



# **STANDARDS OF CONDUCT**

January 30, 2009



# Standards of Conduct Overview

- FERC Order No. 2004 effective September 22, 2004
- FERC issued a final rule on the revised Standards of Conduct on October 16, 2008 (Order No. 717)
- Implementation Posted on MP website and OASIS on January 30, 2009



## Standards of Conduct Overview (continued)

- Final rule adopts an employee functional approach to the Standards of Conduct
  - FERC clarified that the term Transmission Function refers to day-to-day operation of the transmission system.
  - FERC clarified that Marketing Function employees also are only those involved in day-to-day marketing activity.
  - FERC eliminated the concept of energy affiliates and therefore the category of shared services employees has been eliminated
  - Officers, Directors and Supervisors are no longer covered by the definition but are still subject to the No Conduit rule



# Definitions

## ➤ **Transmission Provider**

- Any public utility operating unit or division that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce
  - Includes Transmission Providers that are members of RTOs or ISOs (MP/SWLP)
  - MP is subject to the Standards of Conduct because as a MISO member we retain some control over:
    - Operation of and interconnection with transmission facilities and
    - Access to non-public transmission, customer or market information.

## ➤ **Marketing Affiliate**

- A public utility Transmission Provider's energy sales unit



# Functional Approach

- Shared Services employee category eliminated by the employee functional approach of the new Standards of Conduct rule
- Focus shifts to whether the employee's function is day-to-day transmission or marketing operation
  - Example: Attorney rendering legal advice may consult both Transmission Function employees and Marketing Function employees
  - Example: Risk Management employee may develop risk guidelines for both transmission and Marketing Function
  - All employees remain subject to No Conduit Rule



# Functional Approach (continued)

- Long range planning regarding transmission system is not included in the definition of Transmission Function
  - Independent functioning rule does not apply to employees in long range planning if they are not personally involved in day-to-day operation of the transmission system
- Transmission Function employees are no longer barred from interacting with all employees of marketing or energy affiliates
  - Interaction focuses now only on Marketing Function employees
- Generation dispatch employees specifically identified as a category that Transmission Function employees are no longer barred from interacting with



# Transmission Function

- Transmission Function applies to day-to-day transmission operations and not long range planning.
  - Definition includes planning, directing, organizing or carrying out day-to-day transmission operations, including the granting and denying of transmission service requests
  - Focuses definition on areas most susceptible to affiliate abuse
  - Rule modification acknowledges that long range activities (such as planned transmission lines) are likely already to be public information
  - Definition directed at short-term real-time operations



# Basic Requirements

- **A transmission provider must:**
- Function independently from Marketing Affiliate
- Treat all transmission customers on a non-discriminatory basis
- Not operate its transmission system to preferentially benefit its marketing Affiliate
- Ensure that employees of its Marketing Affiliate only have access to that information available to the Transmission Provider's transmission customers (public information)
- Post certain information on its public utility OASIS
- Disclosures by transmission system operations employees of transmission-related information not posted on the OASIS to marketing employees is prohibited
- Information Access: The Transmission provider must ensure that marketing employees have access only to information that is on the OASIS and available to all on a non-discriminatory basis





# Marketing Function

- Eliminated the prohibition that Marketing Function employees could not receive non-public transmission information
  - Hindered resource planning and integrated utility functions.
  - Hindered day-to-day integrated utility and day-to-day Transmission Function operations
  - FERC acknowledged that conveyance of non-public transmission information could be inadvertent so rule could be seen as overly broad and administratively infeasible
- FERC restricted definition of Marketing Function to include only sales rather than also purchases to more closely match the statutory prohibition from the transmission provider granting undue preference to its affiliate
  - Removing purchases allows utilities to conduct informational exchanges necessary to engage in integrated resource planning
  - Also eliminates former rules difficult application to executive personnel who have overall procurement responsibilities that include both transmission and marketing



# Marketing Function (continued)

- A supervisor or upper level manager is not a Marketing Function employee unless he or she oversees and provides input into negotiations of a transaction
  - Simple review of a contract over a specific dollar amount under corporate policy does not make the reviewer a Marketing Function employee
  - Focus again rests on whether the individual provides input or otherwise crosses a line to more day-to-day rather than supervisory activity



# No-conduit Rule

- Transmission providers prohibited from using anyone as a conduit for disclosure of non-public Transmission Function information to its Marketing Function employees
- Any employee, contractor, consultant or agent of the transmission provider or of the affiliate of a transmission provider engaged in Marketing Function is prohibited from disclosing non-public transmission information to any Marketing Function employee
- Prohibits Transmission Provider from using anyone to pass along the non-public transmission or customer information to a Marketing Affiliate



# No-conduit Rule (continued)

- FERC recognized that officers and directors need to have information from both transmission and marketing functions to carry out their fiduciary duties to the entity and its shareholders
- Any employee may receive transmission information so long as they observe the no-conduit rule by not disclosing information to the Marketing affiliate



# Joint Meetings

- The recording of any meetings and exchanges of information between transmission and Marketing Function employees clarified to focus only on certain information exchanges relating to day-to-day transmission operations
  - Information must be retained for 5 years
  - After the fact recording of information allowed in emergency circumstances
  - Thoroughness of notes or other records vary depending on nature and extent of the emergency



# Joint Meetings (continued)

- Transmission Function employees must not disclose any non-public information about the transmission system or other customer information
- Subject of meetings should be limited to topics specifically allowed for a shared discussion (such as transaction specific transmission request)
- Keep minutes of the joint meetings
  - Reinforces need to comply with the Standards of Conduct's information sharing prohibitions
  - Provides Transmission Provider ability to document its compliance with the information sharing prohibitions in the event of an audit, investigation or complaint



# Contemporaneous Disclosure

- FERC retained the requirement that the transmission provider must post disclosure of non-public Transmission Function information to a Marketing Function employee
  - Notice must only be that non-public transmission customer information was improperly disclosed. (FERC does not require the posting of the disclosure itself, in order to prevent further breach of confidentiality.)
  - Notice of disclosure applies to critical energy infrastructure.
  - Nonpublic transmission information does not pertain to disclosures in connection with requests for transmission service made by Marketing Function employees



# Posting Requirements

- If an improper disclosure is made, the Transmission Provider must immediately post the information on the OASIS
- FERC retained the requirement that the transmission provider post the names and addresses of all its affiliates that employ or retain Marketing Function employees
  - An organizational chart of affiliates is not necessary
- Required postings can now occur on the transmission provider's website since Minnesota Power like other members of MISO no longer have their own OASIS for posting of information





# Affidavit of Annual Training

- If you are viewing this presentation on line, you must complete the presentation's linked Affidavit of Standards of Conduct Training form or contact the Legal Services Department for an Affidavit of Standards of Conduct Training form.
- Please complete the form, and return original to Legal Services.