

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.) Docket No. ER14-2895-000

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.212 and 385.213 (2009), the New York Independent System Operator, Inc. (“NYISO”) submits this motion for leave to answer, and an answer to, the Motion to Intervene and Protest of National Fuel Gas Distribution Corporation (“NFG Distribution”) and the Notice of Intervention and Comments of the New York State Public Service Commission (“NYPSC”). The NFG Distribution Protest and the NYPSC Comments were filed in response to the NYISO’s September 17, 2014 filing in the above-captioned proceeding, pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission’s regulations.

In this proceeding, the NYISO proposed revisions to its Open Access Transmission Tariff (“OATT”) Code of Conduct to permit voluntary sharing of certain non-public operational information with natural gas pipelines and local distribution companies. NFG Distribution’s argument that the revisions should be rejected in their entirety is meritless because it would defeat the Commission’s purpose in Order No. 787¹: permitting operational personnel of the bulk electric power system to share non-public operating information with the operational personnel of the natural gas system. NFG Distribution’s concerns about potential unauthorized information

¹ Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators, 145 FERC ¶ 61,134 (2013) (“Order No. 787”).

sharing can be addressed by not sharing that information with its affiliates or third parties, or, as a last resort, by electing not to receive non-public operating information from the NYISO.

In response to the NYPSC Comments, and to address a separate issue raised by NFG Distribution, the NYISO herein suggests clarified tariff language to expressly permit LDCs and intrastate pipelines to share non-public operational information with the operating personnel of affiliated entities already authorized to receive that information. Should the Commission accept this language, the Commission should direct the NYISO to file the modified tariff language in a further compliance filing in this proceeding.

I. REQUEST FOR LEAVE TO FILE ANSWER

The NYISO recognizes that the Commission generally discourages answers to protests and answers. However, the Commission has the discretion to accept answers to protests and answers, and has done so when those answers help to clarify complex issues, provide additional information, or are otherwise helpful in the development of the record in a proceeding.² The NYISO submits that this answer will assist the Commission in its decision-making process and respectfully requests leave to answer NFG Distribution Protest and NYPSC Comments.

II. ANSWER

A. The NYISO's Proposed Code of Conduct Revisions Are a Reasonable Application of FERC Order No. 787, and the NFG Distribution Protest Should Be Rejected.

The NYISO is seeking the Commission's acceptance of tariff revisions to permit the sharing of non-public operational information about the bulk electric system with the operating

² See e.g., *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044 at P 39 (2008) (accepting answers to answers because they provided information that aided the Commission's decision-making process); *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting the NYISO's answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was "helpful in the development of the record...").

personnel of natural gas interstate pipelines, intrastate pipelines, and local distribution companies (LDCs) for the purpose of promoting reliable service and operational planning pursuant to Order No. 787. The tariff revisions will enable improved communication and coordination between the control room operators of the gas and electric networks in New York, as contemplated by the Commission in Order No. 787. This communication will promote enhanced situational awareness and assist in identifying and addressing circumstances which could affect bulk power system reliability in the event of fuel shortages. At the same time, the proposed tariff language strives to maintain the confidentiality of its generators' non-public information—which may be of substantial commercial value—by limiting its dissemination.

In its Protest, NFG Distribution raises concerns that the limitations placed on entities receiving non-public information from the NYISO—particularly LDCs and intrastate pipelines—will make it difficult to use that information to support reliability:

After carefully analyzing the impact of the limitations authorized in the NYISO compliance filing, Distribution fears that the NYISO's seemingly straightforward restrictions against communicating the non-public operational data to affiliates and third parties pose significant challenges to many LDCs, including Distribution, and may significantly inhibit the benefits of the Final Rule implemented by Order No. 787. Therefore, the Commission should reject the proposed amendments to the OATT. At minimum, the Commission should clarify the scope of these restrictions in a manner that recognizes the steps that LDCs must take to effectively communicate non-public operational data to achieve increased reliability.³

Consistent with Order No. 787,⁴ the NYISO proposed to share non-public operational information with the operating personnel of intrastate pipelines and LDCs only if those parties

³ NFG Distribution Protest at p. 8.

⁴ See *Order No. 787*, n. 83 (stating that electric transmission operators may seek tariff authority to share non-public operational information with intrastate pipelines and LDCs, provided they require acceptable procedures for handling and protection from inappropriate disclosure or use of such information – such as by use of a non-disclosure agreement).

acknowledge in writing that they will not disclose, or use anyone as a conduit to disclose, any such information with a third party or affiliate.⁵ As discussed below, the NYISO does not oppose a modification to its proposed tariff language that would permit LDCs and intrastate pipelines to share non-public operational information with the operating personnel of entities already authorized to receive that information. However, the NYISO respectfully asks that the Commission: (1) deny NFG Distribution's request that the Commission reject the proposed tariff revisions in their entirety; and (2) decline to order that the NYISO alter its tariff language to permit LDCs and intrastate pipelines to share non-public operational information with third parties.

1. There is no basis to deny the NYISO's tariff amendments in their entirety.

NFG Distribution requests that FERC reject the NYISO proposed tariff revisions in their entirety due its concerns with whether it can sufficiently use that information for the benefit of reliability.⁶ This argument is unfounded for two reasons.

First, while NFG Distribution raises various hypothetical scenarios in which they state they would need to communicate with third parties and affiliates regarding "information derived from the NYISO's notice" of non-public operational information in order to act on such information, they do not explain why they cannot resolve their compliance concerns by simply limiting their use of any such information they may receive to those actions they conclude are safely within the ambit of activities permitted by Order No. 787 and contemplated by the proposed tariff revisions. Neither Order No. 787 nor the NYISO proposed tariff amendments

⁵ Given the existing Standards of Conduct required of FERC-jurisdictional transmission entities handling non-public operational information, and the No-Conduit Rule imposed by FERC in Order No. 787, the NYISO did not need to offer language that would impose additional obligations on the use and handling of such information once received by interstate pipelines.

⁶ NFG Distribution Protest at pp. 4 – 5.

forbid an intrastate pipeline or LDC from communicating non-specific pipeline capacity or local distribution information, without revealing confidential information, in response to an emergent reliability need. Furthermore, neither Order No. 787 nor the NYISO tariff requires the recipient of non-public operational information to take specific actions—or any actions at all—in response to that information. An entity may freely choose not to use or act on non-public operational information received from the NYISO, if they are concerned that any action taken based on that information would result in disclosure of such information to an unauthorized party.

Second, the information sharing authorized by the proposed tariff language is voluntary. The NYISO hopes and anticipates that LDCs and intrastate pipelines in New York will engage in the information sharing authorized by Order No. 787 and contemplated by these tariff revisions. However, if NFG Distribution—or another LDC or intrastate pipeline—is concerned that accepting non-public operational information from the NYISO is an unacceptable compliance risk, that LDC or intrastate pipeline can simply elect not to execute an agreement with the NYISO to accept such information. Accordingly, NFG’s concerns about potential inadvertent information sharing should not deprive the NYISO of the opportunity to exchange operational information with all interstate pipelines, LDCs, and intrastate pipelines in order to enhance electric system reliability.

2. The NYISO tariff language should not be revised to permit sharing of information with third parties.

In its Protest, NFG Distribution expresses concern that the NYISO tariff language would forbid an LDC from sharing non-public operational information with third parties, such as “independent electric generators connected to the LDC” and its “own major customers” – which NFG asserts may be necessary to fully respond to non-public operational information it may

receive.⁷ However, altering NYISO tariff language in a way that would permit an LDC or intrastate pipeline to disclose commercially sensitive, non-public operational information to other LDC customers who may themselves be seeking to acquire natural gas, or even to competing generators, risks exposing that information to parties that should not receive it, or could use it in a way that might be harmful to competitive markets.

Indeed, the NYISO's proposed prohibition on LDCs or intrastate pipelines disclosing confidential information to third parties is fully consistent with the restrictions imposed by FERC on interstate pipelines through the No-Conduit Rule. In Order No. 787, FERC made clear that, since "[t]he scope of information that transmission operators may permissibly share under this rule is broader than transmission function information . . . , [it] therefore warrants the restriction on disclosure to third parties, as well as marketing function employees, via the No-Conduit Rule."⁸ The NYISO believes that this is an appropriate limitation given the potential commercial value of information that could be disclosed pursuant to this procedure, and respectfully requests that the Commission leave the third party prohibition intact.

B. The NYISO Does Not Object to Limited Tariff Modifications Permitting Intrastate Pipelines and LDCs to Share or Discuss Non-Public Operational Information with Affiliates Already Authorized by the NYISO to Receive It.

NYPSC and NFG Distribution have asserted that the non-disclosure restriction proposed by the NYISO for confidential information shared with intrastate pipelines and LDCs is unduly burdensome, and will restrict the ability of the recipient to act on such information for the benefit of reliability. The NYPSC Comments assert that the NYISO tariff language should be revised to permit intrastate pipelines and LDCs to share non-public operational information received from

⁷ NFG Distribution Protest, p. 4.

⁸ *Order No. 787* at P. 97.

the NYISO with all its affiliates except “marketing affiliates.” The NYPSC reasons that “since the purpose of the information sharing is to better organize the distribution of gas during times when circumstances may create constraints that may limit the availability of transportation capacity, precluding affiliated pipelines and LDCs from speaking with each other would be counter-productive.”⁹

Upon consideration of the NYPSC Comments and NFG Distribution Protest, the NYISO agrees that it is reasonable to permit LDCs and intrastate pipelines to share and discuss non-public operational information with affiliated entities already explicitly authorized by the NYISO to receive such information: namely, the operating personnel of interstate pipelines, as well as the operating personnel of LDCs or intrastate pipelines who have already executed an appropriate non-disclosure agreement with the NYISO.¹⁰ This practice may aid the ability of LDCs and intrastate pipelines to better act on non-public operational information they may receive, and—because it is limited to affiliates already authorized to receive the information from the NYISO, and who, in practice, may indeed already have received such information—will still prevent the dissemination of this non-public information beyond those parties authorized by Order No. 787 to receive it. To this end, should the Commission conclude that permitting LDCs and intrastate pipelines to share and discuss non-public operational information with its affiliates who are already authorized by the NYISO to receive such information is consistent with Order No. 787 and the NYISO’s obligation to protect Confidential Information,

⁹ NYSPC Comments, Oct. 8, 2014 at p. 5.

¹⁰ After consideration of the NYPSC proposed tariff language that would forbid confidential information-sharing by LDCs and intrastate pipelines with “marketing affiliates,” the NYISO concluded that the language it proposes here would provide more clarity, as affiliates of LDCs and intrastate pipelines likely include entities that perform both operational and marketing functions.

the NYISO proposes modifications to its proposed OATT Attachment F tariff revisions to that end, to read as follows:

12.4 Treatment of Confidential and Transmission System Information

The procedures described in this section do not apply to the following:

- (1) communication of TSI between the ISO and the Transmission Owner's control centers, and other power pools or ISOs;
- (2) communication of non-public, operational information concerning natural gas-fueled generation from resources located within the New York Control Area between the ISO and the operating personnel of an interstate natural gas pipeline company for the purpose of promoting reliable service or operational planning;
- (3) communication of non-public, operational information concerning natural gas-fueled generation from resources located within the New York Control Area between the ISO and the operating personnel of natural gas local distribution companies and/or intrastate natural gas pipeline operators for the purpose of promoting reliable service or operational planning, provided that such party has acknowledged, in writing, that it is prohibited from disclosing, or using anyone as a conduit for disclosure of, non-public, operational information received from the ISO to ~~an affiliate or 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;

The NYISO asserts that this revision better enables operational information-sharing in response to the observations made by the NYPSC and NFG Distribution, while at the same time protecting the confidentiality of that information. As stated above, the NYISO requests that the Commission direct the NYISO to file the amended tariff language for Commission acceptance in a further compliance filing in this proceeding.

III. CONCLUSION

Wherefore, for the reasons set forth herein, the NYISO respectfully requests that the Commission take action as specified herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 23rd day of October, 2014.

/s/ Joy A. Zimmerlin

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