

INSIGHTS

FERC Takes Steps to Eliminate Barriers to Transmission Provider and Pipeline Communications

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On July 18, 2013, the Federal Energy Regulatory Commission ("Commission") issued a [Notice of Proposed Rulemaking](#) ("NOPR") proposing to revise its regulations to permit expressly interstate natural gas pipelines and public utilities that own, operate, or control transmission facilities (i.e., transmission operators) to share non-public, operational information for the purpose of promoting reliable service or operational planning. The Commission issued the NOPR in response to statements by natural gas pipelines and transmission operators at recent conferences concerning electric-gas coordination that they are reluctant to share non-public operational information with each other due to a concern that such sharing may be viewed as a violation of Commission laws and regulations, including the prohibitions against undue discrimination and preference contained in the Federal Power Act ("FPA") and Natural Gas Act ("NGA"). Noting that the protections against undue discrimination and preference do not prohibit differences in treatment when the difference is justified, the Commission clarified that the sharing of non-public, operational information between transmission operators and natural gas pipelines for the purpose of promoting reliable service or operational planning is reasonable and does not violate the FPA or NGA. In addition, responding to concerns that the Standards of Conduct ("SOC") contained in Part 358 of the Commission's regulations could prevent the effective participation of such entities in regional reliability or system planning exercises, the Commission clarified that the SOC do not limit communications between pipelines and transmission operators that are not affiliated with each other; the Commission emphasized, however, that communicating non-public transmission information during private exercises involving only the transmission provider and its marketing function employees is prohibited by the SOC, as it would give marketing function employees preferential access to non-public transmission information. In an attempt to eliminate doubt about the legal status of the sharing of non-public, operational information between natural gas pipelines and transmission operators for the purpose of promoting reliable service or operational planning, the Commission proposes to revise its regulations to state specifically that such

communications are permissible. For the purpose of its proposed revisions, the Commission explained that non-public, operational information includes information that is not yet publicly posted that helps transmission operators and natural gas pipelines operate and maintain a reliable system on a day-to-day basis, during emergency conditions, and during operational planning. The Commission further explained that non-public information may include generator, pipeline, or transmission-specific information and information dealing with the actual, anticipated, or potential effects of an event or condition on the ability to provide electric and gas service. In connection with its proposal, the Commission seeks comment on:

- The proposed scope of the non-public, operational information that may be shared;
- Whether additional regulations are needed to require a generator to share necessary information with its electric transmission operator to inform it of the possibility that the generator's natural gas service may be interrupted; and
- Whether electric transmission operators and gas pipelines should be required to include the customer on any communication involving the exchange of customer-specific information.

In order to ensure that any non-public, operational information shared under its proposed regulations remains confidential and is shared in a manner consistent with the prohibition on undue discrimination, the Commission also proposes to adopt a "No-Conduit Rule" that would prohibit all public utilities and natural gas pipelines, and their employees and agents, from disclosing or using anyone as a conduit for the disclosure of non-public information received pursuant to the Commission's proposed rule to a third party or to a marketing function employee in violation of the SOC. Comments on the Commission's proposals are due no later than August 26, 2013.