c)(2) of this AD, as applicable, per Boeing Alert Service Bulletin MD11-24A041, Revision 02, dated April 11, 2001.

(1) For airplanes identified as Group 1 in the service bulletin: Repair wiring; replace the support bracket with a new bracket; and relocate the support clamp of the wire bundle, per Figure 3 of the service bulletin. The grommet around the lower edge of the feed-through must be installed as indicated in Figure 3 of the service bulletin.

(2) For airplanes identified as Group 2 in the service bulletin: Repair wiring; install grommet around lower edge of the feed-through; replace the support bracket with a new bracket; and relocate the support clamp of the wire bundle, per Figure 2 of the service bulletin.

**Alternative Methods of Compliance**

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000-03-13, amendment 39-11572, are approved as alternative methods of compliance with this AD.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 1, 2001.

**Charles Huber,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01-25069 Filed 10-4-01; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 990**

**[Docket No.: 990608154-9154-01]**

**RIN 0648-AO36**

**Natural Resource Damage Assessments**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; amendments; reopening of comment period.

**SUMMARY:** On January 5, 1996, the National Oceanic and Atmospheric Administration (NOAA) promulgated final regulations for the assessment of natural resource damages pursuant to section 1006(e)(1) of the Oil Pollution Act of 1990. The final regulations were challenged, pursuant to section 1017(a) of OPA. On November 18, 1997, the U.S. Court of Appeals for the District of Columbia Circuit issued a ruling on the final regulations (*General Electric Co., et al., v. Commerce*, 128 F.3d 767 (D.C. Cir. 1997)). NOAA proposed amendments to the final regulations that address the Court's remand as well as other clarifying and technical issues (66 FR 39464). Today's notice reopens and extends the comment period on the proposed amendments by thirty (30) calendar days.

**DATES:** Written comments must be received no later than November 5, 2001.

**ADDRESSES:** Written comments are to be submitted to: Eli Reinharz, c/o Office of General Counsel/Natural Resources, 1315 East-West Highway, Room #15132, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Eli Reinharz, 301-713-3038, ext. 193 (FAX: 301-713-4387; e-mail: [eli.reinharz@noaa.gov](mailto:eli.reinharz@noaa.gov)), or Linda Burlington, 301-713-1332 (FAX: 301-713-1229; e-mail: [Linda.B.Burlington@noaa.gov](mailto:Linda.B.Burlington@noaa.gov)).

**SUPPLEMENTARY INFORMATION:** On July 31, 2001 (61 FR 39464), NOAA published proposed amendments to the final regulations for the assessment of

natural resource damages as required by the Oil Pollution Act of 1990. General Electric and other industry groups challenged the final regulations pursuant to section 1017(a) of OPA. On November 18, 1997, the U.S. Court of Appeals for the District of Columbia Circuit issued a ruling on the final regulations (*General Electric Co., et al., v. Commerce*, 128 F.3d 767 (D.C. Cir. 1997)). The Court remanded to NOAA for further agency decisionmaking: (1) authorization for the removal of residual oil; and (2) the scope of authorization for recovery of legal costs. NOAA also proposed clarifying and technical amendments in other parts of the regulations.

NOAA requested comments to its proposed amendments by September 29, 2001. NOAA has received requests to extend the comment period on the proposed amendments. Since NOAA wants to encourage a thorough and thoughtful review of all components of the proposed amendments, the comment period is being reopened and extended an additional thirty (30) calendar days.

Dated: September 28, 2001.

**Jamison S. Hawkins,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 01-24920 Filed 10-4-01; 8:45 am]

**BILLING CODE 3510-JE-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 37, 161, 250, 284, 358**

**[Docket No. RM01-10-000]**

**Standards of Conduct for Transmission Providers; Notice of Proposed Rulemaking**

September 27, 2001.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is proposing to promulgate new standards of conduct regulations that apply uniformly to natural gas pipelines and transmitting public utilities (jointly referred to as transmission providers) that are currently subject to the gas standards of conduct and the electric standards of conduct. The Commission is proposing to adopt one set of standards of conduct to govern the relationships between regulated transmission providers and their energy affiliates, broadening the

definition of an affiliate covered by the standards of conduct.

**COMMENT DATE:** Comments on the proposed rulemaking are due on or before November 19, 2001.

**ADDRESSES:** File written comments on the proposed rulemaking with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments should reference Docket No. RM01-10-000. Comments may be filed electronically or by paper (an original and 16 copies, with an accompanying computer diskette in the prescribed format requested.)

**FOR FURTHER INFORMATION CONTACT:** Demetra E. Anas, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208-0178.

**SUPPLEMENTARY INFORMATION:** The Federal Energy Regulatory Commission is proposing to promulgate new standards of conduct regulations that would apply uniformly to natural gas pipelines and transmitting public utilities (jointly referred to as transmission providers) that are currently subject to the gas standards of conduct in part 161 of the Commission's regulations and the electric standards of conduct in part 37 of the Commission's regulations.<sup>1</sup> In light of the changing structure of the energy industry, the Commission is proposing to adopt one set of standards of conduct to govern the relationships between regulated transmission providers and all their energy affiliates, broadening the definition of an affiliate covered by the standards of conduct, from the more narrow definition in the existing regulations.

Electric transmission providers that do not control transmission facilities and participate in Commission approved regional transmission organizations (RTOs) under Order No. 2000,<sup>2</sup> would be able to request an exemption from these proposed standards of conduct.

The proposed standards of conduct would be codified in a new Subchapter S, the current standards of conduct at

parts 37 and 161 would be deleted, and conforming changes would also be made to other regulations as necessary.

### I. Current Regulations

The current standards of conduct restrict the ability of interstate natural gas pipelines and electric utilities (transmission providers) to give their marketing affiliates or wholesale merchant functions undue preferences over non-affiliated transportation customers.<sup>3</sup> Both gas and electric standards of conduct rely on similar principles to prevent market power over transmission from being used in competitive commodity markets by: (1) Separating employees engaged in transmission services from those engaged in commodity marketing services, i.e., marketing or sales of natural gas or electric energy; and (2) ensuring that all transmission customers, affiliated and non-affiliated, are treated on a non-discriminatory basis. The Commission is not proposing to change these principles. Nor is the Commission proposing to codify the electric codes of conduct<sup>4</sup> that guard against discrimination by power marketers or other affiliates that request market-based rate authority. As discussed later, the Commission is soliciting comments whether these electric codes of conduct should be codified.

In 1987, when the gas pipeline standards of conduct were promulgated, the natural gas industry had witnessed a rapid growth of marketing affiliates and the Commission was concerned that pipelines were giving their marketing affiliates preferential treatment. As a result, the Commission issued the standards of conduct to give guidance on how pipelines can conduct transportation transactions on a non-discriminatory basis.<sup>5</sup> The Commission

reserved the right to impose structural remedies, such as divestiture or other circumstances demonstrate they are required.

Five years ago in Order No. 888, the Commission found that unduly discriminatory and anti-competitive practices existed in the electric industry and that transmission-owning utilities had discriminated against others seeking transmission access. Thus, the Commission required electric transmission providers to provide open-access transmission service.<sup>6</sup> For the same reasons, the Commission simultaneously promulgated electric standards of conduct in Order No. 889.<sup>7</sup> The electric standards of conduct reflected the Commission's experiences

FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 30,934 (Dec. 20, 1991), *reh'g denied*, 57 FR 5815 (Feb. 18, 1992) 58 FERC ¶ 61,139 (Feb. 10, 1992); *Tenneco Gas. v. FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497-D, *order on remand and extending sunset date*, 57 FR 58978 (Dec. 14, 1992), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 30,958 (Dec. 4, 1992); Order No. 497-E, *order on reh'g and extending sunset date*, 59 FR 243 (Jan. 4, 1994), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 30,987 (Dec. 23, 1993); Order No. 497-F, *order denying reh'g and granting clarification*, 59 FR 15336 (Apr. 1, 1994), 66 FERC ¶ 61,347 (Mar. 24, 1994); and Order No. 497-G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 30,996 (June 17, 1994).

See also Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 30,997 (June 17, 1994); Order No. 566-A, *order on reh'g*, 59 FR 52896 (Oct. 20, 1994), 69 FERC ¶ 61,044 (Oct. 14, 1994); Order No. 566-B, *order on reh'g*, 59 FR 65707 (Dec. 21, 1994), 69 FERC ¶ 61,334 (Dec. 14, 1994); and Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (Aug. 12, 1998), FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,064 (July 30, 1998).

<sup>6</sup> Promoting Wholesale Competition Through Open Access Non-Discrimination Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,036 (Apr. 24, 1996) at 31,692; *order on reh'g*, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,048 (Mar. 4, 1997); *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997); *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.*, Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *cert. granted*, 69 U.S.L.W. 3574 (Nos. 00-568 (in part) and 00-809), *cert. denied* (No. 00-800) (U.S. Feb. 26, 2001).

<sup>7</sup> Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,035 (Apr. 24, 1996); Order No. 889-A, *order on reh'g*, 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,049 (Mar. 4, 1997); Order No. 889-B, *reh'g denied*, 62 FR 64715 (Dec. 9, 1997), FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,253 (Nov. 25, 1997).

<sup>1</sup> The gas standards of conduct are codified at part 161 of the Commission's regulations, 18 CFR part 161 (2001), and the electric standards of conduct are codified at § 37.4 of the Commission's regulations, 18 CFR 37.4 (2001).

<sup>2</sup> Regional Transmission Organizations, Order No. 2000, 65 FR 809 (Jan. 6, 2000), FERC Stats. & Regs., Regulation Preambles July 1999-December 2000 ¶ 31,089 (Dec. 20, 1999), *order on reh'g*, Order No. 2000-A, 65 FR 12088 (Mar. 8, 2000), FERC Stats. & Regs., Regulation Preambles 1996-2000 ¶ 31,092 (Feb. 25, 2000), *petitions for review pending sub nom.*, Public Utility District No. 1 of Snohomish County, Washington v. FERC (D.C. Cir., Apr. 24, 2000 (Nos. 00-1174, et al.)).

<sup>3</sup> Section 4 of the Natural Gas Act (NGA), 15 U.S.C. 717c (1994), states that no natural gas company shall make or grant an undue preference or advantage with respect to any transportation or sale of natural gas subject to the Commission's jurisdiction. See also section 5 of the NGA, 15 U.S.C. 717d (1994). Similarly, under section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (1994), no public utility shall make or grant an undue preference with respect to any transmission or sale subject to the Commission's jurisdiction. See also section 205 of the FPA, 16 U.S.C. 824e (1994).

<sup>4</sup> See e.g., Heartland Energy Services, Inc., et al., 68 FERC ¶ 61,223 at 62,064-65 (1994).

<sup>5</sup> Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,820 (June 1, 1988); Order No. 497-A, *order on reh'g*, 54 FR 52781 (Dec. 22, 1989), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,868 (Dec. 15, 1989); Order No. 497-B, *order extending sunset date*, 55 FR 53291 (Dec. 28, 1990), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,908 (Dec. 13, 1990); Order No. 497-C, *order extending sunset date*, 57 FR 9 (Jan. 2, 1992),

with implementation of the gas standards of conduct. One significant difference from the gas standards of conduct is that the electric standards of conduct do not prohibit transmission providers from assigning the responsibility for making purchases to serve bundled retail customers to the transmission operations and reliability function.<sup>8</sup>

Significant changes have occurred since the standards of conduct were first adopted. In the gas industry, these changes include unbundling, capacity release, and e-commerce. Fourteen years ago, pipelines were primarily affiliated with marketers, whereas in today's world, as a result of growth and consolidations, gas pipeline companies have a much wider array of affiliates in all sectors of the energy business. The market has undergone a transformation from purchases and sales of the commodity—natural gas—to sophisticated, lightning-speed transactions involving both physical and financial transactions by marketing and non-marketing gas pipeline affiliates. The gas industry has experienced consolidations in every sector—pipelines, producers, marketers, LDC/utilities and industrials. Examples are the mergers of El Paso Energy Corporation, Sonat Inc. and the Coastal Corporation or the acquisitions by the Enron Corporation. Marketing affiliates and non-marketing affiliates, today, offer a variety of new services, such as bundled sales, asset management, price hedging, risk management, and electronic commodity trading.

Similarly, now that the electric industry has been providing open-access service for several years, changes in the electric industry are occurring, e.g., the increased number of power marketers with market-based rates, an increased market for available transmission capacity, and increased number of power transactions and new and different uses of the transmission grid. Electric power is evolving into a more liquid, transparent commodity and its sale into a fast-paced marketplace, particularly with the development of on-line trading. The electric industry has witnessed large increases in the number of power marketers and independent generation facility developers entering the marketplace. Trade in bulk power markets has continued to increase significantly and the Nation's transmission grid is being used more heavily and in new ways. The electric market participants are also changing: there are more lightly regulated entities, such as power

marketers and generation facilities, that are affiliated with traditional regulated entities (both gas and electric transmission providers), as well as more unaffiliated unregulated entities.

Not only are the affiliated entities changing in size and scope, so are the transmission providers. The energy industry has experienced an increase in merger activities, as well as a convergence of the gas and electric industries.<sup>9</sup> These industry changes mean that pipelines and their affiliates not only deal in gas, but also in power, much of which is generated using natural gas.

The Commission is concerned that a transmission provider's market power could be transferred to its affiliated businesses because the existing rules do not cover all affiliate relationships.<sup>10</sup> For example, when Dominion Resources Inc. (an electric transmission provider with several affiliated power projects and generating plants) proposed to merge with Consolidated Natural Gas Company (CNG) (a natural gas pipeline with several affiliated LDCs), the Commission was concerned that the merger could adversely affect competition.<sup>11</sup> Specifically, the merged entity could exercise vertical market power in delivered natural gas service to raise costs of rival generators or inhibit entry of new generators into bulk power markets. Therefore, the Commission required, as a condition of approving the merger, that the merged company apply the gas pipeline standards of conduct to all of its energy affiliates or submit a revised competitive merger analysis.

Although the current standards of conduct limit transmission providers' ability to make or grant undue preferences to the wholesale merchant function of their businesses (in the electric area) or to their marketing affiliates, they do not cover the transmission providers' other non-marketing affiliates. Non-marketing affiliates compete against non-affiliates for transmission services, in capacity release transactions, in power sales, and

in siting new generation.<sup>12</sup> For example, in the gas industry, non-marketing affiliates of natural gas pipelines can control large amounts of capacity on their affiliated pipelines, yet they are not covered by the current standards of conduct because they do not actually hold pipeline capacity (functioning instead as asset managers) or they fit within one of the existing exceptions, e.g., producers, gatherers and local distribution companies. 18 CFR 161.2 (2001).

The current standards of conduct do not address the sharing of confidential shipper information and transportation information with all energy affiliates. For example, if a pipeline informs its affiliated asset manager about a proposed pipeline expansion or upcoming curtailment, the current standards of conduct do not require the pipeline to make that information available to non-affiliates, unless the asset manager is a marketing affiliate. Nor do the current standards address whether an electric transmission provider can share with its generator affiliates information about generation projects planned by competitors. Sharing of information between transmission providers and energy affiliates undermines and frustrates the efforts of businesses to buy, sell, build, grow, and provide competitive alternatives in markets where there are concerns about market power.

On March 15, 2001, Commission staff hosted a technical conference in Docket No. PL00–1–000 which addressed whether current regulatory policy with respect to pipeline affiliates and non-affiliates, as well as asset managers and agents, should be revised to reflect the changing nature of the natural gas market and whether the Commission should consider revising the regulations pertaining to pipeline affiliates. The comments received suggest that since non-marketing pipeline affiliates, which are offering a wide variety of transportation-related services, are not subject to the current standards of conduct, transmission providers have the ability to grant their non-marketing pipeline affiliates undue preferences. The commenters also expressed concern that the regulated entity can transfer all the benefits of its regulated (monopolistic) status to its unregulated non-marketing affiliate, which can then use these benefits to reap unregulated profits from the public. See *e.g.*, Comments in Docket No. PL00–1–000

<sup>9</sup> In the past six years, the Commission received 61 electric merger applications, 53 of which have been approved, two are pending and six have been withdrawn or terminated. Several of the recent mergers joined gas and electric companies, such as NiSource Inc. with Columbia Energy Group, Koch Energy Trading Inc. with Entergy Power Marketing Corp., and Dominion Resources, Inc. with Consolidated Natural Gas Company.

<sup>10</sup> Conversely, a transmission provider's market power could also be increased by virtue of the affiliate's business.

<sup>11</sup> Dominion Resources, Inc. and Consolidated Natural Gas Co., 89 FERC ¶ 61,162 (1999), *order on compliance filing*, 91 FERC ¶ 61,140 (2000), *order denying reh'g*, 93 FERC ¶ 61,214 (2000), *appeal pending*, (D.C. Cir. Jan. 19, 2001 (No. 01–1169)).

<sup>12</sup> A review of the data from the January 2001 Gas Index of Customers shows that marketing/brokering affiliates hold about 18% of the affiliated pipeline capacity and non-marketing affiliates hold an additional 19% of the affiliated pipelines' capacity.

<sup>8</sup> Order No. 889–A at 30,560.

submitted by Dynegy, Inc. and Amoco Production Company and BP Energy Company.

## II. Proposed Standards of Conduct

The proposed standards of conduct combine, revise and conform the current gas and electric standards of conduct found in parts 37 and 161 of the Commission's regulations. The Commission proposes to change the existing regulations to reflect the evolving energy market. The Commission proposes to consolidate the standards of conduct and apply them uniformly to all transmission providers, i.e., the entities that are currently subject to the gas and electric standards of conduct under part 161 and part 37.

In Order No. 2000, the Commission expressed a continuing concern about undue discrimination in electric transmission services and concluded that the formation of regional transmission organizations (RTOs) would eliminate undue discrimination in electric transmission services that can occur when the operation of the electric transmission system remains in the control of a vertically integrated utility.<sup>13</sup> Therefore, the proposed standards of conduct would exempt a transmission provider that itself is a Commission-approved RTO, but would not automatically exempt transmission providers that are members of RTOs. Depending on how an RTO is structured, there may be a continuing need to apply the standards of conduct to electric transmission providers that are members of RTOs. While an RTO may administer or manage the transmission facilities, there may be instances where a transmission owner continues to physically control or operate the transmission facilities or control center.<sup>14</sup> Unless the RTO has a single control center that is physically operated by the RTO, a transmission provider that is a member of a RTO may still have physical control over the transmission assets and, importantly, direct access to transmission information. Participation in an RTO does not necessarily eliminate or restrict the ability of an electric transmission

provider from sharing information with its affiliates preferentially or operating facilities for the benefit of its affiliates. Therefore, the standards of conduct should govern the relationship between the transmission provider/owner, its merchant function and/or energy affiliates. The proposed regulations contain a provision whereby if a transmission provider participates in a Commission approved RTO and does not manage or control transmission facilities, it may request an exemption from the standards of conduct.

In addition, the proposed standards of conduct would govern the relationships between the transmission providers and all of their energy affiliates, not just those engaged in marketing or sales functions.

In Order No. 889, the Commission stated that utilities' purchases of power for their retail native load customers were not sales for resale. Therefore, those employees that engage in sales or purchases solely on behalf of bundled retail native load were not treated as wholesale merchant function employees.<sup>15</sup> Under the current standards of conduct, employees engaged solely in a bundled sales function for retail native load can also perform transmission functions, and they may have access to all transmission, non-affiliated customer and market information available to the transmission provider.

In this NOPR, the Commission is proposing to apply the standards of conduct to require a separation of the transmission function from all sales functions, including bundled retail sales and a restriction on preferential access to transmission information for the bundled retail sales function. All merchant function employees would need to be separated from transmission function employees, whether they are engaged in bundled retail sales or wholesale sales. Therefore, the transmission providers employees engaged in bundled sales functions for retail native load will be treated the same as wholesale merchant function employees. In addition, the transmission providers would have to implement measures to restrict the retail native load sales employees' preferential access to transmission information. In the final rule, the Commission may determine that this separation is not required. Parties are strongly urged to provide factual evidence on the costs and benefits of this proposal in their

comments. State commissions are also strongly urged to provide their views as well.

The Commission is not proposing to assert jurisdiction over the underlying transactions in a bundled retail sale, merely requiring the employees engaged in sales functions to operate independently of the transmission function and to restrict access to the transmission provider's transmission information or confidential transmission customer information. This would ensure that all transmission customers, affiliated or non-affiliated, bundled or unbundled, will have equal access to the transmission providers' transmission information.

This Notice of Proposed Rulemaking (NOPR) does not propose any changes to the record keeping requirements of § 250.16 of the Commission's regulations, 18 CFR 250.16 (2001), or the posting requirements of § 37.4(b)(6) of the Commission's regulations, 18 CFR 37.4(b)(6) (2001), other than to make technical and conforming revisions, as needed.

### A. General Principles—Proposed § 358.2

The central principles of the regulations are that: (1) The transmission providers' employees engaged in transmission system operations must function independently from the transmission providers' sales or marketing employees and from any employees of their energy affiliates; and (2) the transmission providers must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis, and cannot operate their transmission systems to benefit preferentially an energy affiliate. This proposed section would set forth these general rules.

### B. Definitions—Proposed § 358.3

Proposed § 358.3 combines and revises the definitions that were previously contained in §§ 161.2 and 37.3. The Commission proposes to define a transmission provider as any public utility that owns, operates or controls interstate transmission facilities or any natural gas pipeline company subject to the current standards of conduct. In addition, the Commission is proposing to define an energy affiliate as any entity affiliated with a transmission provider (gas or electric) that engages in or is involved in transmission transactions or manages or controls transmission capacity or buys, sells, trades or administers natural gas or electric energy or engages in financial transactions relating to the sale or transmission of natural gas or electric energy. Under this definition, for

<sup>13</sup> See note 2.

<sup>14</sup> See Grid Florida, L.L.C., 94 FERC ¶ 61,363 (2001), the Commission permitted GridFlorida to operate a hierarchical control area that exercises operational control by communicating with control centers operated by the existing control area operators that work for the transmission owner. See also, PJM Interconnection, L.L.C. and Allegheny Power, 96 FERC ¶ 61,060 (2001), where the Commission permitted PJM-West's transmission assets to be operated through PJM's central control center, while the physical control of these transmission assets would remain with the transmission owners.

<sup>15</sup> Order No. 889—A at 30,558. See also, American Electric Power Service Corporation, 81 FERC ¶ 61,332 at 62,514 (1997), order on reh'g, 82 FERC ¶ 61,131 (1998); order on reh'g, 83 FERC ¶ 61,357 (1998).

example, a transmission provider would be required to treat affiliated asset managers as energy affiliates.

Currently, the gas standards of conduct exempt producers that sell from their own production, gatherers that sell from their own gathering facilities and local distribution companies (LDCs) that make on-system sales. 18 CFR 161.2 (2001). Under the proposed definition of energy affiliates, transmission providers would be required to apply the standards of conduct to their relationships with their affiliated producers, gatherers and LDCs.

### C. Independent Functioning—Proposed § 358.4

The principle underlying proposed § 358.4 is that when the employees engaged in transmission services function independently, there are significantly fewer opportunities to give preferential treatment to affiliates engaged or involved in commodity transactions or other business activities that compete with non-affiliated customers of the transmission providers.

#### 1. Separation of Functions

Proposed § 358.4(a), which combines the separation of functions requirements of current § 161.3(g) and 37.4(a)(1) and (2), ensures that the transmission function employees of the transmission provider function independently of the transmission provider's sales and marketing employees and employees of the energy affiliates. Like the separation of functions requirement in current § 37.4(a)(1) and (2), employees engaged in transmission functions would be required to function independently; but, in the event of emergencies affecting system reliability, may take whatever steps are necessary to keep the transmission systems in operation, including, if needed, using affiliates' employees.

Currently, under § 37.4(a)(2), if the transmission function of an electric transmission provider utilizes the services of a wholesale merchant function employee during an emergency circumstance affecting system reliability, the electric transmission provider posts each such event on its OASIS and reports it to the Commission in an "EY" docket within 24 hours of a deviation. The Commission proposes to hold gas transmission providers to the same requirement under proposed § 358.4(a). Annually, since 1998, the Commission has received between eight and 18 reports of emergency circumstances necessitating deviations from the separation of functions requirement. As the Commission stated in Order No. 889, if a pattern of

activities indicates that "emergencies" are not authentic, the Commission will take strong action against the offending transmission provider.

#### 2. Identification of Affiliates on Internet

Proposed § 358.4(b) requires all transmission providers to post information with respect to their marketing and sales employees and energy affiliates on their OASIS or Internet websites, as applicable. Gas pipelines already post this information with respect to their marketing affiliates under § 161.3(l). Although the current regulations do not require electric transmission providers to post the names and addresses of their marketing affiliates on the OASIS, the Commission did require the posting of organizational charts and job descriptions when it reviewed the electric transmission providers' implementation of the standards of conduct.<sup>16</sup>

Commission staff recently reviewed pipelines' Internet websites and other public sources and learned that it is extremely difficult to obtain up-to-date information about the relationship of pipelines and their other affiliated shippers. Given the frequent mergers and acquisitions in the energy industry, and the impact on the market, it is important to make this organizational information available to all potential customers and to the Commission via posting on the OASIS or Internet website.

The Commission's current policy with respect to announced mergers is to treat the potential merger partners as affiliates.<sup>17</sup> The Commission requests comments whether these rules should require the posting of the potential merger partners on the OASIS or Internet Website.

#### 3. Transfer of Employees

The transfer of employees between transmission and marketing or sales functions, or between a transmission provider and its affiliates, presents opportunities for the inappropriate sharing of information in circumvention of the standards of conduct. While a one-time transfer of an employee from the transmission provider to the marketing or sales function or energy affiliate (or vice versa) may not present the potential for circumvention,

<sup>16</sup> American Electric Power Service Corporation, 81 FERC ¶61,332 (1997), *order on reh'g*, 82 FERC ¶61,131 (1998); *order on reh'g*, 83 FERC ¶61,357 (1998).

<sup>17</sup> Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642, 65 FR 70,983 (Nov. 28, 2000), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶31,111 at 31,887 (Nov. 15, 2000), *reh'g denied*, Order No. 642-A, 94 FERC ¶61,289 (Mar. 15, 2001).

transferring an employee multiple times (*i.e.*, cycling) is inconsistent with the independent functioning requirement. In *K N Interstate Gas Transmission Company* (KN), the Commission prohibited the cycling of employees and held that transferred employees may not use, in their new jobs, transportation information that is not publicly available.<sup>18</sup>

Proposed § 358.4(c) parallels the current requirements of § 37.4(b)(2) of the electric standards of conduct, which permits transmission provider employees, marketing and sales employees and energy affiliate employees to transfer between such functions, as long as such transfers are not used as a means to circumvent the standards of conduct. Notices of employee transfers would be posted on the OASIS or Internet website. The cycling of employees between the transmission provider, the marketing or sales unit or the energy affiliates facilitates the sharing of preferential information between these functions. The posting of transfer information provides a technique to detect possible improper cycling of employees.<sup>19</sup> This enables the Commission and the public to monitor all transfers and to ensure that employees are not cycling between functions. The Commission requests comments on whether there is a need for clearer standards for transfers of employees among the transmission function, marketing or sales function and energy affiliates, and specifically, what standards the Commission should adopt.

#### 4. Books and Records

Proposed § 358.4(d) parallels current § 161.3(j) and 37.4(b)(6). Under this requirement transmission providers must keep separate books and records from those of their energy affiliates. This ensures that the companies operate independently. It also helps to ensure that the regulated companies are not used to subsidize or support the unregulated companies.

#### 5. Written Procedures

Proposed § 358.4(e) replaces the requirements of § 161.3(i) and 37.4(c). Under proposed § 358.4(e), transmission

<sup>18</sup> 80 FERC ¶61,212 (1997). For example, in KN, the Commission suggested that a transferred employee could be restricted to assignments or responsibilities that would not use information obtained from non-affiliated or potential non-affiliated shippers or by showing that the transportation information has lost its commercial value, *i.e.*, a "cooling off" period before or after the transfer.

<sup>19</sup> See *e.g.*, *Kinder Morgan Interstate Gas Transmission, L.L.C., et al.*, 90 FERC ¶61,310 (2000).

providers must file with the Commission written procedures implementing the standards of conduct. Merely restating the regulations or incorporating them by reference will not show acceptable compliance. The transmission providers must explain the measures they used to implement the standards of conduct, e.g., how transmission information and confidential customer information is kept secure, whether the standards of conduct have been distributed to employees, whether employees have been offered training on the standards of conduct, and whether employees are required to read and sign acknowledgment forms. The Commission solicits comments on whether it is sufficient to file this information with the Commission or whether it should also be posted on the OASIS and Internet websites. Also, the Commission requests comment on whether this requirement is a useful technique for ensuring compliance or whether the Commission should adopt other measures.

*D. Non-Discriminatory Requirements—Proposed § 358.5*

The principle underlying these requirements is that the transmission provider is prohibited from giving the employees of its affiliates or the employees engaged in marketing and sales any undue preferential treatment. The proposed standards specify the ways in which a transmission provider must ensure equal treatment and equal access to information.

**1. Information Access**

Proposed § 358.5(a), which combines §§ 161.3(f) and 37.4(b)(3), limits the marketing and sales employees and the energy affiliates' employees' access to transmission information. Proposed § 358.5(a) and (b) are designed to prevent transmission providers from giving their marketing and sales employees and the employees of their energy affiliates undue preferences over their unaffiliated customers through the exchange of "insider" information. As with the current requirements, the proposal would require transmission providers to implement security measures to restrict access to transmission information.

**2. Prohibited Disclosure**

Proposed § 358.5(b) combines the requirements of current §§ 161.3(e) and 37.4(b)(4). Transmission providers would be prohibited from disclosing transmission information about transmission system operations or information acquired from non-affiliated

customers to their marketing and sales employees and the energy affiliates' employees through non-public communications. During the March 15, 2001 Staff Affiliate Conference on gas pipeline issues, several industry participants expressed concerns that pipelines may be sharing confidential information with their non-marketing affiliates that could improve the affiliates' ability to secure deals or compete against non-affiliates. For example participants suggested that, a non-marketing affiliate could have advance knowledge of an upcoming open season, which would give it the opportunity to line-up its transactions on an affiliated interconnecting pipeline. No specific examples of this were presented; however, by applying the standards of conduct to all energy affiliates, a transmission provider would not be permitted to share this type of information with its energy affiliates.

**3. Implementing Tariffs**

Proposed § 358.5(c) combines §§ 161.3(a), (b), (c), (d) and (k) and § 37.4(b)(5), under which transmission providers are required to treat all customers in a fair and impartial manner. For example, transmission providers must apply tariff provisions in a manner that treats all transmission customers in a non-discriminatory manner. Transmission providers would be prohibited from giving their marketing and sales employees and energy affiliates' employees preferential treatment, such as more flexible service.

**4. Discounts**

Proposed § 358.5(d) combines the requirements of §§ 161.3(h) and 37.6(c)(3). Proposed § 358.5(d) is consistent with the way electric transmission providers currently treat discounts—any offer of a discount for any transmission service made by the transmission provider must be announced to all potential customers solely by posting on the OASIS. These proposed rules do not change § 37.6(c)(3) of the OASIS requirements.

Proposed § 358.5(d) would change current discounting requirements for natural gas pipelines, however. Currently, § 161.3(h)(1), states that if a pipeline offers a discount to its marketing affiliate, the pipeline must make a comparable discount contemporaneously available to all similarly situated non-affiliated shippers. However, under current § 161.3(h)(2), the pipeline is required to post relevant information (name of affiliate, maximum rate, discounted rate, delivery points, quantity of gas and conditions) on its Internet website

within 24 hours of the time at which gas first flows under a discounted transaction. With the increased market transparency and liquidity, the Commission proposes to adopt the electric standard for interstate natural gas pipelines, i.e., that transmission providers announce all discounts (not only discounts to affiliates) to all potential customers via the OASIS or Internet website at the time of the offers. This is a simpler, quicker way of communicating discount information to all potential customers and ensures that all potential customers have contemporaneous equal access to current pricing information. The Commission does not propose to change the current policy permitting natural gas transmission providers to offer selective discounts.

The Commission also solicits comments on whether it would be necessary to continue posting discount information for gas transactions under proposed § 358.5(d) when rate information is required to be posted under §§ 284.13(b)(1) and (2) of the Commission's regulations.<sup>20</sup>

*III. Conforming Changes*

The Commission proposes to make conforming changes to the regulations to delete references to Parts 37 and 161, as necessary, and add references to Part 358.

**IV. Additional Policy Changes**

In addition to proposing new standards of conduct, the Commission is soliciting comments on additional measures that may be necessary to limit transmission providers' abilities to grant their affiliates undue preferences.

In the past, gas industry participants have expressed concern that pipelines' marketing affiliates were able to lock up capacity through discounted bids. At the March 15, 2001 Affiliate Conference, some participants expressed concern that the pipelines' marketing affiliates might outbid other potential shippers for pipeline capacity by paying an above-market price (where the market price is less than the maximum tariff rate) for available pipeline capacity. The Commission seeks comments on whether such bidding activities are taking place, and if so, how such bidding activity by marketing affiliates affects the gas market.

<sup>20</sup> Under §§ 284.13(b)(1) and (2), 18 CFR 284.13(b)(1) and (2) (2001), a pipeline must post on its Internet website, no later than the time of the first nomination under a transaction, firm contract information and interruptible agreement information, including the charged rate, the quantity of gas scheduled, receipt and delivery points, the identity of the shipper, and whether the shipper is affiliated.

At the March 15, 2001 Affiliate Conference, several industry participants suggested the following measures for the Commission's consideration: (1) Limiting the amount of capacity (by volume or by percentage of capacity) an affiliate can hold on a transmission provider; (2) revising capacity allocation policies to minimize an affiliate's ability to exercise market power by allocating firm capacity to as many shippers as possible; (3) revising the policies for bumping interruptible transportation; (4) prohibiting transmission providers from entering into profit-sharing agreements with affiliates and non-affiliates; (5) limiting pipelines' ability to sell call options on capacity to their affiliates; (6) requiring the pipelines to disgorge any revenues paid by a marketing affiliate in excess of the pipeline's opportunity costs; (7) requiring the geographic (physical) separation of transmission functions and affiliates; or (8) prohibiting affiliated power generators from connecting with affiliated pipelines. The Commission is seeking comments whether any of these policies are necessary or appropriate for the Commission to adopt.

To date, few formal complaints have been filed against pipelines with respect to their relationships with their marketing affiliates and many of the various options or proposals discussed during the March 15, 2001 Affiliate Conference referenced anecdotal, rather than specific, examples of affiliate abuse. To the extent possible, commenters should provide evidence that would support any measures proposed in their comments. In addition, comments should address the economic consequences of any policies supported by the commenter, *e.g.*, the impact on the competitive market, whether there would be stranded costs to take into account, whether there could be a rate impact on captive customers, and whether the benefits associated with the proposed measures outweigh the costs.

When promulgating Order No. 497, the Commission considered imposing structural remedies to limit anti-competitive behavior, such as divestiture (spin off the affiliate) or divorcement (prohibiting the affiliate from doing business on the affiliated pipeline). Although the Commission rejected structural remedies because they could reduce the choices available to buyers and sellers of gas or for moving gas in the market place, the Commission can always use structural remedies when it finds that a pipeline violates the standards of conduct. Here, the Commission is seeking comments on

whether behavioral remedies for transmission providers, such as the standards of conduct or those mentioned above, are sufficient to limit anti-competitive behavior, or whether the Commission should consider imposing structural remedies. Comments concerning proposed structural remedies should discuss the impact on the competitive market and explain the economic consequences of the proposed remedies.

The standards of conduct are designed to prevent a regulated company's market power over transmission from being used to benefit other aspects of its energy business, and so focuses on the transmission function. For public utilities, the Commission also imposes codes of conduct for power sales to govern the relationship between an investor-owned public utility and its power marketing affiliates. The purpose of the codes of conduct is to protect captive ratepayers of the investor-owned public utilities.<sup>21</sup> The codes of conduct have been imposed as conditions to market based rate authority. To date, the codes of conduct have not been codified in the Commission's regulations. The Commission requests comments on whether it should codify these codes of conduct.

#### V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act<sup>22</sup> requires rulemakings to contain either a description and analysis of the effect that a rule will have on small entities or to certify that the rule will not have a significant economic effect on a substantial number of small entities. Because most transmission providers do not fall within the definition of "small entity,"<sup>23</sup> the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### VI. Information Collection Statement

The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.<sup>24</sup> The NOPR replaces existing rules under parts 161 and 37 with comparable rules at part 358. Under the current requirements at parts 161 and 37, transmission providers are posting certain information with respect to their marketing affiliates or wholesale merchant functions on their respective OASIS nodes or Internet websites. The

NOPR also requires the transmission providers to post the same information on their OASIS or Internet websites with respect to the transmission providers' energy affiliates. This information helps potential customers and the Commission determine whether or not there has been discrimination in pipeline/affiliate/nonaffiliated transactions.

The Commission is submitting notification of these posting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d) (1994). Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondent's burden, including the use of automated information techniques.

Estimated Annual Burden:

| Data collection |                  |                    |                    |
|-----------------|------------------|--------------------|--------------------|
| No. respondents | No. of responses | Hours per response | Total annual hours |
| 257             | 1                | 65                 | 16,705             |

*Total Annual Hours for Collection:* (Reporting + Recordkeeping, (if appropriate)) = 16,705.

*Information Collection Costs:* The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost per respondent to be the following: total hours divided by 2,080 (total work hours in a year) times \$117,041 = \$939,985.53.

|   |           |
|---|-----------|
| Annual Capital/Startup costs .....                | 0         |
| Annualized Costs (Operations & Maintenance) ..... | \$939,985 |
| Total Annualized Costs .....                      | \$939,985 |

OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

*Title:* FERC-592 and 717.

*Action:* Proposed Collection.

*OMB Control No:* 1902-0157 and 1902-173.

*Respondents:* Business or other for profit.

*Frequency of Responses:* On occasion.

*Necessity of the Information:* The information is necessary to ensure that all regulated transmission providers treat all transmission customers in a

<sup>21</sup> 68 FERC at 62,062-63.

<sup>23</sup> 5 U.S.C. 601-612 (1994).

<sup>24</sup> See 5 U.S.C. 601(3) (1994).

<sup>24</sup> 5 CFR 1320.13 (2001).



non-discriminatory basis. By requiring the posting of information regarding transmission, all non-affiliated customers have the ability to acquire information simultaneously with affiliated customers in a pro-competitive environment. The information also permits the market participants and the Commission to monitor the transmission market in a timely and efficient manner.

**Internal Review:** The Commission has reviewed the requirements pertaining to natural gas pipelines and transmitting electric utilities and determined the proposed revisions are necessary because of the evolving energy market. The Commission proposes to consolidate the standards of conduct to govern the relationships between regulated transmission providers and their affiliates that engage in or are involved in transmission transactions or manage or control transmission capacity. Although the current standards of conduct limit a transmission provider's ability to make or grant undue preferences to the wholesale merchant function of their businesses (in the electric area) or to their marketing affiliates, they do not cover the transmission providers' other non-marketing affiliates.

These requirements conform to the Commission's plan for efficient information collection, communication, and management within the gas and electric industries. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202)208-1415, fax: (202)208-2425, e-mail: [Michael.Miller@FERC.FED.US](mailto:Michael.Miller@FERC.FED.US)).

Comments on the requirements of the subject proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).<sup>27</sup>

## VII. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse

effect on the human environment.<sup>25</sup> The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.<sup>26</sup> The action proposed here falls within the categorical exclusions provided in the Commission's regulations.<sup>27</sup> Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

## VIII. Public Comment Procedure

The Commission invites all interested persons to submit written comments on this proposal. An original and 16 copies of such comments should be received by the Commission before 5 p.m. November 19, 2001. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. RM01-10-000.

In addition to filing paper copies, the Commission encourages the filing of comments either on 3 1/2 inch computer diskette or via Internet e-mail. Comments may be filed in the following formats: WordPerfect 8.0 or lower version, Microsoft Word 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM01-10-000; the name of the filing entity; the software and version used to create the file (WP, MS Word or ASCII); and the name and telephone number of the contact person.

For Internet E-mail submittal, comments should be submitted to "[comment.rm@ferc.fed.us](mailto:comment.rm@ferc.fed.us)" in the following format. On the subject line, specify Docket No. RM01-10-000. In the body of the E-mail message, include the name of the filing entity; the software and version used to create the file (WP, MS Word or ASCII), and the name and telephone number of the contact person. Attach the comment to the E-mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at (202) 501-8145, e-mail address [brooks.carter@ferc.fed.us](mailto:brooks.carter@ferc.fed.us).

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any

discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, NE., Washington, DC 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS links. User assistance is available at (202) 208-2222 or by e-mail to [rims.master@ferc.fed.us](mailto:rims.master@ferc.fed.us).

## IX. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Commission's Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426. Additionally, comments may be viewed and printed remotely via the Internet through FERC's Home page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

The Commission's Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's homepage (<http://www.ferc.gov>) using the CIPS link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and Word Perfect 6.1. User assistance is available at (202) 208-0874 or e-mail to [cips.master@ferc.fed.us](mailto:cips.master@ferc.fed.us).

The document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via the Internet through FERC's homepage using the RIMS link or Energy Information Online icon. User assistance is available at (202) 208-2222, or by e-mail to [rims.master@ferc.fed.us](mailto:rims.master@ferc.fed.us).

Finally the complete text on diskette in Word Perfect format may be purchased from the Commission's copy contractor, RVJ International, Inc., which is located in the Public Reference

<sup>25</sup> Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. ¶ 30,783 (1987).

<sup>26</sup> 18 CFR 380.4 (2001).

<sup>27</sup> 18 CFR 380.4(a)(2)(ii) and 380.4(a)(5) (2001).



Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

## List of Subjects

### 18 CFR Part 37

Conflict of interests, Electric power plants, Electric utilities, Reporting and recordkeeping requirements.

### 18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

### 18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

### 18 CFR Part 284

Natural gas, Reporting and recordkeeping requirements.

### 18 CFR Part 358

Conflict of interest, Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

**David P. Boergers,**  
Secretary.

In consideration of the foregoing, the Commission proposes to amend Title 18 of the Code of Federal Regulations, as follows:

## PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS

1. The authority citation for part 37 continues to read as follows:

**Authority:** 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In part 37, the heading is revised to read as set forth above.

### § 37.4 [Removed and reserved]

3. Section 37.4 is removed and reserved.

### § 37.6 [Amended]

4. In § 37.6(g)(3), the word “§ 37.4(b)(2)” is removed and the word “§ 358.4(c)” is added in its place and in § 37.6(g)(4), the word “§ 37.4(b)(5)(iii)” is removed and the word “§ 358.5(c)(4)” is added in its place.

## PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES [REMOVED]

5. Part 161 is removed in its entirety.

## PART 250—FORMS

6. The authority citation for part 250 continues to read as follows:

**Authority:** 16 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

7. In § 250.16(a), the word “§ 161.2” is removed and the word “§ 358.3” is added in its place and in § 250.16(e), the word “§ 161.3” is removed and the words “§§ 358.4 and 358.5” are added in its place.

8. In § 284.13(a), the word “Part 161” is removed and the word “part 358” is added in its place.

9. In § 284.286(c), the words “§ 161.3(a), (b), (d), and (k) of this chapter and comply with § 161.3(c), (e), (f), (g), (h), and (l) of this chapter” are removed and the word “part 358” is added in their place.

10. Subchapter S, part 358, is added to read as follows:

## SUBCHAPTER S—STANDARDS OF CONDUCT FOR TRANSMISSION PROVIDERS

### PART 358—STANDARDS OF CONDUCT

Sec.

- 358.1 Applicability.
- 358.2 General principles.
- 358.3 Definitions.
- 358.4 Independent functioning.
- 358.5 Non-discrimination requirements.

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

#### § 358.1 Applicability.

(a) This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.

(b) This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce, except that this part does not apply to an electric transmission provider that is a Commission-approved Regional Transmission Organization (RTO). If an electric transmission owner participates in a Commission-approved RTO and does not operate or control its transmission facilities, it may request an exemption from this part.

#### § 358.2 General principles.

(a) A transmission provider's employees engaged in transmission system operations must function independently from the transmission provider's marketing and sales employees, and from any employees of its energy affiliates.

(b) A transmission providers must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis, and must not operate its transmission system to preferentially benefit an energy affiliate.

#### § 358.3 Definitions.

(a) *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 subpart A of part 157 or subparts B or G of part 284 of this chapter.

(b) *Affiliate* means:

(1) Another person which controls, is controlled by or is under common control with, such person, and

(2) For any exempt wholesale generator, as defined under section 32(a) of the Public Utility Holding Company Act of 1935, as amended, the same as provided in section 214 of the Federal Power Act.

(c) *Control* (including the terms “controlling,” “controlled by,” and “under common control with”) as used in this part and § 250.16 of this chapter, includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.

(d) *Energy Affiliate* means an affiliate of a transmission provider that:

- (1) Engages in or is involved in transmission transactions; or
- (2) Manages or controls transmission capacity of a transmission provider; or
- (3) Buys, sells, trades or administers natural gas or electric energy; or
- (4) Engages in financial transactions relating to the sale or transmission of natural gas or electric energy.

(e) *Marketing, sales or brokering* means a sale for resale of natural gas or electric energy in interstate commerce. Sales and marketing employee or unit includes:

- (1) Any pipeline's sales operating unit, to the extent provided in § 284.286 of this chapter, and
- (2) An electric transmission provider's sales unit, including those employees that engage in wholesale merchant sales or bundled retail sales.

(f) *Transmission* includes storage, exchange, backhaul, displacement, network or point-to-point service, reliability service, ancillary services or other methods of transportation or the interconnection with jurisdictional transmission.

(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) *Reseller* means any transmission customer who offers to sell transmission capacity it has purchased.

(i) *Open Access Same-time Information System or OASIS* refers to the Internet location where a public utility posts the information, by electronic means, required by part 37 of this chapter.

(j) *Internet website* refers to the Internet location where a natural gas pipeline posts the information, by electronic means, required by §§ 284.12 and 284.13 of this chapter.

#### § 358.4 Independent functioning.

(a) *Separation of functions.* (1) Except in emergency circumstances affecting system reliability, the transmission function employees of the transmission provider must function independently of the transmission provider's marketing or sales employees, and its energy affiliates' employees.

(2) Notwithstanding any other provisions in this section, in emergency circumstances affecting system reliability, transmission providers may take whatever steps are necessary to keep the system in operation. Transmission providers must report to the Commission and post on the OASIS or Internet website, as applicable, each emergency that resulted in any deviation from the standards of conduct, within 24 hours of such deviation.

(3) The transmission provider is prohibited from permitting its sales and marketing employees or employees of its energy affiliates from:

(i) Conducting transmission system operations or reliability functions; and

(ii) Having access to the system control center or similar facilities used for transmission operations or reliability functions that differs in any way from the access available to other transmission customers.

(b) *Identifying affiliates on the public Internet.* (1) A transmission provider must post the names and addresses of its sales and marketing units and energy affiliates on its OASIS or Internet website.

(2) A transmission provider must post on its OASIS or Internet website, as applicable, a complete list of the facilities shared by the transmission provider and its marketing or sales units or any energy affiliates, including the types of facilities shared and their addresses.

(3) A transmission provider must post comprehensive organizational charts showing:

(i) The organizational structure of the parent corporation with the relative

position in the corporate structure of the transmission provider, marketing and sales units and any energy affiliates;

(ii) For the transmission provider, the business units, job titles and descriptions, and chain of command for all positions, including officers and directors, with the exception of clerical, maintenance, and field positions. The job titles and descriptions must include the employee's title, the employee's duties, whether the employee is involved in transmission or sales, and the name of the supervisory employees who manage non-clerical employees involved in transmission or sales.

(iii) For all employees who are engaged in transmission functions for the transmission provider and marketing or sales functions or who are engaged in transmission functions for the transmission provider and are employed by any of the energy affiliates, the transmission provider must post the name of the business unit within the marketing or sales unit or the energy affiliate, the organizational structure in which the employee is located, the employee's name, job title and job description in the marketing or sales unit or energy affiliate, and the employee's position within the chain of command of the marketing or sales unit or energy affiliate.

(iv) The transmission provider must update the information on its OASIS or Internet website, as applicable, required by §§ 358.4(1), (2) and (3) within three business days of any change, posting the date on which the information was updated.

(v) All OASIS or Internet website postings required by part 358 must comply, as applicable, with the requirements of § 37.3 or §§ 284.12(a) and (c)(3)(v) of this chapter.

(c) *Transfers.* Employees of the transmission provider, marketing or sales unit or energy affiliates are not precluded from transferring among such functions as long as such transfer is not used as a means to circumvent the standards of conduct. Notices of any employee transfer must be posted on the OASIS or Internet website, as applicable. The information to be posted must include: the name of the transferring employee, the respective titles held while performing each function (i.e., on behalf of the Transmission Provider, Marketing Function or Energy Affiliate), and the effective date of the transfer. The information posted under this section must remain on the OASIS or Internet website, as applicable, for 90 days.

(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 energy affiliates and these must be available for Commission inspections.

(e) *Written procedures.* The transmission provider must file with the Commission and post on the OASIS or Internet website, current written procedures implementing the standards of conduct in such detail as will enable customers and the Commission to determine that the transmission provider is in compliance with the requirements of this section.

#### § 358.5 Non-discrimination requirements.

(a) *Information access.* (1) The transmission provider must ensure that any employee of the transmission provider engaged in marketing or sales or any employee of any energy affiliate may only have access to that information available to the transmission provider's transmission customers (i.e., the information posted on the OASIS or Internet website, as applicable), and must not have access to any information about the transmission provider's transmission system that is not available to all users of an OASIS or Internet website, as applicable.

(2) The transmission provider must ensure that any employee of the transmission provider engaged in marketing or sales or any employee of any energy affiliate is prohibited from obtaining information about the transmission provider's transmission system (including, but not limited to, information about available transmission capability, price, curtailments, ancillary services, balancing, maintenance activity, capacity expansion plans or similar information) through access to information not posted on the OASIS or Internet website or that is not otherwise also available to the general public without restriction.

(b) *Prohibited disclosure.* (1) An employee of the transmission provider may not disclose to its marketing or sales employees, or to employees of the transmission provider's energy affiliates any information concerning the transmission system of the transmission provider or the transmission system of another (including, but not limited to, information received from non-affiliates or information about available transmission capability, price, curtailments, ancillary services, balancing, maintenance activity, capacity expansion plans, or similar information) through non-public communications conducted off the OASIS or Internet website, through access to information not posted on the OASIS or Internet Website that is not

contemporaneously available to the public, or through information on the OASIS or Internet website that is not at the same time publicly available.

(2) A transmission provider may not share any information, acquired from nonaffiliated transmission customers or potential nonaffiliated transmission customers, or developed in the course of responding to requests for transmission or ancillary service on the OASIS or Internet website, with its marketing or sales employees or energy affiliate employees, except to the limited extent information is required to be posted on the OASIS or Internet website in response to a request for transmission service or ancillary services.

(3) If an employee of the transmission provider discloses information in a manner contrary to the requirements § 358.5(b)(1) and (2), the transmission provider must immediately post such information on the OASIS or Internet website.

(c) *Implementing tariffs.* (1) A transmission provider must strictly enforce all tariff provisions relating to the sale or purchase of open access transmission service, if these tariff provisions do not permit the use of discretion.

(2) 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 non-discriminatory manner, if these tariff provisions permit the use of discretion.

(3) A transmission provider must process all similar requests for transmission in the same manner and within the same period of time.

(4) The transmission provider must maintain a written log, available for Commission audit, detailing the circumstances and manner in which it exercised its discretion under any terms of the tariff. The information contained in this log is to be posted on the OASIS or Internet website within 24-hours of when a transmission provider exercises its discretion under any terms of the tariff.

(5) The transmission provider may not, through its tariffs or otherwise, give preference to its own marketing or sales function or to any energy affiliate, over any other wholesale customer 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) *Discounts.* Any offer of a discount for any transmission service made by the transmission provider must be posted on the OASIS or Internet website

contemporaneously with the offer. The posting must include: The name of the customer involved in the discount and whether it is an affiliate or whether an affiliate is involved in the transaction, the rate offered; the maximum rate; the time period for which the discount would apply; the quantity of power or gas scheduled to be moved; the delivery points under the transaction; and any conditions or requirements applicable to the discount. The posting must remain on the OASIS or Internet website for 60 days from the date of posting.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 589

[Docket No. 01N-0423]

#### Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed; Public Hearing; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public hearing; request for comments..

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a public hearing in Kansas City, MO, to solicit information and views on its present animal feeding regulation. The purpose of the rule is to help prevent the establishment and amplification of the agent(s) of bovine spongiform encephalopathy (BSE) in the U.S. cattle herd through feed and thereby help minimize any risks from such agent(s) to animal or human health. FDA recognizes that much new information has emerged on BSE and new variant Creutzfeldt-Jakob Disease (vCJD) since the rule went into effect in 1997. FDA is therefore requesting information and views from individuals and organizations on the present rule and whether changes in the rule or other additional measures are necessary. The agency is particularly interested in soliciting comments and views from individuals, industry, consumer groups, health professionals, and researchers with expertise in BSE and related animal and human diseases.

**DATES:** The hearing will be held on October 30, 2001, from 9 a.m. to 5 p.m. central time and will be open to the public throughout its entirety. The hearing will be adjourned from 12 noon

to 1 p.m. for lunch. FDA will reserve the hour from 4 p.m. to 5 p.m. for those who have not registered to present orally at the meeting to make oral presentations to the panel. Those individuals or organizations that wish to register to present orally at the hearing must register by 4:30 p.m. eastern time on October 23, 2001. Send registration information to the contact person. Written comments regarding the matters before this panel are welcome at anytime; however, the official record of the hearing will remain open to receive written comments until November 21, 2001.

**ADDRESSES:** The public hearing will be held at the Westin Crowne Center Hotel, One Pershing Rd., Kansas City, MO. Those wishing to present orally at the hearing must submit a written notice of participation to Linda Grassie at the address or fax number listed in **FOR FURTHER INFORMATION CONTACT** section. To submit electronic comments go to <http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm>.

Individuals and organizations wishing to submit written comments on these issues to the panel, but who do not wish to present orally to the panel, should submit their written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Written comments are to be identified with Docket No. 01N-0423.

Information specified in this notice can be received by calling 301-594-5000 or sending a self-addressed stamped envelope with your request to the contact person listed below.

**FOR FURTHER INFORMATION CONTACT:** Linda Grassie, Center for Veterinary Medicine (HFV-12), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-3796, FAX 301-827-4065, e-mail [lgrassie@cvm.fda.gov](mailto:lgrassie@cvm.fda.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the **Federal Register** of June 5, 1997 (62 FR 30936), FDA issued a final rule amending its final regulations to provide that animal protein derived from mammalian tissues for use in ruminant feed is a food additive subject to certain provisions in the Federal Food, Drug, and Cosmetic Act. The final rule established at § 589.2000 (21 CFR 589.2000) a flexible system of controls, including a number of exemptions, designed to ensure that ruminant feed does not contain most mammalian tissue proteins and to encourage innovation in such controls. FDA issued this regulation to protect animal and