

114 FERC 61,155
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 358

(Docket No. RM01-10-005)

Interpretive Order Relating to the Standards of Conduct

(Issued February 16, 2006)

AGENCY: Federal Energy Regulatory Commission

ACTION: Interpretive Order

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this Order to clarify that Transmission Providers may communicate with affiliated nuclear power plants regarding certain matters related to the safety and reliability of the transmission system on the nuclear power plants, in order to comply with requirements of the Nuclear Regulatory Commission.

EFFECTIVE DATE: The Interpretive Order will become effective [**insert date of publication in the FEDERAL REGISTER**]. Comments are due March 20, 2006.

Reply comments are due April 19, 2006.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

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FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Standards of Conduct for Transmission Providers Docket No. RM01-10-005

INTERPRETIVE ORDER RELATING TO
THE STANDARDS OF CONDUCT

(Issued February 16, 2006)

1. The Federal Energy Regulatory Commission (Commission) clarifies that sections 358.5(a) and (b) of the Commission's regulations, 18 C.F.R. § 358.5(a) and (b) (2005), do not prohibit a Transmission Provider and its affiliated nuclear power plant from engaging in necessary communications related to the safety and reliability of the transmission system or the nuclear power plant, including information relating to the loss of or potential loss of transmission lines that provide off-site power to the nuclear power plant regardless of ownership of those lines. The Commission is issuing this Interpretive Order to clarify that Transmission Providers may communicate with affiliated and non-affiliated nuclear power plants to enable the nuclear power plants to comply with the requirements of the Nuclear Regulatory Commission (NRC) as described in the NRC's February 1, 2006 Generic Letter 2006-002, Grid Reliability and the Impact on Plant Risk and the Operability of Offsite Power (Generic Letter).¹

¹ Nuclear Regulatory Commission's Generic Letter 2006-002, Grid Reliability and the Impact on Plant Risk and the Operability of Offsite Power. February 1, 2006. OMB Control No.: 3150-0011.

I. Background

2. On November 25, 2003, the Commission issued a Final Rule adopting Standards of Conduct for Transmission Providers (Order No. 2004).² Under Order No. 2004, the Standards of Conduct govern the relationships between Transmission Providers³ and all of their Marketing Affiliates⁴ and Energy Affiliates.⁵ The Standards of Conduct also

² Standards of Conduct for Transmission Providers, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), order on reh'g, Order No. 2004-A, III FERC Stats. & Regs. ¶ 31,161 (2004), 107 FERC ¶ 61,032 (2004), order on reh'g, Order No. 2004-B, III FERC Stats. & Regs. ¶ 31,166 (2004), 108 FERC ¶ 61,118 (2004), order on reh'g, Order No. 2004-C, 109 FERC ¶ 61,325 (2004), order on reh'g, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), appeal docketed sub nom., National Gas Fuel Supply Corporation v. FERC, No. 04-1183 (D.C. Cir. June 9, 2004).

³ A Transmission Provider means: (1) Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce; or (2) Any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter. A Transmission Provider does not include a natural gas storage provider authorized to charge market-based rates that is not interconnected with the jurisdictional facilities of any affiliated interstate natural gas pipeline, has no exclusive franchise area, no captive ratepayers and no market power. 18 C.F.R. 358.3(a) (2005).

⁴ A Marketing Affiliate means an affiliate as that term is defined in section 358.3(b) or a unit that engages in marketing, sales or brokering activities as those terms are defined at section 358.3(e). 18 C.F.R. § 358.3(k) (2005).

⁵ An Energy Affiliate means an affiliate of a Transmission Provider that:

- (1) Engages in or is involved in transmission transactions in U.S. energy or transmission markets; or
- (2) Manages or controls transmission capacity of a Transmission Provider in U.S. energy or transmission markets; or
- (3) Buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or
- (4) Engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets.

(continued...)

contain various information sharing prohibitions to help ensure that Transmission Providers do not use their access to information about transmission to unfairly benefit their own or their affiliates' sales to the detriment of competitive markets. Absent one of the exceptions articulated in section 358.5, if a Transmission Provider discloses transmission information to its Marketing or Energy Affiliate, the Transmission Provider is required to immediately post that information on its OASIS or Internet website.⁶

(5) An LDC division of an electric public utility Transmission Provider shall be considered the functional equivalent of an Energy Affiliate, unless it qualifies for the exemption in § 358.3(d)(6)(v). 18 C.F.R. § 358.3(d) (2005). Affiliates that are not Energy Affiliates are described at 18 C.F.R. § 358.3(d)(6)(i) – (vi) (2005).

⁶ The information sharing prohibitions of the Standards of Conduct are as follows:

18 C.F.R. § 358.5(a) (2005).

(a) Information access.

(1) The Transmission Provider must ensure that any employee of Marketing or Energy Affiliate may only have access to that information available to the Transmission Provider's transmission customers (*i.e.*, the information posted on the OASIS or Internet website, as applicable), and must not have access to any information about the Transmission Provider's transmission system that is not available to all users of an OASIS or Internet website, as applicable.

(2) The Transmission Provider must ensure that any employee of the Marketing or Energy Affiliate is prohibited from obtaining information about the Transmission Provider's transmission system (including, but not limited to, information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans or similar information) through access to information not posted on the OASIS or Internet website or that is not otherwise also available to the general public without restriction.

(b) Prohibited disclosure.

(1) An employee of the Transmission Provider may not disclose to its Marketing or Energy Affiliates any information concerning the transmission system of the Transmission Provider or the transmission system of another (including, but not limited to, information received from non-affiliates or information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans, or similar information) through non-public

(continued...)

3. On January 9, 2006, at the request of the NRC, FERC Staff participated in a public meeting/workshop of the NRC regarding its then-proposed Generic Letter concerning Grid Reliability and the Operability of Offsite Power. During that discussion, participants expressed concern that the Commission's Standards of Conduct appear to restrict communications between Transmission Providers and their affiliated nuclear power plants, which are Energy Affiliates, thereby limiting the ability of the nuclear power plants to comply with all the requirements of the NRC. The participants also expressed concern that the information sharing prohibitions of the Standards of Conduct would prevent the nuclear power plants from answering all the questions posed in the NRC's draft Generic Letter.

4. The NRC's Generic Letter information request focuses on four areas: (1) use of protocols, communications and coordination procedures between the nuclear power plant and the transmission system operators (TSO), independent system operator (ISO) or reliability coordinator/authority (RC), including the use of real-time contingency analysis

communications conducted off the OASIS or Internet website, through access to information not posted on the OASIS or Internet Website that is not contemporaneously available to the public, or through information on the OASIS or Internet website that is not at the same time publicly available.

(2) A Transmission Provider may not share any information, acquired from nonaffiliated transmission customers or potential nonaffiliated transmission customers, or developed in the course of responding to requests for transmission or ancillary service on the OASIS or Internet website, with employees of its Marketing or Energy Affiliates, except to the limited extent information is required to be posted on the OASIS or Internet website in response to a request for transmission service or ancillary services.

(3) If an employee of the Transmission Provider discloses information in a manner contrary to the requirements of § 358.5(b)(1) and (2), the Transmission Provider must immediately post such information on the OASIS or Internet website.

or other programs to monitor the operability of offsite power systems; (2) describing procedures and the sharing of information between the NPP and the TSO/ISO/RC regarding real time contingency analysis to assist the NPP in monitoring grid considerations in maintenance risk assessments; (3) communications and procedures between the NPP and the TSO/ISO/RC regarding offsite power restoration procedures; and (4) losses of offsite power caused by grid failures at a frequency equal to or greater than once in 20 site-years. The February 1, 2006, Generic Letter asks nuclear power plant owners/operators to submit to the NRC a variety of information, within 60 days of its issuance, so that the NRC can determine if the nuclear power plants are complying with its regulations. Based on its inspection information and risk insights following the August 14, 2003 blackout, the NRC staff expressed concern that several issues associated with assurance of grid reliability may impact public health and safety and/or compliance with applicable regulations.⁷ Accordingly, through the questions posed in the Generic Letter, the NRC is trying to identify the types of communications, protocols and procedures, both formal and informal, that are in place between the TSO, ISO or RC and nuclear power plants to ensure that off-site power is available in the event of a significant power outage, such as the one that occurred on August 14, 2003.

II. Discussion

⁷ Nuclear Regulatory Commission's Generic Letter 2006-003, Grid Reliability and the Impact on Plant Risk and the Operatibility of Offsite Power. February 1, 2006.

5. At the January 9, 2006 workshop, representatives of the nuclear power plants raised the concern that the Standards of Conduct prevent Transmission Providers from communicating with the nuclear power plants limiting their ability to comply with the NRC's requirements articulated in the Generic Letter. The Standards of Conduct are not intended to impede necessary communications related to safety or reliability between operators of transmission systems and nuclear power plant generators. The Commission recognizes the NRC's stringent requirements on nuclear power plants as part of the nuclear power plants' operating licenses to satisfy NRC standards for offsite and onsite electric power systems. See 10 C.F.R. Part 50, Appendix A, Design Criterion 17 (2005).

6. During the Standards of Conduct rulemaking proceeding, the Commission adopted an exception to the information sharing prohibitions to permit the types of communications necessary for the nuclear power plants to comply with the requirements of NRC's Generic Letter. Specifically, the Commission permits a Transmission Provider to share with its Energy Affiliates information necessary to maintain the operations of the transmission system. 18 C.F.R. § 358.5(b)(8) (2005). This information is defined as information necessary to operate and maintain the transmission system on a day-to-day basis as well as information relating to maintenance of interconnected facilities and operational data relating to interconnection points, but does not include transmission or marketing information that would give a Transmission Provider's Marketing or Energy Affiliates undue preference over a Transmission Provider's non-affiliated customers in the energy marketplace. See Order No. 2004-A at P 203. Thus, communications between nuclear power plants and Transmission Providers as required by NRC's Generic

Letter are permitted without violating the information disclosure prohibitions or triggering a posting requirement under the Standards of Conduct.⁸ Of course, nuclear power plant operators are prohibited from being a conduit for sharing transmission or customer information with other employees of the Marketing or Energy Affiliates.

18 C.F.R. § 358.5(b)(7) (2005).

7. In this Interpretive Order, the Commission also recognizes that, in addition to permitting communications necessary to operate and maintain the transmission system, the Transmission Provider and its interconnected nuclear power plant must engage in certain limited communications to operate and maintain the operations of the interconnection and the safety and reliability of the nuclear power plant. The Commission clarifies that such communications may include: (1) communications between the transmission control center and the nuclear power plant control room regarding switching, output, transformer availability; opening or closing breakers and other operational parameters necessary to maintain the safety and reliability of the transmission system and the nuclear power plant; (2) information necessary to coordinate switching and maintenance at the interconnected nuclear power plants; and

⁸ During the rulemaking proceeding, one commenter expressed concern that nuclear power plant operators belonging to an Energy Affiliate of the Transmission Provider would be prohibited from receiving information they need to satisfy certain requirements of the NRC's regulations. The commenter also pointed out that station blackout rules require that nuclear stations have real-time information on grid disturbances and duration of power unavailability under 10 C.F.R. § 50.63. In Order No. 2004, the Commission ruled that in such situations the Transmission Provider would be permitted to share this type of information with its Energy Affiliates. See Order No. 2004 at P 144 and Order No. 2004-A at 206.

(3) information on grid disturbances and the duration of power unavailability in order for the nuclear power plant to plan for off-site power in the event of a grid-related loss of power or station blackout, as required by the NRC. Although such communications are permitted, as noted earlier, the nuclear power plant operators are prohibited from being a conduit for sharing this information with employees of other Marketing or Energy Affiliates. 18 C.F.R. § 358.5(b)(7) (2005). For example, a nuclear power plant operator may communicate to an employee of the Marketing Affiliate that output from the nuclear power plant is not available, but cannot disclose that the plant output is not available because there is an outage at a certain location on the transmission system. (unless that information is already publicly available.)

8. In addition to this exception for nuclear power plants' operations and reliability, Transmission Providers can communicate any information to nuclear power plants if that information is also simultaneously posted on an OASIS. Many Transmission Providers already post much of the information that might be needed by nuclear power plants on their respective OASIS sites. Part 37 of the Commission's regulations require Transmission Providers to post on their OASIS information regarding: transmission service schedules (18 C.F.R. §37.6(f)); constrained posted paths (18 C.F.R. § 37.6(b)(3)(1)); and curtailments or interruptions (18 C.F.R. §37.6(e)(3)) so that all transmission customers have the information at the same time.

9. Finally, under emergency conditions, the Commission created an exception that permits a Transmission Provider to take whatever steps are necessary to keep a system in operation. 18 C.F.R. § 358.4(2) (2005). For example during such emergency situations,

such as the 2003 Blackout or Hurricanes Katrina and Rita, a Transmission Provider is permitted to engage in any type of communications and to share any employees needed to keep the system in operation. Subsequently, the Transmission Provider is required to report to the Commission each emergency that resulted in any deviation from the Standards of Conduct. 18 C.F.R. § 358.4(2) (2005).

III. Comment Procedures

10. No public notice or comment on this Interpretive Order is necessary pursuant to section 4(b)(A) of the Administrative Procedure Act, 5 U.S.C. § 533(b)(A) (2000), which exempts from such notice or comment “interpretive rules, general statements of policy or rules of agency organization, procedure or practice.” However, the Commission herein invites all interested persons to submit written comments on this Interpretive Order. The Commission invites interested persons to submit comments on the matters and issues proposed in this Interpretive Order, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due March 20, 2006. Reply comments are due April 19, 2006. Comments and reply comments must refer to Docket No. RM01-10-005, and must include the commenters’ names, the organizations they

represent, if applicable, and their address in their comments. Comments and reply comments may be filed either in electronic or paper format.

11. Comments and reply comments may be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most

standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make paper filings. Commenters that are not able to file comments and reply comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, D.C. 20426.

12. All comments and reply comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments and reply comments on other commenters.

IV. Document Availability

13. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

14. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

15. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance, please contact FERC Online Support at 1-866-208-3676 (toll free) or (202) 502-8222 (e-mail at FERCOOnlineSupport@FERC.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659 (e-mail at public.referenceroom@ferc.gov).

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.