

BPA Written Procedures for Implementing FERC Standards of Conduct



**Bonneville Power Administration
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Introduction

On October 16, 2008, the Federal Energy Regulatory Commission (FERC) issued Order No. 717, a final rule revising the Standards of Conduct for Transmission Providers. These procedures implement the Standards of Conduct and apply to interactions and communications between Marketing Function Employees and Transmission Function Employees, and Undesignated Employees with access to Transmission Function Information.

General Principles

The Standards of Conduct are designed to promote three basic principles. Terms are defined below.

1. **Independent Functioning:** BPA's Transmission Function Employees must function independently from Marketing Function Employees, unless limited exceptions apply.
2. **No Conduit Rule:** BPA and its employees, contractors, consultants and agents may not disclose, or use a conduit to disclose, nonpublic Transmission Function Information to its Marketing Function Employees.
3. **Transparency Rule:** BPA shall comply with SOC in a transparent manner through compliance with various posting requirements, and will provide equal access to nonpublic Transmission Function Information to all of its affiliated and nonaffiliated transmission customers.

Key Definitions

- A. **Employee** means any BPA employee, contractor, consultant or agent. All BPA employees are required to comply with FERC Standards of Conduct.
- B. **Chief Compliance Officer (CCO)** means the person BPA has authorized to direct a compliance program implementing BPA's compliance with FERC Standards of Conduct.
- C. **No Conduit Rule** means a transmission provider is prohibited from using anyone as a conduit for the disclosure of nonpublic Transmission Function Information to its Marketing Function Employees.
- D. **Nonpublic** means not posted on BPA's external website or Open Access Same-Time Information System or not otherwise simultaneously available to all transmission customers and potential transmission customers.
- E. **Transmission Provider** means any public utility that owns, operates or controls facilities used for the transmission of electric energy. BPA has agreed to comply with FERC Standards of Conduct requirements to the maximum extent allowed by its governing statutes.
- F. **Open Access Same-Time Information System (OASIS):** The real-time information sharing system used to communicate with customers, provide transmission system information, process requests for transmission service and post Standards of Conduct requirements.
- G. **Marketing Function** involves the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, of electric energy or capacity, demand response, virtual transactions, or financial or physical transmission rights, all as subject to an exclusion for bundled retail sales, including sales of electric energy made by providers of last resort (POLRs) acting in their POLR capacity.
- H. **Marketing Function Employee (MFE)** means an employee of the transmission provider who actively and personally engages on a day-to-day basis in marketing functions.
- I. **Transmission Function** involves the planning, directing, organizing or carrying out of day-to-day transmission operations, including the granting and denying of transmission service requests.

- J. **Transmission Function Employee (TFE)** means an employee, contractor, consultant, or agent of a transmission provider who actively and personally engages on a day-to-day basis in transmission functions.
- K. **Transmission Function Information** means information relating to transmission functions.
- L. **Undesignated Employee (UE)** means an employee that is not designated as a Transmission Function Employee or as a Marketing Function Employee.
- M. **SOC-Restricted Information** means nonpublic Transmission Function Information, including nonpublic transmission customer information.

1. Independent Functioning

Pursuant to FERC Standards of Conduct, except in emergency circumstances, BPA employees that direct, organize, or execute transmission system operations or reliability activities (Transmission Function Employees) must function independently of BPA's Marketing Function Employees (MFEs) engaged in wholesales power sales.

Undesignated Employees may interact freely with both MFEs and TFEs. There is no restriction on their interactions, apart from the No Conduit Rule's prohibition on the disclosure of nonpublic Transmission Function Information with MFEs.

A. Physical Separation and Access Restrictions

Standards of Conduct regulations require BPA to restrict MFEs' physical access to the transmission system control centers and to BPA facilities where transmission functions are performed. BPA maintains a strict policy restricting access to its control centers by all non-TFE employees (including Undesignated Employees and MFEs) and visitors. All visitor requests are processed consistent with the Cyber Security requirements. Access to TFEs' workspace is further restricted by security guards. All customers (including MFEs) and external visitors must sign in and be escorted at all times.

Transmission functions occur primarily in Vancouver, Washington. Marketing functions occur primarily in the headquarters building in Portland, Oregon. This physical separation of TFEs from MFEs supports compliance with the Independent Functioning Rule.

MFEs occupy workspace on the 5th floor of the headquarters building, which is restricted by key card access. Undesignated employees also are located on the 5th floor and may have access to SOC-restricted information. These employees have been trained in the No Conduit Rule.

B. Joint Meetings

Joint meetings between TFEs and MFEs are generally prohibited. Under the SOC, TFEs and MFEs are not permitted to interact for any business purpose, unless a specific exception applies (discussed in Section 3). Thus, TFEs and MFEs generally may only interact in the context of social or nonbusiness-related activities.

This issue is under rehearing at FERC now, and may be subject to change. For the time being, however, business-related interactions between TFEs and MFEs are prohibited unless one of the exceptions discussed on page 6 (Section 3) applies.

If employees believe that a joint meeting ought to occur, the meeting organizer is required to contact the Compliance Office. This will allow the Compliance Office to evaluate the need and purpose of the meeting to determine if it is allowable under one of the exceptions.

If a joint meeting is permitted, the meeting must be documented and the Compliance Office may impose other controls on the meeting to ensure that it meets SOC requirements. The documentation of the meeting may consist of handwritten or typed notes, electronic records such as e-mails and text messages, recorded telephone exchanges, and the like. The record must be provided to the CCO and will be retained for five years.

2. No Conduit Rule and Nondiscriminatory Information Access

FERC Standards of Conduct regulations prohibit the disclosure of SOC-restricted information to MFEs, and require BPA to provide equal access to SOC-restricted information to all transmission function customers, whether affiliated or not.

The No Conduit Rule prohibits BPA employees from disclosing or using anyone as a conduit to disclose SOC-restricted information to MFEs.

Transmission information is considered “public” and not restricted under SOC if the information is posted on BPA’s external website, posted on BPA’s OASIS or otherwise simultaneously available to all other BPA transmission customers or potential transmission customers.

If SOC-restricted information is disclosed to MFEs in contravention of this rule, then a posting must be made of the disclosure. If the information that was disclosed was nonpublic transmission customer information, BPA must immediately post notice that the information was disclosed. If the information that was disclosed was any other nonpublic transmission function information, then BPA must immediately post the information itself that was disclosed.

3. Exceptions to Independent Functioning and No Conduit Rules

The Standards of Conduct provide for several exceptions to the Independent Functioning and No Conduit Rules. These exceptions permit interactions between MFEs and TFEs and the disclosure of SOC-restricted information to MFEs.

- A. MFE’s Own Request for Transmission Service:** TFEs or Undesignated Employees may discuss with an MFE a specific request for transmission service submitted by the MFE. The discussion may include SOC-restricted information. BPA is not required to contemporaneously disclose or post such information if it relates solely to the MFE’s specific request for transmission service.
- B. Transmission Customer’s Voluntary Consent:** Transmission customers may voluntarily consent, in writing, to allow BPA to disclose the customer’s nonpublic information to MFEs. BPA must post notice of the consent on its website prior to any disclosure, along with a statement that it did not provide any operational or rate-related preferences in exchange for the voluntary consent. Voluntary consents are posted at www.bpa.gov/corporate/business/soc/. No other contemporaneous disclosure or posting is required.
- C. Information Pertaining to Compliance with Reliability Standards:** TFEs or Undesignated Employees may disclose to MFEs SOC-restricted information pertaining to compliance with Reliability Standards approved by FERC. This exception does not apply to proposed or potential reliability standards that have not yet been approved by FERC. A contemporaneous record must be made of any information exchanged under this exception. In emergency circumstances, a record of the exchange may be made as soon as practicable after the fact.
- D. Information Necessary to Restore or Maintain System Operation:** TFEs or Undesignated Employees may disclose to MFEs SOC-restricted information necessary to maintain or restore operation of the transmission system and generating units, or that may affect the dispatch of generating units. A contemporaneous record must be made of any information exchanged under this exception. In emergency circumstances, a record of the exchange may be made as soon as practicable after the fact.

When a contemporaneous record is required, the record may consist of handwritten or typed notes, electronic records such as e-mails and text messages, recorded telephone exchanges, and the like. The record must be provided to the CCO and will be retained for five years.

4. Training

All Transmission Function Employees and Marketing Function Employees, supervisors, officers, directors, and any other employees likely to become privy to Transmission Function Information must receive SOC training annually. New employees in these categories must receive training within the first 30 days of employment. Employees must certify in writing or electronically that they have completed the training when they have done so.

5. Open Access Transmission Tariff

The Standards of Conduct requires BPA to strictly enforce all OATT provisions that do not expressly provide for the use of discretion. BPA is required to post a notice of waiver whenever it waives any tariff provision for a customer.

6. Standards of Conduct Posting Requirements

FERC requires transmission providers to maintain specific information on their Internet website and may also post this information on OASIS. All information must be updated within seven business days of any change and must include the date on which the information was updated.

BPA is required to post the following information:

- A. Chief Compliance Officer:** BPA has designated the head of Agency Compliance and Governance as its Chief Compliance Officer (CCO). Contact information is posted on the internet and OASIS.
- B. Affiliate Information:** BPA has no affiliates. Its Marketing Function resides in the Power Services organization.
- C. Shared Facilities:** BPA posts the addresses and types of facilities shared by Merchant Function Employees and Transmission Function Employees.
- D. Transmission Function Employees:** BPA posts the position title and position description of all Transmission Function Employees.
- E. Transfers:** BPA posts any transfer of a TFE to a position as an MFE or an MFE to a position as a TFE. Postings include name of employee, job titles of both the vacated position and the new position, and the effective date.
- F. Written Procedures:** BPA posts these written procedures implementing the FERC Standards of Conduct.
- G. Voluntary Consents:** BPA posts notice of any voluntary consent provided by customers to authorize BPA to disclose nonpublic customer information to MFEs. BPA posts notice of the consent along with a statement that it did not provide any preferences, either operation or rate-related, to obtain the consent.
- H. Information Disclosures:** BPA must immediately post any disclosures of SOC-restricted information to an MFE, unless one of the exceptions discussed on page 6 (Section 3) applies. Disclosures should be reported immediately by calling the SOC helpline at 503-230-4677 or e-mailing the SOC mailbox at soc@bpa.gov.

7. Chief Compliance Officer

The Chief Compliance Officer is:

John Hairston Tel: 503-230-5262
Bonneville Power Administration jlhairston@bpa.gov
PO Box 3621, DG-7
Portland, OR 97208-3621

8. Questions and Inquiries

E-mail Standards of Conduct questions to: soc@bpa.gov

18 C.F.R. § 358

FERC Standards of Conduct Regulations

Title 18 – Conservation of Power and Water Resources

Chapter I – Federal Energy Regulatory Commission

Part 358 – Standards of Conduct

18 C.F.R. § 358.1 – Applicability

Applicability Regulation, 18 C.F.R. § 358.1(b): This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce and conducts transmission transactions with an affiliate that engages in marketing functions.

Applicability Regulation to RTOs and ISOs, 18 C.F.R. § 358.1(c): This part does not apply to a public utility transmission provider that is a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO). If a public utility transmission owner participates in a Commission-approved ISO or RTO and does not operate or control its transmission system and has no access to transmission function information, it may request a waiver from this part.

Applicability Regulation on Waivers and Exemptions, 18 C.F.R. § 358.1(d): A transmission provider may file a request for a waiver from all or some of the requirements of this part for good cause.

18 C.F.R. § 358.2 – General Principles

General Principle of Nondiscrimination, 18 C.F.R. § 358.2(a): A transmission provider must treat all transmission customers, affiliated and nonaffiliated, on a not unduly discriminatory basis, and must not make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage with respect to any transportation of natural gas or transmission of electric energy in interstate commerce, or with respect to the wholesale sale of natural gas or of electric energy in interstate commerce.

General Principle of Independent Functioning, 18 C.F.R. § 358.2(b): A Transmission Provider's employees engaged in transmission system operations must function independent from the employees of its Marketing and Energy Affiliates.

General Principle of Nondisclosure, 18 C.F.R. § 358.2(c): A transmission provider and its employees, contractors, consultants and agents are prohibited from disclosing, or using a conduit to disclose, nonpublic transmission function information to the transmission provider's marketing function employees.

SOC General Principle of Equal Access, 18 C.F.R. § 358.2(d): A transmission provider must provide equal access to nonpublic transmission function information to all its transmission function customers, affiliated and nonaffiliated, except in the case of confidential customer information or Critical Energy Infrastructure Information.

18 C.F.R. § 358.3 – Definitions

Affiliate, 18 C.F.R. § 358.3(a): Affiliate of a specified entity means:

- (1) Another person which controls, is controlled by or is under common control with, the specified entity. An affiliate includes a division of the specified entity that operates as a functional unit.
- (3) "Control" as used in this definition means the direct or indirect authority, whether acting alone or in conjunction with others, to direct or cause to direct the management policies of an entity. A voting interest of 10 percent or more creates a rebuttable presumption of control.

Internet Website, 18 C.F.R. § 358.3(b): the Internet location where an interstate natural gas pipeline or a public utility posts the information, by electronic means, required under this part 358.

Marketing Functions, 18 C.F.R. § 358.3(c):

(1) In the case of public utilities and their affiliates, the sale for resale in interstate commerce, or the submission of offers to sell in interstate commerce, of electric energy or capacity, demand response, virtual transactions, or financial or physical transmission rights, all as subject to an exclusion for bundled retail sales, including sales of electric energy made by providers of last resort (POLRs) acting in their POLR capacity.

Marketing Function Employee, 18 C.F.R. § 358.3(d): an employee, contractor, consultant or agent of a transmission provider or of an affiliate of a transmission provider who actively and personally engages on a day-to-day basis in marketing functions.

Open Access Same-Time Information System or OASIS, 18 C.F.R. § 358.3(e): the Internet location where a public utility posts the information, required by part 37 of this chapter, and where it may also post the information required to be posted on its Internet website by this part 358.

Transmission, 18 C.F.R. § 358.3(f): electric transmission, network or point-to-point service, ancillary services or other methods of electric transmission, or the interconnection with jurisdictional transmission facilities, under part 35 of this chapter.

Transmission Customer, 18 C.F.R. § 358.3(g): any eligible customer, shipper or designated agent that can or does execute a transmission service agreement or can or does receive transmission service, including all persons who have pending requests for transmission service or for information regarding transmission.

Transmission Functions, 18 C.F.R. § 358.3(h): the planning, directing, organizing or carrying out of day-to-day transmission operations, including the granting and denying of transmission service requests.

Transmission Function Employee, C.F.R. § 358.3(i): an employee, contractor, consultant or agent of a transmission provider who actively and personally engages on a day-to-day basis in transmission functions.

Transmission Function Information, C.F.R. § 358.3(j): information relating to transmission functions.

Transmission Provider, 18 C.F.R. § 358.3(k):

(1) Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce.

Transmission Service, C.F.R. § 358.3(l): the provision of any transmission as defined in information relating to § 358.3(f).

Waiver, C.F.R. § 358.3(m): the determination by a transmission provider, if authorized by its tariff, to waive any provisions of its tariff for a given entity.

18 C.F.R. § 358.4 – Nondiscrimination Requirements

Enforce all Tariff Provisions, 18 C.F.R. § 358.4(a): A transmission provider must strictly enforce all tariff provisions relating to the sale or purchase of open access transmission service, if the tariff provisions do not permit the use of discretion.

Apply all Tariff Provisions in a Nondiscriminatory Manner Where There is No Discretion, 18 C.F.R. § 358.4(b): A transmission provider must apply all tariff provisions relating to the sale or purchase of open access transmission service in a fair and impartial manner that treats all transmission customers in a not unduly nondiscriminatory manner, if the tariff provisions permit the use of discretion.

Nonpreferential Affiliate Treatment, 18 C.F.R § 358.4(c): A transmission provider may not, through its tariffs or otherwise, give undue preference to any person in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price, curtailments, scheduling, priority, ancillary services, or balancing).

Process all Similar Requests for Transmission in the Same Manner, 18 C.F.R § 358.4(d): A transmission provider must process all similar requests for transmission in the same manner and within the same period of time.

18 C.F.R. § 358.5 – Independent Functioning

General Rule of Independent Functioning, 18 C.F.R § 358.5 (a): Except as permitted in this part or otherwise permitted by Commission order, a transmission provider's transmission function employees must function independently of its marketing function employees.

Separation of Functions, 18 C.F.R § 358.5 (b):

- (1) A transmission provider is prohibited from permitting its marketing function employees to:
 - (i) Conduct transmission functions; or
 - (ii) Have access to the system control center or similar facilities used for transmission operations that differs in any way from the access available to other transmission customers.
- (2) A transmission provider is prohibited from permitting its transmission function employees to conduct marketing functions.

18 C.F.R. § 358.6 – No Conduit Rule

No Conduit Rule, 18 C.F.R § 358.6(a): A transmission provider is prohibited from using anyone as a conduit for the disclosure of nonpublic transmission function information to its marketing function employees.

Prohibited Disclosures of Nonpublic Transmission Function Information, 18 C.F.R § 358.6(b): An employee, contractor, consultant or agent of a transmission provider, and an employee, contractor, consultant or agent of an affiliate of a transmission provider that is engaged in marketing functions, is prohibited from disclosing nonpublic transmission function information to any of the transmission provider's marketing function employees.

18 C.F.R. § 358.7 – Transparency Rule

Contemporaneous Disclosure, 18 C.F.R § 358.7(a):

- (1) If a transmission provider discloses nonpublic transmission function information, other than information identified in paragraph (a)(2) of this section, in a manner contrary to the requirements of § 358.6, the transmission provider must immediately post the information that was disclosed on its Internet website.
- (2) If a transmission provider discloses, in a manner contrary to the requirements of § 358.6, nonpublic transmission customer information, critical energy infrastructure information (CEII) as defined in § 388.113(c)(1) of this chapter or any successor provision, or any other information that the Commission by law has determined is to be subject to limited dissemination, the transmission provider must immediately post notice on its website that the information was disclosed.

Exclusion for Specific Transaction Information, 18 C.F.R § 358.7(b): A transmission provider's transmission function employee may discuss with its marketing function employee a specific request for transmission service submitted by the marketing function employee. The transmission provider is not required to contemporaneously disclose information otherwise covered by § 358.6 if the information relates solely to a marketing function employee's specific request for transmission service.

Voluntary Consent Provision, 18 C.F.R § 358.7(c): A transmission customer may voluntarily consent, in writing, to allow the transmission provider to disclose the transmission customer's nonpublic information to the transmission provider's marketing function employees. If the transmission customer authorizes the transmission provider to disclose its information to marketing function employees, the transmission provider must post notice on its Internet website of that consent along with a statement that it did not provide any preferences, either operational or rate-related, in exchange for that voluntary consent.

Posting Written Procedures on the Public Internet, 18 C.F.R § 358.7(d): A transmission provider must post on its Internet website current written procedures implementing the standards of conduct.

Identification of Affiliate Information on the Public Internet, 18 C.F.R § 358.7(e):

- (1) A transmission provider must post on its Internet website the names and addresses of all its affiliates that employ or retain marketing function employees.
- (2) A transmission provider must post on its Internet website a complete list of the employee-staffed facilities shared by any of the transmission provider's transmission function employees and market function employees. The list must include the types of facilities shared and the addresses of the facilities.
- (3) The transmission provider must post information concerning potential merger partners as affiliates that may employ or retain marketing function employees, within seven days after the potential merger is announced.

Identification of Employee Information on the Public Internet, 18 C.F.R § 358.7(f):

- (1) A transmission provider must post on its Internet website the job titles and job descriptions of its transmission function employees.
- (2) A transmission provider must post a notice on its Internet website of any transfer of a transmission function employee to a position as a marketing function employee, or any transfer of a marketing function employee to a position as a transmission function employee. The information posted under this section must remain on its Internet website for 90 days. No such job transfer may be used as a means to circumvent any provision of this part. The information to be posted must include:
 - (i) The name of the transferring employee,
 - (ii) The respective titles held while performing each function (i.e., as a transmission function employee and as a marketing function employee),
 - (iii) The effective date of the transfer.

Timing and General Requirements of Postings on the Internet, 18 C.F.R § 358.7(g):

- (1) A transmission provider must update on its Internet website the information required by this part 358 within seven days of any change, and post the date on which the information was updated. A public utility may also post the information required to be posted under part 358 on its OASIS, but is not required to do so.
- (2) In the event an emergency, such as an earthquake, flood, fire or hurricane, severely disrupts a transmission provider's normal business operations, the posting requirements in this part may be suspended by the transmission provider. If the disruption lasts longer than one month, the transmission provider must so notify the Commission and may seek a further exemption for the posting requirements.
- (3) All Internet website postings required by this part must be sufficiently prominent as to be readily accessible.

Exclusion for and Recordation of Certain Information Exchanges, 18 C.F.R § 358.7(h):

- (1) Notwithstanding the requirements of §§ 358.5(a) and 358.6, a transmission provider's transmission function employees and marketing function employees may exchange certain nonpublic transmission function information, as delineated in § 358.7(h)(2), in which case the transmission provider must make and retain a contemporaneous record of all such exchanges except in emergency circumstances, in which case a record must be made of the exchange as soon as practicable after the fact. The transmission provider shall make the record available to the Commission upon request. The record may consist of handwritten or typed notes, electronic records such as e-mails and text messages, recorded telephone exchanges, and the like, and must be retained for a period of five years.
- (2) The nonpublic information subject to the exclusion in § 358.7(h)(1) is as follows:
 - (i) Information pertaining to compliance with Reliability Standards approved by the Commission, and
 - (ii) Information necessary to maintain or restore operation of the transmission system or generating units, or that may affect the dispatch of generating units.

Postings of Waivers, 18 C.F.R § 358.7(i): A transmission provider must post on its Internet website notice of each waiver of a tariff provision that it grants in favor an affiliate, unless such waiver has been approved by the Commission. The posting must be made within one business day of the act of waiver. The transmission provider must also maintain a log of the acts of waiver, and must make it available to the Commission upon request. The records must be kept for a period of five years from the date of each act of waiver.

18 C.F.R. § 358.8 – Implementation Requirements

Effective Date, 18 C.F.R. § 358.8(a): A transmission provider must be in full compliance with the standards of conduct on the date it commences transmission transactions with an affiliate that engages in marketing functions.

Compliance Measures and Written Procedures, 18 C.F.R. § 358.8(b):

- (1) A transmission provider must implement measures to ensure that the requirements of §§ 358.5 and 358.6 are observed by its employees and by the employees of its affiliates.
- (2) A transmission provider must distribute the written procedures referred to in § 357.7(d) to all its transmission function employees, marketing function employees, officers, directors, supervisory employees, and any other employees likely to become privy to transmission function information.

Training and Compliance Personnel, 18 C.F.R. § 358.8(c):

- (1) A transmission provider must provide annual training on the standards of conduct to all the employees listed in paragraph (b)(2) of this section. The transmission provider must provide training on the standards of conduct to new employees in the categories listed in paragraph (b)(2) of this section, within the first 30 days of their employment. The transmission provider must require each employee who has taken the training to certify electronically or in writing that s/he has completed the training.
- (2) A transmission provider must designate a chief compliance officer who will be responsible for standards of conduct compliance. The transmission provider must post the name of the chief compliance officer and provide his or her contact information on its Internet website.

Books and Records, 18 C.F.R. § 358.8(d): A transmission provider must maintain its books of account and records (as prescribed under parts 101, 125, 201 of this chapter) separately from those of its affiliates that employ or retain marketing function employees, and these must be available for Commission inspections.