FEDERAL ENERGY REGULATORY COMMISSION

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FERC Proposes Reforms to Strengthen, Clarify Standards of Conduct

The Federal Energy Regulatory Commission (FERC) today proposed a series of reforms to the Standards of Conduct for transmission providers that will simplify and strengthen the rules.

The intent of the proposal, outlined in a Notice of Proposed Rulemaking (NOPR), is to return to the core principles of Order Nos. 497 and 889, which until 2003 addressed standards of conduct for, respectively, natural gas pipeline and electric transmission provider employees.

"The fair and open markets that consumers expect require us to provide clear and enforceable rules of the road for market participants," FERC Chairman Joseph T. Kelliher said. "Our experience to date shows that the Standards of Conduct have become overly broad, complex and difficult to understand. The Standards represent a compliance challenge and an enforcement challenge. The new proposed rule will reform the Standards so that they are amenable to ready compliance while effectively policing affiliate abuse."

The NOPR proposes to revamp the Standards to make enforcement easier and compliance less elusive, provide clarity by rewording and reorganizing the Standards, avoid impeding business operations due to overly broad coverage and eliminate the concept of "energy affiliates" for both electric and gas companies.

The NOPR is broken down into three rules: the "independent functioning rule" as used in Order Nos. 497 and 889; the "no-conduit rule" that prohibits both passing and receipt of transmission function information; and the "transparency rule" that improves transparency to detect, correct and sanction any undue discrimination.

Independent Functioning Rule

This rule requires transmission function employees to function independently of marketing function employees, defining both transmission and marketing functions and using those definitions to define employees of both functions. It also carries over from existing standards the exceptions to marketing functions. The rule also:

- Restricts marketing functions employees to those actually engaged in marketing functions, rather than all employees of a marketing affiliate, as was the case under the previous corporate functional approach;
- Eliminates the need for the concept of shared employees between the transmission provider and the marketing affiliate;
- Eliminates obstacles to efficiency resulting from overly broad restrictions;
- Encourages compliance by applying a common-sense approach; and
- States that supervisors are not transmission function or marketing function employees unless they are actively and personally engaged in such activities.

There are exceptions: Transmission function and marketing function employees may exchange certain limited information, such as information regarding generation necessary to perform generation dispatch and

information necessary to maintain or restore operation of the transmission system. But contemporaneous records must be kept of any such exchanges, except in emergency circumstances, where the record can be made after the fact.

The No-Conduit Rule

Transmission provider employees now may not disclose information concerning the transmission system to marketing or energy affiliates. Under the reforms proposed in the NOPR:

- All employees would be prohibited from passing restricted information to marketing function employees;
- Transmission providers would be prohibited from using a conduit to pass restricted information to prohibited employees; and
- Marketing function employees would be prohibited from receiving transmission function information.

The same exceptions that apply to the independent functioning rule would apply to the no-conduit rule.

The Transparency Rule

Information can be taken out of the no-conduit rule by contemporaneously posting it on the Open Access Same Time Information Service (OASIS) or the company's Internet website. Inadvertent disclosure of non-public information can be cured by posting it on OASIS or the Internet.

Contemporaneous records are to be made of permitted exchanges between transmission function employees and marketing function employees. This record can be made after the fact in the event of an emergency.

Companies must retain postings of waiver notices, acts of discretion and offers of discounts, as well as maintenance of waiver logs. Posting requirements can be temporarily suspended in the event of an emergency.

Training requirements are strengthened to include annual training and certification of completion. Companies must designate, and post the name and contact information of, their chief compliance officers. Transmission providers must be in full compliance when they commence transactions or have a rate on file with FERC.

Comments on the NOPR, *Standard of Conduct for Transmission Providers*, are due within 45 days of publication in the *Federal Register*.

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