

December 1, 2014

Submitted Electronically

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street N.E.
Washington, D.C. 20426

Re: New York Independent System Operator, Inc.
Compliance Filing in Docket No. ER14-2895-

Dear Ms. Bose:

In compliance with the Federal Energy Regulatory Commission's ("Commission") November 14, 2014 Order ("Order") in the above-captioned proceeding,¹ the NYISO submits additional revisions to Attachment F, Section 12.4 of the NYISO's Open Access Transmission Tariff ("OATT").

The NYISO's September 17, 2014 filing in the above-captioned proceeding sought revisions to the OATT to permit information sharing with interstate natural gas pipelines, intrastate natural gas pipelines and natural gas local distribution companies ("LDCs"). The NYISO proposed a modification to its proposed revisions to the OATT in an Answer filed on October 23, 2014 in response to the Motion to Intervene and Protest of National Fuel Gas Distribution Corporation and the Notice of Intervention and Comments of the New York State Public Service Commission ("Answer").

In its Order, the Commission accepted the NYISO's filing—as modified by NYISO's Answer—with a November 17, 2014 effective date, but instructed the NYISO to submit a compliance filing revising its proposed tariff modifications to: (1) clarify that the operating personnel of interstate pipelines receiving non-public operational information originating from the NYISO, from an affiliated LDC or intrastate pipeline, must comply with 18 CFR 284.12(b)(4)(ii); and (2) specify which employees of an LDC or intrastate natural gas pipeline company may receive non-public operational information from the NYISO.

¹ *New York Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,122 (2014).

I. DESCRIPTION OF PROPOSED COMPLIANCE REVISIONS

The NYISO's proposed compliance revisions address the Commission's instructions.

First, as required by the Order,² the NYISO has revised Section 12.4 of its OATT "to 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)." Specifically, the NYISO has revised the OATT to state that: "[t]he operating personnel of an affiliated interstate natural gas pipeline operator accepting non-public operational information [from an affiliated LDC or interstate pipeline] shall agree to comply with 18 CFR 284.12(b)(4)(ii)."

Second, the NYISO addressed the Commission's directive that the NYISO specify "which LDC or intrastate employees are prohibited from receiving non-public operational information." The NYISO modified its tariff language in response to this directive by: (1) prohibiting "operating personnel" of an LDC or intrastate pipeline from disclosing—or using anyone as a conduit for disclosure of—such information to any non-operating personnel of the LDC or intrastate pipeline; and (2) stating that "[u]nless otherwise authorized by the Commission . . . LDC or intrastate pipeline "operating personnel" shall exclude employees engaged in marketing functions as defined by 18 CFR 358.3(c) or who make sales of natural gas." These modifications provide the clarification sought in the Order; at the same time, they also contemplate a mechanism for redress should the definition of LDC or intrastate pipeline "operating personnel" prove unnecessarily restrictive.

As the Commission recognized in the Order, the identification and classification of "marketing function" employees may be more ambiguous for LDCs and intrastate pipelines than for FERC-jurisdictional interstate pipelines:

the definition of marketing function employee in the Standards of Conduct is narrow and linked to the relationship between the electric transmission provider and its marketing function employee or to an interstate pipeline and its marketing function employees and, therefore, may not apply to LDCs without marketing function employees as defined by the Standards of Conduct.³

The Commission therefore proposed limitations in the OATT consistent with its order in *Enable Gas Transmission, LLC, et al.*⁴ to ameliorate the "opportunity for commercially sensitive information to be used in an unduly discriminatory or preferential manner by the

² *Id.* P. 25.

³ *Id.* P. 25.

⁴ 147 FERC ¶ 61,229, P. 18 (2014).

recipient's employees or to the detriment of the market.” The NYISO believes that, in general, the limitations on LDCs and intrastate pipelines prescribed in *Enable* and adopted here by the NYISO succeed in protecting markets and avoiding undue discrimination or preference while at the same time accomplishing the reliability aims sought by FERC Order No. 787. But the NYISO recognizes that—in certain limited circumstances—LDCs and intrastate pipelines could have employees that engage in infrequent or *de minimus* activity that could constitute “making sales of natural gas” but who nevertheless could substantially aid gas-electric coordination if authorized to receive non-public operational information, if protections are in place to prevent use of that information in an unduly discriminatory or preferential manner or to the detriment of a gas or electric market.⁵

For this reason, the NYISO's tariff revisions in this compliance filing adopt the *Enable* characterization of the LDC/intrastate pipeline marketing function “unless otherwise authorized by the Commission.” In this way, if an LDC or intrastate pipeline identifies personnel who do not fit the NYISO tariff definition of “operating personnel” but would substantially aid the aims of Order No. 787—and whose receipt of non-public operational information would not result in undue discrimination, preference, or detriment to a market—they may seek authorization from the Commission for such an employee to receive non-public, operational information from the NYISO subject to appropriate protections. This approach avoids overly-permissive tariff language but acknowledges that limited, factually-specific circumstances could support a waiver. Pertinently, this approach is consistent with the Commission's stated rationale in Order No. 787-A for encouraging waiver filings in the analogous situation of disclosure of non-public, operational information employees shared between interstate pipelines and intrastate pipelines/LDCs:

The Commission found that the situations warranting such disclosure would depend on the individual circumstances of each case. Given the relatively few pipelines that are in this position, the Commission determined that, rather than attempting to craft a generic regulation, the best course would be to proceed on an individual case-by-case basis through waivers. We cannot find that the limited extra burden on a pipeline to seek a waiver to permit such sharing outweighs the benefits of being able to review the individual circumstances of such cases.

Finally, the NYISO proposes to add punctuation, additional numbering, and an abbreviation for organizational purposes. The NYISO does not propose any other changes to the language accepted by the Commission in its Order.

II. DOCUMENTS SUBMITTED

The NYISO submits the following documents:

⁵ By way of non-exclusive example, this could include operational employees who perform balancing services for an LDC or intrastate pipeline.

1. This filing letter;
2. A clean version of the revisions to Section 12.4 of the NYISO OATT (“Attachment I”); and
3. A black lined version of the revisions to Section 12.4 of the NYISO OATT (“Attachment II”).

III. SERVICE LIST

The NYISO will send an electronic link to this filing to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, to all parties listed on the Commission’s official service list in Docket No. ER14-2895-___ and to the New Jersey Board of Public Utilities. In addition, the complete filing will be posted on the NYISO’s website at www.nyiso.com.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this compliance filing and the revisions to NYISO OATT Section 12.4, effective November 17, 2014.

Respectfully submitted,

/s/ Christopher R. Sharp

Robert E. Fernandez
General Counsel
Christopher R. Sharp
Compliance Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, New York 12144
(518) 356-7537
csharp@nyiso.com

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Cc: Michael Bardee
Anna Cochrane
Morris Margolis
David Morenoff

Gregory Berson
Jignasa Gadani
Michael McLaughlin
Daniel Nowak