

153 FERC ¶ 61,152
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket No. ER14-2895-003

ORDER GRANTING MOTION FOR CLARIFICATION

(Issued November 5, 2015)

1. On November 14, 2014, the Commission accepted,¹ subject to conditions, a filing by the New York Independent System Operator, Inc. (NYISO) to revise its Open Access Transmission Tariff (OATT) to allow it 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. 787.² On December 1, 2014, NYISO filed a revised tariff record to comply with the November 2014 Order. On December 15, 2014, National Fuel Gas Distribution Corporation (NFG Distribution) filed a request for rehearing and, in the alternative, motion for clarification of the November 2014 Order. On May 19, 2015, the Commission accepted NYISO's compliance filing, but denied NFG Distribution's request for rehearing and, in the alternative, motion for clarification of the November 2014 Order.³

¹ *New York Independent System Operator, Inc.*, 149 FERC ¶ 61,122 (2014) (November 2014 Order).

² *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) (collectively, Order No. 787).

³ *New York Independent System Operator, Inc.*, 151 FERC ¶ 61,159 (2015) (May 2015 Order).

2. On June 18, 2105, NFG Distribution filed a motion for clarification or, in the alternative, request for rehearing of the May 2015 Order. As discussed below, the Commission grants NFG Distribution's request for clarification.

I. Background

3. 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 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

4. On September 17, 2014, NYISO filed a revision to Attachment F, section 12.4, of its OATT proposing to modify the treatment of confidential information to permit the communication of non-public, operational information concerning natural gas-fueled generation between NYISO and operating personnel at interstate natural gas pipeline companies. NYISO also proposed to permit, under certain conditions, the sharing of non-public operational information with operating personnel of LDCs and intrastate natural gas pipeline operators. In response to a protest to its filing, NYISO revised its proposed conditions applicable to the sharing of non-public operational information by the operating personnel of LDC and intrastate pipelines to provide that such party(ies) are "prohibited from disclosing, or using anyone as a conduit for disclosure of, non-public,

⁴ Order No. 787, FERC Stats. & Regs. ¶ 31,350 at P 16 n.27, P 56.

⁵ *Id.* P 135.

operational information received from the ISO to a 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.”

5. The Commission accepted NYISO’s proposal to explicitly permit NYISO to share non-public, operational information with interstate natural gas pipeline operators.⁶ With respect to the sharing of non-public, operational information with LDCs and intrastate natural gas pipeline operators, the Commission held that NYISO’s proposal failed to prohibit the sharing of that information within the LDC or intrastate pipeline. The Commission therefore required NYISO to clarify its tariff to prohibit LDCs and intrastate pipelines from sharing non-public, operational information with their marketing employees or any other employees making sales of natural gas. The Commission also found that NYISO’s proposed modification allowing LDCs and intrastate pipelines to share the non-public, operational information received from NYISO with their affiliated interstate pipelines did not sufficiently protect the commercially sensitive non-public, operational information. Therefore, the Commission accepted NYISO’s filing subject to the condition that NYISO 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 prohibiting recipients of non-public, operational information from disclosing that information to third parties or marketing function employees).⁷

6. The November 2014 Order also denied NFG Distribution’s request to reject NYISO’s proposal or, in the alternative, clarify or amend NYISO’s proposed tariff language with regard to LDCs and intrastate pipelines to exempt shippers and customers from NYISO’s proposed restrictions on sharing non-public, operational information with third parties and affiliates.⁸ The Commission stated, however, that nothing in NYISO’s proposed tariff amendments forbids an intrastate pipeline or LDC from communicating non-specific pipeline or local distribution information, without revealing confidential information.

7. On December 1, 2014, in Docket ER14-2895-001, NYISO filed a revised tariff record to comply with the November 2014 Order. On December 15, 2014, NFG

⁶ November 2014 Order, 149 FERC ¶ 61,122 at P 20.

⁷ *Id.* P 25.

⁸ *Id.* P 26-27.

Distribution filed a request for rehearing and, in the alternative, clarification of the November 2014 Order. In its request for rehearing, NFG Distribution argued that the Commission erred when it found that NYISO's proposal to prohibit LDCs and intrastate pipelines from disclosing non-public, operational information to third parties, including large customers and electric generators, was just and reasonable. NFG Distribution argued that such restrictions could significantly inhibit the benefits of Order No. 787. NFG Distribution explained that, if it receives non-public operational information from NYISO about a sudden likely increase in electric generator use of natural gas in one section of its system, it may need to request that its shippers or interconnected pipelines take certain actions to ensure that supplies will be available to serve that section of its system. NFG Distribution stated that it should be permitted to communicate to those third parties what actions it needs them to take, even if those third parties might be able to infer that the request was prompted by non-public, operational information received from NYISO.⁹

8. On May 19, 2015, the Commission accepted NYISO's compliance filing, but denied NFG Distribution's request for rehearing and clarification.¹⁰ The Commission continued to find that NYISO's restrictions on LDCs and intrastate pipelines sharing non-public, operational information received from the NYISO were just and reasonable. The Commission also clarified what information NFG Distribution could share with third parties, stating:

...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 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

⁹ NFG Distribution Request for Rehearing, December 15, 2014, at 6-7, 9-10.

¹⁰ May 2015 Order, 151 FERC ¶ 61,159.

operational counterparties to perform specific actions based on such information.¹¹ (footnotes omitted)

9. On June 18, 2015, NFG Distribution filed a motion for clarification or, in the alternative, request for rehearing of the May 2015 Order.

II. NFG Distribution Request for Clarification and Rehearing

10. In its request for clarification and rehearing, NFG Distribution states that it appreciates the Commission's clarification that it can coordinate with "customers and operational counterparties" to take actions to assist in averting operational problems based on protected information conveyed by the NYISO, so long as NFG Distribution does not reveal the information itself. NFG Distribution states that it construes this statement as providing adequate guidance to allow it to communicate with third parties after receiving operationally sensitive information from NYISO that is subject to the restrictions at issue in this proceeding.

11. However, NFG Distribution states that the May 2015 Order leaves one important issue still in need of clarification. NFG Distribution states that effectively responding to NYISO requests would likely also require it to communicate with NFG Distribution's own Gas Supply Administration (GSA) personnel —some of whom could be marketing function employees or make sales of natural gas and thus ineligible to receive information on non-public, operational matters communicated by the NYISO. NFG Distribution believes that if it can communicate with third parties on the steps needed as a result of the NYISO's protected information, so long as it does not communicate the information received from the NYISO, then it should also be appropriate for NFG Distribution to engage in parallel communications with its own marketing function personnel —so long as it does not reveal the non-public, operational information shared by NYISO.¹² Therefore, NFG Distribution requests that the Commission clarify that this statement applies equally to NFG Distribution's own personnel making sales of natural gas, who in this case would be treated the same as third parties for purposes of sharing the operational NYISO data. NFG Distribution seeks this clarification because it hopes to be able to effectively use information received by the NYISO to enhance operational performance and system reliability, while remaining in full compliance with the restrictions on the use of that data approved by the Commission.

¹¹ May 2015 Order, 151 FERC ¶ 61,159 at P 26.

¹² NFG Distribution Request for Clarification, June 18, 2015, at 5 (citing May 2015 Order, 151 FERC ¶ 61,159 at P 26).

12. In the alternative, NFG Distribution argues that the Commission erred in the May 2015 Order by clarifying that NFG Distribution may communicate with third parties to seek operational changes in natural gas transportation or consumption so long as it does not reveal the non-public information received from NYISO, but failing to clarify that NFG Distribution could take the same actions with respect to the non-public information in communicating with its own marketing function employees or other employees making sales of natural gas, subject to the same restriction that it not reveal the nonpublic information provided by NYISO to those employees.

III. Discussion

13. As discussed below, the Commission grants NFG Distribution's request for clarification.

14. Nothing in NYISO'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,¹³ the non-public, operational information received from NYISO (*e.g.*, information concerning a particular electric generator), NFG Distribution can request or direct employees engaged in marketing functions as defined by 18 C.F.R. 358.3(c) or who make sales of natural gas to perform specific actions based on such information.

¹³ In a contemporaneous order, the Commission addresses a motion for clarification filed by NFG Distribution wherein NFG Distribution requests that the Commission clarify that its use of the term "indirect" should not be interpreted to prevent NFG Distribution from issuing a direction or instruction because a third party may be able to infer that the request is based on non-public, operational information from PJM. *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61, 151 (2015). In that order, the Commission clarifies that while the tariff provision would prevent NFG Distribution from disclosing the confidential information itself, the provision would 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."

The Commission orders:

NFG Distribution's request for clarification is granted as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.