

149 FERC ¶ 61,122
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket No. ER14-2895-000

ORDER ON TARIFF FILING

(Issued November 14, 2014)

1. On September 17, 2014, pursuant to section 205 of the Federal Power Act,¹ the New York Independent System Operator, Inc. (NYISO) filed a revised tariff record² to its Open Access Transmission Tariff (OATT) to allow NYISO to share confidential information concerning natural gas-fueled generation with the operating personnel of interstate natural gas pipeline companies, intrastate natural gas pipeline companies, and natural gas local distribution companies (LDCs) to conform with the Commission regulations adopted in Order No. 787.³ As discussed below, we accept the revised tariff record, subject to conditions, effective November 17, 2014 as requested.

I. Background

2. In Order No. 787, the Commission revised its 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'

¹ 16 U.S.C § 824d (2012).

² New York Independent System Operator, Inc., NYISO Tariffs, [NYISO OATT, 12.4 OATT Att F Treatment Of Confidential And Transmission S, 3.0.0.](#)

³ *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 (2013) (cross-referenced at 145 FERC ¶ 61,134 (2013), *order on reh'g*, Order No. 787-A, 147 FERC ¶ 61,228 (2014) (collectively, Order No. 787).

systems. Order No. 787 also prohibited such recipients of non-public, operational information from subsequently disclosing that information to third parties or marketing function employees as defined in section 358.3(d) of the Commission's regulations. However, the Commission stated that Order No. 787 does not supersede any existing tariff provisions. With respect to communications between transmission operators and LDCs, the Commission stated that the rule does not affect the ability of an electric transmission operator to share its own information with an LDC, if otherwise permitted under its tariff. In addition, the rule does not prohibit electric transmission operators from sharing non-public, operational information received from an interstate pipeline pursuant to this rule with LDCs, if otherwise provided for in tariff provisions approved by the Commission.⁴ Thus, to the extent a transmission operator wants to take advantage of the explicit authority provided under Order No. 787, and that transmission operator has tariff provisions prohibiting the communications, it must first make a section 205 filing with the Commission to revise the relevant tariff provisions to permit such sharing of information.⁵

II. NYISO Filing

3. NYISO states that its OATT does not permit the broad range of communications with interstate natural gas pipelines authorized by Order No. 787. NYISO states that the proposed tariff revision modifies NYISO's treatment of confidential information to permit the communication of non-public, operational information concerning natural gas-fueled generation between NYISO and operating personnel at an interstate natural gas pipeline company. NYISO states the proposed revisions also permit, under certain conditions, the sharing of non-public operational information with operating personnel of LDCs and intrastate natural gas pipeline operators, on the condition such party(ies) acknowledge in writing that they are prohibited from disclosing or using anyone as a conduit for disclosure of non-public, operational information received from NYISO to a third party or affiliate. Specifically, NYISO proposes to modify Attachment F, section 12.4 of the OATT with regard to the treatment of confidential information to permit:

[C]ommunication of non-public, operational information concerning natural gas-fueled generation from resources located within the New York Control Area between the ISO and the operating personnel of an interstate

⁴ Order No. 787, FERC Stats. & Regs. ¶ 31,350 at P 16 & N.27, P56 (Cross-Referenced 145 FERC ¶ 61,134 at P 16 & n.27, P 56).

⁵ *Id.* P 135.

natural gas pipeline company for the purpose of promoting reliable service or operational planning; [Proposed § 12.4(2)]

and

[C]ommunication of non-public, operational information concerning natural gas-fueled generation from resources located within the New York Control Area between the ISO and the operating personnel of natural gas local distribution companies and/or intrastate natural gas pipeline operators for the purpose of promoting reliable service or operational planning, provided that such party has acknowledged, in writing, that it is prohibited from disclosing, or using anyone as a conduit for disclosure of, non-public, operational information received from the ISO to an affiliate or third party. [Proposed §12.4(3)].

4. According to NYISO, nearly 85 percent of natural gas-fueled generation is served by LDCs or connected to intrastate pipelines. Accordingly, NYISO states that permitting communication of non-public, operational information with LDCs and intrastate pipelines is of particular benefit to reliability in New York. NYISO states that the proposed non-disclosure provisions provide assurances that the non-public, operational information to be shared will be adequately protected. NYISO also states that the proposed revisions will enable improved communication and coordination between the control room operators of the natural gas and electric networks in New York. Specifically, NYISO states that the revisions will: (1) permit NYISO to provide natural gas pipeline operators and LDCs with operating schedules for individual generators to indicate their expected natural gas needs; (2) further allow real-time discussion among NYISO and natural gas suppliers concerning specific resources that may be needed to maintain reliability in normal and extreme weather conditions; and (3) promote enhanced situational awareness and assist in identifying and addressing circumstances which could affect bulk power system reliability in the event of fuel shortages.

5. NYISO requests the proposed revisions be effective November 17, 2014.

III. Notice of Filing and Responsive Pleadings

6. Notice of NYISO's September 17, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 58,763 (2014), with interventions and protests due on or before October 8, 2014. Motions to intervene were filed by Exelon Corporation, New York Transmission Owners (NYTOs),⁶ National Fuel Gas Distribution Corporation (NFG

⁶ For purposes of this intervention, NYTOs consist of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Power Supply

(continued ...)

Distribution), and NRG Companies.⁷ A notice of intervention was filed by the New York Public Service Commission (NYPSC). NYPSC and NYTOs each filed comments and NFG Distribution filed a protest.

7. On October 23, 2014, NYISO filed an answer to the protest of NFG Distribution and comments of NYPSC. On November 7, 2014, NFG Distribution filed an answer to NYISO's answer.

IV. Comments and Protests

8. NYTOs state that they support NYISO's proposed tariff revisions and request that the Commission approve the filing. The NYPSC supports NYISO's proposed tariff amendments, but recommends one modification. The NYPSC states that, as written and contrary to the intent of Order No. 787, an LDC or interstate pipeline would be prohibited from sharing confidential information received from NYISO with an affiliate. According to the NYPSC, NFG Distribution is affiliated with two interstate pipelines in New York State, National Fuel Gas Supply Corporation and Empire Pipeline, Inc., that will obtain confidential information directly from NYISO. The NYPSC states that preventing these interstate pipelines from sharing the information with NFG Distribution, which could also obtain the information from NYISO under the proposed tariff, seems pointless. As a remedy, the NYPSC requests that the Commission direct NYISO to insert the word "marketing" before "affiliate" in the proposed section 12.4(3).

9. NFG Distribution⁸ states that the Commission should reject NYISO's September 17, 2014 filing, or in the alternative, clarify or amend the NYISO proposal. NFG Distribution states that requiring NYISO to prevent recipients of non-public, operational information, including LDCs, from disclosing that information to an affiliate or third party may result in a reduction in the use of shared data and a loss of the expected benefits in reliability. Specifically, NFG Distribution asserts that the blanket prohibition against sharing information with affiliates and third parties includes such entities with whom the LDC must coordinate to effectively improve reliability and security of fuel

Long Island, Inc., New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

⁷ For purposes of this filing, the NRG Companies are NRG Power Marketing LLC and GenOn Energy Management, LLC.

⁸ NFG Distribution states that it is an LDC whose activities are subject to the jurisdiction of the NYPSC and the Pennsylvania Public Utility Commission.

supply, such as interstate pipelines or independent electric generators connected to the LDC. NFG Distribution states that interstate pipelines and their transmission personnel are authorized under Order No. 787 to receive non-public operating data from electric utilities directly, and any communications between LDCs and interstate pipelines would be subject to the restrictions of the No Conduit Rule as provided in Order No. 787.

10. NFG Distribution also asserts that LDCs cannot absorb non-public, operational data from entities like NYISO without having the ability to communicate some of that data to their own major customers in order to address the operational problems stemming from the electric system data. NFG Distribution states that if information about a sudden likely increase in electric generator use of natural gas in one segment of the interstate pipeline affects one load pocket of the LDC, then the LDC may need to contact large customers in that load pocket to inform them of the impact of the expected capacity constraint on service conditions in that affected portion of the LDC's system (in addition to discussing the data with the pipeline, as outlined above).⁹ NFG Distribution states that, in some cases, it may be possible for the LDC to avoid discussing why the load shifts or constraints were appearing, but, directly or indirectly, some LDC customers would become aware of the operational data conveyed by NYISO.

11. NFG Distribution contends that performing such discussion is consistent with the goals of Order No. 787—notwithstanding the communication of some of the data to third parties. NFG Distribution states that, if the LDC is unable to communicate with either affiliated customers, large third party customers, interconnecting gathering companies, or storage companies, natural gas system reliability would not be improved. NFG Distribution states that its marketing affiliate, National Fuel Resources, Inc. (NFR),¹⁰ would be one of the large transportation customers with which NFG Distribution would need to coordinate and communicate in order to divert or alternate natural gas flows.

12. NFG Distribution states that it cannot simply direct its transportation customers to change their interstate natural gas flows—it would need to discuss the problem and

⁹ NFG Distribution states that it primarily provides transportation services (more than 50 percent of its throughput is transportation rather than retail sales), and nearly all of its service to large customers, such as electric generators, is in the form of transportation rather than sales. NFG Distribution states that communication with the customers in cases of operational constraint is therefore critical to being able to influence operational conditions because the natural gas in question belongs to NFG Distribution's customers, not to NFG Distribution.

¹⁰ NFR provides retail sales to many customers on the NFG Distribution system, including some electric generators.

potential solutions with them. NFG Distribution also states that by barring communication of the data to third parties and affiliates, the limitation is even more restrictive than the No-Conduit Rule adopted in Order No. 787 because it affects the ability of LDCs or intrastate pipelines to exchange operational information with interstate natural gas pipelines regarding actual or potential pipeline or distribution system operational conditions, affecting the natural gas flow between these physically interconnected parties.

13. Lastly, NFG Distribution asserts that the prohibition ignores that LDCs are already subject to comprehensive regulation by state commissions as to their operational actions and communications. NFG Distribution states that LDCs face codes of conduct restricting their ability to use, or potentially misuse data, which further reduces the need for a blanket prohibition against any third-party communications as to the data newly available under Order No. 787. If the Commission does not reject the proposed revision, NFG Distribution recommends that the Commission require NYISO to amend its tariff to ensure that the prohibition on contacts by LDCs with affiliates and third parties does not apply to (a) parties already qualified to receive such data from NYISO under its rules (i.e., interstate pipelines), and (b) the LDC's customers or other connecting suppliers, affiliated or not, with whom the LDC has communicated on operational matters subject to its state regulatory restrictions.

14. In its answer, NYISO states that its proposal is a reasonable application of Order No. 787 and requests that the Commission deny the protest of NFG Distribution and requests that the Commission accept suggested clarified tariff language in response to the NYPSC's comments. Regarding NFG Distribution's protest, NYISO asserts that NFG Distribution's argument that the revisions should be rejected in their entirety is meritless and should be rejected. NYISO states that NFG Distribution does not explain why it cannot resolve its compliance concerns by simply limiting its use of the non-public, operational information. NYISO states that neither Order No. 787, nor the proposed tariff amendments (1) forbid an intrastate pipeline or LDC from communicating non-specific pipeline capacity or local distribution information, without revealing confidential information, in response to an emergent reliability need, or (2) require the recipient of non-public operational information to take specific actions—or any actions at all—in response to that information. NYISO notes that the information sharing authorized by the proposed tariff language is voluntary. NYISO states that if an entity is concerned that any action taken based on that information would result in disclosure of such information to an unauthorized party, that entity may choose not to use or act on the non-public operational information received from NYISO or can elect not to execute an agreement with NYISO to accept such information.

15. NYISO also argues that the Commission should not revise its proposal to permit sharing of information with third parties as NFG Distribution asserts. NYISO argues that permitting an LDC or intrastate pipeline to disclose commercially sensitive, non-public

operational information to other LDC customers who may themselves be seeking to acquire natural gas, or even to competing generators, risks exposing that information to parties that should not receive it, or could use it in a way that might be harmful to competitive markets.

16. Lastly, NYISO agrees with the NYPSC that it is reasonable to permit LDCs and intrastate pipelines to share and discuss non-public, operational information with affiliated entities already explicitly authorized by NYISO to receive such information—namely, the operating personnel of interstate pipelines, as well as the operating personnel of LDCs or intrastate pipelines who have already executed an appropriate non-disclosure agreement with NYISO. Accordingly, NYISO proposes modifications to its proposed OATT Attachment F tariff revisions to that end, to read as follows:

(3) communication of non-public, operational information concerning natural gas-fueled generation from resources located within the New York Control Area between the ISO and the operating personnel of natural gas local distribution companies and/or intrastate natural gas pipeline operators for the purpose of promoting reliable service or operational planning, provided that such party has acknowledged, in writing, that it is prohibited from disclosing, or using anyone as a conduit for disclosure of, non-public, operational information received from the ISO to ~~an affiliate or third party or any affiliate~~ except for (a) the operating personnel of an affiliated interstate natural gas pipeline company, or (b) the operating personnel of an intrastate pipeline which has a non-disclosure agreement with the ISO.¹¹

NYISO asserts that this revision better enables operational information-sharing in response to the observations made by the NYPSC and NFG Distribution, while at the same time protecting the confidentiality of that information.

17. In its answer, NFG Distribution contends that the Commission should not accept NYISO's revised proposal because it does not address NFG Distribution's concerns regarding the third party prohibition in the OATT. NFG Distribution proposes that, in addition to NYISO's proposed revision, NYISO's proposal should still be further revised to address its third party concerns regarding large shippers and customers.

¹¹ NYISO Answer at 8-9.

V. Discussion

A. Procedural Issues

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹² the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority.¹³ We accept NYISO's and NFG Distribution's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

20. As discussed below, the Commission accepts the proposed tariff record, effective November 17, 2014, as requested, subject to conditions and NYISO filing a revised tariff record within 15 days of the date of this order. We find that NYISO's proposed revision to Attachment F section 12.4 of its OATT explicitly permitting NYISO to share non-public, operational information with interstate natural gas pipeline operators for the purpose of promoting reliable service and operational planning is consistent with Order No. 787. The proposed revision should improve communication and coordination among the operating personnel of NYISO and the interstate natural gas pipeline companies in the NYISO region.

21. We now address the remainder of NYISO's proposed revisions, which permit the sharing of non-public, operational information with LDCs and intrastate natural gas pipeline operators. In Order No. 787, the Commission recognized that LDCs and other parties have a significant role to play in maintaining the reliability of both the interstate natural gas pipeline system and the electric transmission system, particularly since many electric generators take service from LDCs, rather than directly from interstate pipelines. The Commission stated that the Final Rule does not affect the ability of an electric transmission operator to share its own information with an LDC, if otherwise permitted under its tariff.¹⁴ However, the Commission stated that it preferred to proceed on a case-

¹² 18 C.F.R. § 385.214 (2014).

¹³ 18 C.F.R. § 385.213(a)(2) (2014).

¹⁴ Order No. 787, FERC Stats. & Regs. ¶ 31,350 at P56 (Cross-Referenced at 145 FERC ¶ 61,134 at P 56).

by-case basis with respect to electric transmission operators sharing non-public operational information received from an interstate pipeline pursuant to the rule with these entities.¹⁵ Electric transmission operators that saw the need for such communication were encouraged to offer tariff provisions that establish acceptable procedures for the handling and protection from inappropriate disclosure or use of such information.¹⁶

22. We find that NYISO's proposal to extend the information sharing provisions to LDCs and intrastate natural gas pipeline operators, including NYISO's proposed modifications thereto, should ensure cooperation and coordination, thus contributing to the reliable operation of the transmission system. These proposed modifications also address concerns raised by the NYPSC and NFG Distribution. However, we find further clarification is required to the tariff language prohibiting an LDC or intrastate natural gas pipeline from disclosing, or using anyone as a conduit for disclosure of, non-public operational information received from NYISO to a third party or any affiliate except for the operating personnel of an affiliated interstate pipeline or intrastate pipeline which has a non-disclosure agreement with NYISO.

23. First, in Order No. 787, recipients of non-public, operational information under the rule were prohibited from subsequently disclosing that information to third parties or the recipient transmission operator's marketing function employees as defined in section 358.3(d) of the Commission's regulations.¹⁷ The Commission stated that the No-Conduit Rule was necessary to ensure that any non-public, operational information, in particular, commercially sensitive, customer-specific information, shared under the regulations remained confidential and was shared among transmission operators in a manner consistent with the prohibition against undue discrimination.¹⁸ Unlike Order No. 787, NYISO's proposal does not appear to prohibit the sharing of non-public, operational information within the LDC or intrastate pipeline. We recognize that the definition of marketing function employee in the Standards of Conduct is narrow and linked to the relationship between the electric transmission provider and its marketing function employee or to an interstate pipeline and its marketing function employees and, therefore, may not apply to LDCs without marketing function employees as defined by the

¹⁵ *Id.* P 57.

¹⁶ *Id.*

¹⁷ *Id.* PP 77, 96.

¹⁸ *Id.* P 77.

Standards of Conduct.¹⁹ However, the sharing of non-public, operational information still creates an opportunity for commercially sensitive information to be used in an unduly discriminatory or preferential manner by the recipient's employees or to the detriment of the market.²⁰

24. For example, in *Enable*, the Commission granted two affiliated interstate pipelines a limited waiver of the No-Conduit Rule in Order No. 787 to permit employees shared by those pipelines and their affiliated intrastate pipeline and gathering systems to receive non-public operational information provided under Order No. 787 on 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.²¹ Therefore, consistent with the Commission's action in *Enable*, NYISO's filing, including the modifications it proposed in its answer, is accepted subject to the condition that NYISO file a revised tariff record within 15 days from the date of this order to clarify section 12.4 of its OATT, specifying which LDC or intrastate employees are prohibited from receiving non-public operational information.

25. Second, the Commission finds that NYISO's proposed modification allowing LDCs and intrastate pipelines to share the non-public, operational information received from NYISO with affiliated interstate pipelines does not sufficiently protect the commercially sensitive non-public, operational information. If NYISO disclosed non-public, operational information to an interstate pipeline, the interstate pipeline is prohibited by the No-Conduit Rule provisions of section 284.12(b)(4)(ii) of the Commission's regulations from being a conduit for disclosing that information to third parties and marketing function employees. However, section 284.12(b)(4)(ii) of the Commission's regulations applies to non-public operational information received from a public utility pursuant to section 38.2 and does not apply to information received from an LDC or intrastate pipeline.²² If NYISO wants to allow an LDC or intrastate pipeline to

¹⁹ See *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,105, at P 9 (2014) (*PJM*).

²⁰ See, e.g., *PJM*, 147 FERC ¶ 61,105 at P 9; see also *Enable Gas Transmission, LLC, et al.*, 147 FERC ¶ 61,229, at P 18 (2014) (*Enable*) (order on waivers requiring that shared pipeline employees receiving information pursuant to waivers under Order No. 787 not make natural gas sales to avoid any adverse competitive effects).

²¹ *Enable*, 147 FERC ¶ 61,229 at P 15.

²² Section 38.2 of the Commission's regulations applies to public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce (e.g., NYISO).

share the non-public operational information received from NYISO with an affiliated interstate pipeline, the affiliated interstate pipeline should be similarly limited from being a conduit for disclosing that information to third parties and marketing function employees. Therefore, NYISO's filing, including its proposed modifications, is accepted subject to the condition that NYISO file a revised tariff record within 15 days from the date of this order revising section 12.4 of its OATT to clarify that an LDC or intrastate pipeline can only share the non-public operational information with operating employees of an affiliated interstate pipeline if the affiliated interstate pipeline agrees to treat the information as if it had been disclosed by NYISO (i.e., comply with section 284.12(b)(4)(ii) of the Commission's regulations).

26. We deny NFG Distribution's request to reject NYISO's proposal and its requests to clarify and amend NYISO's proposed tariff language to exempt shippers and customers from NYISO's proposed third party and affiliate restrictions. As stated above, the Commission found that the No-Conduit Rule was necessary to ensure that any non-public, operational information, in particular, commercially sensitive, customer-specific information, shared under the new regulations remained confidential and was shared among transmission operators in a manner consistent with the prohibition against undue discrimination.²³ Several parties contended that the No-Conduit Rule was too restrictive and recommended that the Commission adopt various modifications, including exceptions to third party restriction. The Commission denied those requests, stating the scope of information allowed to be shared under the Final Rule warranted the restrictions in the No-Conduit Rule, as proposed.²⁴ The Commission also declined to require three-way communications between transmission operators and electric generators because it was concerned that such sharing could result in the transmission operators inadvertently sharing non-public, operational information with only that generator, which could be characterized as permitting a public utility or interstate pipeline to make or grant an undue preference.²⁵ Expanding NYISO's proposal to allow LDCs and intrastate pipelines to share non-public, operational information received from NYISO with third parties, including large customers and electric generators, is inconsistent with the requirements of Order No. 787.

27. Further, under NYISO's proposal, NFG Distribution may still share its own operational information with its customers or other interconnecting entities involved in

²³ Order No. 787, FERC Stats. & Regs. ¶ 31,356 at P77 (Cross-Referenced at 145 FERC ¶ 61,134 at P 77).

²⁴ *Id.* P 96.

²⁵ *Id.* PP 115-116.

ensuring the reliability of system operations; and, as NYISO points out, nothing in the proposed tariff amendments forbid an intrastate pipeline or LDC from communicating non-specific pipeline or local distribution information, without revealing confidential information. Consistent with Order No. 787, NYISO's proposal is voluntary. If NFG Distribution, or any other LDC or intrastate pipeline, is nevertheless concerned about the compliance risks associated with accepting non-public operational information from NYISO, they may elect not to execute an agreement with NYISO to accept such information.

The Commission orders:

(A) NYISO's revisions to section 12.4 of its OATT are hereby accepted, effective November 17, 2014, subject to NYISO filing a revised tariff record as discussed in the body of this order.

(B) NYISO is hereby directed to submit a compliance filing within 15 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.