

filing, Exelon answers this and other questions regarding compliance based on its best understanding of what Order No. 2004 requires.¹

Exelon has two jurisdictional transmission-owning indirect subsidiaries, PECO and ComEd. PECO and ComEd are direct subsidiaries of Exelon Energy Delivery Company, LLC (“EED”). As a result of corporate reorganizational changes occurring in the late fall of 2003, the transmission functions of both PECO and ComEd were consolidated within EED in a new department, EED Transmission Operations & Planning.

Written Procedures

One of the requirements of Order No. 2004, as of the Commission’s existing Standards of Conduct regulation, is that each transmission provider promulgate detailed procedures that demonstrate its compliance with the Standards of Conduct requirements. Exelon has a corporate procedure currently on file with the Commission. That procedure demonstrates Exelon’s compliance with the existing Standards of Conduct regulation, not with the Order No. 2004 requirements. Exelon will revise that procedure by June 1, 2004 to demonstrate Exelon’s compliance with the Order No. 2004 requirements and will post the new corporate procedure on the OASIS systems of PECO and ComEd.

Exelon need not make any structural or organizational changes to come into compliance with the new requirements, and thus the procedure that it posts on June 1 will not reflect any such changes. Exelon will make changes to its currently filed corporate procedure, in the respects described below, to come into

¹ The following section of this filing states Exelon’s present compliance with the new regulation on a section-by-section basis.

compliance with the new requirements. The changes Exelon will make to come into compliance, also described below, are largely in the areas of training and posting, rather than substantive changes in the way Exelon's business is conducted or in the communications between PECO and ComEd and their energy affiliates. Although compliance with the new requirements will not require corporate reorganization, the additional training and posting requirements will substantially increase the burden and expense of compliance. Exelon will post a revised corporate procedure on the OASES of PECO and ComEd by June 1, 2004.

Distribution of Written Procedures

Exelon will distribute the procedures described above to all Exelon employees impacted by the Standards of Conduct regulation, namely (a) all PECO and ComEd transmission function employees, (b) any PECO and ComEd wholesale merchant employees; (c) all employees PECO and ComEd share with merchant functions or energy affiliates; and (d) all wholesale merchant employees and any generating station employees of manager level or higher of PECO's and ComEd's energy affiliates by June 1, 2004.²

Energy Affiliate Approach

The most substantive change to Exelon's currently filed corporate procedure will be a change to reflect the Commission's abandonment of the functional approach to Standards of Conduct regulation in favor of the energy affiliate approach. PECO and ComEd have a generation and wholesale

² Section 388.4(e)(4), taken literally, would require distribution to all employees of ComEd and PECO, including janitors and cafeteria workers. Exelon does not believe that is what the Commission meant, but if the Commission clarifies that this is what it meant, Exelon will comply.

marketing affiliate known as Exelon Generation, which in turn owns other generation entities. Exelon's existing corporate procedure identifies only the Exelon Generation employees engaged in the wholesale merchant function – and not employees engaged in the generation function – as employees to whom non-public transmission information may not be disclosed. Exelon will have to revise the procedure to reflect the new requirement that all employees of Exelon Generation and its generation subsidiaries, as “energy affiliates,” are employees to whom such information may not be disclosed.

This revision will not require any structural or organizational change within Exelon or its subsidiaries. In addition, Exelon does not believe that this revision will require any behavioral change on the part of the transmission function at ComEd and PECO and the generation operators at Exelon Generation. The transmission function does provide operating information to all generation operators, both affiliated and unaffiliated, because this is necessary for the reliable operation of the system. Exelon objected strongly to the NOPR in this docket for that reason. By prohibiting the disclosure of any nonpublic transmission information to affiliated generators, the proposed rule would have fatally undermined system reliability.

In the Final Rule, however, the Commission has taken note of this objection, raised by many industry participants besides Exelon, and has permitted the transmission function to provide to the generation operators the operating information needed to run the system reliably. Exelon understands this to be the meaning of the Commission's phrase “crucial operating information” in

Section 358.5(b)(8). Accordingly, Exelon will continue its practice of providing this information to generation operations personnel – affiliated and non-affiliated – under the “crucial operating information” exception. Consistent with existing practice, the applicable affiliated generating personnel will be included within the Exelon compliance program and subject to training on the FERC Standards of Conduct prohibitions.

Training

The new requirements of Order No. 2004 mandate the training in the Standards of Conduct of a much wider pool of employees than under the existing regulation. All employees shared by ComEd and PECO and any energy affiliate will have to be trained. In addition, within the energy affiliates, not only employees engaged in wholesale merchant functions will have to be trained, but also those likely to come into possession of transmission market information, which at Exelon would be generating station personnel at the manager level and above.³ These training requirements will be very extensive and burdensome. At this point, Exelon is exploring development and implementation of web-based training, with a mechanism to certify that the employee has been trained, as the most practical and effective means of complying with this requirement. Exelon will have a training program in place and use its best efforts to complete required training by June 1, 2004.

³ This is Exelon’s interpretation of Order No. 2004. The literal wording of Section 358.4(e)(5), as EEI has pointed out, is both under- and over-inclusive. It would require training of all ComEd and PECO employees, including janitors and cafeteria workers, while requiring training of no affiliate employees, such as power traders. Exelon does not believe this is what the Commission intended.

Posting of Organizational Charts

The new requirements of Order No. 2004 mandate the posting on OASIS of organization charts that show the positions and job descriptions of a much larger number of employees than was previously required. (See n.2 *supra*.) The seven-day posting requirement for changes in what is likely to be thousands of employees is perhaps the most burdensome imposition of the new rule. Exelon will use best efforts to institute notification and posting protocols that give reasonable assurance of being in compliance by June 1, 2004.

Chief Compliance Officer

The new requirements of Order No. 2004 require the appointment of a Compliance Officer with specified duties. Exelon has had a Chief Compliance Officer with those duties for several years, and is thus in compliance with that new requirement. In addition to this Chief Compliance Officer, Exelon has a Deputy Compliance Officer and a Responsible Manager at each of its major business units who are responsible for compliance and who report to the Chief Compliance Officer.

II. Section-By-Section Report On 18 C.F.R. Part 358

Section 358.2 Exelon is in compliance with these requirements.

PECO and ComEd employees engaged in transmission system operations function independently from any applicable marketing and sales employees and the employees of any energy affiliates.

Section 358.4(a) Exelon is in compliance with these requirements. The transmission function employees of PECO and ComEd function independently from any applicable marketing and sales employees and the employees of any energy affiliates except in emergency circumstances affecting system reliability. PECO and ComEd do not permit the employees of their marketing or energy affiliates to conduct transmission operations or have access to the system control center or similar facilities that differs from that available to other customers.

Section 358.4(b) PECO and ComEd have posted the names and addresses of their sales and marketing affiliates on their OASIS systems. Exelon understands “facilities” to mean physical locations, such as office space. Neither PECO nor ComEd shares such facilities with wholesale merchant personnel or employees of energy affiliates.⁴ PECO and ComEd have posted on OASIS comprehensive organizational charts. Those charts include the information designated in Section 358.4(b)(3)(i) and (ii).⁵

PECO and ComEd are not now in compliance with Section 358.4(b)(3)(iv) in that they do not update the OASIS postings within seven business days and post the date on which the information was updated. Exelon will use best efforts to be in compliance by June 1, 2004.

⁴ PECO’s transmission operations function is housed in the same building as certain employees belonging to the consolidated EED organization that is the successor to the PECO PLR function. However, PECO’s system control center is restricted with a cardkey access system. No wholesale merchant or PLR employees or employees of energy affiliates are permitted cardkey access and cannot access the control center except on the same basis as non-affiliated merchants.

⁵ ComEd and PECO do not have any employees described in Section 358.4(b)(3)(iii). Exelon finds that regulation puzzling, because the existence of such employees would appear to violate Sections 358.2 and 358.4(a).

PECO and ComEd now post transfers of employees between their transmission function and their wholesale merchant function, if any, or the wholesale merchant function of any affiliate. Section 358.4(c) appears to require that any employee of an energy affiliate who transfers to the transmission function of ComEd or PECO must also be posted. Exelon takes this to mean that if any generation employee of Exelon Generation or other generating affiliate transfers to the PECO or ComEd transmission function, that transfer will be posted.⁶

PECO and ComEd now maintain books and records in compliance with Section 358.4(e).

PECO and ComEd have not posted on OASIS procedures that demonstrate compliance with Order No. 2004. They will do so by June 1, 2004.

Section 358.4(e)(5) Exelon will have a training program in place by June 1, 2004, and use its best efforts to train in the Standards of Conduct requirements all of the Exelon employees to whom the requirements of the regulation will apply, namely PECO and ComEd transmission function employees, PECO and ComEd wholesale merchant employees, if any, and Exelon shared employees, as well as employees of PECO and ComEd's energy affiliates engaged in marketing and those engaged in generation at the level of manager and above. As explained above, the literal wording of the regulation⁷ would not require the training of energy affiliates and would require the training of all of the thousands of employees of PECO and ComEd who have no relation to

⁶ The wording of Section 358.4(c) is confusing.

⁷ 358.4(e)(5) provides: "Transmission Providers shall require all of their employees to attend training . . ."

either transmission or marketing and come into possession of no information related to either. Exelon does not believe this is what the Commission intended. Upon the Commission's clarification, however, Exelon will comply with the Commission's dictates. Exelon will have trained employees certify their training. Exelon does not understand the Commission's use of the word "affidavit" to include the requirement of formal oath or affirmation and notarization, which would be unreasonably burdensome and would raise problems with union contracts.

Section 358.4(e)(6) PECO and ComEd are in compliance with the requirement to have a Chief Compliance Officer.

Section 358.5(a) PECO and ComEd are in compliance with the requirement that any employees engaged in wholesale merchant functions and any employees of their energy affiliates have no access to, and are prohibited from obtaining, non-public transmission and marketing information within the meaning of Order No. 2004 except to the extent consistent with Section 358.5(b)(6) and (8).

Section 358.5(b) PECO and ComEd are in compliance with the requirement that their employees do not disclose to any employees engaged in wholesale merchant functions or to employees of their energy affiliates, any non-public transmission or marketing information within the meaning of Order No. 2004 except to the extent consistent with Section 358.5(b)(6) and (8).

PECO and ComEd are in compliance with the requirement that none of their employees use anyone as a conduit for sharing restricted information.

Section 358.5(c) and (d) These sections apply only to ComEd, because PECO does not administer a transmission tariff; transmission over the PECO system is provided under the PJM tariff. In addition, ComEd expects that before June 1, 2004, it will not administer a transmission tariff, but that transmission over its system will be provided under the PJM tariff. ComEd is currently in compliance with the requirements of these sections.

III. Estimate of Compliance Costs

Exelon's estimate of compliance costs can be no more than very approximate at this time. Exelon will not incur any costs of restructuring or reorganizing its businesses or hiring new employees, because no such actions are necessary to ensure Exelon's compliance with the requirements of Order No. 2004. Exelon believes that the majority of its costs will be in the area of training.

Training Module

Web-based, including tracking Estimate \$80,000

Training

Lost productivity Estimate \$688,800

(4592 people x 1.5 hours training/person x \$100/hr)

In addition, Exelon will incur costs for devising its compliance plan, drafting its new corporate procedure demonstrating compliance, posting greatly expanded information on OASIS and updating that information much more

frequently. Exelon is not able at this time to estimate these costs, but expects that the costs will be in the tens of thousands.

Respectfully submitted,

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