

152 FERC ¶ 61,037
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

National Fuel Gas Supply Corporation and
Empire Pipeline, Inc.

Docket No. RP14-380-001

ORDER DISMISSING REHEARING

(Issued July 16, 2015)

1. On January 21, 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. On June 19, 2014, the Commission granted in part and denied in part the waiver requests, subject to conditions.² On July 21, 2014, National Fuel Pipelines filed a request for rehearing of the June 19 Order. As discussed below, the Commission dismisses National Fuel Pipelines' request for rehearing.

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

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).

² *National Fuel Gas Supply Corp., et al.*, 147 FERC ¶ 61,214 (2014) (June 19 Order).

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.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. 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 employees with Local Distribution Companies (LDCs) or other affiliates makes compliance difficult.⁶

4. On January 21, 2014, as supplemented on February 20, 2014, National Fuel Pipelines⁷ filed a request for limited waivers of the No-Conduit Rule. National Fuel Pipelines stated that they share many employees with National Fuel Gas Distribution Corporation (NFG Distribution).⁸ In its supplemental filing, National Fuel Pipelines

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.

⁶ *Id.*

⁷ NFGSC and Empire are interstate natural gas pipelines subject to the Commission's jurisdiction under the Natural Gas Act. Empire does not have any employees of its own and Empire's system is operated by NFGSC pursuant to an operating and maintenance agreement. June 19 Order, 147 FERC ¶ 61,214 at P 4-5.

⁸ NFG Distribution, an affiliate of National Fuel Pipelines, is a LDC in western New York and northern Pennsylvania. June 19 Order, 147 FERC ¶ 61,214 at P 5.

stated that many of the departments with NFGSC and NFG Distribution employees that provide services to both the National Fuel Pipelines and NFG Distribution (Shared Services Departments) also provide services to their parent company, National Fuel Gas Company, and to National Fuel Gas Midstream Corporation (Midstream)⁹ and other affiliated companies.¹⁰ The Shared Services Departments include not only the natural 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.

5. National Fuel Pipelines sought four waivers, the following two of which are at issue in this rehearing request. First, National Fuel Pipelines requested 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 as it relates to the non-shared employees' place of work. Second, National Fuel Pipelines requested a waiver of Order No. 787 to the extent necessary to permit National Fuel Pipelines' natural gas dispatch center employees that receive information about a power outage affecting the facilities of Midstream to communicate such information to Midstream.

6. Based on the information provided by National Fuel Pipelines, the June 19 Order found that good cause did not exist to justify granting a 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.¹¹ The Commission stated that these waiver requests go beyond the type of waiver Order No. 787 indicated the Commission would consider. The Commission saw little basis to permit preferential communication of information concerning service interruptions, particularly since regulated public utilities would inform all of their customers of any relevant electric service interruptions or power outages.

⁹ National Fuel Pipelines stated that Midstream builds, owns and operates natural gas processing and gathering facilities and does not buy or sell natural gas, nor does it employ any Marketing Function Employees.

¹⁰ National Fuel Pipelines' affiliates include the following: (1) Seneca Resources Corporation, which is an exploration and production company; (2) National Fuel Resources, Inc., which is a natural gas marketing company; and (3) Horizon Power, Inc., which is a member of Energy Systems Northeast, LLC, which owns decommissioned power generation assets in northwestern Pennsylvania.

¹¹ June 19 Order, 147 FERC ¶ 61,214 at P 20.

II. Request for Rehearing

7. In its rehearing request, National Fuel Pipelines argue that the Commission should waive Order No. 787's No-Conduit Rule as necessary: (1) to permit employees that provide services to the National Fuel Pipelines and other affiliates to communicate information received from a local electric utility about an impending or ongoing power outage to a National Fuel office building (a) to non-shared employees of an affiliate of the National Fuel Pipelines who work in the building; (b) to an employee who supervises non-shared employees of an affiliate of the National Fuel Pipelines who work in the building; or (c) in response to an emergency involving the loss of electric power to one or more office buildings; and (2) to permit employees that provide services to the National Fuel Pipelines and other affiliates to communicate information received from a local electric utility about an impending or ongoing power outage affecting a facility of Midstream to non-shared employees of Midstream.

8. With respect to its first waiver request, National Fuel Pipelines state that at several of its locations, shared employees and non-shared affiliate employees work in the same building. National Fuel Pipelines state that in these buildings, a Shared Services Department (Land Department) is responsible for building maintenance and would be the primary contact with the local electric utility and all employees in the building regarding the status and impact of an outage. For example, National Fuel Pipelines state that if power to the building were interrupted, the Land Department would be responsible for making inquiries to the local electric utility regarding the likely duration of the outage and providing employees in all departments (including the non-shared NFG Distribution and Midstream employees) with information they need about the status of power availability and its impact on building safety and the various functions performed within the building. Absent the requested waiver, or clarification that §284.12(b)(4)(ii) does not prohibit the desired communication,¹² National Fuel Pipelines state that the shared services personnel responsible for building maintenance cannot give non-shared affiliate employees within the building any information received from the local electric utility about an impending or ongoing power outage affecting the building.

9. With respect to the second waiver request, National Fuel Pipelines state that shared employees in the dispatch center may be the first to become aware of a power outage affecting Midstream's facilities. National Fuel Pipelines state that its dispatch center, staffed by employees of NFGSC, is equipped to receive pressure and flow

¹² National Fuel Pipelines note that it appears that the Commission considers the scope of §284.12(b)(4) to be so broad as to include information about the status of power interruptions to pipeline office buildings. National Fuel Pipelines state that clarification that the scope of this provision is not so broad would obviate the need for this requested waiver.

information from Midstream facilities and has emergency shut down capabilities for some of Midstream's facilities. National Fuel Pipelines state that an alert from the power company relative to Midstream's facilities that occurs during the middle of the night may be received by the dispatch center, which is manned on a 24-7 basis. National Fuel Pipelines state that they seek only the ability to share information received from the local electric utilities about impending or ongoing power interruptions to Midstream facilities with Midstream employees. National Fuel Pipelines argue that there would be nothing preferential in permitting the shared employees to provide information they have obtained from the power company to Midstream's own operators and managers.

III. Discussion

10. In light of National Fuel Pipelines' clarification of the requested waiver, we find that, because the requested waiver involves information from a local electric utility regarding retail power outages affecting National Fuel Pipelines' office building or Midstream's facilities, we find that waiver of the regulations is unnecessary for the requested communications to take place.

11. In its rehearing request, National Fuel Pipelines clarify that it requests waiver to allow the sharing of information received from a local electric utility regarding power outages affecting a National Fuel Pipelines office building or Midstream facility. National Fuel Pipelines' waiver request concerns the provision of information to a retail customer regarding a retail power outage, as opposed to information regarding a wholesale customer or regarding a wholesale transaction.¹³ As such, the provision of such information does not involve information within the scope of Order No. 787, and accordingly, the Commission dismisses National Fuel Pipelines' request for rehearing.

¹³ See 16 U.S.C. § 824(b)(1). Section 201(b) of the Federal Power Act provides in relevant part:

“The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but except as provided in paragraph (2) shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line.”

The Commission orders:

National Fuel Pipelines' request for rehearing is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.