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Secretary

October 8, 2014

SENT VIA ELECTRONIC FILING
Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

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

Dear Secretary Bose:

Attached, for filing, please find the Notice of Intervention and Comments of the New York Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

David G. Drexler
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

NOTICE OF INTERVENTION AND COMMENTS OF THE
NEW YORK PUBLIC SERVICE COMMISSION

Pursuant to Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or the Commission),¹ and the Combined Notice of Filings #2 issued by the Commission on September 17, 2014, the New York Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Comments in the above-captioned proceeding.

INTRODUCTION

On September 17, 2014, the New York Independent System Operator, Inc. (NYISO) proposed amendments to its Open Access Transmission Tariff (OATT) pursuant to Section 205 of the Federal Power Act.² The proposal is to allow the NYISO to share confidential information, as defined by the NYISO's OATT and Market Administration and Control Area Services Tariff, concerning gas-fueled generation with the interstate natural gas pipeline companies and natural gas local distribution companies (LDCs). The NYISO states that its proposed amendment is

¹ 18 C.F.R. §385.214 (2014).

² 16 U.S.C. §824d (2012).

consistent with the Commission's regulations under Order No. 787.³ Overall, NYPSC supports the NYISO's proposed tariff changes and its efforts to further the intent of Order No. 787. Nonetheless, NYPSC respectfully requests that the Commission direct the NYISO to make one modification to its proposed language that would have a significant beneficial effect, as set forth below.

NOTICE OF INTERVENTION

The NYPSC is a regulatory body established under the laws of the State of New York with jurisdiction to regulate rates or charges for the sale of gas and electricity within the State.⁴ It is, therefore, a State Commission as defined in §1.101(k) of the Commission's Rules of General Applicability.⁵ Additionally, NYPSC is interested in this particular matter because it is charged with ensuring New York utilities furnish safe and adequate service at just and reasonable rates.⁶ Accordingly, NYPSC hereby provides its notice of intervention

³ Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators, 145 FERC ¶ 61,134 (2013) (Order 787).

⁴ New York Public Service Law (PSL) §65.

⁵ 18 C.F.R. §1.101(k) (2014).

⁶ PSL §65.

pursuant to Rule 214(a)(2) of the Commission's Rules of Practice and Procedure.⁷

Copies of all documents and correspondence in this proceeding should be sent to:

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BACKGROUND

On November 15, 2013, FERC issued Order No. 787, which authorized interstate natural gas pipelines and electric transmission operators to share non-public, operational information with one another on a voluntary basis to promote reliability and planning. In its filing, the NYISO states its OATT does not currently permit the communications authorized by Order No. 787. The NYISO seeks to revise its OATT to permit the communications Order No. 787 prescribes.

Most importantly, the NYISO's proposed amendments include a revision to Attachment F, Section 12.4 of the OATT, to modify the treatment of confidential information to permit:

communication of non-public, operational information concerning natural gas-fueled generation from resources located within the New York Control Area between the ISO and

⁷ 18 C.F.R. §385.214(a)(2) (2014).

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.

NYPSC supports the intent of this NYISO effort to achieve compliance with Order No. 787. However, the language the NYISO selected is problematic as it applies to the corporate structure of some companies supplying gas transportation and commodity service in New York State. As written, a local distribution company (LDC) or an interstate pipeline cannot share confidential information from the NYISO with an affiliated subsidiary. This outcome is contrary to the intent of Order No. 787, but may be corrected with the addition of a single word to the NYISO proposal.

DISCUSSION

The proposed language would prevent an LDC or interstate pipeline from sharing information received from NYISO with an affiliate. The purpose of the language is to promote coordination between gas and electric networks while preventing any dissemination of confidential information intended to grant

an affiliate access to market knowledge that would enable it to gain unfair advantage over competitors. While the goal of the proposed modification is to conform to the requirements of Order 787 and realize the enhanced system reliability through improved communications envisioned there, as worded the modification may defeat its purpose.

As presently proposed, the language does not recognize that a New York LDC, National Fuel Gas Distribution Corporation (NFG Distribution) is affiliated with two interstate pipelines present in New York State, National Fuel Gas Supply Corporation (NFG Supply) and Empire Pipeline, Inc. (Empire), that will obtain confidential information directly from the NYISO. Preventing these pipelines from readily sharing the information with their affiliated LDC, NFG Distribution, seems pointless because the LDC could also obtain the information from NYISO under the proposed tariff. Moreover, 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. Both have a role to play in resolving constraints and minimizing their impacts.

To remedy the situation, NYPSC requests that FERC direct the NYISO to insert the word "marketing" before

"affiliate" in the proposed language. If the restriction were thereby limited to the sharing of confidential information with a marketing affiliate, a pipeline could safely provide the confidential data to an affiliate also engaged in the delivery business. The import of the information could then be discussed amongst them for the purpose of responding to potential constraints. The result would be to facilitate the effective, efficient and properly allocated distribution of gas, which is the intent of Order No. 787.

Indeed, Order 787 itself recognizes that the sharing of confidential information where there is an interest in marketing differs from sharing of information where there is no such interest. In that Order, the Commission found that a prohibition against disclosure of confidential information to a marketing function employee was appropriate. The analogy here is to the sharing of information with an affiliate that is not engaged in marketing in comparison to sharing with an affiliate whose function is marketing.⁸ Therefore, the proposed revision is consistent with the intent of Order 787.

⁸ To the extent that NFG Distribution is engaged in marketing when it purchases commodity supply for its customers, that function is already walled off from delivery responsibilities through existing Codes of Conduct and FERC regulations that prevent employees engaged in marketing from accessing confidential delivery information.

CONCLUSION

Based on the foregoing, the NYPSC supports the intent of the amendments to its OATT that NYISO proposed. However, the language, as presented, causes a problem where pipelines are affiliated with downstream LDCs. To resolve that problem, NYPSC respectfully requests that the Commission direct the NYISO to amend its proposal by inserting the word "marketing" before "affiliate". This would enable pipelines and LDCs to share information for the purpose of addressing system constraints and enhancing gas distribution system reliability while preventing the release of confidential information as the NYISO intended in proposing its tariff revisions.

Respectfully submitted,



Kimberly Harriman
General Counsel
Public Service Commission
of the State of New York
By: Alan T. Michaels
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Dated: October 8, 2014
Albany, New York

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.

Dated: October 8, 2014
Albany, New York



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