



Compliance with the Standards of Conduct in Accordance with Orders and Regulations of the Federal Energy Regulatory Commission

Procedure for Implementation of Standards of Conduct under Order No. 717

Updated November 13, 2009

I. GENERAL

This procedure updates the New York Power Authority's ("NYPA") implementation of the Standards of Conduct as revised by the Federal Energy Regulatory Commission ("FERC") in Order No. 717¹ issued on October 16, 2008, the successor order to earlier versions of the Standards of Conduct (or "SOC") for the electric utility industry which FERC first promulgated in 1996. The procedure is designed to ensure that each of NYPA's employees comply with Order No. 717.

The goals of compliance are ensuring that NYPA's employees observe the rules of non-discrimination, independent functioning, the "No Conduit" rule, and transparency, as set forth in the revised SOC at 18 C.F.R. Part 358 (2009).² NYPA commits itself to fully complying with the letter and intent of the SOC, as those regulations may be amended from time to time.

II. DESCRIPTION OF SOC REQUIREMENTS AND APPLICABLE IMPLEMENTATION PROCEDURE

A. Non-Discrimination Rule.

Requirements: Under the SOC, transmission providers must strictly enforce all tariff provisions; apply the tariff in a fair, impartial and not unduly discriminatory manner; prohibit undue preference to any person; and process all similar requests for service in the same manner and within the same period of time.³

Implementation Procedure: These requirements are met through NYPA's participation in the electricity markets administered by the New York Independent System Operator ("NYISO"). The NYISO administers its tariff in a non-discriminatory manner in compliance with the FERC Standards of Conduct.

¹ *Standards of Conduct for Transmission Providers*, 125 FERC ¶ 61,064 (2008) ("Order No. 717").

² *See also* Order No. 717 at pp. 152-166 (slip op.).

³ 18 C.F.R. § 358.4.

B. Independent Functioning Rule.

Requirements: The SOC require that a transmission provider's transmission function employees must function independently of its marketing function employees.⁴ The policy is designed to prevent granting any undue preference to a transmission provider's affiliated business entity.

Implementation Procedure: This is achieved through the separation of NYPA's marketing and transmission personnel on a functional basis. To an extent, this is achieved by physical separation. Transmission function employees, *i.e.* those involved in "the planning, directing, organizing or carrying out of day-to-day transmission operations,"⁵ are housed at NYPA's Clark Energy Center in Marcy, New York ("CEC"). NYPA's marketing functions, *i.e.* "the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, of electric energy or capacity, demand response or financial or physical transmission rights,"⁶ are carried out, for the most part in NYPA's White Plains Office ("WPO").

Note that physical separation is not a requirement to comply with the SOC.⁷ NYPA complies with the independent functioning requirement through the following additional means:

NYPA's Office of Ethics and Regulatory Compliance ("OERC") works with the Senior Vice President – Transmission to identify those positions that qualify as performing a transmission function as recognized by FERC (whether they be NYPA employees, contractors or consultants). OERC and the Senior Vice President – Transmission review and update this list of positions on a regular basis as those positions change, and never less than annually. All personnel changes within NYPA's Transmission Department are reviewed to determine if the position represents a transmission function under FERC's SOC. Both job descriptions and effective dates are recorded for purposes of the posting requirements under the SOC. Posting requirements are discussed under the Transparency Rule.

In addition, OERC receives weekly reports from NYPA's Human Resources Department of all personnel changes within the Transmission Department. OERC reviews these reports and compares it against the list of transmission function positions identified by the Senior Vice President – Transmission. This provides OERC an additional means to assure that all transmission function positions are identified.

⁴ 18 C.F.R. § 358.5.

⁵ 18 C.F.R. § 358.3 (h).

⁶ 18 C.F.R. § 358.3 (c).

⁷ Under the previously applicable Order No. 2004 and its related orders, FERC directed the physical separation of the marketing and transmission functions, as well as organizational separation. *See Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,155 (2003) ("Order No. 2004"). As this Procedure explains, physical separation of employees engaging in these functions is no longer required under Order No. 717. NYPA's current structure retains some vestiges of this physical separation.

1. *Restricting access to electronic information.* Employees engaged in the marketing functions do not have access, directly or indirectly, to non-public transmission system information. Access to transmission system data on NYPA's Energy Management System ("EMS") is restricted to transmission function employees *i.e.* those engaged in the transmission system operations or reliability functions on a day-to-day basis. Marketing function employees do not have access electronically or otherwise, to the EMS. Merchant function employees can access the same transmission system information available to other NYPA employees on NYPA's Intranet site, but that information is publicly available. In short, merchant function employees are granted the same access to information about NYPA's transmission facilities as are granted to other non-affiliated transmission customers.
2. *Prohibiting marketing function employees from conducting transmission functions,* and
3. *Prohibiting transmission function employees from conducting marketing functions.*

For both prohibitions listed in items 2 and 3 above, NYPA meets these requirements by conducting formal training on an annual basis to educate relevant NYPA personnel about these prohibitions, as well as through the development of a culture of compliance within the business units at NYPA that perform the marketing and transmission functions, respectively. Within Energy Resource Management ("ERM") which handles the bulk of NYPA's marketing function, and Transmission which handles NYPA's transmission function, directors and supervisors emphasize the importance of compliance with the SOC at monthly meetings and through informal discussions.

One facet of the formal training is to identify NYPA's marketing affiliates to make clear to NYPA employees where marketing functions are performed. Consistent with Order No. 717, NYPA has identified two affiliates (*i.e.* divisions within NYPA that operate as a functional unit) that retain marketing function employees. They are described as follows:

- The first is ERM which includes employees working on the WPO's "trading floor" who are engaged in day-to-day bidding of NYPA's energy resources for sale in the NYISO markets. They are also empowered to engage in virtual transactions in the NYISO.⁸ Other ERM personnel at the WPO are engaged in the sale of capacity in accordance with NYISO market guidelines.
- The second NYPA marketing affiliate is Marketing and Economic Development ("MED") which includes certain employees in the WPO who are engaged in negotiating and executing bilateral contracts for the sale of electricity to customers and managing that customer relationship. In addition, NYPA houses some MED employees at the CEC, who are empowered to engage in the sale of demand response in the NYISO markets.

⁸ At present, ERM is not actively pursuing virtual transactions in the NYISO markets.

Thus, employees in the ERM group, which is located on the 11th floor of the WPO, are physically remote from the CEC, the main unit housing NYPA's transmission function employees. The ERM employees are also denied physical access to that portion of the CEC facility. In addition, those ERM employees located on the 11th floor of the WPO are denied physical access to WPO's 6th floor, which houses a small group of transmission function employees engaged in transmission system operations and reliability. Gaining access to the aforementioned restricted locations requires the use of a coded access card.

Physical separation of these employee groups is no longer required under Order No. 717, and to the extent NYPA treats the denial of physical access as an element for compliance with the independent functioning rule, this is a vestige of NYPA's compliance with Order No. 2004.⁹ Under the revised Standards of Conduct, NYPA has the discretion to modify its practice with respect to physical separation, provided it maintains strict standards on maintaining the independent functioning requirements described in this section.

C. "No Conduit" Rule.

Requirements: Transmission providers or any employees, consultants or affiliates of a transmission provider are prohibited from disclosing non-public transmission function information to a transmission provider's marketing function employees.¹⁰ The policy is designed to prevent granting any undue preference to a transmission provider's affiliated business entity.

Implementation Procedure: Employees who are neither merchant function nor transmission function employees, but who may have access to non-public transmission function information need to be aware of this prohibition so that no improper sharing of information occurs.

Employees in many departments throughout NYPA (*e.g.* Law, Finance, Risk Management, Internal Audit, Information Technology) may gain access to non-public transmission function information in their professional capacity. Heads of most, if not all, NYPA business units may also have reason to come in contact with this transmission information.

NYPA's SOC training instructs these targeted employees that they cannot become the conduit for any impermissible disclosure. In addition, as discussed in reference to the independent functioning rule, the heads of the business units for Transmission and ERM reinforce these lessons through informal discussion with their employees.

D. Transparency Rule.

Requirements: NYPA is required to make numerous postings on its public Internet website to demonstrate compliance with the FERC Standards of Conduct.

⁹ See, *e.g.*, Order No. 2004 at P. 85.

¹⁰ 18 C.F.R. § 358.6.

Implementation Procedure: In accordance with 18 C.F.R. § 358.7 (a), NYPA has developed a reporting system to contemporaneously post instances in which non-public transmission function information has been disclosed contrary to the requirements of FERC’s SOC. All such instances are reported to the OERC, where they are reviewed in conjunction with NYPA’s Law Department. OERC is responsible for making such postings.

NYPA is also required to post the job titles and job descriptions of its transmission function employees, as well as detailed information about any transmission function employee who transfers to a position as marketing function employee, or any such transfer in the reverse direction.¹¹

Per the regulations, NYPA has made the required Internet postings concerning its marketing function affiliates, its facilities that house both transmission and marketing function employees,¹² as well as the posting of these Procedures.¹³ The regulations also require the posting of potential merger partners as affiliates that may employ or retain marketing function employees.¹⁴ However, no posting is needed to meet this requirement because NYPA, as a corporate municipal instrumentality and a subdivision of New York State, is not authorized to merge with other entities and establish an affiliate in same sense as private sector entities. NYPA does not otherwise have any other subdivisions within NYPA that would be potential “affiliates” within the meaning of the SOC.

In addition, NYPA management has adopted protocols to ensure that updates to the information required to be posted is made within seven days, except in the event of emergencies, as explained in the revised SOC.¹⁵

Note on Exclusions from Posting Requirement: Non-public transmission function information may be exchanged by transmission function employees and marketing function employees without the need for a posting when such information is necessary to comply with reliability standards, maintain or restore operation of the transmission system, or affect the dispatch of generating units.¹⁶ Such communications are not deemed a violation of the Standards of Conduct.¹⁷ Nonetheless, records of such communications must be retained for five years and made available to FERC upon request.¹⁸

¹¹ 18 C.F.R. § 358.7 (f) (1), (2).

¹² 18 C.F.R. § 358.7 (e).

¹³ 18 C.F.R. § 358.7 (d).

¹⁴ 18 C.F.R. § 358.7(e)(3).

¹⁵ 18 C.F.R. § 358.7 (g).

¹⁶ 18 C.F.R. § 358.7 (h) (2).

¹⁷ Order No. 717 at PP. 153, 174-76.

¹⁸ 18 C.F.R. § 358.7 (h) (1).

III. RELATED IMPLEMENTATION PROCEDURES

Designation of Chief Compliance Officer (“CCO”). NYPA has designated Joseph Gryzlo as Chief Compliance Officer who is responsible for full compliance with the Standards of Conduct, including the coordination of employee training, answering employee questions, and facilitating all audits and investigations initiated by FERC staff. Mr. Gryzlo’s office is located at 123 Main Street, White Plains, NY 10601. E-mail: Joseph.Gryzlo@nypa.gov. Telephone: (914) 681-6939. Contact information for the CCO is posted on NYPA’s Internet website, which is also consistent with the FERC’s postings requirements under Order No. 717.

Distribution of the SOC Implementation Procedure. The CCO shall provide a copy of this Procedure to corporate officers; employees performing transmission and marketing functions; and other such NYPA staff as deemed appropriate by the CCO. The distribution will be made either electronically or physically, and will also be accessible to all employees through NYPA’s Intranet website.

Training on the Standards of Conduct. The CCO shall coordinate, distribute and track NYPA’s annual training on the Standards of Conduct, which shall be directed to NYPA’s Trustees, officers, employees performing transmission and marketing functions, and numerous other employees who may have reason to conduct business with transmission function employees and may be privy to non-public transmission function information. The CCO will broadly interpret the universe of employees who should receive the training. New employees who fit into the above categories are required to take SOC training within the first 30 days of employment. Such training will be made available either electronically or through other appropriate means, and requires employees to certify electronically or in writing their completion of the training.

Consequences for Noncompliance. Individual employee actions that do not comply with the Standards of Conduct will be handled in a manner consistent with applicable provisions of NYPA’s collective bargaining agreements and/or NYPA’s Ethics & Compliance program and such other Human Resources and corporate policies as may apply.

Maintenance of Books and Records. NYPA is required to maintain its books of account and records as prescribed in FERC’s regulations. Transmission provider records must be kept separate from records of marketing affiliates. All such books and records must be made available for FERC inspections.