



# FEDERAL ENERGY REGULATORY COMMISSION

**Date** March 20, 2008  
**Docket No.** RM07-1-000  
**Item No.** M-1

**Chairman Joseph T. Kelliher**

## **Statement of Chairman Joseph T. Kelliher on Standards of Conduct for Transmission Providers**

"Today the Commission issues a Notice of Proposed Rulemaking (NOPR) to reform the Standards of Conduct rule. This new approach should produce a Standards of Conduct rule that facilitates compliance, is amenable to fair enforcement, and establishes appropriate safeguards against undue discrimination and preference.

This is the second proposed rule we have issued to reform the Standards of Conduct rule in the past 14 months, and I suspect it will come as a surprise to market participants that the Commission has taken the unusual step of a complete change in approach from the prior NOPR that we issued. However, as we moved to issue a final rule, and took the time to think through the issues with a fresh perspective, we realized that the original proposed rule retained some of the significant flaws that marred Order No. 2004. In particular, the original proposed rule retained the corporate functional approach which led to so many implementation difficulties. Additionally, our proposal in the original NOPR to allow integrated resource planning actually added new complexities to a rule that already has a wealth of complexity. So on careful reconsideration, today's proposed rule shifts focus to the employee function approach rather than the corporate approach – a focus that I believe will better address the heart of the affiliate problems we are trying to prevent.

One of common viewpoints voiced at the November enforcement policy conference was that the Standards of Conduct rule is a model of complexity and presents a severe compliance challenge. Regulated companies that want to comply with the rule have been frustrated in their efforts.

Since issuance of the Standards of Conduct rule, the Commission has held no fewer than four technical conferences devoted to explaining operation of the rules. The bulk of the No Action Letter requests received by the Commission have involved the Standards. FERC has received so many calls regarding interpretation of the Standards that we were forced to post extensive "Frequently Asked Questions" on our website. Since the Standards were issued, FERC has received 107 requests for waivers, the bulk of which have been granted.

The consequences of confusing and complex regulatory requirements is much greater in wake of enactment of the civil penalty provisions of the Energy Policy Act of 2005. At the November enforcement conference, we discussed the responsibility of regulated companies to comply with FERC regulatory requirements. We also acknowledged the Commission has a duty to try to be clear in its regulatory requirements. The Standards of Conduct rule fails that test. It defies ready compliance. It also defies effective enforcement.

This proposed rule will narrow the scope of the Standards of Conduct rule so that it focuses on the relationship between transmission providers and marketing affiliates, rather than energy affiliates. This focuses the Standards of Conduct rule on the areas where there is the highest risk of affiliate abuse and



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undue discrimination. Importantly, unlike the prior proposed rule, this proposed rule will also focus on the actual functions that an employee performs rather than where he or she is listed on a corporate organization chart. While this is a significant change from our earlier NOPR, I believe it will allow us to better address undue discrimination and undue preferences that are barred by the Federal Power Act and Natural Gas Act and at the same time not unduly burden the industry. The Standard of Conduct rule as it is currently constituted burdens vertical integration beyond the point necessary to effectively guard against undue discrimination and preference. The new proposed rule strikes the right balance.

The new proposed rule also addresses the concerns of states regarding integrated resource planning by utilities, since planning personnel, regardless of where they are employed, will be able to receive and process both generation and transmission information. The new rule will enable us to effectively police affiliate abuse, while allowing transmission providers to efficiently run their business.

There probably never has been a FERC rule that posed as many challenges to compliance and enforcement as the Standards of Conduct rule. If we are serious about fairness in enforcement, we must correct the fatal flaws in this rule. That is our object today.

The fact that we are taking the time to issue a new proposed rule instead of issuing a final rule that we believe has flaws demonstrates our commitment to establishing rules that are capable of ready compliance. We are taking the time to get it right."

