

147 FERC ¶ 61,229  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

Enable Gas Transmission, LLC and  
Enable Mississippi River Transmission, LLC

Docket No. RP14-453-000

ORDER ON WAIVER REQUEST

(Issued June 19, 2014)

1. On February 6, 2014, Enable Gas Transmission, LLC (EGT) and Enable Mississippi River Transmission, LLC (MRT) (Enable Pipelines) filed a request for a limited waiver of the No-Conduit Rule announced in Order No. 787<sup>1</sup> and codified at 284.12(b)(iv)(ii) of the Commission's regulations. The requested waiver is to permit employees shared by Enable Pipelines and their affiliated intrastate and gathering systems to receive non-public, operational information under Order No. 787. As discussed below, the Commission finds good cause to grant the requested waiver, subject to condition.

**I. Background**

2. On November 15, 2013, the Commission issued Order No. 787, which revised the Commission's regulations to provide explicit authority to interstate natural gas pipelines and public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to share non-public, operational information with each other for the purpose of promoting reliable service or operational planning on either the public utilities' or pipelines' system.<sup>2</sup> The Commission found that the revised regulations will help maintain the reliability of interstate pipeline and public utility

---

<sup>1</sup> *Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators*, Order No. 787, 78 Fed. Reg. 70,163 (Nov. 22, 2013), FERC Stats. & Regs. ¶ 31,350 (cross-referenced at 145 FERC ¶ 61,134 (2013)).

<sup>2</sup> See 18 C.F.R. 38.2 and 284.12(b)(4).

transmission service by permitting transmission operators to share information with each other that they deem necessary to promote the reliability and integrity of their systems.<sup>3</sup>

3. As a protection against the disclosure of shared non-public, operational information, including commercially sensitive, customer-specific information, Order No. 787 also adopted a No-Conduit Rule that prohibits subsequent disclosure of that information to a third party or a marketing function employee of the public utility or interstate pipeline. The Commission included the No-Conduit Rule to ensure that any non-public, operational information shared under the new rule remains confidential and that information is shared among transmission operators in a manner that is consistent with the prohibition on undue discrimination. Specifically, sections 38.3(b) and 284.12(b)(4)(ii) adopt a No-Conduit Rule that prohibits all public utilities and interstate pipelines, as well as their employees, contractors, consultants, or agents, from disclosing, or using anyone as a conduit for the disclosure of, non-public, operational information they receive under this rule to a third party. Sections 38.3(b) and 284.12(b)(4)(ii) similarly prohibit the disclosure of such non-public, operational information to the transmission operator's marketing function employees, as that term is defined in § 358.3 of the Commission's regulations. Order No. 787 held that the No-Conduit Rule applies to employees an interstate pipeline shares with affiliated gathering facilities or intrastate pipelines.<sup>4</sup> However, Order No. 787 stated that interstate pipelines could seek a waiver of the No-Conduit Rule, if the fact they share operational employees with Local Distribution Companies (LDCs) or other affiliates makes compliance difficult.<sup>5</sup>

## II. Instant Filing

4. Enable Pipelines state that EGT and MRT are regulated as interstate pipelines subject to the Commission's regulations.<sup>6</sup> Enable Pipelines state that EGT and MRT are wholly-owned subsidiaries of Enable Midstream Partners, LP (Enable Midstream), which is a limited partnership jointly owned by CenterPoint Energy, Inc., OGE Energy Corp., and ArcLight Capital Partners, LLC. Enable Pipelines state that Enable Midstream was formed when CenterPoint Energy merged its interstate pipelines and field services business with the midstream business of Enogex LLC, a subsidiary of OGE Energy Corp.

---

<sup>3</sup> In Order No. 787 and in this order, the Commission refers to interstate natural gas pipelines and public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce collectively as "transmission operators."

<sup>4</sup> Order No. 787, 145 FERC ¶ 61,134 at P 99.

<sup>5</sup> *Id.*

<sup>6</sup> Enable Pipelines Waiver Request at 3.

Enable Pipelines state that, as part of its overall business activities, Enable Midstream owns and operates approximately 8,000 miles of natural gas pipelines in Arkansas, Illinois, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas.

5. Enable Pipelines state that Enable Illinois Intrastate Transmission, LLC (IIT) is an Illinois intrastate pipeline within the meaning of Section 2(16) of the Natural Gas Policy Act of 1978 (NGPA).<sup>7</sup> Enable Pipelines state that, prior to July 30, 2013, IIT was known as CenterPoint Energy-Illinois Gas Transmission Company, LLC. IIT is a wholly-owned subsidiary of Enable Midstream.

6. Enable Pipelines state that Enable Oklahoma Intrastate Transmission, LLC (Enable Oklahoma) is an Oklahoma intrastate pipeline within the meaning of Section 2(16) of the NGPA.<sup>8</sup> Enable Pipelines state that prior to July 30, 2013, Enable Oklahoma was known as Enogex LLC. Enable Pipelines state that Enable Oklahoma is a wholly-owned subsidiary of Enable Midstream.

7. Enable Pipelines state that Enable Midstream currently shares a number of employees that serve in operational roles amongst the Enable Pipelines, IIT, Enable Oklahoma, and Enable Midstream's gathering and processing business. Enable Pipelines state that, for example, certain of the companies' system operations personnel, including those in system control, DOT compliance, measurement data processing, and commercial administration, have job functions that cover activities related to the interstate pipelines and non-jurisdictional entities. Enable Pipelines state that some of these shared employees, therefore, are likely recipients of information that an electric transmission operator might provide to the Enable Pipelines to address system operations issues and would be the employees with access to and knowledge of operationally salient information related to the transmission operator's interests.

8. Enable Pipelines request a limited waiver of the No-Conduit Rule in Order No. 787 to allow their employees to receive non-public, operational information provided under Order No. 787 by a public utility, even though those employees have intrastate pipeline and gathering responsibilities as well as interstate pipeline responsibilities.<sup>9</sup> Enable Pipelines state that the shared employees cannot presently receive information protected by Order No. 787 since they would by definition be deemed to be a conduit of information from an interstate pipeline to a third party.<sup>10</sup> Enable Pipelines state that if the

---

<sup>7</sup> *Id.* at 3 (citing 15 U.S.C. § 3301(16)).

<sup>8</sup> *Id.* at 4 (citing 15 U.S.C. § 3301(16)).

<sup>9</sup> *Id.* at 5-6.

<sup>10</sup> *Id.* at 1-2.

rule's application to these employees is not waived, then Enable Pipelines would have no choice but to elect to limit participation in the sharing of information that would be subject to the No-Conduit Rule.

9. Enable Pipelines contend that granting the limited waiver will encourage the robust communication intended under Order No. 787.<sup>11</sup> Enable Pipelines explain that employees of Enable Pipelines have participated in a variety of system modeling and roundtable discussion with the Midcontinent Independent System Operator, Inc. (MISO) and MISO periodically communicates with Enable Pipelines' operational personnel when there are potential system operational challenges, such as when there are severe weather conditions. Enable Pipelines state with the implementation of Order No. 787 they have become concerned that their access to such system-planning information received from MISO could create a compliance issue. Enable Pipelines state that receiving the requested waiver would allow them to continue to receive Order No. 787 information and alleviate their concerns.

10. Enable Pipelines also state that with the Commission's desire to encourage operational information-sharing and coordination between the electric and natural gas pipeline industries, Enable Pipelines expect that there will be an increased likelihood that those in the electric industry may reach out to Enable Pipelines' operational employees for long-term planning purposes as well as during times of increased demand on electric utilities and interstate pipelines. Enable Pipelines state that they would like to be able to engage in discussions with electric transmission operators as the Commission desired in implementing Order No. 787.

### **III. Notice, Interventions, and Answers**

11. Public notice of the filing was issued on February 10, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>12</sup> Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>13</sup> all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

---

<sup>11</sup> *Id.* at 6-7.

<sup>12</sup> 18 C.F.R. § 154.210 (2013).

<sup>13</sup> 18 C.F.R. § 385.214 (2013).

On February 18, 2014, the Indicated Shippers<sup>14</sup> filed an answer in opposition to Enable Pipelines' waiver request. On February 24, 2014, Enable Pipelines filed an answer to Indicated Shippers' answer.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibit answers to protests and answers to answers unless otherwise ordered by the decisional authority.<sup>15</sup> We will accept Indicated Shippers' and Enable Pipelines' answers because they have provided information that will assist us in our decision-making process.

13. Indicated Shippers argue that Enable Pipelines' request for waiver is overly broad, in that it does not limit the category of individuals to whom the waiver would apply.<sup>16</sup> Indicated Shippers are concerned that, as drafted, Enable Pipelines are seeking waiver of the entirety of the No-Conduit Rule for their shared employees, which could include those employees with marketing functions, as well as "third party" affiliate entities.<sup>17</sup> Indicated Shippers, as marketers and producers of gas, are concerned that they could be competitively harmed if Enable Pipelines or their affiliates' marketing function personnel received non-public, operational information while the Indicated Shippers did not.<sup>18</sup> Accordingly, the Indicated Shippers request the Commission leave in place the No-Conduit Rule for marketing function employees of the Enable Pipelines.

14. In their answer, Enable Pipelines state that their petition sought no relief from the Order No. 787 No-Conduit Rule as applicable to marketing function employees, nor did they request any waiver of the Commission's Standards of Conduct.<sup>19</sup>

#### **IV. Discussion**

15. As discussed below, the Commission grants Enable Pipelines' waiver request, subject to conditions. Order No. 787 held that the No-Conduit Rule applies to employees

---

<sup>14</sup> Indicated Shippers include: Anadarko Energy Services Company, Apache Corporation, BP Energy Company, ConocoPhillips Company, Cross Timbers Energy Services Inc., Marathon Oil Company, Shell Energy North America (US), L.P., and SWEPI LP.

<sup>15</sup> 18 C.F.R. § 385.213(a)(2) (2013).

<sup>16</sup> Indicated Shippers Answer at 1.

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.* at 4.

<sup>19</sup> Enable Pipelines Answer at 1-2.

an interstate pipeline shares with affiliated gathering facilities or intrastate pipelines.<sup>20</sup> However, Order No. 787 stated that interstate pipelines could seek a waiver of the No Conduit Rule, if the fact they share operational employees with LDCs or other affiliates makes compliance difficult.<sup>21</sup> Based on the information provided by Enable Pipelines, the Commission finds that good cause exists for granting Enable Pipelines a limited waiver of the No-Conduit Rule in Order No. 787 to permit employees shared by Enable Pipelines and their affiliated intrastate and gathering systems to receive non-public, operational information provided under Order No. 787. This limited waiver is subject to the condition that the shared employees do not engage in marketing functions as defined in section 358.3(c) of the Commission's regulations or otherwise make sales of natural gas. The shared employees receiving the information also may not use anyone as a conduit for the disclosure of non-public, operational information received from a public utility under the rule to: (1) a third party, (2) any marketing function employee of Enable Pipelines, or (3) any employee of their affiliates not authorized to receive the information pursuant to the terms of this waiver.

16. The Commission finds that granting this waiver, as conditioned, reasonably balances (1) Enable Pipelines' interest in allowing their shared employees to receive non-public, operational information from public utilities with (2) the need to avoid adverse competitive effects from the disclosure of commercially sensitive, customer specific information. Allowing shared employees involved in the operation of those pipelines to receive non-public, operational information from public utilities should minimize the burden of complying with the No-Conduit Rule and thereby help promote reliable service and operational planning by facilitating Enable Pipelines' receipt of relevant information from public utilities.

17. Further, the conditions we have imposed on the two waivers, particularly the requirement that the shared employees receiving information pursuant to the waivers not make natural gas sales, are necessary to avoid any adverse competitive effects as a result of the waivers. Under Order No. 787, the scope of information that may permissibly be shared is not limited to "transmission function information" covered under the Standards of Conduct.<sup>22</sup> Rather, the scope of information that may permissibly be shared under the rule is far broader and more competitively sensitive than transmission function information covered under the Standards of Conduct. For example, confidential, customer-specific information about natural gas generators, such as anticipated run times and gas purchases and scheduling decisions may be exchanged under Order No. 787. Prior to Order No. 787, the exchange of such non-public, operational information

---

<sup>20</sup> Order No. 787, 145 FERC ¶ 61,134 at P 99.

<sup>21</sup> *Id.*

<sup>22</sup> Order No. 787, 145 FERC ¶ 61,134 at P 97. *See also* 18 CFR 358.3(j) (2013).

between public utilities and natural gas pipelines, whether interstate or intrastate or LDCs, generally did not take place.<sup>23</sup> Electric and natural gas pipeline transmission operators stated that there was general reluctance to share non-public, operational information because of concerns that doing so could be a violation of current laws, regulations or tariffs, including the Commission's prohibition on undue discrimination.<sup>24</sup> Numerous parties also raised concerns about the potential competitive effects of such disclosure.<sup>25</sup>

18. While Enable Pipelines agree not to disclose shared information to any marketing function employee, we find that agreement insufficient to protect the commercially sensitive, non-public information that may be shared under Order No. 787. The definition of "marketing function employee" in the Standards of Conduct includes various exemptions such that employees which Enable Pipelines share with their intrastate pipeline, gathering, and processing affiliates may not qualify as marketing function employees, despite the fact they make natural gas sales. For example, an intrastate pipeline's on-system natural gas sales and a gatherer's sales of natural gas solely from its own gathering or processing facilities are exempted from the definition of marketing function.<sup>26</sup> We are concerned that with preferential access to confidential, customer-specific information, including information about future usage, any employee that makes natural gas sales could use it to the competitive disadvantage of the customer, as well as other gas marketers.

---

<sup>23</sup> PJM Interconnection, L.L.C., Docket No. ER14-1469-000 (Mar. 12, 2014) (filing to amend PJM's confidentiality rules to allow PJM to share non-public, operational information with natural gas pipeline operators, consistent with the Commission's regulations adopted in Order No. 787); *Cal. Indep. Sys. Operator Corp.*, Docket No. ER12-278-000 (Dec. 8, 2011) (delegated letter order) (filing to revise tariff to permit the CAISO to share generation and transmission outage information with utilities operating natural gas pipelines, pursuant to non-disclosure agreements).

<sup>24</sup> See Order No. 787, 145 FERC ¶ 61,134 at P 4. See also *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,003 (2014); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,033 (2014).

<sup>25</sup> See, e.g., Order No. 787, 145 FERC ¶ 61,134 at P 16, 28 (summarizing comments).

<sup>26</sup> See 18 C.F.R § 358.3(c)(2)(iv) and (v) (2013).

The Commission orders:

The requested waiver is granted, as discussed above.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.