

150 FERC ¶ 61,085
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Kinder Morgan Pipelines

Docket No. RP15-217-000

ORDER ON WAIVER REQUEST

(Issued February 10, 2015)

1. On November 25, 2014, eighteen interstate pipelines, referring to themselves as the Kinder Morgan Pipelines (KM), filed a request for a limited waiver of the No-Conduit Rule adopted in Order No. 787.¹ Specifically, they request that their control room personnel and their superiors,² including those that they share with affiliated Hinshaw pipelines, intrastate pipelines and gathering companies, be permitted to receive non-public operational information from electric transmission operators. The eighteen interstate pipelines requesting this waiver are Natural Gas Pipeline Company of America LLC (Natural), Horizon Pipeline Company, L.L.C. (Horizon), Elba Express Company, L.L.C. (Elba), Kinder Morgan Louisiana Pipeline LLC (KMLP), Midcontinent Express Pipeline LLC (MEP), Kinder Morgan Illinois Pipeline LLC (KM Illinois), Tennessee Gas Pipeline Company, L.L.C. (Tennessee), Southern Natural Gas Company, L.L.C. (SNG) and Bear Creek Storage Company, L.L.C. (Bear Creek) operated out of Houston, Texas; and Colorado Interstate Gas Company, L.L.C. (CIG), Wyoming Interstate Company, L.L.C. (WIC), Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains), Ruby Pipeline, L.L.C. (Ruby), TransColorado Gas Transmission Company LLC (TC), Young Gas Storage Company, Ltd. (Young), Sierrita Gas Pipeline LLC (Sierrita), El Paso Natural Gas Company, L.L.C. (El Paso) and Mojave Pipeline Company, L.L.C. (Mojave)

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), *order on reh'g*, Order No. 787-A, 147 FERC ¶ 61,228 (2014) (collectively, Order No. 787)).

² KM states that, for purposes of this waiver, the term “superiors” is in reference to the managers of the gas control personnel from their immediate supervisors up through and including the Vice President responsible for the gas control function.

operated out of Colorado Springs, Colorado. 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.³ 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.⁴

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 section 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.⁵ However, Order No. 787 stated that interstate pipelines could seek a waiver of the No-Conduit Rule, if the fact they share operational

³ See 18 C.F.R. §§ 38.2 and 284.12(b)(4) (2014).

⁴ 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."

⁵ Order No. 787, 145 FERC ¶ 61,134 at P 99.

employees with local distribution companies (LDCs) or other affiliates makes compliance difficult.⁶

II. Details of the Filing

4. KM states that, to achieve operating efficiency, it has two control rooms, one in Houston, Texas and one in Colorado Springs, Colorado. Each control room operates a group of interstate pipelines, with the Houston control room also operating intrastate pipelines and gathering facilities and the Colorado Springs control room also operating a Hinshaw pipeline. KM states that, under the terms of the No-Conduit Rule, disclosure of operational information to any shared controller or their superiors could be deemed a violation of the rule. To avoid any potential violation and to continue to obtain the synergies created by controlling a number of entities from a single control room, KM is seeking this limited waiver of the No-Conduit Rule.

5. KM states that it operates nine interstate pipelines out of its Houston offices. KM states that the Houston gas control room has multiple gas control banks that have multiple stations and are operated by designated gas controllers. KM states that one bank controls Tennessee, a different bank controls SNG, Elba, and Bear Creek, and another bank controls Natural, MEP, KMLP, Horizon, and KM Illinois. KM states that, in addition, the Houston gas control room has a separate area for gas control banks that only operate intrastate pipelines and gathering operations. KM states there are certain gas control supervisory personnel who are responsible for all of the Houston gas control operations and are privy to both interstate and intrastate transmission information. KM states that it also operates nine interstate pipelines out of its Colorado Springs offices, along with one Hinshaw pipeline. The Hinshaw pipeline is Keystone Gas Storage (KGS), an intrastate natural gas storage facility located in Texas and regulated by the Texas Railroad Commission which also has a limited jurisdiction certificate under section 284.224 of the Commission's regulations⁷ to provide interstate services. KM states that the KGS storage facility is connected to three large interstate natural gas pipelines: El Paso, Transwestern Pipeline Company, LLC, and Northern Natural Gas Company. KM states that KGS offers interstate firm and interruptible storage services, including storage, park and loan, and wheeling services.

6. KM states that KGS does not have any employees. KM states that KM personnel located in Colorado Springs, Colorado, who primarily work for interstate pipelines, operate KGS. KM states that the Colorado Springs gas control room has two different sets or banks of gas controls that have multiple controller stations and are operated by designated gas controllers. KM states that one gas control bank operates El Paso, Sierrita, and Mojave and the other gas control bank operates CIG, WIC, Cheyenne Plains,

⁶ *Id.*

⁷ 18 C.F.R. § 284.224 (2014).

Ruby, TC, Young, and KGS. KM states there are certain gas control management personnel who are responsible for all of the Colorado Springs gas control operations, and are privy to both interstate and intrastate transmission information.

7. KM requests a limited waiver of the application of the No-Conduit Rule to control room personnel and their superiors. KM states that the No-Conduit Rule would prohibit KM from disclosing to personnel shared with its intrastate pipelines, Hinshaw and gathering entities non-public, operational information received under Order No. 787. KM states that because KM shares transmission operational personnel with such non-jurisdictional entities, disclosure to shared KM operating personnel of non-public, operational information necessarily also discloses the information to the personnel operating non-jurisdictional pipelines. KM states that compliance with the No-Conduit Rule could eliminate the very operational and economic efficiencies generated by sharing personnel among the gas gathering and transmission assets owned and operated by KM. KM states that compliance with Order No. 787 could cause operational disruptions, potentially result in the duplication and segregation of personnel and facilities, and the loss of efficiencies for KM.

8. KM states that granting the limited waiver would not cause any damaging disclosures of non-public, operational information provided by an electric transmission operator. KM states that disclosures will be limited to control room personnel and their superiors.⁸ KM further states that these personnel in both Houston and Colorado Springs have and will continue to undergo training on compliance with the No-Conduit Rule.

9. Lastly, KM asserts that personnel shared by KM and its intrastate, Hinshaw, and gathering affiliates who are the subject of this request do not conduct natural gas sales. KM states that these personnel are all transmission function employees.

⁸ KM states that Order No. 787 should not be violated when counsel or other support personnel, even if they support multiple entities, are consulted by control room personnel about information received under Order No. 787. KM states that such personnel remain subject to the No-Conduit Rule under the Standards of Conduct and generally applicable prohibitions on undue discrimination, and thus no special waiver for those personnel should be required. KM states that this treatment is consistent with how such support personnel are treated under the Standards of Conduct. KM Filing at n.16 (citing *Standards of Conduct for Transmission Providers*, Order No. 717-B, 129 FERC ¶ 61,123, at P 6 (2009)).

III. Public Notice

10. Public notice of the filing was issued on December 8, 2014. Interventions and protests were due as provided by section 154.210.⁹ Pursuant to Rule 214,¹⁰ 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.

IV. Discussion

11. As discussed below, the Commission grants KM'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.¹¹ 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.¹² Based on the information provided by KM, the Commission finds that good cause exists for granting KM a limited waiver of the No-Conduit Rule in Order No. 787 to permit control room employees and their superiors, shared by KM and its intrastate, Hinshaw, and gathering affiliates to receive non-public, operational information provided under Order No. 787 and to permit those shared control room employees and their superiors to consult with shared counsel about information received 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 KM; or (3) any employee of their affiliates not authorized to receive the information pursuant to the terms of this waiver.¹³

⁹ 18 C.F.R. § 154.210 (2014).

¹⁰ 18 C.F.R. § 385.214 (2014).

¹¹ Order No. 787, 145 FERC ¶ 61,134 at P 99.

¹² *Id.*

¹³ As the Commission stated in Order No. 787, sections 4 and 5 of the Natural Gas Act prohibit the employees shared by the pipeline and its affiliates from granting any undue preference or advantage based on the information received pursuant to the waiver granted herein. *See* Order No. 787, 145 FERC ¶ 61,134 at P 32, 85.

12. The Commission finds that granting this waiver, as conditioned, reasonably balances: (1) KM'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, as well as consult with shared counsel regarding such information, should minimize the burden of complying with the No-Conduit Rule and thereby help promote reliable service and operational planning by facilitating KM's receipt of relevant information from public utilities. KM incorrectly assumes that it is not required to seek a limited waiver of the No-Conduit Rule in Order No. 787 to allow counsel and support staff serving multiple affiliates to be consulted by shared control room employees and their superiors about information received under Order No. 787. Unlike the Standards of Conduct and related orders which specifically incorporated exceptions for categories of certain shared employees,¹⁴ the Commission has not generically addressed shared support employees in the context of information sharing and information disclosure under Order No. 787.¹⁵ In its waiver request, KM has not provided any information concerning the nature of the "support personnel" to be consulted regarding information shared under Order No. 787, except for shared counsel. While we are granting a limited waiver to KM with respect to shared counsel, KM must provide additional information regarding the nature of the other support personnel before the Commission can consider a limited waiver of the No-Conduit Rule in Order No. 787 with respect to those shared support employees.¹⁶

13. 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.¹⁷ Rather, the scope of information that may permissibly be shared under the

¹⁴ See *Standards of Conduct for Transmission Providers*, Order No. 717-B, 129 FERC ¶ 61,123, at P 6 (2009).

¹⁵ Order No. 787, 145 FERC ¶ 61,134 at P 99.

¹⁶ See, e.g., *National Fuel Gas Supply Corporation et al.*, 147 FERC ¶ 61,214 (2014). In that proceeding, the pipelines requested, and the Commission granted, a limited waiver of the No-Conduit Rule in Order No. 787, for shared control room personnel, as well as the specially identified shared administrative personnel with whom the control room might consult regarding Order No. 787 information. While we find that counsel is reasonably specific, support personnel is not.

¹⁷ Order No. 787, 145 FERC ¶ 61,134 at P 97. See also 18 C.F.R. § 358.3(j) (2014).

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 between public utilities and natural gas pipelines, whether interstate or intrastate or LDCs, generally did not take place.¹⁸ 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.¹⁹ Numerous parties to the Order No. 787 proceeding also raised concerns about the potential competitive effects of such disclosure.²⁰

14. Our waiver is premised on KM's representation that the relevant information, which is designed to promote reliable service or operational planning on the electric transmission and pipeline systems as permitted by Order No. 787, will only be disclosed between shared employees performing gas control and gas control management functions in its operations control rooms, including consultation with counsel. While KM 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 KM 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.²¹ Thus, as described above, we grant the requested waiver, subject to condition, to address our concern that with preferential access to confidential, customer-

¹⁸ *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).

¹⁹ See Order No. 787, 145 FERC ¶ 61,134 at P 4. See also *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,003 (2014).

²⁰ See, e.g., Order No. 787, 145 FERC ¶ 61,134 at PP 16, 28 (summarizing comments).

²¹ See 18 C.F.R. §§ 358.3(c)(2)(iv) and (v) (2014).

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.

The Commission orders:

The requested waiver is granted, subject to conditions, as discussed above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.