

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

Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators)))))) Docket No. RM13-17

**COMMENTS OF
THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.**

The New England Power Generators Association, Inc. (“NEPGA”)¹ respectfully submits the following comments in response to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) July 18, 2013 Notice of Proposed Rulemaking (“NOPR”) regarding *Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators*.² Pursuant to its NOPR, the Commission proposes revising its Regulations to provide explicit authority to interstate natural gas pipelines and public utilities that own, operate, or control facilities used for the transmission of 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 the pipeline system or the public utility system. NEPGA appreciates the opportunity to comment on this critical issue and commends the Commission for issuing this NOPR.

Given the Independent System Operator-New England’s (“ISO-NE’s”) opinion that increased information sharing between the pipelines serving New England and itself will

¹ The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member.

² *Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators*, 144 FERC ¶ 61,043 (July 18, 2013).

improve system reliability, NEPGA supports information sharing subject to certain protections of generator's interests in the confidentiality of certain information. The Commission's Regulations should protect against the unnecessary and potentially economically damaging dissemination of information to pipeline marketing affiliates or to any other third party. When information sharing is deemed necessary, the only entities involved should be generators, the RTO and the pipeline operations staff. The rules contemplated by the Commission in its NOPR correctly limit the scope of information sharing to this limited group. Appropriate protections are necessary to ensure that the sharing of commercially-sensitive information does not negatively impact the commercial interests of generators.

Maintaining appropriate protections is critical in instances such as those contemplated by the NOPR, under which ISO-NE would share confidential and proprietary information with corporate entities that likewise have significant commercial interests in New England. At a general level, the NOPR largely provides these protections. NEPGA therefore strongly supports the goals and overall structure contemplated by the Commission. As discussed in the following comments, however, certain additional requirements would improve the protection of commercially-sensitive information critical to well-functioning markets and commercial transactions.

I. Comments

A. The NOPR Rightly Proposes to Define Categories and the Scope of Information Rather Than an Exhaustive List

The Commission, ISO-NE and other stakeholders widely agree that increased communication between ISO-NE and the pipelines that serve New England is necessary to maintain continued reliability, particularly given increases in the dispatch of natural gas-fired

generation in New England over the past several years.³ Any rule changes providing for an increase in communication should allow ISO-NE the flexibility and deference necessary to determine the types of information it needs to improve its ability to maintain the integrity of the grid. This may include types of information that will be shared on a routine basis or in emergency situations only.

The NOPR provides for an appropriate amount of deference by defining the categories and scope of information that may be shared between the transmission and pipeline operators without narrowly defining each type of information. At the same time, the NOPR appropriately does not grant ISO-NE and pipelines unlimited discretion to share information not relevant to maintaining system reliability. The NOPR is intended to allow for the sharing of information related to system reliability only. The efficiency and functioning of the wholesale electricity market cannot and should not rely on, or be affected by, communications between transmission and pipeline operators. While NEPGA appreciates the need to support reliability, that is the only justification for the discretion contemplated by the NOPR. With the improvements discussed below, the NOPR strikes the appropriate balance between ISO-NE discretion and limits to information sharing.

B. The Commission Should Establish Rules for the Destruction of Written or Recorded Information To Protect Generator Commercial Interests

The type of information shared under the NOPR can, in the aggregate, assume commercial value to third-parties not privy to the information under the NOPR. The requirement to destroy or return confidential information, therefore, is an important protection against the potentially harmful effects of the distribution of generator-specific, commercially-sensitive

³ NEPGA Comments AD12-12; ER13-356

information. The Commission has recognized this generator interest by proposing a broad prohibition on information sharing to any third party under the NOPR. ISO-NE’s Information Policy (“IP”) also recognizes this interest by requiring State Commissions and Academic Institutions to return or destroy confidential information they receive from ISO-NE.⁴ Unlike the pipelines, State Commissions and Academic Institutions have little to no incentive to disseminate the confidential information for commercial gain.⁵ That the IP imposes these obligations on such entities demonstrates the importance of generator rights in the propriety of their commercial information, and the necessity of requiring the destruction or return of their information once no longer useful to serve the purpose of its dissemination. Indeed, one of the very purposes of the NOPR is to prohibit the dissemination of generator confidential information. It is therefore entirely consistent with that purpose to require recipients of confidential information to destroy or return confidential information six months or sooner after they receive it.⁶

C. The Commission Does Not Need To Promulgate a Regulation Requiring Generators to Alert Transmission Operators of Possible Supply Disruptions

The Commission seeks comment on whether regulations requiring a generator to inform the transmission operator of “the possibility that the generator’s natural gas service may be disrupted” are necessary.⁷ Under the ISO-NE tariff, generators have an existing obligation to report to ISO-NE when they are unable to operate due to pipeline disruptions or otherwise.⁸ In addition, the regulations contemplated by the NOPR are ambiguous, in that they would require a generator to report the “possibility” of a natural gas service disruption. What may constitute the “possibility” of a gas service disruption is subject to several reasonable interpretations, and

⁴ IP, Appendix A, § 2.5.5; Appendix C; § 2.3.5.

⁵ NOPR

⁶ CITE to ISO-NE Information Policy.

⁷ NOPR ¶ 25.

⁸ CITE.

therefore would unreasonably subject generators to possible Commission Enforcement action for failure to comply with a vague standard. With the increase in communication between ISO-NE and pipelines allowed for under the NOPR, a pipeline would most certainly provide, and ISO-NE would undoubtedly request, notice of pipeline disruption of service to a generator (a communication that the affected generator(s) should be made a party to, as discussed further below). The scope and categories of information outlined in the NOPR likewise would provide ISO-NE with the information necessary to determine whether system reliability may be impacted by flows of gas into New England. Taken together with generators' existing obligations under the ISO-NE tariff, the allowance of information sharing under the NOPR renders a regulation requiring generators to report possible pipeline service disruptions unnecessary.

D. Generators Should be Included on Communications of Generator-Specific Information

Any communications between the transmission operator and the gas pipeline concerning a specific generator's gas supply, its ability to operate, the possibility of curtailment of the generator's gas supply, or other similar generator-specific communication, should include the gas generator as a third-party on a real-time basis. Generator access to these communications is vital, in order to allow the generator to guarantee that the transmission operator does not take dispatch actions based on incomplete information held by either the pipeline or the generator. If the transmission operator and gas pipeline need to communicate about a specific gas generator on an emergency basis that prevents the inclusion of the gas generator from the communications, the gas generator must be notified of the communications before the transmission operator takes a dispatch action affecting the generator, but no later than sixty minutes following the emergency communications.

The responsibility for initiating the three way communications and informing the gas generator of the emergency communications with the pipeline should be on the transmission operator, because the transmission operator has an existing system of direct communication capability with all gas generators. These communications may be written, but to the extent they are made by phone or otherwise orally they should be recorded. Including affected generators in certain communications between pipelines and ISO-NE is critical to ensure that transmission and pipeline operators understand the full context of the information they share and are aware of other relevant information that the generator, but not the pipeline or ISO-NE, is in a position to provide. To not include generators in such communications could adversely affect their commercial interests and interfere with the efficiency of wholesale electric markets.

Despite these concerns of generator-specific information, NEPGA recognizes that much of the communication between the transmission operators and the gas pipelines under the NOPR would likely not be generator-specific, but instead about general constraints and limitations on the pipeline. Gas generators need not be a party to or informed of such general communications.

E. The Commission Should Clarify Whether a Generator That is Harmed Due to a Breach of Pipeline Obligation Can be Made Whole Under FERC Enforcement Action

The NOPR appropriately prohibits the dissemination of information to any third-party, defined as any party other than the transmission operator, natural gas pipeline, or affected generator. A party that fails to comply with the prohibition on the dissemination of information is subject to FERC Enforcement. The Commission has proposed this strict prohibition on information sharing primarily in consideration of generator's commercial interests in the information that ISO-NE and the pipelines may share. What is unclear from the NOPR is how and to what extent a generator may be compensated for the dissemination of information in

violation of the NOPR where it causes the generator and/or the wholesale electricity markets economic harm. NEPGA asks that the Commission clarify whether a generator may be entitled to compensation through a Commission Enforcement action under such circumstances.

Last winter, the Commission considered whether a Non-Disclosure Agreement (“NDA”) between natural gas pipelines and ISO-NE, which would have allowed for the sharing of the type of information contemplated by the NOPR, sufficiently protected generators’ commercial interests.⁹ NEPGA, NEPOOL, and other interested parties were concerned that the proposed NDA explicitly prohibited generators from asserting their third-party rights in the NDA, and therefore sought to preclude generators from enforcing the NDA and seeking a remedy under the NDA in the event they were economically harmed by a breach of the NDA.¹⁰ The Commission concluded that the NDA was not shown to be just and reasonable, and set the matter for settlement judge procedures.¹¹ Ultimately, the interested parties could not come to an agreement through the settlement judge procedures, a procedural course that should not be repeated for this winter. NEPGA brings that proceeding to the Commission’s attention only to note that the Commission recognizes that the failure to allow for a remedy to the improper dissemination of generator information causing economic harm is not just and reasonable. This should be particularly so when an increase in the sharing of commercially sensitive information is allowed not to further the generators’ economic interests, but to give ISO-NE the tools it deems necessary to comply with its obligation to maintain system reliability. NEPGA, therefore, respectfully requests that the Commission clarify whether FERC Enforcement may grant compensation to a generator that is economically harmed by a violation of the rules contemplated under the NOPR.

⁹ *ISO New England Inc.*, 141 FERC ¶ 61,196 (2012).

¹⁰ *Id.*, ¶¶ 17-27.

¹¹ *Id.* ¶ 31.

II. Conclusion

Wherefore, NEPGA respectfully requests that the Commission consider its Comments and adopt NEPGA's requests herein.

Respectfully Submitted,

/s/ Bruce Anderson

Bruce Anderson, Director of Market and Regulatory Affairs
New England Power Generators Association, Inc.
141 Tremont Street, Floor 5
Boston, MA 02111
Tel: 617-902-2347
Fax: 617-902-2349
Email: banderson@nepga.org

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments by via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Boston, Massachusetts, August 26, 2013.

/s/ Bruce Anderson _____

Bruce Anderson
Director of Market and Regulatory Affairs
New England Power Generators Association, Inc.
141 Tremont Street, Floor 5
Boston, MA 02111
Tel: 617-902-2347
Fax: 617-902-2349
Email: banderson@nepga.org