

148 FERC ¶ 61,131
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transcontinental Gas Pipe Line Company, LLC

Docket No. RP14-623-000

ORDER ON WAIVER REQUEST

(Issued August 18, 2014)

1. On March 14, 2014, Transcontinental Gas Pipe Line Company, LLC (Transco) filed a request for a limited waiver of the application of the No-Conduit Rule in Order No. 787¹ to operational personnel shared by Transco and Cardinal Pipeline Company, LLC (Cardinal), its affiliated intrastate pipeline. As discussed below, the Commission finds good cause to grant the requested waiver, subject to conditions.

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.² The Commission found that the revised regulations will help maintain the reliability of interstate pipeline and public utility 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.³

¹ *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)).

² See 18 C.F.R. 38.2 and 284.12(b)(4) (2014).

³ 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."

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 38.2(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 38.2(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(d) 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.⁴ 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.⁵

II. Details of the Filing

4. Transco states that Cardinal is a 105-mile intrastate pipeline that extends from Rockingham County, North Carolina to a point southeast of Raleigh, North Carolina. Transco states that Cardinal is regulated by the North Carolina Utilities Commission and one hundred percent of the natural gas it transports is received at a single interconnect with Transco. Transco states that it indirectly holds a forty-five percent ownership interest in Cardinal. Transco states that Cardinal provides transportation service to two LDCs in North Carolina.

5. Transco states that Cardinal does not have any employees. Transco states that Cardinal Operating Company, LLC (Cardinal Operating), a wholly-owned subsidiary of Transco, serves as operator of Cardinal and Cardinal Operating generally relies on Transco personnel to perform the duties and provide the services needed to operate and administer the day to day affairs of Cardinal. Transco states that the gas control, customer service, and transportation service functions are performed by operational personnel shared by and between Transco and Cardinal. Transco states that shared personnel also perform the regulatory, accounting, field operations, and other necessary

⁴ Order No. 787, 145 FERC ¶ 61,134 at P 99.

⁵ *Id.*

business and operating functions for both entities. Transco states that, although the shared personnel cover several different business and operating functions, Transco personnel typically expend minimal time performing services for Cardinal relative to their other duties.

6. Transco requests a waiver of the application of the No-Conduit Rule to operational personnel shared by Transco and Cardinal. Transco states that the No-Conduit Rule would prohibit Transco from disclosing non-public, operational information received under Order No. 787 to Cardinal. Transco states that since Transco and Cardinal share operational personnel, compliance with the No-Conduit Rule would require Cardinal to retain and to segregate new operational personnel to conduct the operations for Cardinal heretofore conducted by personnel shared with Transco to the extent that the shared personnel come into possession of non-public, operational information as a result of a disclosure to Transco under Order No. 787. Transco states that compliance with the No-Conduit Rule would eliminate the very operational and economic efficiencies generated by the personnel shared by Transco and Cardinal.

7. Transco further states that, since Cardinal provides natural gas transportation service (and not electric transmission service) to two LDC customers (not electric transmission operators), the sharing of non-public, operational information provided by an electric transmission operator will neither benefit Cardinal nor confer an advantage or disadvantage to any Cardinal customer or competitor.

8. Lastly, Transco asserts that none of the personnel shared by Transco and Cardinal are marketing function employees, as defined under the Standards of Conduct. Transco further states that Transco and Cardinal will continue to enforce the No-Conduit Rule with respect to any marketing function employees and any third parties.

III. Public Notice

9. Public notice of the filing was issued on March 18, 2014. Interventions and protests were due as provided by section 154.210.⁶ Pursuant to Rule 214,⁷ all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before the 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. No protests or adverse comments were filed.

⁶ 18 C.F.R. § 154.210 (2014).

⁷ 18 C.F.R. § 385.214 (2014).

IV. Discussion

10. As discussed below, the Commission grants Transco's waiver request, subject to conditions. Order No. 787 held that the No-Conduit Rule applies to employees an interstate pipeline shares with affiliated gathering facilities or intrastate pipelines.⁸ 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.⁹ Based on the information provided by Transco, the Commission finds that good cause exists for granting Transco a limited waiver of the No-Conduit Rule in Order No. 787 to permit employees shared by Transco and Cardinal 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 Transco; or (3) any employee of their affiliates not authorized to receive the information pursuant to the terms of this waiver.

11. The Commission finds that granting this waiver, as conditioned, reasonably balances: (1) Transco's interest in allowing its 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 the 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 Transco's receipt of relevant information from public utilities.

12. Further, the conditions we have imposed on the 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.¹⁰ Rather, the scope of information that may permissibly be shared under the rule is far broader and more competitively sensitive than transmission function

⁸ Order No. 787, 145 FERC ¶ 61,134 at P 99.

⁹ *Id.*

¹⁰ Order No. 787, 145 FERC ¶ 61,134 at P 97. *See also* 18 C.F.R. § 358.3(j) (2014).

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 between public utilities and natural gas pipelines, whether interstate or intrastate or LDCs, generally did not take place.¹¹ 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.¹² Numerous parties also raised concerns about the potential competitive effects of such disclosure.¹³

13. While Transco agrees 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 Transco shares with its intrastate pipeline affiliate 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 are exempted from the definition of marketing function.¹⁴ Thus, as described above, we grant the requested waiver, subject to condition, to address our concern that with preferential access to confidential, customer-specific 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.

¹¹ *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,105 (2014) (order concerned 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).

¹² See Order No. 787, 145 FERC ¶ 61,134 at P 4. See also *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,003 (2014).

¹³ See, e.g., Order No. 787, 145 FERC ¶ 61,134 at PP 16, 28 (summarizing comments).

¹⁴ See 18 C.F.R. § 358.3(c)(2)(iv) and (v) (2014).

The Commission orders:

The requested waiver is granted, as discussed above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.