

**FERC STANDARDS OF CONDUCT**  
**(ORDER 717)**  
**18 C.F.R. PART 358 – STANDARDS OF CONDUCT**  
**STANDARDS OF CONDUCT FERC ORDER 717 HUMAN RESOURCES**  
**PROCEDURE**

**Updated December 22, 2009**

**I. Applicability**

This document describes the procedures of Atlantic City Electric Company (“ACE”), Delmarva Power & Light Company (“Delmarva”) and Potomac Electric Power Company (“Pepco”) (collectively, the “Companies”) to implement the Federal Energy Regulatory Commission’s (“FERC”) Order No. 717 Standards of Conduct (“Procedures”), which became effective on November 26, 2008. ACE, Delmarva and Pepco are Transmission Providers and subsidiaries of the parent company, Pepco Holdings, Inc. (“PHI”). The Standards of Conduct apply to the relationship between the Transmission Function Employees of ACE, Delmarva and Pepco and the Marketing Function Employees in the PHI corporate family. A copy of these Procedures has been distributed to: Transmission Function Employees of ACE, Delmarva and Pepco; Marketing Function Employees in the PHI corporate family; officers, directors and supervisory employees of Transmission and Marketing Function Employees; and employees that likely may have access to Transmission Function Information.

In addition, this information is posted on PHI’s public internet web site and is available to all employees. The Companies have posted these Procedures, FERC’s Standards of Conduct regulations in Part 358 (“FERC Regulations”), and the Companies’ employee and affiliate information and shared facilities on PHI’s public internet web site at <http://www.pepcoholdings.com/about/ferc/>. The PJM OASIS has a link to these procedures at PJM Company Transmission Provider Information. The Procedures include the appropriate references to the FERC Regulations.

**II. Strict Compliance Policy**

It is the Companies’ policy to strictly comply with the FERC Standards of Conduct, as well as the other federal and state codes and standards that are applicable to one or all of the Companies. As a PHI employee, it is your responsibility to review these Procedures and the FERC Regulations, and to understand your responsibilities under the FERC Standards of Conduct and what you may or may not do under the Standards of Conduct. It is important to recognize that many activities and interactions between PHI business units and subsidiaries do not involve any conflict with the Standards of Conduct. Just as it is your responsibility not to violate the Standards of Conduct, it is also your responsibility to be aware of what activities are permitted by the Standards of

Conduct. Employees should be careful not to under-interpret or over-interpret the Standards of Conduct.

IF YOU NEED HELP: Please contact your supervisor or the Chief Compliance Officer (see below) with any questions concerning the appropriate application and interpretation of the Standards of Conduct that may govern your work function and any work activities or situations in which you need guidance. As in most situations, good judgment and common sense should guide your decisions about how to interpret and apply this business policy. If you need help interpreting this policy or if you observe potential violations of it, contact your supervisor or the Chief Compliance Officer. Regardless of status, every PHI employee is expected to comply with these Standards of Conduct Procedures and the Standards of Conduct Regulations in every decision made and every action taken in the conduct of PHI's businesses.

Failure to comply with this or other compliance policies may result in discipline, up to and including discharge.

### **III. General Principles**

#### **A. Independent Functioning:**

Transmission Function Employees of ACE, Delmarva and Pepco shall function independently of Marketing Function Employees in the PHI corporate family, except as permitted in the FERC Regulations or otherwise permitted by Commission order. (Reference FERC Regulations 18 C.F.R. §§ 358.2(b) and 358.5).

A Transmission Function Employee means an employee, contractor, consultant or agent of a transmission provider who actively and personally engages on a day-to-day basis in Transmission Functions. Transmission Functions means the planning, directing, organizing or carrying out of day-to-day transmission operations, including the granting and denying of transmission service requests. (Reference FERC Regulation 18 C.F.R. §§ 358.3(h) and (i)).

A Marketing Function Employee is defined as an employee, contractor, consultant or agent of a transmission provider or of an affiliate of a transmission provider who actively and personally engages on a day-to-day basis in Marketing Functions. Marketing Functions, in the case of public utilities (like ACE, Delmarva and Pepco) and their affiliates, is defined as, 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. (Reference FERC Regulation 18 C.F.R. §§ 358.3(c) and (d)).

#### **B. Separate Operations:**

ACE, Delmarva and Pepco are prohibited from permitting Marketing Function Employees in the PHI corporate family from:

- i. Conducting Transmission Functions. (Reference FERC Regulations 18 C.F.R. § 358.5(b)(1));
- ii. Having access to a system control center or similar facilities used for transmission operations that differs in any way from the access available to other transmission customers. (Reference FERC Regulation 18 C.F.R. §§ 358.5(b)(2); and
- iii. Having access to non-public Transmission Function Information of ACE, Delmarva or Pepco, or of another electric transmission provider, except as permitted by FERC Regulation. (Reference FERC Regulation 18 C.F.R. §§ 358.6(a) and (b), 358.7). Transmission Function Information means information relating to the planning, directing, organizing or carrying out of day-to-day transmission operations. (Reference FERC Regulation 18 C.F.R. §§ 358.3(h) and (i)).

#### **C. Non-Discriminatory Transmission Access:**

ACE, Delmarva and Pepco will treat all transmission customers, both affiliated and non-affiliated, the same with respect to any requests regarding the use and operation of the transmission system. No benefit shall accrue to any affiliated marketing or energy company or division as a result of its affiliation. (Reference FERC Regulation 18 C.F.R. §§ 358.2(a) and 358.4).

### **IV. Chief Compliance Officer**

#### **A. Designation of Chief Compliance Officer:**

The Companies have designated Kirk J. Emge, Senior Vice President and General Counsel of Pepco Holdings, as the Chief Compliance Officer for the PHI companies. Mr. Emge can be reached by phone at 202-872-2890. Please forward any questions regarding specific compliance issues to Mr. Emge ([kjemge@pepcoholdings.com](mailto:kjemge@pepcoholdings.com)) or Ms. Amy L. Blauman, Associate General Counsel, Pepco Holdings, Inc. ([alblauman@pepcoholdings.com](mailto:alblauman@pepcoholdings.com)). Any questions regarding the Standards of Conduct will be logged and maintained by the Legal Department. (Reference FERC Regulation 18 C.F.R. § 358.8(c)(2)).

## **B. Responsibilities:**

The Chief Compliance Officer is responsible for overall compliance with the FERC Standards of Conduct, including training, answering employee questions and ensuring compliance. As noted below, the Chief Compliance Officer also will grant employees access to transmission areas and non-public Transmission Function Information as appropriate in accordance with the Standards of Conduct.

## **V. Separate Operations and Information Access**

No employee who is a Marketing Function Employee in the PHI corporate family may be a Transmission Function Employee for ACE, Delmarva or Pepco. Transmission Function Employees must operate in physically separate locations from Marketing Function Employees and Marketing Function Employees shall not have access to non-public Transmission Function Information.

The Marketing Function Employees who are located in shared office buildings are located on a different floor from the Transmission Function Employees that are located in that office building. These Transmission Function Employees perform their daily activities in an area secured by code card access. Transmission Function Employees in Pepco's Transmission Control Center are located in a separate, physically-secured office building.

Marketing Function Employees in the PHI corporate family are not permitted to enter the office space of any Transmission Function Employees at any shared office buildings or the Transmission Control Centers of Pepco, ACE and Delmarva. All other non-Transmission Function Employees are required to sign an access log immediately upon entry to the Transmission Control Centers.

PHI's Marketing Function Employees (of separate affiliates) are located in separate buildings in Arlington, VA and Newark, DE, where no Transmission Function Employees are located.

### **A. Procedures for Separate Operations and Information Access**

1. The manager of a department or division that includes Transmission Function Employees shall ensure that only employees with authorization shall have access to transmission areas and non-public Transmission Function Information.

- a. Access to transmission areas is secured by locked doors with special card-key access. Marketing Function Employees are not permitted access to secured areas.

- b. To the extent any non-public Transmission Function Information is stored on a local area network (LAN) that is shared between Transmission Function Employees and those not authorized to have access to transmission information, the access to non-public Transmission Function Information is protected by password and no person has access to that information without authorization by the Chief Compliance Officer.
    - c. All PHI employees with desktop computers have installed on those desktops a security system that clears the screen after being inactive for ten minutes and require employee-specific password input prior to renewed activity on that desktop. This password security prevents unauthorized persons from gaining computer access to protected non-public Transmission Function Information.
    - d. Visitor access to the Transmission Control Centers is granted by the managers of the control centers. Marketing Function Employees are not permitted to have access to the Transmission Control Centers. All persons who enter the Transmission Control Centers who do not have key card access must sign entry logs.
  2. The Chief Compliance Officer shall oversee all authorizations for access to transmission areas and non-public Transmission Function Information.
  3. The managers of the control centers and/or the manager of a department or division that requires access to non-public Transmission Function Information shall inform the Chief Compliance Officer if any person authorized to have access to secured areas and non-public Transmission Function Information is moving within the Companies or leaving the Companies. All access to secured areas where Transmission Functions are performed and to non-public Transmission Function Information and non-public information acquired from non-affiliated transmission customers or potential nonaffiliated transmission customers shall be terminated for any employee who has left a Transmission Function Employee position.
  4. The managers of the control centers and/or the manager of a department or division that requires access to non-public Transmission Function Information shall inform the Chief Compliance Officer of any requests for authorization for access to transmission areas and non-public Transmission Function Information.
  5. The transfer of any Transmission Function Employee to a Marketing Function and the transfer of any Marketing Function Employee to a Transmission Function shall follow the procedures set forth in the HR Procedure for the FERC Standards of Conduct (Attachment A). In compliance

with the HR Procedure, the affected Manager of the Transmission Function Employee or Transmission Function shall, not less than 2 days before the change in position, inform the Client Services department of the change and order the appropriate posting on the Company's internet Web site. (Reference FERC Regulation 18 C.F.R. § 358.7(f)(2)).

## **B. Prohibited Information Sharing**

Except as permitted by FERC Regulation, Transmission Function Employees must ensure that Marketing Function Employees in the PHI corporate family do not obtain non-public Transmission Function Information through any vehicle other than an internet Web site, an OASIS or PJM. Examples of transmission information that may not be shared include: information about available transmission capacity, price, curtailments, ancillary services, maintenance activities or similar information. (Reference FERC Regulation 18 C.F.R. §§ 358.6(a) and (b), 358.7).

It is prohibited for anyone to act as a conduit for the transfer of non-Public Transmission Function Information covered by the prohibitions in these Procedures to Marketing Function Employees (Reference FERC Regulation 18 C.F.R. § 358.6).

Below are examples of non-public Transmission Function Information that may not be shared with Marketing Function Employees except pursuant to OASIS or internet postings:

1. any non-public information concerning the day-to-day operations of the transmission system of ACE, Delmarva or Pepco or the transmission system of another electric transmission provider (including, but not limited to, information received from non-affiliates or information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity or similar information) through non-public communications conducted off the PJM OASIS, through access to information not posted on the PJM OASIS that is not contemporaneously available to the public, or through information on the PJM OASIS that is not at the same time publicly available; and
2. any information acquired from non-affiliated transmission customers or potential non-affiliated transmission customers, except to the limited extent information is required to be posted on the OASIS in response to a request for transmission service or ancillary services.

Marketing Function Employees may not be present at any discussions during which non-public Transmission Function Information is discussed. Minutes from such meetings shall note where any Marketing Function Employees were dismissed from the meeting and the meeting minutes distributed to

Marketing Function Employees shall not include any non-public Transmission Function Information.

Any non-public Transmission Function Information that is provided to a Marketing Function Employee in violation of these information sharing prohibitions and the information that was disclosed must be posted on the applicable Web site immediately. (Reference FERC Regulation 18 C.F.R. § 358.7(a)(1). Provided however, in the case in which non-public transmission customer information, critical energy infrastructure information (CEII) as defined in § 388.113(c)(1) of the FERC Regulation, or any other information that FERC 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, but it should not post the disclosed information. (Reference FERC Regulation 18 C.F.R. § 358.7(a)(2). Any person who believes that such a violation occurred should contact the Chief Compliance Officer immediately. (Reference FERC Regulation 18 C.F.R. § 358.7(a)(1).

### **C. Permitted Information Sharing**

ACE, Delmarva and Pepco are not required to contemporaneously disclose to all transmission customers or potential transmission customers specific customer information if it relates solely to a Marketing Function division's or affiliate's specific request for transmission service. (Reference FERC Regulation 18 C.F.R. § 358.7(b)).

ACE, Delmarva and Pepco may share with Marketing Function Employees: (1) information necessary to maintain or restore operation of the transmission system or generating units, or that may affect the dispatch of generating units; and (2) information pertaining to compliance with Reliability Standards approved by FERC. 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 record may consist of hand-written or typed notes, electronic records such as e-mails and text messages, recorded telephone exchanges, and the like, and must be retained for a period of five years. (Reference FERC Regulation 18 C.F.R. § 358(h)(1) and (2)).

A non-affiliated transmission customer may voluntarily consent, in writing, to allow ACE, Delmarva or Pepco to share the non-affiliated customer's information with Marketing or Energy Affiliate Employees. If such authorization is obtained, such release must be posted in a notice on the Web site with a statement that the affected Company did not provide any preferences, either operational or rate-related, in exchange for that voluntary consent. (Reference FERC Regulation 18 C.F.R. § 358.7(c)).

## **VII. Other Compliance Requirements and Procedures**

## **A. Implementing Tariffs**

The Companies operate under the PJM Tariff and do not generally perform tariff administration. To the extent ACE, Delmarva or Pepco implement transmission tariffs on behalf of PJM, the Companies shall apply all tariff provisions in a non-discriminatory manner. No preference shall be given to a Marketing Function Employee 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). (Reference FERC Regulation 18 C.F.R. §§ 358.2(a) and 358.4).

## **B. Emergency Procedures**

Notwithstanding any other provisions in these Procedures, in emergency circumstances, such as an earthquake, flood, fire or hurricane, severely disrupts a transmission provider's normal business operations, the system operators may take whatever steps are necessary to keep the system in operation. In this situation FERC provides that the posting requirements for deviations from the Standards of Conduct 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. (Reference FERC Regulation 18 C.F.R. § 358.7(g)(2)).

Emergency operations may require contacts with affiliated generation owners to maintain system reliability. In any such event, the manager of the control center shall be responsible for reporting such contacts to the Chief Compliance Officer, as well as to the communications department. Each Transmission Control Center shall be responsible for maintaining a log of any deviations from the Standards of Conduct and for transferring updated logs to the Chief Compliance Officer.

## **C. Training**

PHI provides annual training on the Standards of Conduct to all its Transmission Function Employees, Marketing Function Employees, officers, directors, supervisory employees, and any other employees likely to have access to Transmission Function Information. PHI provides training on the Standards of Conduct to new employees in these categories, within the first 30 days of their employment. PHI requires each employee who has taken the training to certify electronically or in writing that s/he has completed the training. (Reference FERC Regulation 18 C.F.R. § 358.8(c)(1)).

As part of the initial annual training, a copy of these Procedures was distributed to the trained employees. As part of the annual retraining, such employees will receive information regarding these Procedures and a Web link to these Procedures. (Reference FERC Regulation 18 C.F.R. §§ 358.7(d) and 358.8(b)(2)).

#### **D. Posting Requirements**

PHI posts their employee and affiliate information and shared facilities. (Reference FERC Regulation 18 C.F.R. § 358.7(e) and (f)). These postings currently reside at [www.pepcoholdings.com/about/ferc/](http://www.pepcoholdings.com/about/ferc/), with a link from the PJM OASIS at PJM Company Transmission Provider Information. Transmission service over ACE, Delmarva and Pepco transmission facilities is provided pursuant to the PJM Open Access Transmission Tariff (PJM Tariff).

PHI will post potential merger partners as affiliates, inadvertent disclosures of information that should not have been disclosed under the FERC Standards of Conduct, and the voluntary consent by a transmission customer for the Transmission Provider to share the customer's information with an affiliate.

Pursuant to the HR Procedure on FERC Standards of Conduct, all managers responsible for Transmission Function Employees shall inform HR of transfers of employees between Transmission Functions, on the one hand, and Marketing Functions, on the other hand, not less than two days before the transfer will take place. The manager shall make the appropriate report to the Client Services department for posting at the appropriate Web site. See HR Procedure for FERC Standards of Conduct (Attachment A). 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 Function or Marketing Functions), and the effective date of the transfer. The information posted under this section must be posted for 90 days. (Reference FERC Regulation 18 C.F.R. § 358.7(f)(2)).

PHI updates on its Internet website the information required by the FERC Regulation within seven business days of any change, and it posts the date on which the information was updated. (Reference FERC Regulation 18 C.F.R. § 358.7(g)(1)).

#### **E. Document Control, Security and Retention**

Transmission Function Employees in the transmission services division keep all files containing non-public Transmission Function Information in locked offices, locked file cabinets or password-protected computer files.

Pepco's, ACE's and Delmarva's Marketing Function Employees do not have access to the energy management systems (EMS). Systems operations personnel provides system generation data needed for retail access billing settlements, extracted from the EMS to a firewall-protected archival database under the control of system operations personnel. Access to this archival database is password-protected, and for each password, access is limited to the level authorized by the transmission system operations personnel database manager.

Marketing Function Employees are denied access to any transmission system operations information.

Marketing Function Employees in an affiliate may be authorized access to economic dispatch data from PJM concerning its affiliate-owned generation, connected to the Pepco, ACE or Delmarva systems metered by the EMS. With proper password authorization, this access is provided through the applicable company LAN. Once a Marketing Function Employee in an affiliate has arranged for this service under contract, any third party that is similarly situated to the PHI affiliate, as described above, and that desires to use the EMS as its real-time metering agent may arrange to do so on the same basis as the PHI affiliate.

#### **F. Books and Records**

The transmission provider will maintain the 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 will be available for Commission inspections.

#### **G. Waivers**

As noted, the Companies operate under the PJM Tariff and do not generally perform tariff administration. To the extent ACE, Delmarva or Pepco implement transmission tariffs on behalf of PJM, ACE, Delmarva and Pepco must post on the PHI 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 FERC. The posting must be made within one business day of the act of a waiver. They must also maintain a log of the acts of waiver. The records must be kept for a period of five years from the date of each act of waiver. (Reference FERC Regulation 18 C.F.R. § 358.7(g)(1)).

## Part 358 — Standards of Conduct

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### Sec.

- § 358.1 Applicability.
- § 358.2 General principles.
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- § 358.4 Non-discrimination requirements.
- § 358.5 Independent functioning rule.
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- § 358.7 Transparency rule.
- § 358.8 Implementation 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 subparts B or G of part 284 of this chapter and conducts transmission transactions with an affiliate that engages in marketing functions.

(b) This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce and conducts transmission transactions with an affiliate that engages in marketing functions.

(c) This part does not apply to a public utility transmission provider that is a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO). If a public utility transmission owner participates in a Commission-approved ISO or RTO and does not operate or control its transmission system and has no access to transmission function information, it may request a waiver from this part.

(d) A transmission provider may file a request for a waiver from all or some of the requirements of this part for good cause.

### **§ 358.2 General principles.**

(a) As more fully described and implemented in subsequent sections of this part, a transmission provider must treat all transmission customers, affiliated and non-affiliated, on a not unduly discriminatory basis, and must not make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage with respect to any transportation of natural gas or transmission of electric energy in interstate commerce, or with respect to the wholesale sale of natural gas or of electric energy in interstate commerce.

(b) As more fully described and implemented in subsequent sections of this part, a transmission provider's transmission function employees must function independently from its marketing function employees, except as permitted in this part or otherwise permitted by Commission order.

(c) As more fully described and implemented in subsequent sections of this part, a transmission provider and its employees, contractors, consultants and agents are prohibited from disclosing, or using a conduit to disclose, non-public transmission function information to the transmission provider's marketing function employees.

(d) As more fully described and implemented in subsequent sections of this part, a transmission provider must provide equal access to non-public transmission function information disclosed to marketing function employees to all its transmission customers, affiliated and non-affiliated, except as permitted in this part or otherwise permitted by Commission order.

### **§ 358.3 Definitions.**

(a) Affiliate of a specified entity means:

(1) Another person that controls, is controlled by or is under common control with, the specified entity. An affiliate includes a division of the specified entity that operates as a functional unit.

(2) For any exempt wholesale generator (as defined under § 366.1 of this chapter), affiliate shall have the meaning set forth in § 366.1 of this chapter, or any successor provision.

(3) "Control" as used in this definition means the direct or indirect authority, whether acting alone or in conjunction with others, to direct or cause to direct the management policies of an entity. A voting interest of 10 percent or more creates a rebuttable presumption of control.

(b) Internet 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) On-system sales by an intrastate natural gas pipeline, by a Hinshaw interstate pipeline exempt from the Natural Gas Act, by a local distribution company, or by a local distribution company operating under section 7(f) of the Natural Gas Act.

(d) Marketing function employee means an employee, contractor, consultant or agent of a transmission provider or of an affiliate of a transmission provider who actively and personally engages on a day-to-day basis in marketing functions.

(e) Open Access Same Time Information System or OASIS refers to the Internet location where a public utility posts the information required by part 37 of this chapter, and where it may also post the information required to be posted on its Internet website by this part 358.

(f) Transmission means electric transmission, network or point-to-point service, ancillary services or other methods of electric transmission, or the interconnection with jurisdictional transmission facilities, under part 35 of this chapter; and natural gas transportation, storage, exchange, backhaul, or displacement service provided pursuant to subparts B or G of part 284 of this chapter.

(g) Transmission customer means any eligible customer, shipper or designated agent that can or does execute a transmission service agreement or can or does receive transmission service, including all persons who have pending requests for transmission service or for information regarding transmission.

(h) Transmission functions means the planning, directing, organizing or carrying out of day-to-day transmission operations, including the granting and denying of transmission service requests.

(i) Transmission function employee means an employee, contractor, consultant or agent of a transmission provider who actively and personally engages on a day-to-day basis in transmission functions.

(j) Transmission function information means information relating to transmission functions.

(k) Transmission provider means:

(1) Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce; or

(2) Any interstate natural gas pipeline that transports gas for others pursuant to subparts B or G of part 284 of this chapter.

(3) A transmission provider does not include a natural gas storage provider authorized to charge market-based rates.

(l) Transmission service means the provision of any transmission as defined in § 358.3(f).

(m) Waiver means the determination by a transmission provider, if authorized by its tariff, to waive any provisions of its tariff for a given entity.

**§ 358.4 Non-discrimination requirements.**

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

(b) A transmission provider must apply all tariff provisions relating to the sale or purchase of open access transmission service in a fair and impartial manner that treats all transmission customers in a not unduly discriminatory manner, if the tariff provisions permit the use of discretion.

(c) A transmission provider may not, through its tariffs or otherwise, give undue preference to any person in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price, curtailments, scheduling, priority, ancillary services, or balancing).

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

**§ 358.5 Independent functioning rule.**

(a) General rule. Except as permitted in this part or otherwise permitted by Commission order, a transmission provider's transmission function employees must function independently of its marketing function employees.

(b) Separation of functions.

(1) A transmission provider is prohibited from permitting its marketing function employees to:

(i) Conduct transmission functions; or

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

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

**§ 358.6 No conduit rule.**

(a) A transmission provider is prohibited from using anyone as a conduit for the disclosure of non-public transmission function information to its marketing function employees.

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

**§ 358.7 Transparency rule.**

(a) Contemporaneous disclosure.

(1) If a transmission provider discloses non-public transmission function information, other than information identified in paragraph (a)(2) of this section, in a manner contrary to the requirements of § 358.6, the transmission provider must immediately post the information that was disclosed on its Internet 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 hand-written or typed notes, electronic records such as e-mails and text messages, recorded telephone exchanges, and the like, and must be retained for a period of five years.

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

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

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

(i) Posting of waivers. A transmission provider must post on its Internet 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.

**§ 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.

## **Standards of Conduct FERC Order 717 Human Resources Procedure**

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### **PROCEDURE FOR IDENTIFYING TRANSMISSION FUNCTION AND MARKETING FUNCTION EMPLOYEES**

It is the policy of Pepco Holdings, Inc. and its affiliates (collectively, “PHI” or the “Company”) to comply fully with all applicable federal, state and local laws, rules, regulations and orders. The purpose of this procedure is to provide a guide for all PHI Managers for complying with FERC Order 717 (Standards of Conduct for Transmission Providers). The Order requires PHI to keep certain records of Transmission and Marketing Function employees. A Transmission Function Employee is defined as “an employee, contractor, consultant or agent of a transmission provider who actively and personally engages on a day-to-day basis in transmission functions.” The definition of transmission function is “the planning,

directing, organizing or carrying out of day-to-day transmission operations, including the granting and denying of transmission service requests.”

A Marketing Function Employee is “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.” A marketing function, in the case of public utilities and their affiliates, is defined as “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.”

### **Procedure:**

In order to comply with Standards of Conduct FERC Order 717, all affected Managers must identify all employees and/or positions designated as performing Transmission or Marketing Functions. All affected Managers must complete a Change of Status form (COS) within two (2) business days of any employee movement into or out of a relevant department. The form must be submitted to an HR Business Partner within those two (2) days. COS forms include the Position Information form, the New Hire/Rehire form, and the Transfer/Promotion/Job-Re-class/Data Change form.

For your convenience, the COS forms are available via the PHI Intranet in the Human Resources section, under the Forms heading.

The Managers are responsible for submitting the completed forms to the Business Partners in a timely manner. It is not the Business Partners’ responsibility to complete the COS forms. However, the Business Partners are responsible for verifying the information provided by the Managers and for making sure that the HR Client Services team gets the completed forms for SAP input within the required time (i.e., the two business days as stated above). Also, the Business Partners will provide assistance with any questions related to completing the forms.

### **Note:**

There is a field on the COS to identify a Transmission Function or Marketing Function employee. Also, each Manager, whether or not he/she is losing or gaining an employee, is responsible for verifying with his/her Business Partner that all eligible employees are properly coded in SAP (Transmission Function = 2T and Marketing Function = 2M).

The following steps will need to be followed in order to complete the process:

- Identify a Transmission Function employee, Marketing Function employee, and/or position.
- Complete a Change in Status Form (“COS”) and submit the form to a Business Partner within two (2) days of an employee movement into or out of a relevant position.
- Keep a copy of the COS form for your records.
- Follow up with the Business Partner to make sure the information was entered into SAP and/or verify the information directly from SAP.

***IF YOU NEED HELP:*** As in most situations, good judgment and common sense should guide your decisions about how to interpret and apply the procedure. If you need help interpreting this procedure or if you observe potential violations of it, contact your supervisor, the Chief Compliance Officer or the Corporate Ethics Officer.