FERC Rules: Standards of Conduct for Transmission Providers (Order No. 717) and Gas/Electric Communications Rule (Order No. 787)
Introduction and Overview

• How these rules work
• How they affect and why they matter to LDCs
  • As affiliates of interstates
  • As shippers on interstates
  • As interconnecting entities
  • As investors in interstates
  • As limited jurisdiction FERC-jurisdictional service providers
History and Purpose of the Standards of Conduct

- Post-Order No. 436, concern about pipelines giving preferential treatment to marketing affiliates – Order No. 497 (1988).
- Statutory basis = NGA prohibition of undue discrimination and undue preference.
- Early 2000’s – concern about persistent violations, cross-industry integration, and “convergence mergers” – Order No. 2004 and corporate structural approach.
- Codified at 18 CFR Part 358.
FERC Order No. 717

Order No. 717 terms applied to natural gas industry:

- **Transmission Provider** — interstate pipelines and non-exempt interstate storage companies (not 311 pipelines or Hinshaw certificate holders)

- **Transmission Function Information** — confidential information about the ongoing, day-to-day, operations of the pipeline
  - Nominations, scheduled flow information
  - Outages, planned maintenance
  - Non-public customer information (i.e., requests for new service, credit information)
  - Operating information about interconnecting pipelines and customers
FERC Order No. 717, cont’d

• **Transmission Function Employees (TFE)**
  Personnel (including outside consultants, agents) engaged in the operation of the pipeline system on a day-to-day basis.
  - Includes executives, legal, marketing, commercial operations, engineering
  - Does not include sr. executives that don’t get personally and directly involved in operations, as well as field and clerical personnel

• **Marketing Function Employees (MFE)**
  Employees of the pipeline or its affiliates that are in the business of selling gas.
  - Includes employees of affiliates that do business on the pipeline
  - Other exemptions – production, gathering/processing sellers, **bundled retail and non-interstate pipeline on-system sellers** (important for LDCs)
FERC Order No. 717, cont’d

The SOC rules apply to transmission providers that have transportation transactions with an affiliate that is engaged in marketing functions.

Four Rules:
- The Non-Discrimination Rule
- The Independent Functioning Rule
- The No-Conduit Rule
- The Transparency Rule
The Non-Discrimination Rule

Transmission Providers must treat all prospective and existing customers, affiliated and unaffiliated, on a not unduly discriminatory basis and may not give undue preferences or advantages to anyone, or subject anyone to undue prejudice or disadvantage.
The Non-Discrimination Rule, cont’d

- Key Point – this is NOT just about affiliate preferences – it applies to all.
- Pipelines must enforce their tariffs strictly.
- If tariff discretion is permitted, the pipeline must apply that discretion fairly and impartially (*i.e.*, waivers).
- Similar requests for service must be processed in the same manner and within the same timeframe.
- No other undue preferences are allowed (such as preferential access to non-public information).
The Independent Functioning Rule

Transmission Function Employees must function separately from Marketing Function Employees.
The Independent Functioning Rule, cont’d

- This rule implements the prohibition on giving Transmission Function Information selectively to MFEs.
- Imposes limitations on communications, access to facilities, and information systems:
  - Building and control room access is restricted
  - Separate IT systems – password protections, firewalls
  - Separate books and records
  - Transmission Providers may have private customer meetings that include MFEs, but may not share Transmission Function Information at those meetings
The Independent Functioning Rule, cont’d

Special Exceptions:

- **Emergencies** – SOC rules can be broken in an emergency affecting system operations (i.e., a hurricane) – after-the-fact reporting and recordkeeping rules apply

- **Affiliate’s own request for service** – TFEs can communicate with MFEs about the MFE’s own service requests (need to exercise care)

- **Shipper’s authorization** – a shipper may give written consent for the Transmission Provider to share its non-public customer info with an MFE
The No-Conduit Rule

Transmission Provider personnel must not disclose – or use any third party to disclose – any non-public transmission function or customer information to an MFE.
The No-Conduit Rule, cont’d

This rule applies to **everybody** – not just TFEs

- Especially important for shared executives and other personnel who hold positions with both a Transmission Provider and an affiliate with MFEs and are not regularly involved in confidential transmission function activities (inadvertent disclosure risks)
- Transmission Providers should take special care with e-mail (i.e., large d-lists, forwarding)
The Transparency Rule

Transmission Providers must provide equal access to information that they are permitted to share, and must comply with FERC’s website posting requirements.
The Transparency Rule, cont’d

Required website postings:
• SOC implementation procedures
• TFE job titles
• SOC Affiliate information
• Shared facilities, employees

Time-sensitive postings:
• Prospective mergers – w/in 7 days, post info about merger partners as affiliates w/ MFEs
• Instances of non-compliance - immediately
• Employee transfers between TFE/MFE – 7 days
• Transportation discounts (to anyone, affiliated or not) – by first gas flow
• Waivers granted to affiliates – w/in 1 day
The Transparency Rule, cont’d

• Any non-public transmission function information disclosed to an MFE in violation of the rules *must be publicly posted for all.*
  
  • Exception – non-public customer information or information that must be kept confidential for security reasons (CEII), in which case the fact of the information disclosure must be posted, not the information itself.
Order No. 787
Pipeline-Electric Transmission Operator
Info Sharing

- Gas-electric coordination initiative.
- Purpose: To facilitate the voluntary sharing, by interstate pipelines and electric transmission providers/RTOs, of non-public information to help them maintain reliability of their systems and promote “operational planning.”
- Codified at
  - 18 CFR Section 38.2 for electric transmission providers
  - 18 CFR Section 284.12(b)(4) for interstate gas pipelines
Order No. 787, cont’d

- Applies to routine, day-to-day operations as well as emergency communications.
- No requirement to document what is shared, or to inform the generator or shipper whose information is shared.
- RTO-provided info may be shared with a pipeline’s transportation service marketing personnel (but sharing with gas marketing function personnel is prohibited).
- Info sharing is also subject to any applicable tariff rules.
Order No. 787 No Conduit Rule

- The recipient of Order No. 787 information cannot share it with any third party (including generator the information is about or an interconnected transmission provider such as an LDC) or its own MFEs.
- BROADER than SOC No-Conduit Rule
  - Applies to any third party, not just MFEs.
  - Applies to any non-public information received from transmission operator.
  - Does not permit sharing with other parties (including generators or connecting LDCs).
  - Has spawned a need for waivers issued to affiliated companies that share TFEs.
FERC Enforcement Actions

• SOC used to be a robust area of enforcement activity.
• In the past few years – very few reported cases, investigations, self-reports.
  • *Alliance Pipeline L.P.*, 141 FERC P 61,182 (2012).
  • *Columbia Gas Transmission, LLC*, 152 FERC P 61,089 (2015) (not SOC but might have been).
• **Anticompetitive conduct and conduct that threatens regulated market transparency remain top enforcement priorities for FERC’s Office of Enforcement.**
Questions?

Thank you!

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