

131. The cycling of employees between the Transmission Provider, the Marketing or 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>66</sup> This enables the Commission and the public to monitor all transfers and to ensure that employees are not cycling between functions.

#### F. Books and Records

132. 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. There were no comments regarding proposed § 358.4(d), and the Commission adopts it as proposed in the NOPR.

#### G. Written Procedures

133. The NOPR proposed that § 358.4(e) would replace the requirements of §§ 161.3(i) and 37.4(c), by requiring Transmission Providers to file with the Commission written procedures implementing the standards of conduct as follows:

The Transmission Provider must file with the Commission and post on the OASIS or Internet website, current written procedures implementing the standards of conduct as will enable customers and the Commission to determine that the Transmission Provider is in compliance with the requirements of this section.

134. The NOPR solicited 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. As discussed in more detail below, several commenters suggested that it would be sufficient to post the procedures, rather than file them with the Commission, and made several other recommendations that the Commission is adopting in the Final Rule, as follows:

(e) Written procedures.

(1) By February 9, 2004, each Transmission Provider is required to file with the Commission and post on the OASIS or Internet website a plan and schedule for implementing the standards of conduct.

(2) Each Transmission Provider must be in full compliance with the standards of conduct by June 1, 2004.

(3) Each Transmission Provider must 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 by June 1, 2004 or within 30 days of becoming subject to the requirements of this part.

(4) Transmission Providers will distribute the written procedures to all Transmission Provider employees and employees of the Marketing and Energy Affiliates.

(5) Transmission Providers shall require all of their employees to attend training and sign an affidavit certifying that they have been trained regarding the standards of conduct requirements.

(6) Transmission Providers are required to designate a Chief Compliance Officer who will be responsible for standards of conduct compliance.

#### i. Posting Standards of Conduct Procedures.

135. Several commenters recommended that the Commission require the posting of the Transmission Provider's written procedures implementing the Standards of Conduct on the OASIS or Internet website in lieu of filing them with the Commission. The Commission is adopting this suggestion and will modify § 358.4(e) to include a posting requirement instead of a filing requirement. Posting the written procedures on the OASIS or Internet website gives users immediate access to the information and does not create additional administrative burdens for the Commission. Filing the written procedures is not required because the Commission has sufficient mechanisms to address problems through the Enforcement Hotline and complaints under the FPA or the NGA. Moreover, Commission staff will aggressively monitor standards of conduct compliance. Each Transmission Provider is required to post on its OASIS or Internet website written procedures implementing the Standards of Conduct no later than June 1, 2004 or within 30 days of becoming subject to the requirements of Part 358.

136. With respect to the standards of conduct procedures that Transmission Providers will post on their OASIS or Internet Website merely restating the regulations or incorporating them by reference will not show acceptable compliance. The Transmission Providers must explain the measures they use 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.

137. In addition, within 60 days of publication of the Final Rule in the **Federal Register**, each Transmission Provider is required to file with the Commission and post on the OASIS or Internet website an informational filing that includes a plan and schedule for implementing the standards of conduct by June 1, 2004, and the Transmission Provider's projected costs of complying with the standards of conduct.

#### ii. Training

138. Standards of Conduct training for employees was not discussed in the NOPR, although it is one of the factors the Commission historically looks at when determining if a Transmission Provider has complied with the Standards of Conduct. In response to the NOPR, Cinergy, Ohio Commission, PGE and other commenters urged the Commission to require training and evaluation or to formalize the training requirement.

139. The Commission likes this suggestion, and will revise § 358.4(e) to adopt it.

#### iii. Chief Compliance Officer

140. The Ohio Commission recommended that the Commission should require the creation of a corporate ethics officer for each Transmission Provider, who would investigate and certify, on a periodic basis, whether the Transmission Provider is complying with the standards of conduct requirements. In several recent settlements, the Commission has required the hiring or designation of a Chief Compliance Officer. These individuals have a working knowledge of the company, its structure and operations and have been invaluable in post-settlement compliance activities.

141. It is appropriate to designate an individual to be responsible for standards of conduct compliance. Therefore, in the Final Rule, the Commission is requiring that each Transmission Provider hire or designate a Chief Compliance Officer. This individual will be responsible for employee training, answering employee questions and coordinating audits and investigations with Commission Staff, as well as duties to ensure that the Transmission Provider complies with the standards of conduct.

value, i.e., a "cooling off" period before or after the transfer.

<sup>66</sup> See e.g., Kinder Morgan Interstate Gas Transmission, L.L.C., et al., 90 FERC ¶ 61,310 (2000).