

96. Historically, the Commission has recognized that different Transmission Providers are faced with different practical circumstances in reviewing the appropriate degree of separation between the Transmission Provider's transmission function and the marketing affiliate or wholesale merchant function. Under the current standards of conduct, the Commission has permitted the transmission function to share with its marketing affiliate or wholesale merchant function non-operating officers or directors and personnel performing various non-operating functions such as legal, accounting, human resources, travel and information technology.⁴⁸

97. By permitting such sharing of non-operating employees, the Commission has allowed the Transmission Provider to realize the benefits of cost savings through integration where the shared employees do not have duties or responsibilities relating to transmission, and generally, would not be in a position to give a marketing affiliate undue preferences. In these circumstances, the sharing of transmission business employees with marketing affiliate employees was not considered to be likely to be harmful to shippers, consumers or competition. The Commission has also recognized that under normal circumstances, highly placed employees, such as officers or directors, are not involved in day-to-day duties and responsibilities and can be shared between a Transmission Provider and its marketing affiliate so long as these individuals comply with the information disclosure prohibitions.⁴⁹

98. When the Commission reviewed public utilities standards of conduct filings, it used a similar approach. The Commission stated that Transmission Providers may allow senior managers, officers or directors to have ultimate responsibility for both transmission system operations and wholesale merchant functions, as long as the persons with shared responsibilities do not participate in directing, organizing or executing transmission system operations or reliability functions or wholesale merchant functions. Further,

the Commission stated that Transmission Providers may share "support" staff, such as legal counsel, accounting services and data processing who do not participate in operating activities.⁵⁰

99. The Commission has previously allowed the sharing of billing, accounting and legal employees. The rationale was that accountants and lawyers were obliged by professional responsibility to maintain the confidentiality of transmission or customer information. For those employees involved in "billing," the rationale was that the employees produced the bills after the transmission took place, and those involved in billing would have little opportunity to give marketing affiliates undue preferences. However, the recent investigations indicate that staff has been improper conduits of transmission information.

100. With respect to accountants, at most Transmission Providers, there are accountants who are responsible for day-to-day accounting functions, which may include billing, gas accounting and invoicing. There are also accountants or a "finance department" responsible for pulling together information for the corporation as a whole. The level of sharing of the accounting employees varies among Transmission Providers. In the *Transco* investigation, the Commission learned that marketing affiliate employees involved in billing and accounting had access to significant amounts of transmission information and confidential shipper information through shared databases and provided non-affiliate customer information to marketing affiliate employees.⁵¹ In an investigation of *Cleco*, the Commission learned that accounting and billing employees improperly re-designated certain power sales transactions between the utility's the wholesale merchant function and its affiliated power marketer.⁵²

101. Accountants and personnel involved in billing have the ability to provide preferential information, or, as in the case of *Cleco*, alter the books after transactions, to benefit an affiliate. While the Commission recognizes the efficiencies in allowing Transmission Providers to share accountants and employees involved in billing with their Energy Affiliates, we are concerned about their behavior and ability to provide preferential treatment. Therefore, the Commission will require that Transmission Providers train all shared support employees regarding the

standards of conduct and that shared employees sign affidavits that they will not be a conduit for sharing transmission, market or customer information with a Marketing or Energy Affiliate.

iv. Sharing of Senior Officers and Directors

102. Many commenters urge the Commission to permit Transmission Providers to share senior officers and directors with their Marketing and Energy Affiliates consistent with current Commission practices.⁵³

103. The Major Issues Analysis recommended that the Commission retain this exception. In follow-up comments, this proposal received support from virtually all the commenters. This exception, which impacts the ability of the senior officers and directors to engage in corporate governance functions is important and merits retention. Therefore, the Commission will codify this exception in the regulatory text.

104. In the Final Rule, the Commission will continue to allow senior officers and directors who do not engage in transmission functions, including day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations to share such positions with the Transmission Provider and its Marketing or Energy affiliates. These shared executives may not serve as a conduit for sharing transmission, customer or market information with a Marketing or Energy Affiliate.

v. Sharing of Field and Maintenance Personnel

105. Numerous commenters urged the Commission to permit Transmission Providers to share field and maintenance personnel with their Marketing and Energy Affiliates, consistent with the Commission's current practices. In Order No. 497-F and in reviewing Tennessee's standards of conduct, the Commission found that "field employees," such as those who perform manual work (dig trenches) or purely technical duties (operate and

⁴⁸ Under Standard G, a pipeline's operating employees and the operating employees of its marketing affiliate must function independently of each other to the maximum extent practicable. See 18 CFR 161.3(g) (2003). In Order No. 497-E, the Commission defined operating employees as, in part, those that are engaged in the day-to-day duties and responsibility for planning, directing, organizing or carrying out gas-related operations, including gas transportation, gas sales or gas marketing activities. See Order No. 497-E, FERC Stats. & Regs., Regulations Preambles 1991-1996, at 30,996.

⁴⁹ *Id.* at 30,996.

⁵⁰ *AEP*, 81 FERC at 62,515.

⁵¹ *Transco*, 102 FERC ¶ 61,302 (2003).

⁵² *Cleco*, 104 FERC ¶ 61,125 (2003).

⁵³ On several occasions, the Commission has specifically addressed the sharing of employees. For example, in reviewing ANR Pipeline Company's standards of conduct, the Commission stated that the potential for abuse when there are shared officers or directors is minimized because the shared officers or directors normally should not receive confidential information from nonaffiliated shippers or potential nonaffiliated shippers nor would they be likely to receive transportation information.