

**Procedure for Implementation of FERC Standards of Conduct**

Note: Revision # should be listed in descending order starting with most recent version at the top

Revision Date (For BCG Use Only)	Revision #	Description/Modification	Revision Section (s)	Author
5/28/2020	5	Formatting Updates  Updated Initialisms  Revised defined term, "Transmission function information"  Added Weekly Process for Identification of Employees	Throughout  Section 3  Section 5.1.2 Paragraph 1  Section 5.1.5	Alicia Baly-Hughes Compliance Officer
8/15/2019	4	Annual Review  Formatting Updates	Throughout	Alicia Baly-Hughes Compliance Officer
8/10/2016	3	Update requirement under the Standards of Conduct and Applicable Implementation of Procedure  Revision to description of Non-Discrimination Rule  Update to reflect removing of physical separation  Revisions of the role of the Office of Ethics and Compliance  Revisions to Business Unit Titles	Section 5.1.1  Section 5.1.1  Section 5.1.2  Section 5.1.2 Paragraphs 6, 7, 8; and Section 5.1.5  Section 5.1.2 Paragraph 4	Joseph Gryzlo Chief Ethics and Compliance Officer  Denise Baker-Evers Senior Compliance Officer

# Procedure for Implementation of FERC Standards of Conduct

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# Procedure for Implementation of FERC Standards of Conduct

## 1 PURPOSE AND SCOPE

This Procedure sets forth the New York Power Authority's (NYPA) implementation of the Federal Energy Regulatory Commission (FERC) Standards of Conduct (SOC).<sup>1</sup> The FERC Order No. 717<sup>2</sup> issued in 2008 established the current SOC Rule governing the electric utility industry. This Procedure is designed for the purpose of achieving NYPA's employees' full compliance with the SOC Rule.

## 2 APPLICABILITY

All NYPA employees and contractors are required to observe the Non-Discrimination, Independent Functioning, No Conduit and Transparency Rules, as set forth in both Order No. 717 and its progeny that comprise the SOC Rule,<sup>3</sup> and in the applicable regulations at 18 C.F.R. Part 358 (2015).<sup>4</sup> NYPA commits itself to fully complying with the letter and intent of the SOC Rule, as those regulations may be amended from time to time.

## 3 INITIALISMS (ACRONYMS) AND DEFINITIONS

AGILE - Advanced Grid Innovation Laboratory for Energy  
CO - Compliance Officer  
CCO - Chief Compliance Officer  
CEC - Clark Energy Center  
CES - Clean Energy Solutions  
CFR - Code of Federal Regulations  
ECC - Energy Control Center  
EDEE - Economic Development and Energy Efficiency  
EMS - Energy Management System  
ERM - Energy Resources Management  
FERC - Federal Energy Regulatory Commission  
iSOC - Integrated Smart Operation Center  
MFE - Marketing Function Employee  
LMS - Learning Management System  
NYISO - New York Independent System Operator  
NYPA - New York Power Authority  
OE&C - Office of Ethics and Compliance  
SOC - Standards of Conduct  
TFE - Transmission Function Employee  
WPO - White Plains Office

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<sup>1</sup> The acronyms used in this Procedure are defined in Section 3 of this Procedure.

<sup>2</sup> *Standards of Conduct for Transmission Providers*, FERC Stats. & Regs. ¶ 32,280 (2008) ("Order No. 717"), *order on reh'g and clarification*, FERC Stats. & Regs. ¶ 31,297 ("Order No. 717-A"), *order on reh'g and clarification*, 129 FERC ¶ 61,043 (2009) ("Order No. 717-B"), *order on clarification and reconsideration*, 131 FERC ¶ 61,045 (2010) ("Order No. 717-C"); *order on reh'g and clarification* 135 FERC ¶ 61,017 (2011) ("Order No. 717-D") (collectively, referred to hereinafter as the "SOC Rule").

<sup>3</sup> See n.2, *supra*.

<sup>4</sup> See also Order No. 717 (code of federal regulations sections included at end of order's text); Order No. 717-A (revisions to code of federal regulations sections included at end text).

## **4 RESPONSIBILITY**

Oversight and monitoring of this procedure will be carried out by NYPA's Chief Ethics and Compliance Officer in conjunction with NYPA's Compliance Officer.

## **5 PROCEDURE IMPLEMENTATION**

### **5.1 Procedure**

#### **5.1.1 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.<sup>5</sup>

Implementation Procedure: Because NYPA (like other New York transmission owners) has turned over transmission service operations to the New York Independent System Operator, Inc. (NYISO), NYPA helps satisfy the non-discrimination requirement by complying with the NYISO Open Access Transmission Tariff. NYPA does not administer transmission service requests as these are handled by the NYISO.

#### **5.1.2 Independent Functioning Rule**

Requirements: The SOC Rule requires that a transmission provider's transmission function employees (TFEs) must function independently of its marketing function employees (MFEs).<sup>6</sup> 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 in the following ways:

1. Restricting access to electronic information. MFEs are not allowed access, directly or indirectly, to non-public transmission system information. Transmission function information posted on the NYISO website is considered publicly available. Access to transmission system data in NYPA's Energy Management System (EMS) is restricted to TFEs (i.e. those engaged in the transmission system operations or reliability functions on a day-to-day basis). MFEs do not have access electronically or otherwise, to the EMS. MFEs can access the same transmission system information available to other NYPA employees on the NYISO website when that information is publicly available. In short, MFEs are granted the same access to information about NYPA's transmission facilities as are granted to other non-affiliated transmission customers, thereby avoiding granting an undue preference to NYPA's MFEs
2. Prohibiting MFEs from conducting transmission functions, and

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<sup>5</sup> 18 C.F.R. § 358.4.

<sup>6</sup> 18 C.F.R. § 358.5.

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### 3. Prohibiting TFEs 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 designated 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. The most affected units are the Commercial Operations Business Unit, which handles the bulk of NYPA's marketing function, and the Transmission Department, which handles NYPA's transmission function, whose 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 the SOC Rule, NYPA has identified two affiliates (i.e. divisions within NYPA that operate as a functional unit) that retain MFEs. They are described as follows:

- The first is ERM which includes employees working in NYPA's White Plains Office (WPO) "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.<sup>7</sup> Other personnel at the WPO are engaged in the sale of capacity in accordance with NYISO market guidelines.
- The second NYPA marketing affiliate is the Clean Energy Solutions (CES) Department 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 those customer relationships.

To an extent, compliance with the Independent Functioning Rule is achieved by physical separation. The vast majority of NYPA's TFEs, i.e. those involved in the planning, directing, organizing or carrying out of day-to-day transmission operations,<sup>8</sup> 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,<sup>9</sup> are carried out in the WPO.

4. Thus, ERM, which is located in the WPO, is physically remote from the CEC, the facility housing NYPA's TFEs. Furthermore, ERM employees who are MFEs are also denied physical access to NYPA's Energy Control Center (ECC), which is located at the CEC. This is in accordance with the SOC Rule, which prohibits MFEs from having access to the system control center or similar facilities used for transmission operations that differs from the access available to other transmission customers.<sup>10</sup>

5. NYPA's Office of Ethics and Compliance (OE&C) collaborates with the head of the Transmission Department to identify those positions that qualify as performing a transmission function as recognized by FERC (whether they be NYPA employees, contractors, contingent workers or consultants). OE&C and the Human Resources Department review and update this list of positions

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<sup>7</sup> WCO is not currently pursuing virtual transactions in the NYISO.

<sup>8</sup> 18 C.F.R. § 358.3 (h).

<sup>9</sup> 18 C.F.R. § 358.3 (c)(1).

<sup>10</sup> 18 C.F.R. § 358.5 (b)(1)(ii).

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on a regular basis as those positions change and additionally, the OE&C and the head of the Transmission Department review and update this list annually. All personnel changes within NYPA's Transmission Department are reviewed to determine if the position represents a transmission function under the SOC. Position titles, position numbers and job descriptions are recorded for purposes of the posting requirements under the SOC and archived in NYPA's Digital Warehouse. These FERC posting requirements are discussed under the Transparency Rule, below.

6. In addition, OE&C receives weekly reports from NYPA's Human Resources Department of all personnel changes within the Transmission Department. OE&C reviews these reports and compares it against the list of transmission function positions identified by the head of the Transmission Department. This provides OE&C a means to provide reasonable assurance that all transmission function positions are identified as required by the SOC Rule.

7. Additionally, although not required by the SOC Rule, NYPA's OE&C works with the appropriate supervisors of CES and ERM to identify those positions that qualify as performing a marketing function as recognized by FERC (whether they be NYPA employees, contractors, contingent workers or consultants). OE&C and the Human Resources Department review and update this list of positions on a regular basis as those positions change and additionally, the OE&C and the appropriate supervisors of the CES and ERM review and update this list annually. All personnel changes within NYPA's marketing departments are reviewed to determine if the position represents a marketing function under the SOC. Employee names, position titles and position numbers are recorded and provided to NYPA's marketing groups, the Director of Power System Operations at NYPA's ECC and Site Security at NYPA's CEC. This process serves to strengthen the internal controls in meeting compliance with the SOC.

### 5.1.3 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 MFEs.<sup>11</sup> The policy is designed to prevent granting any undue preference to a transmission provider's affiliated business entity.

Implementation Procedure: Employees who are neither MFEs nor TFEs, 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 or business units throughout NYPA (e.g. Legal Affairs, Financial Planning, Treasury, Risk Management, Internal Audit, and Technology & Innovation) 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 of non-public transmission information. In addition, as discussed in reference to the independent functioning rule, the heads of the business units for Transmission, CES and ERM reinforce these lessons through informal discussion with their employees.

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<sup>11</sup> 18 C.F.R. § 358.6.

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### 5.1.4 Transparency Rule

Requirements: NYPA is required to make various postings on its public internet website to demonstrate compliance with the FERC SOC.

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 Rule. All such instances are reported to the OE&C, where they are reviewed in conjunction with NYPA's Legal Affairs Department. OE&C is responsible for making such postings.

NYPA is also required to post the job titles and job descriptions of its TFEs, as well as detailed information about any TFE who transfers to a position designated as a MFE, or any such transfer in the reverse direction where a MFE transfers to a position designated as a TFE.<sup>12</sup>

In addition, NYPA management makes periodic updates to the information required to be posted within seven days of being notified by CEC Human Resources, except in the event of emergencies, as explained in the SOC Rule.<sup>13</sup>

As required by the regulations, NYPA has made the mandatory internet postings concerning its marketing function affiliates and of its facilities that house both TFEs and MFEs.<sup>14</sup> The regulations also require the posting of potential merger partners as affiliates that may employ or retain MFEs.<sup>15</sup> 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 the 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 Rule.

Note on Exclusions from Posting Requirement: Non-public transmission function information may be exchanged by TFEs and MFEs 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.<sup>16</sup> Such communications are not deemed a violation of the SOC Rule.<sup>17</sup> Nonetheless, records of such communications must be retained for five years and made available to FERC upon request.<sup>18</sup>

### 5.1.5 Related Implementation Requirements

Designation of Chief Compliance Officer (CCO). The position of CCO is within NYPA's OE&C and has the responsibility for overseeing compliance with the SOC, including the coordination of employee training, responding to employee inquiries, and facilitating all audits and investigations initiated by FERC

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<sup>12</sup> 18 C.F.R. § 358.7 (f)(1), (2).

<sup>13</sup> 18 C.F.R. § 358.7 (g).

<sup>14</sup> 18 C.F.R. § 358.7 (e).

<sup>15</sup> 18 C.F.R. § 358.7 (e)(3).

<sup>16</sup> 18 C.F.R. § 358.7 (h)(2).

<sup>17</sup> Order No. 717 at PP 153, 174-76.

<sup>18</sup> 18 C.F.R. § 358.7 (h)(1).

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staff. Contact information for the CCO is posted on NYPA's Internet website,<sup>19</sup> which is also consistent with the FERC's postings requirements under the SOC Rule.

Distribution of the SOC Implementation Procedure. The CCO, in coordination with OE&C staff, shall provide a copy of this Procedure to corporate officers; MFEs and TFEs; and other such NYPA staff as deemed appropriate by the CCO.<sup>20</sup> The distribution will be made either electronically or physically, and will also be accessible to all employees through NYPA's intranet. Likewise, this Procedure is posted on the NYPA Internet website as prescribed by FERC.<sup>21</sup>

**Training on the Standards of Conduct.** The CCO, in conjunction with OE&C staff, shall coordinate, distribute and track NYPA's annual training on the SOC, which shall be directed to NYPA's employees who perform transmission and marketing functions, Trustees, officers, supervisors, and various other employees who may have reason to conduct business with TFEs and may have access to non-public transmission function information. The OE&C, with assistance from the Legal Affairs Department, will monitor the SOC Rule and related regulations, as they may be modified from time to time, and make any necessary adjustments to NYPA's annual SOC training. 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 complete SOC training within the first 30 days of employment.<sup>22</sup> Such training will be made available either electronically or through other appropriate means, and requires employees to certify their training completion either electronically or in writing.<sup>23</sup>

Consequences for Noncompliance. Individual employee actions that do not comply with the SOC will be handled in a manner consistent with applicable provisions of NYPA's collective bargaining agreements, NYPA's Ethics & Compliance program and such other company and employee policies as may apply.

**Weekly Process for Identification of Employees to Receive Training.** The Compliance Officer (CO) maintains a FERC SOC trainee listing of all employees identified to receive training. On a weekly basis, the CO reviews the Human Resources Information Systems (HRIS) position change report to identify NYPA staff whose job responsibilities satisfy eligibility to receive electronic FERC SOC training. All employees identified are added to the current trainee list maintained by the CO. Staff that are identified as TFEs and MFEs, and others, including officers, directors, supervisory employees, interns, and any other employees and contractors likely to have access to transmission function information are added to the FERC SOC trainee list.

Employees are removed from the list if: (1) for any reason employment is terminated, or (2) a change in position results in their no longer performing transmission function duties or does not expose them to transmission function information. New and existing employees who are identified to be trained will be notified by email with a request to log in to their Mosaic LMS account and complete the FERC SOC training within two weeks of date of notice. A copy of the request is sent to the Technical Training group, which is responsible for loading the training material to the employees' LMS account.

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<sup>19</sup> 18 C.F.R. § 358.8 (c)(2).

<sup>20</sup> 18 C.F.R. § 358.8 (b)(2).

<sup>21</sup> 18 C.F.R. § 358.7 (d).

<sup>22</sup> 18 C.F.R. § 358.8 (c)(1).

<sup>23</sup> *Id.*



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With respect to SOC training for contractors/contingent workers, the CO reviews requests from Physical Infrastructure Security and Facility Management on an as-needed basis regarding any contractors/contingent workers recommended to receive training. The CO makes arrangements for a physical distribution of SOC training for those contractors. Upon completion, a NYPA Manager shall use the FERC SOC “Read and Sign” form to verify SOC training completion by the contractor/contingent worker and provide a copy to the CO.

**iSOC/AGILE Access.** For NYPA employees requesting access to the iSOC/AGILE workspace (or any contractors/contingent workers for whom such a request is made), the CO reviews such individuals to ensure they are not MFEs and to confirm whether he/she has received the FERC SOC training. (Note: MFEs cannot be granted access to iSOC/AGILE for functional separation reasons. iSOC/AGILE receives and maintains non-public and other business sensitive transmission system information.) If the individual has not completed the FERC SOC training, then the CO shall issue the training module and verify completion. If the individual has completed the FERC SOC training, then the CO shall notify the WPO Access Authorization Specialist and the originating iSOC/AGILE Manager that the individual has completed the training requirements and unescorted access may be authorized. A list of all contractors/contingent workers requesting access to iSOC/AGILE is maintained by the CO.

Annual reconciliation of the Mosaic LMS trainee inventory and the Excel FERC SOC list maintained by the CO shall be performed to verify that all identified trainees have completed the mandatory FERC SOC training.

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 inspection.

## 6 VIOLATIONS

Violations of this Procedure by employees may result in disciplinary action up to and including termination. Violations of this Procedure by contractors/contingent workers and other authorized third parties may result in the revocation of such party's access to NYPA's premises and/or electronic access to its systems, and the termination of such party's contract for services. In addition, where the conduct engaged in is illegal, violators may be subject to prosecution under applicable federal, state or local laws.

## 7 REFERENCES

N/A

## 8 PROCEDURE REVIEW AND EXPIRATION

This document will be reviewed and updated as business needs require. However, a mandatory review will be required on the anniversary date of the approved document.

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**Revision cycle: Every Other Year**

## **9 ATTACHMENTS**

N/A