

153 FERC ¶ 61,151  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER14-1469-003

ORDER GRANTING MOTION FOR CLARIFICATION

(Issued November 5, 2015)

1. On August 14, 2015, National Fuel Gas Distribution Corporation (NFG Distribution) filed a motion for clarification or, in the alternative, request for rehearing of the Commission's July 16, 2015 order<sup>1</sup> related to PJM Interconnection, L.L.C.'s (PJM) implementation of the Commission's regulations adopted in Order No. 787.<sup>2</sup> As discussed below, the Commission grants NFG Distribution's motion for clarification.

**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' 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

---

<sup>1</sup> *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,035 (2015) (July 2015 Order).

<sup>2</sup> *Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators*, Order No. 787, 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).

local distribution companies (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 a pipeline pursuant to this rule with LDCs, if otherwise provided for in tariff provisions approved by the Commission.<sup>3</sup> 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.<sup>4</sup>

3. On March 12, 2014, PJM proposed to modify the confidentiality rules in section 18.17 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) to allow PJM to share non-public, operational information with natural gas pipeline operators to implement the Commission's regulations adopted in Order No. 787. PJM proposed to explicitly permit PJM to share non-public, operational information with interstate natural gas pipeline operators for the purpose of promoting reliable service and operational planning as permitted by the Commission's regulations adopted in Order No. 787. In addition, PJM proposed revisions to allow it to share non-public, operational information with LDCs and intrastate natural gas pipeline operators, provided that such party or parties have acknowledged, in writing, that they are prohibited from disclosing, or using anyone as a conduit for disclosure of non-public, operational information received from PJM to a third party or to its "marketing function employees" as that term is defined by section 358.3(d) of the Commission regulations.

4. On May 9, 2014, the Commission accepted the proposed tariff record, subject to conditions.<sup>5</sup> The Commission found that PJM's proposal to explicitly allow PJM to share non-public, operational information with interstate natural gas pipeline operators for the purpose of promoting reliable service and operational planning was consistent with Order No. 787.<sup>6</sup> With respect to PJM's proposal to prohibit LDCs and intrastate natural gas pipelines from disclosing non-public, operational information received from PJM to a third party or "to its marketing function employees as that term is defined by FERC

---

<sup>3</sup> Order No. 787, FERC Stats. & Regs. ¶ 31,350 at P 16 n.27, P 56.

<sup>4</sup> *Id.* P 135.

<sup>5</sup> *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,105 (2014) (May 2014 Order).

<sup>6</sup> *Id.* P 7.

regulations at 18 CFR 358.3 (d),” the Commission found that PJM’s reference to the term “marketing function employee” was unclear.<sup>7</sup> Therefore, PJM’s filing was accepted subject to the condition that PJM file a revised tariff record to clarify section 8.17.1(f).

5. On May 27, 2014, PJM filed a revised tariff record to comply with the May 2014 Order (May 2014 Compliance Filing). In the May 2014 Compliance Filing, PJM proposed to amend section 8.17.1(f) to require that a recipient LDC or intrastate pipeline operator acknowledge, in writing, “that it shall not disclose, or use anyone as a conduit for disclosure of, non-public, operational information received from the Office of Interconnection to a third party or in an unduly discriminatory or preferential manner or to the detriment of any natural gas and/or electric market.” No party protested the May 2014 Compliance Filing and it was accepted for filing on July 16, 2014.<sup>8</sup>

6. On August 15, 2014, NFG Distribution filed a motion for clarification and, in the alternative, request for rehearing of the July 2014 Order (August 2014 Clarification Request). In its August 2014 Clarification Request, NFG Distribution requested, among other things, that the Commission clarify that PJM’s restriction against LDCs communicating non-public, operational information will not apply to the LDCs’ communications with: (1) interstate pipelines eligible to receive the information directly from PJM; and (2) LDCs’ customers or other connecting suppliers (i.e., other non-jurisdictional natural gas transporters such as gathering companies) with whom the LDC has communicated on operational matters subject to its state regulatory restrictions.

7. In its July 2015 Order, the Commission denied NFG Distribution’s request for rehearing and motion for clarification of the Commission’s acceptance of PJM’s tariff amendment prohibiting LDCs and intrastate pipelines from sharing non-public, operational information received from PJM with third parties. However, the Commission clarified the type of information that NFG Distribution could share with third parties:

NFG Distribution may share its own operational information with its customers or other interconnecting entities involved in ensuring the reliability of system operations. Moreover, nothing in PJM’s tariff amendments forbids NFG Distribution, or any other intrastate pipeline or LDC, from communicating non-specific pipeline or LDC information, without revealing confidential operational information. As

---

<sup>7</sup> May 2014 Order, 147 FERC ¶ 61,105 at P 9.

<sup>8</sup> *PJM Interconnection, L.L.C.*, Docket No. ER14-1469-001 (July 16, 2014) (delegated letter order) (July 2014 Order).

long as NFG Distribution does not reveal, directly or indirectly, the non-public, operational information shared by PJM (*e.g.*, information concerning a particular electric generator), NFG Distribution can request or direct its customers and operational counterparties to perform specific actions based on such information.<sup>9</sup> (footnotes omitted)

8. On August 14, 2015, NFG Distribution filed a motion for clarification or, in the alternative, request for rehearing of the July 2015 Order (August 2015 Clarification Request).

## **II. Motion for Clarification or, in the Alternative, Request for Rehearing**

9. In its August 2015 Clarification Request, NFG Distribution requests that the Commission provide further clarification on the meaning of its holding in the July 2015 Order permitting NFG Distribution to communicate with its customers and operational counterparties based on confidential operational data received from PJM, so long as it “does not reveal, directly or indirectly, the non-public, operational data shared by PJM.” NFG Distribution states that, under this standard, a counterparty’s inference from a NFG Distribution request that it is motivated by certain PJM information might be considered to constitute informing counterparties “indirectly” as to the information received from PJM. NFG Distribution states that the potential for “indirectly” informing counterparties of PJM’s non-public, operational information solely as a result of the circumstances of a request (*i.e.*, the need to boost gas flows to a region of its system in which a power generator is located), creates very real risks. NFG Distribution states that under the phrasing of the July 2015 Order, it believes that it would likely need to decline to obtain the non-public, operational information from PJM rather than risk violating Commission rules and a Commission-approved tariff.

10. NFG Distribution points to a similar and related request for clarification submitted by NFG Distribution with regard to the New York Independent System Operator, Inc. (NYISO) in Docket No. ER14-2895. NFG Distribution states that, in a May 19, 2015 order in that docket, the Commission stated that “[a]s long as NFG Distribution does not reveal the non-public, operational information shared by NYISO, NFG Distribution can request or direct its customers and operational counterparties to perform specific actions based on such information.”<sup>10</sup> NFG Distribution is concerned that the language in the

---

<sup>9</sup> July 2015 Order, 152 FERC ¶ 61,035 at P 23.

<sup>10</sup> NFG Distribution August 2015 Clarification Request at 3 (citing *New York Independent System Operator, Inc.*, 151 FERC ¶ 61,159 (2015) (NYISO May 2015 Order)).

PJM July 2015 Order countermands the standard stated in the NYISO May 2015 Order. NFG Distribution states that it is now concerned that with respect to NYISO data it would need to refrain from obtaining the non-public, operational information rather than risk being found to have indirectly conveyed it by means of its requests to counterparties.

11. NFG Distribution also notes that the discussion in paragraph 23 of the July 2015 Order, regarding operational directives and requests based on non-public, operational information received from PJM, should apply to directions communicated to its Gas Supply Administration personnel to the same extent as to directions or requests communicated to external counterparties.<sup>11</sup>

12. Should the Commission not grant the requested clarification, NFG Distribution seeks rehearing of the July 2015 Order arguing that the Commission erred (1) when it prohibited NFG Distribution from revealing indirectly the non-public, operational data shared by PJM, and (2) by using a different standard in this proceeding than the standard stated in the NYISO May 2015 Order.

### **III. Determination**

13. The Commission grants NFG Distribution's motion for clarification and clarifies that NFG Distribution would not be in violation of the PJM tariff based on a third party's potential inference that an instruction or directive may be based on non-public information. The limitation on communication of PJM's confidential information between LDCs and third parties is not a product of Order No. 787 or Commission policy.<sup>12</sup> Rather the prohibition emanates from a requirement in PJM's tariff limiting PJM's ability to disclose confidential information obtained from its stakeholders. PJM's tariff provision filed in this proceeding provides that PJM is permitted to share PJM's non-public, operational information with natural gas local distribution companies and/or intrastate natural gas pipeline operators "provided that such party has acknowledged, in

---

<sup>11</sup> As NFG Distribution has explained, the Gas Supply Administration group purchases and ships natural gas required for NFG Distribution's service territories and some of the groups personnel would be considered "marketing function employees" and thus ineligible to receive information on operational matters communicated by the NYISO or PJM. *See* NFG Distribution Transmittal, Docket No. RP14-380-000 at 3 (filed Jan. 21, 2014) and NFG Distribution Motion for Clarification, Docket No. ER14-2895-003 at 5 (filed June 18, 2015).

<sup>12</sup> Order No. 787, FERC Stats. & Regs ¶ 31,350 at P 16 n.27, P 56 ("Nor does [Order No. 787] affect the ability of an electric transmission operator to share its own information with an LDC, if otherwise permitted under its tariff.")

writing, that it shall not disclose, or use anyone as a conduit for disclosure of, non-public, operational information received from the Office of Interconnection to a third party or in an unduly discriminatory or preferential manner or to the detriment of any natural gas and/or electric market.”<sup>13</sup> In the July 2015 Order, we interpreted this tariff provision to provide that as long as “NFG Distribution does not reveal, *directly or indirectly*, the non-public, operational information shared by PJM (*e.g.*, information concerning a particular electric generator), NFG Distribution can request or direct its customers and operational counterparties to perform specific actions based on such information.”<sup>14</sup> NFG Distribution claims this interpretation is at odds with the Commission’s NYISO May 2015 Order.

14. In the NYISO May 2015 Order, the Commission interpreted a similar tariff provision filed by the NYISO,<sup>15</sup> finding that NFG Distribution could issue a direction or instruction to its customers or operational counterparties based on that information, since the mere fact of issuing such a direction would not necessarily reveal NYISO’s non-public, operational information in contravention of the tariff. In the NYISO May 2015 Order, the Commission stated:

[U]nder NYISO’s proposal, NFG Distribution may share its own operational information with its customers or other interconnecting entities involved in ensuring the reliability of system operations. Moreover, nothing in NYISO’s proposal forbids NFG Distribution, or any other LDC or intrastate pipeline, from communicating non-specific pipeline or LDC

---

<sup>13</sup> PJM Interconnection, L.L.C./Intra-PJM Tariffs, OA 18.17 Confidentiality (5.1.0), § 18.17.1(f), <http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=1731&sid=163250>.

<sup>14</sup> July 2015 Order, 152 FERC ¶ 61,035 at P 23.

<sup>15</sup> The NYISO tariff provides that NYISO can share its non-public, operational information with an LDC or intrastate pipeline if the company receiving the information 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: (a) an employee other than operating personnel of that LDC and/or intrastate natural gas pipeline company, (b) a third party, or (c) any affiliate except for (i) the operating personnel of an affiliated interstate natural gas pipeline company, or (ii) the operating personnel of an intrastate pipeline which has a non-disclosure agreement with the ISO.” New York Independent System Operator, Inc./NYISO Tariffs, NYISO OATT, 12.4 OATT Att F Treatment Of Confidential And Transmission S (4.0.0), § 12.4.

information, without revealing confidential operational information. *It is unclear why NFG Distribution believes that its customers or operational counterparties would be able to infer that an operational request by NFG Distribution was in response to NYISO's non-public, operational information, as opposed to any other non-NYISO operational or reliability issue.* As long as NFG Distribution does not reveal the non-public, operational information shared by NYISO, NFG Distribution can request or direct its customers and operational counterparties to perform specific actions based on such information. We do not believe any further revisions or clarifications to NYISO's proposal are required.<sup>16</sup> (emphasis added) (footnotes omitted)

Our clarification to PJM is consistent with the NYISO May 2015 Order. In both orders, the Commission found that NFG Distribution could issue a directive or request to third parties as long as NFG Distribution does not reveal confidential operational information. This interpretation refers to the actual disclosure of the confidential information itself.

15. We clarify that the reference to “indirectly” does not preclude an LDC or intrastate pipeline from issuing a directive or instruction simply because a recipient may be able to “infer that the request is based on non-public operational data” from PJM.<sup>17</sup>

16. NFG Distribution also contends that, under PJM's proposal, it should be able to communicate requests or directions to its Gas Supply Administration personnel based on the non-public, operational information received from PJM to the same extent it communicates directions or requests to external counterparties. Nothing in PJM's proposal forbids NFG Distribution, or any other LDC or intrastate pipeline, from communicating non-specific pipeline or LDC information, as long as they do not reveal confidential operational information. Subject to state regulations, as long as NFG Distribution does not reveal, directly or indirectly, the non-public, operational information received from PJM (*e.g.*, information concerning a particular electric generator), NFG Distribution can request or direct its employees who make sales of natural gas to perform specific actions based on such information. We do not believe any further revisions or clarifications to PJM's proposal are required.

---

<sup>16</sup> NYISO May 2015 Order, 151 FERC ¶ 61,159 at P 26.

<sup>17</sup> NFG Distribution August 2015 Clarification Request at 2.

The Commission orders:

The Commission grants NFG Distribution's motion for clarification as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.