**65-407 PUBLIC UTILITIES COMMISSION**

**Chapter 308: STANDARDS OF CONDUCT FOR TRANSMISSION AND DISTRIBUTION UTILITIES AND AFFILIATED GENERATORS**

**SUMMARY**: This Chapter establishes standards of conduct applicable to investor-owned transmission and distribution utilities and affiliated generators

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**§ 1 PURPOSE OF RULE; APPLICATION**

This Chapter establishes standards of conduct governing the relationships and interactions between a transmission and distribution utility and an affiliated generator that are intended to eliminate the potential for these relationships and interactions to lead to adverse effects on ratepayers and the competitive electricity market. This Chapter applies to an affiliated generator that:

A. Owns or develops generation or generation-related assets in the ISO-NE or NMISA, power system;

B. Imports generation into the ISO-NE or NMISA power system;

C. Is directly interconnected to the ISO-NE or NMISA power system;

D. Takes any action or makes any plans toward future ownership or development of generation or generation-related assets in the ISO-NE or NMISA power system; or

E. Takes any action or makes any plans to import generation or become directly interconnected to the ISO-NE or NMISA power system.

**§ 2 DEFINITIONS**

* 1. **Affiliate**. Affiliate means a person who has any direct or indirect ownership interest in, or is a direct or indirect subsidiary of a person who has any ownership interest in, the investor-owned transmission and distribution utility, but does not include a wholly owned or partially owned direct or indirect subsidiary of the investor-owned transmission and distribution utility.
  2. **Affiliated Generator**. Affiliated generator means an affiliate of a transmission and distribution utility that owns or develops generation or generation-related assets in New England or that can import generation into New England.
  3. **Affiliated Interest**. Affiliated Interest has the same meaning as contained in Title 35-A.
  4. **Commission**. Commission means the Maine Public Utilities Commission.
  5. **Contractor**. Contractor means entities or individuals that are not employees of the transmission and distribution utility, an affiliated generator or an affiliated interest, but provides legal, consulting or other services to a transmission and distribution utility, an affiliated generator or an affiliated interest on matters related to the development and operation of transmission or generation.
  6. **Directly Interconnected**. Directly Interconnected means a physical electrical connection of a generator to a transmission and distribution utility's transmission and distribution assets that allows that generator to transport electric power across the transmission and distribution utility's electric plant.
  7. **FERC**. FERC means the Federal Energy Regulatory Commission.
  8. **FERC Standards of Conduct**. FERC standards of conduct means the regulations contained in 18 CFR Part 358.
  9. **ISO-NE**. ISO-NE means the Independent System Operator of the New England bulk power system or successor organization.
  10. **NEPOOL**. NEPOOL means the New England Power Pool or successor organization.
  11. **NMISA**. NMISA means the Northern Maine Independent System Administrator or successor organization.
  12. **Nodal LMP**. Nodal LMP means the locational marginal price within the ISO-NE energy market applicable to a generator.
  13. **Service Territory**. Service Territory means the geographic area in which a transmission and distribution utility is authorized to provide service based on a finding of need by the Commission or a legislative finding of need.
  14. **Transmission and Distribution Utility**. Transmission and distribution utility means an investor-owned transmission and distribution utility that has an affiliated generator.

**§3. AFILIATED GENERATOR PROHIBITED**

A. A transmission and distribution utility may not have an affiliate that owns generation or generation-related assets that are directly interconnected to any facilities owned or operated by the transmission and distribution utility or if the point of interconnection is within the service territory of the transmission and distribution utility.

1. A transmission and distribution utility may not wholly own or partially own a direct or indirect subsidiary that owns generation or generation-related assets.

**§ 4 STANDARDS OF CONDUCT**

1. **No Preference**. A transmission and distribution utility may not engage in preferential, discriminatory or other anticompetitive conduct, or in any way give an affiliated generator preference over other generators in matters relating to any product or service, including the generator interconnection process.
2. **Service Provided Without Discrimination**. All products and services provided by a transmission and distribution utility including the generation interconnection process, must be available to all generators on comparable terms and conditions and without undue or unreasonable discrimination.
3. **Posting**. A transmission and distribution utility may not sell or otherwise provide products or services to an affiliated generator without either simultaneously posting the offering electronically on the transmission and distribution utility's internet web site or otherwise making a sufficient offering to the market for that product or service. Provision of the product or service under the terms of a filed term and condition or tariff constitutes a sufficient offering.
4. **Requests for Products**. A transmission and distribution utility shall process all similar requests for a product or service related to generation or generation-related assets in the same manner and within the same period of time.
5. **No Tying**. A transmission and distribution utility may not condition or tie the provision of any product or service by the transmission and distribution utility to the provision of any other product or service in which an affiliated generator has an interest.
6. **Requests for Information**. A transmission and distribution utility shall process all similar requests for information from a generator in the same manner and within the same period of time. A transmission and distribution utility may not provide information to an affiliated generator without a request when information is made available to other generators only upon request. A transmission and distribution utility may not allow an affiliated generator preferential access to any nonpublic information regarding the transmission and distribution system, customers taking service from the transmission and distribution utility, or any other nonpublic information that the transmission and distribution utility has obtained that is not made available to all generators upon request. A transmission and distribution utility shall instruct all of its employees and contractors not to provide an affiliated generator preferential access to nonpublic information.
7. **Promotion of Affiliate; Joint Marketing**. Neither a transmission and distribution utility nor an affiliated generator may speak or give any appearance of speaking on behalf of the other. A transmission and distribution utility and an affiliated generator may not engage in joint advertising or marketing.
8. **Non-Public Information Sharing**. Employees or contractors of a transmission and distribution utility or an affiliated interest shall not share with employees or contractors of an affiliated generator any non-public information related to the development and operation of the transmission and distribution system or to the development or operation of generation or generation-related assets that was obtained through its operations unless the information is developed in connection with an ongoing generation interconnection request. Employees or contractors of an affiliated generator or an affiliated interest may not share any non-public information related to the development or operation of generation or generation-related assets with employees or contractors of the transmission and distribution utility. A transmission and distribution utility, an affiliated generator and an affiliated interest shall instruct their employees and contractors not to share such information prohibited by this subsection.
9. **Sharing of Employee; Contractors**. Employees of a transmission and distribution utility must be located in a separate building from the employees of an affiliated generator. Employees or contractors may not be shared between a transmission and distribution utility and an affiliated generator. An employee or contractor is considered to be shared if the employee or contractor performs work directly for both entities related to a particular transmission or distribution development or operation project or a generation development or operation project. The prohibition of sharing employees and contractors does not apply to general business support service such as billing, accounting, or other back-office functions. A transmission and distribution utility must provide, within 30 days, notice to the Commission of any employee transfers between the transmission and distribution utility and an affiliated generator. An employee who is transferred from an affiliated generator to the transmission and distribution utility cannot return to the affiliated generator for at least one year.
10. **Employee Compensation**. No component of a transmission and distribution utility employee compensation package (including bonuses) may be related to the financial performance of an affiliated generator. This provision does not prohibit employee compensation packages (including bonuses) that relate to the financial performance of the transmission and distribution utility’s parent company.
11. **FERC Standards of Conduct**. The FERC standards of conduct shall apply to all employees of transmission and distribution utilities and affiliated generators with respect to (1) non-public transmission operation, planning and development information and (2) non-public generation operation, planning and development information..
12. **Information Disclosure**. Transmission and distribution employees and contractors, affiliated interest employees and contractors may not disclose or use any conduit for the disclosure of non-public transmission and distribution information to any employee of an affiliated generator, nor use any such information to the undue advantage of an affiliated generator, regardless of whether those employees are considered market function employees under FERC standards of conduct. This provision does not apply in the event an affiliated generator makes an interconnection request to the transmission and distribution utility and the disclosure of confidential information is reasonably necessary to process the interconnection request. Any such information disclosed in connection with an interconnection request shall be used solely for the purpose of the interconnection request.
13. **Regional and Federal Forums**. The Commission may direct a transmission and distribution utility to provide information, including the rationale, for positions and votes taken in regional and federal forums including, but not limited to, the ISO-NE, NEPOOL, NMISA and FERC and associated committees.

N. **Transmission System Operation**. To the extent that a transmission and distribution utility, in its capacity as operator of the northern Maine transmission system, denies a transmission reservation request, orders a curtailment of a generator, or otherwise deviates from the NMISA balanced schedule, such activity must be reported to the Commission at the same time as reporting to NMISA. At the option of the Commission, after notice and opportunity for hearing, a transmission and distribution utility may be ordered to cease to serve as the operator of the Northern Maine transmission system.

O. **Books and Records**. A transmission and distribution utility, affiliated generators and affiliated interests shall keep separate books of account and records, which are subject to Commission review for the purpose of verifying compliance with this Chapter. Access to books and records pursuant to this provision includes books and records that predate the affiliated generator or affiliated interest becoming subject to this Chapter.

P. **No Subsidization**. A transmission and distribution utility may not subsidize the business of an affiliated generator.

Q. **Reorganization Approval**. Notwithstanding any prior Commission order to the contrary, a transmission and distribution utility must petition for reorganization approval pursuant to Title 35-A, section 708 for any reorganization that involves an affiliated generator.

R. **Complaint Log**. A transmission and distribution utility shall maintain a log of all resolved and pending complaints alleging violations of the standards of conduct contained in this Chapter, which are subject to Commission review.

**§ 5 ANNUAL CHAPTER 330 REPORTS**

1. **Annual Chapter 330 Reports**. A transmission and distribution utility that has one or more affiliated generators shall expand its Chapter 330 reports to include the following information:
   1. identification of all planned transmission substation work at the 69 kV level and above;
   2. identification of all planned construction or rebuilding (including reconductoring) of transmission lines at the 69 kV level and above;
   3. identification of the most likely potential alternative to each item in (1) and (2) above;
   4. identification of all existing generators or proposed generators that that would be materially affected by any projects referenced in the Report;
   5. based on existing interconnection or planning studies, explanation and analysis of how the generators and proposed generators identified in (4) may be affected by any projects that are referenced in the Report, including but not limited to, to the extent available, interconnection timing and cost, applicable transmission charges and nodal LMPs, any other factors that affect the access to and prices for the generator or proposed generator in the wholesale markets;
   6. a signed affidavit from the President and Chief Operating Officer of each transmission and distribution utility that he/she has reviewed the Chapter 330 Report with the person(s) responsible for its development and affirms that the utility has not planned or made any improvements to the transmission system with the intent of giving any existing or proposed generator preferential treatment nor with the intent of providing any ratepayer subsidy in terms of allocating the costs of any such improvements between generators and ratepayers.
2. **Investigation**. The Commission may commence a formal investigation into any project or planned improvement referenced in the Report if it determines that the project(s) could result in preferential treatment or other benefits for an affiliated generator or a financial interest generator. In the investigation, the Commission will determine whether the project(s) must receive prior approval or must be developed or owned by an affiliate and thus excluded from retail transmission rates. To the extent the Commission orders a transmission and distribution utility not to proceed with a project based on a finding of preferential treatment or other benefits for an affiliated generator of financial interest generator, the Commission may direct the transmission and distribution utility not to seek recovery of development costs associated with the project. To the extent the Commission finds that a project be cancelled or modified based on a finding of preferential treatment or other benefits for an affiliated generator or financial interest generator, the Commission may direct the transmission and distribution utility not to seek recovery of any costs from the FERC that resulted from the preferential treatment or other benefits.

**§ 6 COMMISSION JURISDICTION**

Affiliated generators and affiliated interests shall be subject to Commission jurisdiction with respect to compliance with this Chapter.

**§ 7 IMPLEMENTATION PLAN**

**Implementation Plan**. A transmission and distribution utility shall file with the Commission current written procedures implementing the standards of conduct established by this Chapter. The transmission and distribution utility, its affiliated generators and its affiliated interests shall provide every employee with a copy of the implementation plan and any amendments to the plan. The implementation plan must include procedures to train employees of the transmission and distribution utility, its affiliated generators and affiliated interests in procedures necessary to ensure compliance with this Chapter. For purposes of this provision, training requirements are limited to employees that have or may have access to confidential information that is subject to this Chapter.

1. **Effective Date**. An implementation plan takes effect 30 days after it is filed with the Commission unless the Commission suspends the effectiveness of all or part of the plan, in which case the suspended portion takes effect upon Commission approval*.*
2. **Changes**. A transmission and distribution utility shall file with the Commission any change to an implementation plan. A change to an implementation plan takes effect 30 days after the change is filed with the Commission unless the Commission suspends the effectiveness of all or part of the change, in which case the suspended portion takes effect upon Commission approval.
3. **Commission Investigation**. The Commission may open an investigation into a transmission and distribution utility's implementation plan or a transmission and distribution utility's compliance with its plan at any time and may order changes to be made in an implementation plan as a result of the investigation.

**§ 8 AUDITS**

An independent external audit of compliance with standards of conduct contained in this Chapter shall be completed every five years. The Commission shall develop the scope of the audit and select the auditor. The costs of the audit, including the Commission’s external costs of developing the scope of the audit shall not be recovered from ratepayers. In its discretion, the Commission may require audits more frequently.

**§ 9 ENFORCEMENT AND SANCTIONS**

1. **Sanctions and Administrative Penalties**. In the event that a transmission and distribution utility or an affiliated generator violates provisions of this Chapter, the transmission and distribution will be subject to sanctions and administrative penalties pursuant to the provisions of 35-A MRS Chapter 15.
2. **Divestiture**. The Commission may order divestiture of or by the transmission and distribution utility in the event the violation of provisions of this Chapter has resulted or will likely result in substantial injury to ratepayers or to the competitive generation market and upon a determination by the Commission after notice and opportunity to be heard that no other remedy is adequate to reasonably address the harm.

C. **Complaints**. A complaint may be brought for matters within the Commission's jurisdiction by an individual generator for acts or omissions of a transmission and distribution utility that are unreasonable, preferential, discriminatory or anticompetitive and the complaint will be treated in the same manner as a complaint otherwise brought by 10 persons as allowed by Title 35-A, section 1302;

**§ 10 LONG-TERM CONTRACTS**

An affiliated generator that does not have a Commission-approved long-term contract or term sheet pursuant to provisions contained in Title 35-A as of July 1, 2017 are ineligible for any long-term contract authorized in Title 35-A.

**§ 11 WAIVER OR EXEMPTION**

Upon the request of any person subject to this Chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director of Electric and Gas Industries, or the Presiding Officer assigned to a proceeding related to this Chapter may grant the waiver.

**BASIS STATEMENT:** The factual and policy basis for this rule is set forth in the Commission’s Order Adopting Provisional Rule and Statement of Factual and Policy Basis, Docket No. 2017-00262, issued on January 5, 2018, and Order Adopting Final Rule and Statement of Factual and Policy Basis, Docket No. 2017-00262, issued on May 24, 2018. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04330-0018.

**STATUTORY AUTHORITY**: 35-A M.R.S. §§ 104, 111, 3204(11) and Resolves 2017, Chapter 49

**EFFECTIVE DATE**: This rule was approved as to form and legality by the Attorney General on June 1, 2018. It was filed with the Secretary of State on June 4, 2018 (filing 2018-094), and becomes effective on July 4, 2018.