

Order No. 717 Standards of Conduct: The Benefits For Your Company



Bruder, Gentile & Marcoux, L.L.P.
The Fifteenth Annual FERC Briefing:
Conducting Public Utility Business in Uncertain Times
March 5, 2009

Antonia A. Frost
Bruder, Gentile, & Marcoux, L.L.P.
1701 Pennsylvania Avenue, NW
Washington, D.C. 20006
202-296-1500
202-296-0627
aafrost@brudergentile.com

Order No. 717

~~Order No. 2004~~

- Issued:
 - October 16, 2008
- Compliance Dates:
 - November 26, 2008
 - January 30, 2009



The New World Order



- Order No. 717 made substantial changes in compliance obligations:
 - It reduced the scope of employees that are considered transmission and marketing employees.
 - It reduced the scope of information that cannot be shared with marketing employees.
 - It eliminated barriers to integrated resource planning.

How Can Your Company Benefit?

#1 - Consider reorganizing your marketing group



The Old World Order – Order No. 2004

- Marketing employees include employees engaged in purchases and sales for resale.
- Marketing groups cannot organize to reduce the scope of compliance because marketing includes both purchases and sales.



Purchases and Sales

The New World Order – Order No. 717

- Marketing employees include employees engaged in sales for resale and offers to sell; they do not include employees engaged in purchases and bids to buy.



Sales



Purchases

Reorganize Your Marketing Group

- Reorganize to reduce compliance obligations and reintegrate employees:
 - “Silo” or separate marketing employees who engage in sales for resale. Those marketing employees are subject to the Standards of Conduct and must not receive non-public transmission function information.
 - Identify marketing employees engaged in power purchases for retail and wholesale load. They are not subject to the Standards of Conduct, may receive all information, and can be reintegrated with transmission employees.

How Can Your Company Benefit?

#2 - Reassess opportunities for transmission and marketing employees to meet and share information



The Old World Order – Order No. 2004

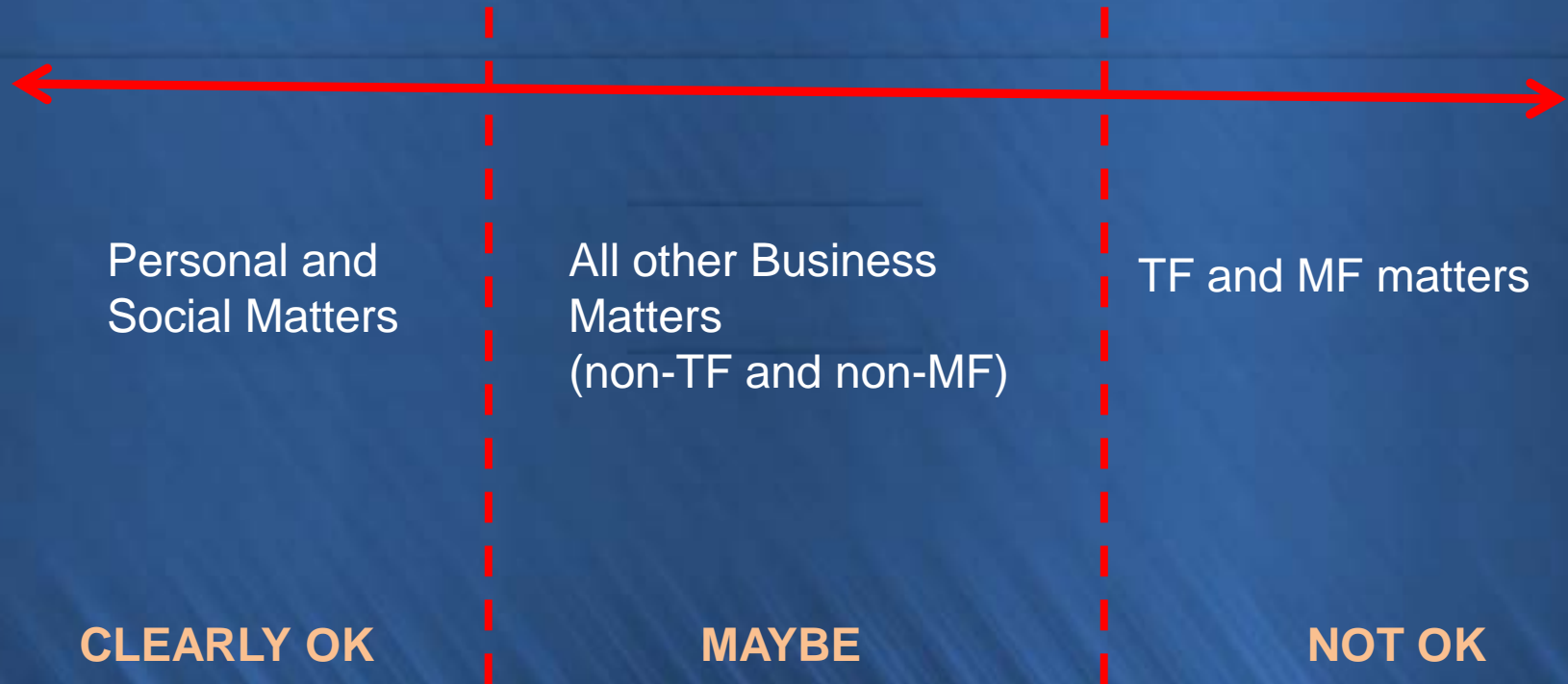
- The scope of transmission information that transmission employees cannot share with marketing employees was broadly defined.
- FERC audits penalized companies for joint meetings of transmission and marketing employees – even when there was no evidence that improper disclosures of information occurred.
- Companies eliminated nearly all joint meetings of transmission and marketing employees and instituted strict controls for remaining joint meetings.

The New World Order – Order No. 717

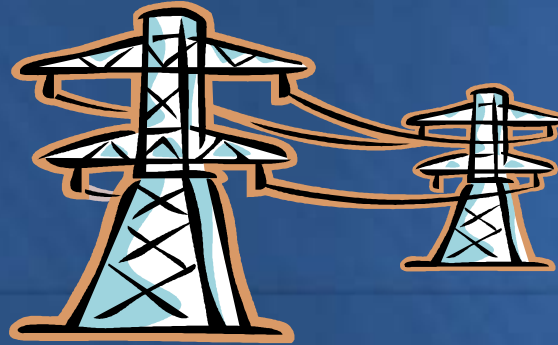
- The information that transmission employees cannot share with marketing employees is much more narrowly defined.
- They cannot share non-public transmission function information.
 - Defined as non-public information concerning the planning, directing, organizing or carrying out of day-to-day transmission operations, including the granting or denying of transmission service requests.
- Subject to the Independent Functioning Rule, transmission and marketing employees can meet (with appropriate controls) to share information that does not concern non-public transmission function information. Consult your legal counsel.

The New World Order – Order No. 717

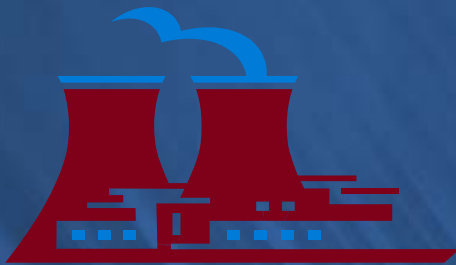
Communications/Meetings of Transmission Function (TF) and Marketing Function (MF) Employees



How Can Your Company Benefit?



#3 - Reassess your integrated resource planning process



The Old World Order – Order No. 2004

- Transmission planners were considered transmission employees.
- Integrated resource planners (IRP) were housed in either the transmission or marketing side of the house.
- If IRP was on the transmission side of the house, marketers could provide information to planners, but planners could not provide information to marketers.

The New World Order – Order No. 717

- Transmission planners are not transmission employees.
- Transmission planners and IRP do not need to be housed with transmission or marketing.
- An interactive IRP process is acceptable.
Marketers can provide information to planners and planners can provide information (except non-public transmission function information) to marketers.

Closing Thoughts

- The restrictive Order No. 2004 requirements are engrained in employees' minds – because of four years of training and compliance programs on Order No. 2004.
- With the guidance of the Compliance Officer or legal counsel, employees should be encouraged to reassess their compliance requirements.
- Order No. 717 presents new opportunities for companies to reintegrate, share information and reduce costs.