

## i. Posting Organizational Charts

123. The NOPR proposed that organizational charts and job descriptions be updated within three days of a change. Under the current gas standards of conduct, interstate natural gas pipelines are required to make changes to the postings within three days of a change. The Commission has never addressed the frequency of changes to be madder under the electric standards of conduct. Commenters asked the Commission to reconsider this proposal. They argued that there would be significantly more information to post if the Commission adopts a broad definition of the term Energy Affiliate. Williston Basin, Semptra and others urged that the organizational charts be updated every seven days. EEI, AEP, Basin Electric, Carolina Power & Light, Florida Power Corp. and PacifiCorp, urged that organizational charts be updated on a quarterly basis. Several commenters, including Carolina Power & Light and Florida Power Corp., argued that the posting of organizational charts is too broad and burdensome and others argued that it may be difficult to post all changes within three days given the complexity of some mergers or buy-outs. While some companies link their employee or human resource databases to the posted organizational charts and job descriptions, so that automatic downloads or updates take place each day, not all Transmission Providers have that capability. In balancing the burden associated with updating information with the efforts that would be needed to post organizational charts, the Commission has decided it would be reasonable to require the information to be posted within seven business days of a change.

124. Currently, the gas standards of conduct and the posting requirements at § 284.12, required gas Transmission Providers to retain information concerning organizational charts and job descriptions for three years. While § 37.6 of the Commission's regulations, 18 CFR 37.6 (2003), requires public utility Transmission Providers to retain OASIS postings for three years, this section did not specifically refer to the posting of organizational chart and job descriptions. Basin Electric recommended that all Transmission Providers be required to retain, for three years, all posted organizational charts and job descriptions to facilitate the Commission's monitoring and enforcement efforts. To avoid any confusion, the Commission will adopt this suggestion in the Final Rule.

125. Several commenters also argued that Transmission Providers that share

support employees that are of no interest to the Commission, such as legal, accounting, human resources, information technology, and customer service should not be required to post detailed information and job descriptions for each of these employees. With respect to posting organizational information where a Transmission Provider shares support, field or maintenance employees with its Marketing or Energy Affiliates, the Transmission Provider must clearly identify the business units for the shared employees and provide a description of the shared services functions or responsibilities, but is not required to provide names or job descriptions for the support or field or maintenance employees.

## ii. Posting of Merger Information

126. The Commission's current policy with respect to announced mergers is to treat the potential merger partners as affiliates.<sup>64</sup> The NOPR solicited comments on whether the Standards of Conduct should require the posting of the potential merger partners on the OASIS or Internet Website. In response to the NOPR, several commenters, including APGA, Michigan Commission, New Power, Oklahoma Commission, Ohio Commission, Reliant and the CPUC, supported this proposal as being consistent with the Commission's current policy. Pan Canadian Energy urged that the Commission adopt the same posting requirements as the SEC. In contrast, Niagara Mohawk, Williston Basin, Calpine, Carolina Power and Light, Florida Power Corp., National Grid and Questar opposed posting merger information. EEI urged the posting of mergers after they are announced.

127. Following a review of the comments, the Commission will require the posting of merger information within seven days after a potential merger is announced as it is consistent with the Commission's policy on potential merger partners. The Transmission Provider shall post the name(s) and address(es) of potential merger partner(s) and Energy Affiliates on the OASIS or Internet website with the information in § 358.4(b), which requires a Transmission Provider to post the names and addresses of its sales and marketing units and Energy Affiliates on the OASIS or Internet website.

## iii. Transfer of Employees

128. 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. Several commenters sought clarification that the Commission did not intend to capture the transfer of all employees between the Energy and Marketing Affiliates. The Commission is granting the clarification. The Commission did not intend to require the posting of employees that transfer between the Energy and Marketing Affiliates.

129. Some commenters, such as Avista and PSE&G opposed the requirement to post the transfers between a Transmission Provider and its Energy Affiliates. While the Industrials urged the Commission to enhance and enforce posting requirements regarding employee transfers, Exelon, National Grid, and AEP asked for clarification that the posting of employees is for those employees that transfer between the Transmission Provider and the Marketing or Energy Affiliate, and not the transfer of employees among all the Marketing and Energy Affiliates.

130. The Commission is adopting § 358.4(c) as proposed. The transfer of employees between transmission and marketing or sales functions or between a Transmission Provider and its Energy 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 be a problem, transferring an employee multiple times (*i.e.*, cycling) is inconsistent with the independent functioning requirement. In *KN 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>65</sup>

<sup>64</sup> Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642, 65 FR 70983 (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).

<sup>65</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