

147 FERC ¶ 61,214
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

National Fuel Gas Supply Corporation and
Empire Pipeline, Inc.

Docket No. RP14-380-000

ORDER GRANTING AND DENYING WAIVERS

(Issued June 19, 2014)

1. On January 21, 2014, as supplemented on February 20, 2014, National Fuel Gas Supply Corporation (NFGSC) and Empire Pipeline, Inc. (Empire) (collectively, National Fuel Pipelines) filed a request for limited waivers of the No-Conduit Rule announced in Order No. 787¹ and codified at section 284.12(b)(4)(ii) of the Commission's regulations, effective December 23, 2013. As discussed below, the Commission grants in part and denies in part the waiver requests, 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.² The Commission found that the revised regulations will help maintain the reliability of interstate pipeline and public utility

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)).

² See 18 C.F.R. 38.2 and 284.12(b)(4).

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.³

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 38.3(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 38.3(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 § 358.3 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.⁴ 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 Local Distribution Companies (LDCs) or other affiliates makes compliance difficult.⁵

II. Instant Filing

4. National Fuel Pipelines state that NFGSC and Empire are interstate natural gas pipelines subject to the Commission's jurisdiction under the Natural Gas Act. National Fuel Pipelines state that Empire does not have any employees of its own. National Fuel Pipelines state that Empire's system is operated by NFGSC pursuant to an operating and maintenance agreement.

5. National Fuel Pipelines state that National Fuel Gas Distribution Corporation (Distribution), an affiliate of National Fuel Pipelines, is a local distribution company in western New York and northern Pennsylvania. National Fuel Pipelines state that

³ 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."

⁴ Order No. 787, 145 FERC ¶ 61,134 at P 99.

⁵ *Id.*

Distribution's New York Division is comprehensively regulated by the New York Public Service Commission, and its Pennsylvania Division is likewise regulated by the Pennsylvania Public Utility Commission.

6. National Fuel Pipelines state that they share many employees with Distribution. For example, National Fuel Pipelines state that: (1) its gas dispatch center, which is staffed by employees of NFGSC, controls gas operations for NFGSC, Empire and Distribution; (2) the field operations of NFGSC, Empire and Distribution are integrated and many field locations are responsible for operations and maintenance of NFGSC, Empire and Distribution facilities; and (3) many administrative departments perform work for NFGSC, Empire and Distribution, including, for example, engineering, land, accounting, human resources, information services and tax.

7. National Fuel Pipelines state that other functions are performed by solely-NFGSC departments, such as interstate marketing, transportation and exchange, and gas storage, while others are performed by solely-Distribution departments, such as transportation services, rates and regulatory affairs, energy services, and gas supply administration department, which purchases and ships gas required for its service territories.

8. In the supplemental filing, National Fuel Pipelines state that many of the departments with NFGSC and Distribution employees that provide services to both the National Fuel Pipelines and Distribution (Shared Services Departments) also provide services to their parent company, National Fuel Gas Company (Parent) and/or to other affiliated companies.⁶ The Shared Services Departments include not only the gas dispatch center, but other departments including the engineering department providing construction and maintenance services, the land department providing property management services, and various administrative departments providing legal, accounting, tax, and human resources services.⁷ National Fuel Pipelines state that, for

⁶ National Fuel Pipelines affiliates include the following: (1) National Fuel Gas Midstream Corporation (Midstream), which builds, owns and operates natural gas processing and gathering facilities; Midstream does not buy or sell natural gas, nor does it employ any Marketing Function Employees; (2) Seneca Resources Corporation (Seneca), which is an exploration and production company; aside from a small number of employees who may occasionally administer sales of natural gas in California, Seneca does not employ any Marketing Function Employees; (3) National Fuel Resources, Inc. (NFR), which is a natural gas marketing company; NFR employs Marketing Function Employees, who function independently of the National Fuel Pipelines' transmission function employees; and (4) Horizon Power, Inc. (Horizon), which is a member of Energy Systems Northeast, LLC which owns decommissioned power generation assets in northwestern Pennsylvania,

⁷ In the supplemental filing, National Fuel Pipelines describe in detail the various functions provided to Parent and other affiliates by the Shared Services Departments.

example, employees in the gas dispatch center receive pressure and flow information from Midstream facilities and monitor Midstream stations for pressure alarms, in addition to their functions for the National Fuel Pipelines and Distribution.⁸ The Shared Services Departments do not include Distribution's Gas Supply Administration Department, which purchases and ships gas required for its service territories.

9. National Fuel Pipelines are seeking four waivers. First, National Fuel Pipelines seek a waiver of Order No. 787 to the extent necessary to permit shared employees in National Fuel Pipelines' gas dispatch center to receive non-public, operational information from an electric system operator pursuant to section 38.2 of the Commission's regulations and share it with other employees in the Shared Services Departments.⁹ National Fuel Pipelines state that the New York Independent System Operator (NYISO) and PJM Interconnection, L.L.C. (PJM) send e-mail communications to the supervisors at National Fuel Pipelines' gas dispatch center from time to time regarding operational conditions on the electric grid. National Fuel Pipelines state that these communications may include notification that the grid operator is experiencing peak loads and/or that power generators may be coming on-line on short notice. National Fuel Pipelines state that, as operators of National Fuel's gas transmission system, employees at the gas dispatch center are the appropriate point of contact with NYISO and PJM regarding such matters. However, because these employees perform functions for Distribution or another affiliate, their receipt of this information from the grid operator and subsequent communication with other gas dispatch employees may not be consistent with the Order No. 787's No-Conduit Rule.

10. National Fuel Pipelines state that, in most cases, gas dispatch employees would have no reason to forward the information received from electric grid operators to employees in the Shared Services Departments. However, from time to time the need may arise to forward the information to such departments, as for example, to: (1) shared field operations personnel to arrange for someone to stand by for the possibility of manual operation at a station facility; (2) the legal department to discuss compliance obligations regarding the communication; or (3) the audit services department in connection with its auditing responsibilities. National Fuel Pipelines states that, in addition, the network administrators within the information services department would have the ability to access e-mail communications received by the gas dispatch center. National Fuel Pipelines states that, under this limited waiver, the shared employees would be obligated not to disclose the non-public, operational information to: (1) employees in

⁸ National Fuel Pipelines Supplemental Waiver Request at 5.

⁹ National Fuel Pipelines Initial Waiver Request at 5-7; National Fuel Pipelines Supplemental Waiver Request at 5-6.

solely Distribution departments (including but not limited to gas supply administration department employees); (2) any other third party; or (3) any marketing function employee. National Fuel Pipelines states that this waiver is essential to the achievement of the Commission's goals in issuing Order No. 787.

11. Second, National Fuel Pipelines request a waiver of Order No. 787 to the extent necessary to permit employees in the Shared Services Departments to receive communications regarding electric service interruptions affecting National Fuel Pipelines' facilities.¹⁰ National Fuel Pipelines state that they operate many buildings, compressor stations, meter stations and other facilities across western New York and western Pennsylvania. National Fuel Pipelines state that, if power to a particular facility is interrupted, and there is a need for communication between the electric utility and National Fuel Pipelines about the service outage, the person at National Fuel Pipelines' end of the conversation could be an employee within a Shared Services Department, such as an employee at its gas dispatch center or an employee in its operations, land or engineering department. National Fuel Pipelines state that employees within shared departments often need to know about the status of an electric outage in order to perform their responsibilities and respond to it effectively.¹¹

12. Third, National Fuel Pipelines request a waiver of Order No. 787 to the extent necessary to permit National Fuel Pipelines to communicate information received from power companies about electric service interruptions to affiliated non-shared employees, including those in Distribution's gas supply administration department and those of Midstream, Seneca and NFR, the natural gas marketing affiliate, as it relates to the non-shared employees' place of work.¹² National Fuel states that it is not seeking a waiver that would permit it to share information about the impact of a power outage on National Fuel Pipelines' transmission operations with Distribution's gas supply administration department or other employees in non-shared departments. National Fuel Pipelines claim, however, that there should be no reason why these employees cannot be informed about the status of a power interruption as it relates to a building in which they or their fellow employees work.

¹⁰ National Fuel Pipelines Initial Waiver Request at 7-8; National Fuel Pipelines Supplemental Waiver Request at 6-7.

¹¹ National Fuel Pipelines Initial Waiver Request at 7-8; National Fuel Pipelines Supplemental Waiver Request at 6. National Fuel Pipelines state that, for example, shared field operations personnel may need to man what are normally automated locations. National Fuel Pipelines Initial Waiver Request at 8.

¹² National Fuel Pipelines Initial Waiver Request at 8-9; National Fuel Pipelines Supplemental Waiver Request at 7.

13. Fourth, National Fuel Pipelines request a waiver of Order No. 787 to the extent necessary to permit National Fuel Pipelines' gas dispatch center employees that receive information about a power outage affecting the facilities of Midstream to communicate such information to Midstream.¹³ National Fuel Pipelines assert that such communication is "obviously required."

III. Public Notice

14. Public notice of the filing was issued on January 23, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹⁴ Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁵ all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance 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

15. As discussed below, the Commission grants in part and denies in part National Fuel Pipelines' request for waivers.

16. Order No. 787 held that the No-Conduit Rule applies to employees an interstate pipeline shares with affiliated gathering facilities or intrastate pipelines.¹⁶ 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.¹⁷ Based on the information provided by National Fuel Pipelines, the Commission finds that good cause exists for granting National Fuel Pipelines: (1) a limited waiver of Order No. 787 to permit shared employees in National Fuel Pipelines' gas dispatch center to receive non-public, operational information from a public utility pursuant to section 38.2 of the Commission's regulations and to share it with other shared employees in the Shared Services Departments; and (2) a limited waiver of Order No. 787 to permit shared employees in the Shared Services Departments to receive communications regarding electric service interruptions affecting National Fuel

¹³ National Fuel Pipelines Supplemental Waiver Request at 7.

¹⁴ 18 C.F.R. § 154.210 (2013).

¹⁵ 18 C.F.R. § 385.214 (2013).

¹⁶ Order No. 787, 145 FERC ¶ 61,134 at P 99.

¹⁷ *Id.*

Pipelines' facilities. These limited waivers are subject to the condition that the shared employees do not engage in marketing functions as defined in 358.3(d) 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 the National Fuel Pipelines; or (3) any employee of their affiliates not authorized to receive the information pursuant to the terms of this waiver.

17. The Commission finds that granting these two waivers, as conditioned, reasonably balances: (1) the National Fuel Pipelines' interest in allowing their 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 those pipelines to receive non-public, operational information from public utilities should minimize the burden of complying with the No-Conduit Rule and thereby help promote reliable service and operational planning by facilitating National Fuel Pipelines' receipt of relevant information from public utilities.

18. Further, the conditions we have imposed on the two 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.¹⁸ Rather, the scope of information that may permissibly be shared under the 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.¹⁹ Electric and natural gas pipeline transmission operators stated that there was general reluctance to share non-public, operational

¹⁸ Order No. 787, 145 FERC ¶ 61,134 at P 97. *See also* 18 C.F.R. 358.3(j) (2013).

¹⁹ PJM Interconnection, L.L.C., Docket No. ER14-1469-000 (Mar. 12, 2014) (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).

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.²⁰ Numerous parties also raised concerns about the potential competitive effects of such disclosure.²¹

19. While National Fuel Pipelines agree 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 National Fuel Pipelines share with their local distribution company, gathering, and processing affiliates may not qualify as marketing function employees, despite the fact they make natural gas sales. For example, an LDC's on-system natural gas sales and a gatherer's sales of natural gas solely from its own gathering or processing facilities are exempted from the definition of marketing function.²² We are concerned that with preferential access to confidential, customer-specific information, including 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.

20. Next, we turn to National Fuel Pipelines' requests for waiver of Order No. 787 to permit National Fuel Pipelines to communicate information received under the rule regarding electric service interruptions or impending power outages to affiliated non-shared employees. The Commission finds that good cause does not exist to justify granting these waivers to non-shared employees. These waiver requests go beyond the type of waiver Order No. 787 indicated the Commission would consider. The Commission sees little basis to permit preferential communication of information concerning service interruptions, particularly since regulated public utilities will inform all of their customers of any relevant electric service interruptions or power outages.

²⁰ See Order No. 787, 145 FERC ¶ 61,134 at P 4. See also *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,003 (2014); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,033 (2014).

²¹ See, e.g., Order No. 787, 145 FERC ¶ 61,134 at P 16, 28 (summarizing comments).

²² See 18 C.F.R § 358.3(c)(2)(iv) and (v) (2013).

The Commission orders:

The requested waivers are granted in part and denied in part as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.