135 FERC ¶ 61,017
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 358

[Docket No. RM07-1-003; Order No. 717-D]

Standards of Conduct for Transmission Providers

(Issued April 8, 2011)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on Rehearing and Clarification.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued Order No. 717-A to address requests for rehearing and make clearer the Standards of Conduct as implemented by Order No. 717. The Commission issued Order No. 717-B to address expedited requests for rehearing and clarification concerning paragraph 80 of Order No. 717-A and whether an employee who is not making business decisions about contract non-price terms and conditions is considered a "marketing function employee." Order No. 717-C addressed requests for rehearing and clarification concerning Order No. 717-A. This order addresses an additional request for rehearing and clarification concerning Order No. 717-C.

EFFECTIVE DATE: This rule will become effective [Insert_Date 30 days after publication in the **FEDERAL REGISTER**].

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SUPPLEMENTARY INFORMATION:

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Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Standards of Conduct for Transmission Providers Docket No. RM07-1-003

ORDER NO. 717-D

ORDER ON REHEARING AND CLARIFICATION

(Issued April 8, 2011)

I. Introduction

1. On October 16, 2008, the Commission issued Order No. 717 amending the Standards of Conduct for Transmission Providers (the Standards of Conduct or the Standards) to make them clearer and to refocus the rules on the areas where there is the greatest potential for abuse.[1] On October 15, 2009, the Commission issued Order No. 717-A to address requests for rehearing and clarification of Order No. 717, largely affirming the reforms adopted in Order No. 717.[2] On November 16, 2009, the Commission issued Order No. 717-B to address expedited requests for rehearing and

[1] *Standards of Conduct for Transmission Providers*, Order No. 717, 73 Fed. Reg. 63,796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (Order No. 717).

[2] *Standards of Conduct for Transmission Providers*, Order No. 717-A, 74 Fed. Reg. 54,463 (Oct. 22, 2009), FERC Stats. & Regs. ¶ 31,297 (Order No. 717-A).

clarification concerning paragraph 80 of Order No. 717-A and whether an employee who is not making business decisions about contract non-price terms and conditions is considered a "marketing function employee."[3] On April 16, 2010 the Commission issued Order No. 717-C to provide additional clarification concerning matters petitioners raised regarding the Commission's determinations in Order No. 717-A.[4] In this order, the Commission addresses an additional request for rehearing and clarification concerning Order No. 717-C.

II. Discussion

2. In paragraph 16 of Order No. 717-C, the Commission clarified that "a system impact study performed pursuant to a request for energy resource interconnection service or network resource interconnection service is similar to long-range planning and therefore not a transmission function, because the focus of such a study is to determine the impact of the proposed interconnection on the safety and reliability of the transmission provider's transmission system, but without conveying a right to

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[3] *Standards of Conduct for Transmission Providers*, Order No. 717-B, 74 Fed. Reg. 60,153 (Nov. 20, 2009), 129 FERC ¶ 61,123 (2009) (Order No. 717-B). On October 30, 2009, Edison Electric Institute (EEI) filed a request for expedited clarification of a single issue addressed in Order No. 717-A. The Commission determined that it should address this issue expeditiously even though the time allowed under the regulations for filing rehearing requests had not yet expired. For this reason, the Commission issued Order No. 717-B on November 16, 2009, in which it addressed a single clarification request of EEI, Western Utilities, Otter Tail and Central Vermont. All other timely requests for rehearing, i.e. those filed by November 16, 2009, were addressed in Order No. 717-C.

[4] *Standards of Conduct for Transmission Providers*, Order No. 717-C, 75 Fed. Reg. 20,909 (Apr. 22, 2010), 131 FERC ¶ 61,045 (2010) (Order No. 717-C).

transmission service."[5] As a result, the Commission concluded that the performance of a system impact study in the context of evaluating an energy resource interconnection service and network resource interconnection service is not a transmission function.

3. The Transmission Access Policy Study Group (TAPS) requests rehearing and clarification of one aspect of Order No. 717-C. Specifically, TAPS requests that the Commission grant rehearing to hold that employees who perform system impact studies (or other studies) in connection with interconnection service requests are transmission function employees. TAPS argues that the consequence of a finding that "performance of a system impact study in the context of evaluating an energy resource interconnection service and network resource interconnection service is not a transmission function" is that the studies may be performed by the Transmission Provider's "merchant-function" personnel.

4. TAPS further argues that the Commission created an inconsistency with its regulatory text when it clarified in Order No. 717-C that the performance of a system impact study in the context of evaluating an energy resource interconnection service and network resource interconnection service is not a transmission function. Specifically, TAPS cites 18 C.F.R. § 358.3(h), which defines "transmission functions" as "the planning, directing, organizing or carrying out of day-to-day transmission operations, including the granting and denying of transmission service requests." TAPS then argues that because 18 C.F.R. § 358.3(f) defines "transmission" as "the interconnection with

[5] *Id.* P 16.

jurisdictional transmission facilities," employees who perform studies that identify upgrades needed for interconnection, or who otherwise help to determine the terms on which interconnection may occur, perform a transmission function.

5. Alternatively, TAPS requests that the Commission clarify that system study information be treated like other planning information, which the Commission requires transmission providers to make available on a non-discriminatory basis to all interested transmission customers. TAPS is concerned that if "merchant-function" personnel are permitted to conduct interconnection-related studies and have access to customer information, "merchant-function" personnel would obtain undue competitive advantages over any other transmission customer.

6. TAPS further requests clarification of paragraph 17 of Order No. 717-C to make clear that where an employee performs system impact studies in response to transmission service requests, the employee's designation as a transmission-function employee does not turn on the duration of the requested transmission service.

Commission Determination

7. We deny TAPS' request that we classify employees who perform system impact studies in connection with interconnection service requests as transmission function employees.[6] Whether an employee performing a system impact study is a transmission

[6] In a footnote, TAPS contends that employees who perform facility studies and feasibility studies in response to requests for interconnection service should be transmission function employees. TAPS, Motion for Rehearing at p. 3-4 n.4. TAPS concedes that Order No. 717-C does not address the performance of these types of studies. Given that TAPS failed to proffer this argument during previous stages of the

(continued…)

function employee depends upon the purpose for which that study is being performed. The key factor in determining whether the employee is performing a transmission function in conducting the system impact study is whether the performance of that study implicates the day-to-day operation of the transmission system. Thus, an employee performing system impact studies that do not implicate the day-to-day operations of the transmission system would not be a transmission function[7] employee, even in those instances where the system impact study pertains to interconnection.

8. In Order No. 717-C, we found that a system impact study performed pursuant to a request for energy resource interconnection service or network resource interconnection service is similar to long-range planning and therefore not a transmission function because it does not involve the conveyance of a right to transmission service. Contrary to the argument raised by TAPS, our focus in reaching this determination was not based on a distinction between transmission and interconnection. Our conclusion was based upon our finding that these types of system impact studies are analogous to transmission long range planning studies, and that neither type of study implicates day-to-day transmission

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process and that Order No. 717-C does not address this issue, TAPS cannot raise this argument at this juncture in the proceeding. *See, e.g., PJM Interconnection, LLC,* 126 FERC ¶ 61,030, at P 15 & n.10 (2009) (A request for rehearing of a new issue is outside the proper scope of the rehearing). *See also, Wholesale Competition in Regions with Organized Electric Markets,* 129 FERC ¶ 61,252, at P 9 & n.18 (2009).

[7] 18 C.F.R. 358.3(h).

operations.[8] The performance of a system impact study is not a transmission function so long as the performance of this system impact study is not carried out as part of day-to-day transmission operations, including the granting or denying of transmission service.[9]

9. TAPS is also incorrect that the Commission's clarification in Order No. 717-C concerning the performance of system impact studies created an inconsistency with its regulatory text. The definition of "transmission functions" includes "the planning, directing, organizing or carrying out of day-to-day transmission operations, including the granting and denying of transmission service requests."[10] "Transmission" is defined to include "the interconnection with jurisdictional transmission facilities."[11] Thus, the definition of transmission functions includes the planning, directing, organizing or carrying out of day-to-day interconnection operations with jurisdictional transmission facilities. Because of the limiting phrase "day-to-day transmission operations," TAPS is incorrect in its conclusion that "transmission functions" always include interconnection-related system impact studies.

10. Similarly, we deny TAPS's request that the information from system impact studies be made available on a non-discriminatory basis to all interested transmission customers. TAPS erroneously assumes that the Commission determined that system

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[8] *See* Order No. 717–C, 131 FERC ¶ 61,045 at P 11-17. *See also* Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 146-147.

[9] Order No. 717–C, 131 FERC ¶ 61,045 at P 17.

[10] 18 C.F.R. 358.3(h).

[11] 18 C.F.R. 358.3(f).

impact studies (or other studies) performed in response to interconnection requests are planning activities that may be conducted by marketing function employees. Marketing function employees may not perform system impact studies (or other studies) in response to interconnection requests since the studies would involve the use and analysis of non-public transmission information. As we stated in Order No. 717, planning personnel who do not qualify as marketing function employees may discuss information with transmission function employees.[12] However, we reiterated that the No Conduit Rule applied in this situation, stating that if transmission employees share transmission function information with planning personnel, the planning personnel may not pass such information on to marketing function employees. The clear implication of these statements is that while planning studies may be conducted by personnel who are not transmission function employees, marketing function employees may not participate in the preparation of studies which involve the use and analysis of non-public transmission information.[13]

11. We grant TAPS's clarification request that when an employee performs a system impact study in response to a transmission service request, that employee is a transmission function employee regardless of the duration of the requested transmission

[12] Order No. 717, FERC Stats. & Regs ¶ 31,280 at P 151.

[13] Order No. 717 specifically recognized that there are employees who are neither transmission function employees nor marketing function employees. *See, e.g.*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 174 ("Transmission function employees are no longer barred from interacting with all the employees of a marketing or energy affiliate (only marketing function employees)").

service. This clarification is consistent with our previous conclusion that the designation of an employee as a transmission function employee does not depend upon the duration of the requested transmission service.[14]

III. Document Availability

12. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (http://www.ferc.gov) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

13. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

14. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at

[14] *See Standards of Conduct for Transmission Providers*, Order No. 717-A, 74 Fed. Reg. 54,463 (Oct. 22, 2009), FERC Stats. & Regs. ¶ 31,297, at P 27 (2009).

(202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

IV. Effective Date

15. Changes to Order No. 717-C adopted in this order on rehearing and clarification are effective [insert date 30 days from publication in **FEDERAL REGISTER**].

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.