

*Paragraph 39(d)(1).*

1. *Identification of covered person.* Section 226.39(d)(1) requires acquiring parties to provide their name, address, and telephone number. The party identified must be the covered person who owns the mortgage loan, regardless of whether another party has been appointed to service the loan or otherwise serve as the covered person's agent. In addition to providing a postal address and a telephone number, the covered person may, at its option, provide an address for receiving electronic mail or an internet web site address but is not required to do so.

*Paragraph 39(d)(3).*

1. *Identifying agents.* Under § 226.39(d)(3), the covered person must provide contact information for the agent or other party having authority to act on behalf of the covered person and who is authorized to receive legal notices on behalf of the covered person and resolve issues concerning the consumer's payments on the loan. Section 226.39(d)(3) does not require that a covered person designate an agent or other party, but if the consumer cannot use the covered person's contact information for these purposes the disclosure must provide contact information for an agent or other party that can address these matters. If multiple agents are listed on the disclosure, the disclosure shall state the extent to which the authority of each agent differs by indicating if only one of the agents is authorized to receive legal notices, or only one of the agents is authorized to resolve issues concerning payments. For purposes of § 226.39(d)(3), it is sufficient to provide a telephone number as the contact information provided that consumers can use the telephone number to obtain the mailing address for the agent or other person identified.

2. *Other contact information.* The covered person may also provide an agent's electronic mail address or internet web site address but is not required to do so.

*Paragraph 39(d)(4).*

1. *Recording location.* Section 226.39(d)(4) requires disclosure of the location where transfer of ownership of the debt to the covered person is recorded. If the transfer of ownership has not been recorded in public records at the time the disclosure is provided, the covered person complies with § 226.39(d)(4) by stating this fact. Whether or not the transfer has been recorded at the time the disclosure is made, the disclosure may state that the transfer "is or may be recorded" at the specified location.

2. *Postal address not required.* In disclosing the location where the transfer of ownership is recorded, the covered person is not required to provide a postal address for the governmental office where the covered person's ownership interest is recorded. The covered person also is not required to provide the name of the county or jurisdiction where the property is located. For example, it would be sufficient to disclose that the transaction is or may be recorded in the office of public land records or the recorder of deeds office "for the county or local jurisdiction where the property is located."

*39(e) Optional disclosures.*

1. *Generally.* Section 226.39(e) provides that covered persons may, at their option,

include additional information about the mortgage transaction that they consider relevant or helpful to consumers. For example, the covered person may choose to inform consumers that the location where they should send mortgage payments has not changed.

By order of the Board of Governors of the Federal Reserve System, November 13, 2009.

**Jennifer J. Johnson,**

*Secretary of the Board.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 358

[Docket No. RM07-1-002; Order No. 717-B]

#### Standards of Conduct for Transmission Providers; Order on Rehearing and Clarification

Issued November 16, 2009.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Order on rehearing and clarification.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) issued Order No. 717-A to make even clearer the Standards of Conduct as implemented by Order No. 717. This order addresses requests for rehearing and clarification concerning paragraph 80 of Order No. 717-A and whether an employee who is not making business decisions about contract non-price terms and conditions is considered a "marketing function employee."

**DATES:** *Effective Date:* This rule will become effective November 23, 2009.

**FOR FURTHER INFORMATION CONTACT:** Leonard Tao, Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8214.

#### SUPPLEMENTARY INFORMATION:

129 FERC ¶ 61,123

Before Commissioners: Jon Wellinghoff, Chairman; Sudeen G. Kelly, Marc Spitzer, and Philip D. Moeller.

#### I. Introduction

1. On October 16, 2008, the Commission issued Order No. 717 amending the Standards of Conduct for Transmission Providers (the Standards of Conduct or the Standards) to make them clearer and to refocus the rules on the areas where there is the greatest

potential for abuse.<sup>1</sup> On October 15, 2009, the Commission issued Order No. 717-A to address requests for rehearing and clarification of Order No. 717, largely affirming the reforms adopted in Order No. 717.<sup>2</sup> In this order, the Commission grants limited rehearing and clarification to address certain specific matters petitioners raised regarding one of the Commission's determinations in Order No. 717-A.

#### II. Discussion

##### *Independent Functioning Rule: Marketing Function Employees*

2. In paragraph 80 of Order No. 717-A, the Commission stated the following:

The Commission clarifies that an employee in the legal, finance or regulatory division of a jurisdictional entity, whose intermittent day-to-day duties include the drafting and redrafting of non-price terms and conditions of, or exemptions to, umbrella agreements is a "marketing function employee." "Marketing functions" are not limited to only price terms and conditions of a contract, because non-price terms and conditions of a contract could contain information that an affiliate could use to its advantage. For example, delivery or hub locations in a contract are non-price terms that could be used to favor an affiliate. In addition, negotiated terms and conditions could affect the substantive rights of the parties. For this reason, we decline to make a generic finding to limit "marketing functions" to only price terms and conditions, but will consider waiver requests concerning an employee whose intermittent duties involve drafting non-price terms and conditions.<sup>3</sup>

##### *Requests for Rehearing and Clarification*

3. Several parties have requested expedited clarification regarding paragraph 80 of Order No. 717-A.<sup>4</sup> Specifically, EEI and Western Utilities request that the Commission clarify that legal, finance, and regulatory personnel can be shared between an entity's transmission and marketing function units.<sup>5</sup> Similarly, Otter Tail and Central Vermont seek clarification that lawyers, finance, and regulatory personnel may continue to provide support to

<sup>1</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, 73 FR 63796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008) ("Order No. 717").

<sup>2</sup> *Standards of Conduct for Transmission Providers*, Order No. 717-A, 74 FR 54463 (Oct. 22, 2009), FERC Stats. & Regs. ¶ 31,297 (2009) ("Order No. 717-A").

<sup>3</sup> Order No. 717-A at P 80.

<sup>4</sup> Edison Electric Institute (EEI) Oct. 30, 2009 Request for Clarification at 7; The Western Utilities Compliance Group (Western Utilities) Nov. 2, 2009 Request for Clarification at 6; Otter Tail Power Company (Otter Tail) Nov. 10, 2009 Request for Clarification at 1; Central Vermont Public Service Corporation (Central Vermont) Nov. 12, 2009 Request for Clarification at 1.

<sup>5</sup> EEI at 7; Western Utilities at 6.

marketing function employees, including drafting and redrafting contract non-price terms, without being classified as marketing function employees.<sup>6</sup>

4. EEI also requests clarification that paragraph 80 in Order No. 717-A was “intended to convey that making business decisions about non-price terms and conditions can be a marketing function if the other ‘marketing function’ criteria are met.”<sup>7</sup>

5. If the Commission does not grant these requested clarifications prior to Order No. 717-A taking effect, EEI, Western Utilities, Otter Tail, and Central Vermont request that the Commission change the effective date of paragraph 80 until 90 days after the Commission issues an order addressing the merits of the issue.

#### *Commission Determination*

6. The Commission clarifies that the language in paragraph 80 of Order No. 717-A was overly broad. The Commission further clarifies that we intended to state in paragraph 80 of Order No. 717-A that an employee making business decisions about non-price terms and conditions can be considered a “marketing function employee” because that employee is actively and personally engaged in marketing functions. However, an employee who simply drafts or redrafts a contract, including non-price terms and conditions, without making business decisions is not a “marketing function employee.” In making our findings in paragraph 80 in Order No. 717-A, the Commission did not intend to depart from the finding in paragraph 131 in Order No. 717 that employees are not subject to the Independent Functioning Rule if they do not perform transmission functions or marketing functions or to depart from the following examples in P 131:

[If an attorney is rendering legal advice, he may consult with both transmission function employees and marketing function employees. Likewise, a risk management employee may develop risk guidelines for both transmission function employees and marketing function employees. And regulatory personnel may present before regulatory bodies filings that cover both transmission and marketing issues. Of course, all such employees would remain subject to the No Conduit Rule, and are prohibited from transmitting transmission function information to marketing function employees.<sup>8</sup>

7. In light of the above clarification to paragraph 80 of Order No. 717-A, we

will deny the petitioners’ request to extend the compliance date with respect to paragraph 80.

#### **III. Document Availability**

8. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC’s Home Page (<http://www.ferc.gov>) and in FERC’s Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

9. From FERC’s Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

10. User assistance is available for eLibrary and the FERC’s Web site during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or e-mail at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

#### **IV. Effective Date**

11. Changes to Order No. 717-A adopted in this order on rehearing and clarification are effective November 23, 2009.

By the Commission.

**Kimberly D. Bose,**  
*Secretary.*

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### **DELAWARE RIVER BASIN COMMISSION**

#### **18 CFR Part 410**

#### **Amendments to the Water Code and Comprehensive Plan To Implement a Revised Water Audit Approach To Identify and Control Water Loss**

**AGENCY:** Delaware River Basin Commission.

**ACTION:** Final rule.

**SUMMARY:** By Resolution No. 2009-01 on March 11, 2009, the Delaware River Basin Commission (“Commission” or “DRBC”) approved amendments to its Water Code and Comprehensive Plan to

implement an updated water audit approach to identify and control water loss in the Basin.

**DATES:** *Effective Date:* November 20, 2009. The incorporation by reference of the publications listed in this rule is approved by the Director of the Federal Register as of November 20, 2009.

*Applicability Date:* Commencing January 1, 2012, the owners of water supply systems serving the public with sources or service areas located in the Delaware River Basin must implement an annual calendar year water audit program conforming to the IWA/AWWA Water Audit Methodology and corresponding AWWA guidance. Commencing January 1, 2013, reported “non-revenue water” must be computed in accordance with the new methodology and guidance.

**FOR FURTHER INFORMATION CONTACT:** Pamela M. Bush, Commission Secretary and Assistant General Counsel by phoning 609-883-9500 Ext. 203, or by e-mail to [Pamela.Bush@drbc.state.nj.us](mailto:Pamela.Bush@drbc.state.nj.us).

**SUPPLEMENTARY INFORMATION:** The Delaware River Basin Commission (“Commission” or “DRBC”) is a federal-state regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four basin states—Delaware, New Jersey, New York, and Pennsylvania—and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government.

Notice of the proposed amendments appeared in the **Federal Register** (73 FR 44945) on August 1, 2008 as well as in the Delaware Register of Regulations on September 1, 2008 (12 DE Reg. 275-278 (09/01/2008)), the New Jersey Register (40 N.J.R. 4499) on August 4, 2008, the New York State Register (page 2) on August 20, 2008 and the Pennsylvania Bulletin (38 Pa. B. 4373) on August 9, 2008.

The amendments to the Comprehensive Plan and Article 2 of the Water Code finalized by the Commission on March 11, 2009 phase in a program requiring water purveyors to perform a water audit and report their findings in accordance with a new audit structure established by the American Water Works Association (AWWA) and the International Water Association (IWA). Effective January 1, 2012, the owners of water supply systems serving the public with sources or service areas located in the Delaware River Basin must implement an annual calendar year water audit program conforming to the IWA/AWWA Water Audit Methodology and corresponding

<sup>6</sup> Otter Tail at 1; Central Vermont at 1.

<sup>7</sup> EEI at 7-8.

<sup>8</sup> Order No. 717 at P 131.