

145 FERC ¶ 61,134  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 38 and 284

[Docket No. RM13-17-000; Order No. 787]

Communication of Operational Information Between Natural Gas Pipelines and Electric  
Transmission Operators

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: In this Final Rule, the Federal Energy Regulatory Commission (Commission) amends the Commission's 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 either the public utility's or pipeline's system. The revised regulations will help maintain the reliability of pipeline and public utility transmission service by permitting transmission operators to share information with each other that they deem necessary to promote the reliability and integrity of their systems. The Final Rule adopts the regulations proposed in the Notice of Proposed Rulemaking without modification.

**EFFECTIVE DATE:** This rule will become effective [**insert date 30 days after publication in the FEDERAL REGISTER**]. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of [**insert date 30 days after publication in the FEDERAL REGISTER**].

**FOR FURTHER INFORMATION CONTACT:**

Caroline Daly (Technical Information)  
Office of Energy Policy & Innovation  
888 First Street, NE  
Washington, DC 20426  
(202) 502-8931  
[caroline.daly@ferc.gov](mailto:caroline.daly@ferc.gov)

Anna Fernandez (Legal Information)  
Office of the General Counsel  
888 First Street, NE  
Washington, DC 20426  
(202) 502-6682  
[anna.fernandez@ferc.gov](mailto:anna.fernandez@ferc.gov)

**SUPPLEMENTARY INFORMATION:**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Communication of Operational Information Between  
Natural Gas Pipelines and Electric Transmission  
Operators

Docket No. RM13-17-000

ORDER NO. 787

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145 FERC ¶ 61,134  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

Communication of Operational Information Between      Docket No. RM13-17-000  
Natural Gas Pipelines and Electric Transmission  
Operators

ORDER NO. 787

FINAL RULE

(Issued November 15, 2013)

1. In this Final Rule, the Federal Energy Regulatory Commission revises Parts 38 and 284 of the Commission’s 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 either the public utility’s or pipeline’s system.<sup>1</sup> The revised regulations will help maintain the reliability of pipeline and public utility transmission service by permitting transmission operators to share information with each other that they deem

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<sup>1</sup> In this Final Rule, the Commission refers to interstate natural gas pipelines and public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce collectively as “transmission operators.”

necessary to promote the reliability and integrity of their systems. The Final Rule adopts the regulations proposed in the Notice of Proposed Rulemaking without modification.<sup>2</sup>

## **I. Introduction**

### **A. Background**

2. In recent years, reliance on natural gas as a fuel for electric generation has steadily increased.<sup>3</sup> This trend is expected to continue into the future, resulting in greater interdependence between the natural gas and electric industries.<sup>4</sup> Several events over the

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<sup>2</sup> *Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators*, 78 FR 44900 (July 25, 2013), FERC Stats. & Regs. ¶ 32,699 (2013) (cross-referenced at 144 FERC ¶ 61,043 (2013) (NOPR)).

<sup>3</sup> See, e.g., Energy Information Administration, *Fuel Competition in Power Generation and Elasticities of Substitution* (June 2012); Richard Smead, *All Industry Segments Working for Success in Growing Gas-Fired Generation* (Nov. 15, 2012); ISO-NE, *Addressing Gas Dependence* at 3 (July 2012) (reliance on natural gas-fired electricity in the region increased from five percent in 1990 to 51 percent in 2011).

<sup>4</sup> See, e.g., North American Electric Reliability Corporation, *2013 Special Reliability Assessment: Accommodating an Increased Dependence on Natural Gas for Electric Power; Phase II: A Vulnerability and Scenario Assessment for the North American Bulk Power System* at 1 (May 2013) (“Over the past decade, natural gas-fired generation rose significantly from 17 percent to 25 percent of U.S. power generation and is now the largest fuel source for generation capacity. Gas use is expected to continue to increase in the future, both in absolute terms and as a share of total power generation and capacity.”), available at [http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC\\_PhaseII\\_FINAL.pdf](http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_PhaseII_FINAL.pdf); Energy Information Administration, *Annual Energy Outlook 2013 Early Release Overview* (2013) (showing electric generation from natural gas rising from 13 percent in 1993 to 30 percent in 2040), available at [http://www.eia.gov/forecasts/aeo/er/early\\_elecgen.cfm](http://www.eia.gov/forecasts/aeo/er/early_elecgen.cfm); The New England State Committee on Electricity, *Natural Gas Infrastructure and Electric Generation: A Review of Issues Facing New England* (Dec. 14, 2012), available at [http://www.nescoe.com/uploads/Phase\\_I\\_Report\\_12-17-2012\\_Final.pdf](http://www.nescoe.com/uploads/Phase_I_Report_12-17-2012_Final.pdf).

last few years, such as the Southwest Cold Weather Event,<sup>5</sup> demonstrate the crucial interaction between natural gas pipelines and electric transmission systems and the need for robust communication between these industry sectors to ensure that both systems operate safely and effectively for the benefit of their customers.

3. Since February 2012, the Commission has requested comment and conducted multiple technical conferences on various aspects of gas-electric interdependence and coordination in order to better understand the interface between the electric and natural gas pipeline industries and identify areas for improved coordination.<sup>6</sup> In this proceeding, the Commission addresses one aspect of gas-electric interdependence and coordination: communication and information-sharing between the natural gas and electric industries.

4. On December 7, 2012, the Commission issued a Notice of Request for Comments and Technical Conference regarding information sharing and communication issues between the natural gas and electricity industries.<sup>7</sup> In response, natural gas and electric industry participants described a variety of actions that are currently being taken to

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<sup>5</sup> See FERC/NERC, *Report on Outages and Curtailments During the Southwest Cold Weather Event of February 1-5, 2011* (2011), available at <http://www.ferc.gov/legal/staff-reports/08-16-11-report.pdf>.

<sup>6</sup> The NOPR contains a detailed description of the Commission's various actions on gas-electric coordination and will not be repeated here.

<sup>7</sup> *Coordination between Natural Gas and Electricity Markets*, Docket No. AD12-12-000 (Dec. 7, 2012) (Notice of Request for Comments and Technical Conference) (<http://www.ferc.gov/EventCalendar/Files/20121207134434-AD12-12-000TC1.pdf>); 77 FR 74180 (Dec. 13, 2012) (<http://www.gpo.gov/fdsys/pkg/FR-2012-12-13/pdf/2012-30063.pdf>).

improve communications and information sharing between the two industries. While several entities acknowledged that system reliability and contingency planning could be further enhanced by the sharing of non-public, operational information directly between transmission operators, several transmission operators pointed out that there is general reluctance to share such information because of concerns that doing so could be a violation of current laws, regulations or tariffs, including the Commission's prohibition on undue discrimination. Accordingly, multiple industry participants requested that, in order to facilitate the exchange of information between transmission operators, the Commission should more clearly identify the types of operational information that may be shared between transmission operators and clarify that the sharing of such information does not violate the prohibition against undue discrimination. While electric generators generally did not oppose the sharing of such information, they, together with other entities, expressed concern about the communication of generator-specific information between an electric transmission operator and an interstate natural gas pipeline operator without the generator's knowledge. Some entities also expressed concern regarding the potential harm to industry participants from the improper use of commercially sensitive information.<sup>8</sup>

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<sup>8</sup> A summary of these views was presented in the NOPR, and will not be repeated in detail here. *See* NOPR, FERC Stats. & Regs. ¶ 32,699 at PP 7-9 (cross-referenced at 144 FERC ¶ 61,043).



**B. NOPR**

5. On July 18, 2013, the Commission issued the NOPR, in which it proposed to revise Parts 38 and 284 of 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 either the public utility's or pipeline's system. As a protection against the disclosure of non-public, operational information, the Commission also proposed a No-Conduit Rule that prohibits subsequent disclosure of that information to a marketing function employee or to a third party.

6. Comments on the NOPR were due on August 26, 2013. Thirty-three parties filed comments. NGSAA filed reply comments on September 30, 2013. Comments were received from Regional Transmission Organizations and Independent System Operators (RTOs/ISOs), electric utilities, interstate natural gas pipelines, LDCs, state regulators, generators, and other parties. Of these, 30 supported or did not oppose the NOPR<sup>9</sup> and

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<sup>9</sup> American Electric Power Service Corporation (AEP), American Gas Association (AGA), American Public Power Association (APPA), Boardwalk Pipeline Partners, LP (Boardwalk Pipelines), California Independent Operator (CAISO), Duke Energy Corporation (Duke), Edison Electric Institute (EEI), Electric Power Supply Association (EPSA), Electricity Consumers Resource Council (ELCON), Enable Interstate Pipelines (Enable), International Transmission Company (ITC), Interstate Natural Gas Association of America (INGAA), ISO New England Inc. (ISO-NE), ISO/RTO Council (IRC), Massachusetts Municipal Wholesale Electric Company (MMWEC), Midcontinent Independent System Operator (MISO), National Rural Electric Cooperative Association (NRECA), Natural Gas Supply Association (NGSA), New England Natural Gas Industry (NE Gas Industry), New England Power Generators Association Inc. (NEPGA),  
(continued...)

three opposed it.<sup>10</sup> In general, most commenters support the proposed rule to help promote the reliability and efficiency of the natural gas and electric systems by eliminating legal uncertainty regarding the ability of interstate natural gas pipelines and electric transmission operators to exchange non-public, operational information. Some commenters request that the Commission modify or clarify the proposal in a number of respects.

## **II. Discussion**

7. In this Final Rule, the Commission is adopting the NOPR as proposed. The Commission is modifying Parts 38 and 284 of the Commission's 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 either the pipeline's or public utility's system. The Commission also is adopting a No-Conduit Rule to provide additional protections against undue discrimination and ensure that the non-public, operational information shared under the rule remains confidential.

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New England States Committee on Electricity (NESCOE), New York ISO (NYISO), New York Public Service Commission (NYPSC), New York Transmission Owners (NYTOs), North American Electric Reliability Corporation (NERC), Pacific Gas and Electric Company (PG&E), Process Gas Consumers (PGC), Public Utilities Commission of Ohio (PUCO), Tennessee Valley Authority (TVA), Washington Gas Light Company (Washington Gas).

<sup>10</sup> American Public Gas Association (APGA), Consumers Energy Company (Consumers Energy), and New Jersey Board of Public Utilities (NJBPU).

8. Communications between transmission operators serve a valuable and necessary purpose to help ensure reliability on both systems. With the increasing reliance on natural gas as a fuel for electric generation, ensuring robust communications between the transmission operators in the electric and natural gas industries is valuable to the ability of both systems to operate reliably and effectively. Electric transmission operators are continuously and near instantaneously balancing supply and demand to ensure the system remains in equilibrium.<sup>11</sup> In contrast, due to the physical characteristics of interstate natural gas pipelines, the pipelines require advance nominations to ensure they have sufficient line pack and storage available to meet scheduled daily load of all their customers, including the gas-fired generators, which may constitute significant load for a pipeline and which generally rely on a just-in-time natural gas supply and pipeline delivery. While pipeline line pack and storage provide some operational flexibility to pipelines to accommodate load swings throughout the day, short term swings in demand by gas-fired electric generators resulting from redispatch by electric transmission operators may be difficult to manage, particularly during times of coincident peak loads on interstate natural gas pipelines and electric transmission systems, such as during unusual cold weather events when end-use customers may rely on both natural gas and electricity. Communication between interstate natural gas pipelines and electric transmission operators can be invaluable to help ensure that electric transmission

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<sup>11</sup> Electric transmission systems currently have limited electric storage capabilities.

operators maintain grid reliability and that interstate natural gas pipelines can meet contractual and operational obligations to all of their shippers.

9. Currently, interstate natural gas pipelines and electric transmission operators share non-public information with other transportation or transmission operators. For example, interstate natural gas pipeline operators routinely exchange nomination and scheduling information with other interstate natural gas pipeline operators and with upstream and downstream entities to confirm transportation nomination requests and to coordinate flows between the parties.<sup>12</sup> Transmitting electric utilities similarly coordinate the sharing of non-public interchange schedule information on a routine basis through mechanisms such as, for example, e-Tags.<sup>13</sup> This coordination helps ensure the safe and reliable transmission of electric power across a region.

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<sup>12</sup> The nomination process initiates the flow of gas with the natural gas transportation service provider. The natural gas transportation service provider then confirms the flow of natural gas with the corresponding upstream and downstream entities. Once the natural gas quantities are confirmed, the natural gas transportation service provider sends the scheduled quantities information to the shipper. *See* 18 CFR 284.12(a)(1)(1), NAESB Nomination Standard 1.3.2 (establishing the standards governing pipeline confirmations with upstream and downstream parties).

<sup>13</sup> e-Tags are used by applicable Balancing Authorities, Reliability Coordinators, Interchange Authorities, Transmission Service Providers, Purchasing-Selling Entities, Generator-Providing Entities, and Load-Serving Entities to coordinate interchange schedules. *See, e.g.*, NAESB Wholesale Electric Quadrant (WEQ) Business Practice Standards (Coordinate Interchange) requirement 004-2 (“Until other means are adopted by NAESB, the primary method of submitting the RFI [Request for Interchange] shall be an e-Tag communicated to and managed by the Sink BA’s [Balancing Authority] registered e-Tag authority service using protocols compliant with the Version 1.8.1 Electronic Tagging Functional Specification.”) and applicability section (“The Coordinate Interchange Business Practice Standards apply to BA [Balancing Authority], RC [Reliability Coordinator], IA [Interchange Authority], Transmission Service Provider, (continued...)”)

10. In Order No. 698, the Commission recognized the need for inter-industry communications by adopting industry-developed standards requiring the exchange of operational information between the natural gas and electric industries.<sup>14</sup> These standards require a generator and its directly connected natural gas pipeline(s) to “establish procedures to communicate material changes in circumstances that may impact hourly flow rates.”<sup>15</sup> In addition, these standards ensure that interstate natural gas pipelines have relevant planning information to assist in maintaining the operational integrity and reliability of pipeline service, as well as to provide gas-fired generator operators with information as to whether hourly flow deviations can be honored. NAESB Wholesale Electric Quadrant (WEQ) Standard 011-1.6, also incorporated in the Commission’s regulations,<sup>16</sup> requires that ISOs, RTOs, and other independent system operators establish

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PSE [Purchasing-Selling Entity], GPE [Generator-Providing Entity], Load-Serving Entity [LSE], and any TPSE [a PSE whose transmission approval rights are cited].”) NAESB WEQ Business Practice Standards (Version 003), published July 31, 2012.

<sup>14</sup> *Standards for Business Practices for Interstate Natural Gas Pipelines; Standards for Business Practices for Public Utilities*, Order No. 698, FERC Stats. & Regs. ¶ 31,251 (2007), *order on clarification and reh’g*, Order No. 698-A, 121 FERC ¶ 61,264 (2007). In Order No. 698, the Commission incorporated by reference NAESB WGQ Standard 0.3.12 into its regulations and NAESB WEQ Standard 011.

<sup>15</sup> NAESB WGQ Version 2.0 Business Practice Standard 0.3.12. *See also Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-V, FERC Stats. & Regs. ¶ 31,332 (2012) (cross-referenced at 140 FERC ¶ 61,036) (2012), (incorporating by reference the Version 2.0 WGQ Business Practice Standards). *See also* 18 CFR 284.12(a) (2013).

<sup>16</sup> 18 CFR pt. 38 (2013).

written operational communication procedures with an appropriate interstate natural gas pipeline to be implemented when an extreme condition occurs.

11. Sharing of operational information between interstate natural gas pipelines and electric transmission operators is akin to the sharing of operational information among interconnected parties. Both interstate natural gas pipelines and electric transmission operators could benefit from information regarding whether scheduled transactions on the others' systems will be carried out because of the potential effect on reliable service and operational planning. In many cases, gas-fired generators do not take natural gas at a uniform flow rate over a 24 hour period, and the electric transmission operator may find it valuable to know whether the interstate natural gas pipeline will be able to provide a non-uniform flow rate to meet the demands on the electric system. By the same token, it may be valuable to an interstate natural gas pipeline to know the demands that may be placed on its transportation system by gas-fired generators and whether such demands may cause a problem with its ability to deliver gas to other customers. Similarly, a disruption on an electric transmission line may force the electric transmission operator to shut down a gas-fired generator, which could cause increased gas pressure on an interstate natural gas pipeline forced to terminate gas deliveries to that generator.

12. Commenters participating in the Commission staff technical conferences, as well as comments to this rulemaking, expressed concern that, without further clarification of the ability of interstate natural gas pipelines and electric transmission operators to exchange information, necessary communications may not take place. Comments have focused on the applicability of both the statutory prohibitions on undue discrimination

and the Standards of Conduct. Both interstate natural gas pipelines and electric transmission operators have stated that clarification of their ability to exchange non-public information would assist them in efficiently and reliably planning the operations of their respective systems and addressing emergencies. The Commission provides the requested clarification in this Final Rule. Sharing of information valuable to reliable operations between transmission operations is not the type of preferential treatment the Federal Power Act (FPA) and Natural Gas Act (NGA) are intended to restrict. We find, as discussed below, that the FPA and NGA provisions regarding undue discrimination or unjust and unreasonable acts and practices do not prevent the exchange of information between operators of interstate natural gas pipeline transportation systems and electric transmission operators provided for in this Final Rule.

13. Both the FPA and the comparable provisions of the NGA prohibit undue discrimination or preference.<sup>17</sup> However, FPA section 205(b) and NGA section 4(b) do not forbid preferences, advantages and prejudices *per se*.<sup>18</sup> Rather, FPA section 205(b) and NGA section 4(b) prohibit “undue” preferences, advantages and prejudices.<sup>19</sup> A

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<sup>17</sup> 16 U.S.C. 824d(b) (2012); 15 U.S.C. 717c(b) (2012).

<sup>18</sup> *See, e.g., Cities of Bethany v. FERC*, 727 F.2d 1131, 1139 (D.C. Cir.), *cert. denied*, 469 U.S. 917, 105 S.Ct. 293, 83 L.Ed.2d 229 (1984).

<sup>19</sup> *See, e.g., Boroughs of Chambersburg v. FERC*, 580 F.2d 573, 577 (D.C. Cir. 1978).

difference in treatment is not unduly discriminatory when the difference is justified.<sup>20</sup> In interpreting FPA section 205(b) and NGA section 4(b), the courts have held that transmission providers cannot treat similarly situated customers differently<sup>21</sup> and that the disparate treatment of two customer classes does not in and of itself result in an undue preference or advantage or in an unreasonable difference in service if the customer classes are not similarly situated.<sup>22</sup> Whether a preference is “undue” depends on the specific facts of the behavior and the circumstances to determine whether disparities exist and whether those disparities are rationally justified.<sup>23</sup>

14. We find that the sharing of non-public, operational information between public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce and interstate natural gas pipelines for the purpose of promoting reliable service or operational planning is reasonable and not unduly discriminatory or preferential. Undue discrimination provisions apply to ensure that similarly situated

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<sup>20</sup> See *Metropolitan Edison Co. v. FERC*, 595 F.2d 851, 857 (D.C. Cir. 1979). See also *Transmission Agency of N. California v. FERC*, 628 F.3d 538, 549 (D.C. Cir. 2010) (citing *Ark. Elec. Energy Consumers v. FERC*, 290 F.3d 362, 367 (D.C. Cir. 2002) and *Elec. Consumers Res. Council v. FERC*, 747 F.2d 1511, 1515 (D.C. Cir. 1984)).

<sup>21</sup> See *Transmission Agency of N. California v. FERC*, 628 F.3d at 549 (citing *Sacramento Mun. Util. Dist. v. FERC*, 474 F.3d 797, 802 (D.C. Cir. 2007)).

<sup>22</sup> See, e.g., *Sw. Elec. Coop., Inc. v. FERC*, 347 F.3d 975, 981 (D.C. Cir. 2003). See also *Michigan Consolidated Gas Co. v. FPC*, 203 F.2d 895, 901 (3d Cir. 1953) and *Complex Consol. Edison Co. of New York, Inc. v. FERC*, 165 F.3d 992, 1012 (D.C. Cir. 1999).

<sup>23</sup> See *St. Michaels Utilities Comm'n v. Fed. Power Comm'n*, 377 F.2d 912, 915 (4th Cir. 1967).



customers are not subject to disparate rates or terms and conditions of service. As noted above, transmission operators are not similarly situated to other customers because they require access to non-public scheduling and other types of information from a variety of sources to help them maintain the reliability and integrity of the transportation and transmission systems. In addition, interstate natural gas pipelines are generally not wholesale customers of electric transmission operators. Likewise, RTOs/ISOs are not shippers on pipelines. Thus, we find that it is appropriate and necessary, with adequate safeguards, to expressly permit the sharing of non-public, operational information between transmission operators.<sup>24</sup>

15. To protect against the potential for undue discrimination, the Commission is relying on existing safeguards as well as the adoption of a No-Conduit Rule. First, while non-public, operational information may be useful for planning, transmission operators cannot deviate from the terms of their tariffs, and cannot operate in an unduly discriminatory manner.<sup>25</sup> Transmission operators are also subject to the same limitations on sharing information with their marketing function employees as provided under the

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<sup>24</sup> The Commission recognizes that some vertically-integrated transmission operators may have marketing function employees or affiliates, such as generators or local distribution companies that handle gas transactions. The Commission addresses concerns *infra* with respect to potential access and misuse of information shared pursuant to this Final Rule in the subsection entitled *Adequacy of No-Conduit Rule to Protect against Competitive Harm*.

<sup>25</sup> See, e.g., *ISO New England Inc.*, 142 FERC ¶ 61,058, at P 23 (2013) (available capacity must be dispatched “consistent with the pipeline’s tariff” and “[t]he pipelines are required to allocate available capacity on a not unduly discriminatory basis among the various requestors of capacity.”).

Standards of Conduct.<sup>26</sup> The Commission's Standards of Conduct were adopted with respect to one aspect of potentially undue discrimination which may occur through exchanges of information between transmission providers and their marketing functions in certain situations.

16. Second, the No-Conduit Rule included in the Final Rule will serve as an additional safeguard to ensure that transmission operators comply with the prohibitions against undue discrimination or preference with respect to their marketing function employees and third parties. The No-Conduit Rule prohibits recipients of non-public, operational information pursuant to the Final Rule from subsequently disclosing that information to a third party or a marketing function employee, as that term is defined in section 358.3(d) of the Commission's regulations. As discussed below, adoption of this No-Conduit Rule addresses many of the concerns regarding the sharing of commercially sensitive, customer-specific information among transmission operators.<sup>27</sup>

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<sup>26</sup> 18 CFR 358.6 and 358.7 (2013).

<sup>27</sup> As discussed further below, this No-Conduit Rule applies only to the information the interstate natural gas pipeline and electric transmission operator exchange pursuant to this Final Rule. It does not otherwise affect the ability of interstate natural gas pipelines and local distribution companies (LDCs) to exchange operational information regarding actual or potential pipeline or distribution system operational conditions affecting the gas flow between these physically interconnected parties. Nor does it affect the ability of an electric transmission operator to share its own information with an LDC, if otherwise permitted under its tariff. This Final Rule also does not prohibit electric transmission operators from sharing non-public, operational information received from a pipeline pursuant to this rule with LDCs, if otherwise provided for in tariff provisions approved by the Commission.

17. Based on the potential need for the exchange of information to promote the reliability and operational integrity of the transmission and transportation systems the Commission regulates, and the protections against undue discrimination, the Commission finds that the exchange of non-public, operational information between transmission operators does not violate the statutory prohibitions on undue discrimination or preference as discussed herein. As discussed in more detail *infra*, to the extent that an electric transmission operator or interstate natural gas pipeline has a tariff provision which precludes a communication that would otherwise be authorized under the Final Rule, it will have to make a filing under section 205 of the FPA or section 4 of the NGA to revise that tariff provision to allow the exchanges of information permitted by this Final Rule. Below, the Commission will address the comments received on the NOPR.

**A. Need For the Rule**

**1. NOPR**

18. In the NOPR, the Commission pointed out that, while several entities acknowledged that system reliability and contingency planning could be further enhanced by the sharing of non-public, operational information directly between transmission operators, several transmission operators pointed out that there is general reluctance to share such information because of concerns that doing so could be a violation of current laws, regulations or tariffs.<sup>28</sup> Accordingly, several entities, including interstate natural

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<sup>28</sup> NOPR, FERC Stats. & Regs. ¶ 32,699 at P 7 (cross-referenced at 144 FERC ¶ 61,043).

gas pipelines and electric transmission operators, requested that, in order to facilitate the exchange of information between transmission operators, the Commission should more clearly identify the types of operational information that may be shared between transmission operators and clarify that the sharing of such information does not violate the prohibition against undue discrimination.

19. In an effort to provide certainty to the industry and remove barriers –real or perceived—to the sharing of non-public, operational information, the Commission proposed to revise its regulations to authorize expressly the exchange of non-public, operational information between electric transmission operators and interstate natural gas pipelines. In consideration of the concerns regarding the exchange of non-public operational information, the Commission also proposed to adopt a No-Conduit Rule which prohibits recipients of the non-public, operational information from subsequently disclosing or being a conduit for subsequently disclosing that information to third parties or marketing function employees.

## **2. Comments**

20. The large majority of commenters generally support or do not oppose the NOPR. Many commenters generally agree that the rule is needed to provide certainty to interstate natural gas pipelines and electric transmission operators so that they may exchange information needed to promote reliable service and operational planning. They also generally support the proposed scope of information that may be shared under the rule, as well as the limitations on disclosures of such information via the No-Conduit Rule.

21. For example, NERC states that, based on its extensive study of both industries and stakeholder discussions with electric and natural gas operators, transmission operators could make better informed operating decisions, particularly during seasonal peak electric system conditions, if they have the ability to obtain information about interstate natural gas pipeline flows and pipeline system conditions.<sup>29</sup> NESCOE states that the implementation of these revisions in the near-term would provide regions like New England with certainty and flexibility to put in place what has the strong potential to be an effective and low cost reliability measure.<sup>30</sup> INGAA states that the proposed scope of information transmission operators may share under the proposed regulations is appropriate and provides sufficient flexibility and guidance.<sup>31</sup>

22. Three commenters, APGA, Consumers Energy, and NJBPU, oppose the Commission's proposed rulemaking.

23. As a general matter, APGA believes that the proposed regulations in the NOPR open the door to the release of commercially sensitive, non-public information without adequate support for such action and without adequate guidelines for such release.<sup>32</sup>

First, APGA contends that interstate natural gas pipelines have made clear that they do not need additional information to operate reliably and that they already make a

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<sup>29</sup> NERC Comments at 5-6.

<sup>30</sup> NESCOE Comments at 7.

<sup>31</sup> INGAA Comments at 2.

<sup>32</sup> APGA Comments at 1.

significant amount of operational data available to the public on a non-discriminatory basis.<sup>33</sup> Second, APGA contends that most electric transmission operators are not experiencing reliability problems related to inadequate access to non-public, gas-related information and that much of the operational data electric transmission operators say they would like to have is already publicly available.<sup>34</sup> APGA contends that the other data electric transmission operators say they would like to have, such as confidential gas availability information indicating whether a specific generator can be dispatched reliably, is information that the interstate natural gas pipelines simply do not have. Third, APGA states that generators may be harmed by secret communications between transmission operators regarding whether a given generation facility may or may not have adequate gas supplies to operate because interstate natural gas pipelines do not have sufficient information to answer that question accurately. APGA argues that, given that the record fails to support a finding of a critical need for the exchange of non-public information to foster reliability and due to the importance of not permitting the sharing of confidential, non-public data absent a showing that such sharing would be beneficial, the NOPR should be abandoned.<sup>35</sup>

24. Instead, APGA argues that the Commission should conduct a case-by-case evaluation of what non-public information specific interstate natural gas pipelines and

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<sup>33</sup> *Id.* at 4.

<sup>34</sup> *Id.* at 4-5.

<sup>35</sup> *Id.* at 7.

electric transmission operators may release and under what circumstances, rather than the sweeping rule proposed in the NOPR.<sup>36</sup> APGA also states that the real issue is the lack of interstate natural gas pipeline capacity to meet peak demand from electric generators resulting from electric generators' failure to subscribe to adequate firm transportation service.<sup>37</sup>

25. Similar to APGA, NJBPU is concerned about the potential for harm to industry participants, as well as the potential for improper use of non-public, operational information.<sup>38</sup> NJBPU does not believe that the Commission's proposed No-Conduit Rule adequately responds to the concerns of NJBPU and various others. NJBPU states that, while the proposed No-Conduit Rule may address subsequent disclosure to an affiliate or third party, it does not address the problem of abuse, gaming, and market manipulation by an initial recipient of non-public, operational information.

26. Consumers Energy argues that the proposed rule would do little to help ensure reliable service.<sup>39</sup> Consumers Energy points out that there has never been an attempt to incent discussion by or between coal producers, rail or barge transporters under the guise of increasing electric transmission reliability. Consumers Energy asserts that transmission operators can and will address reliability through the use of tariffs and

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<sup>36</sup> *Id.* at 8 and 11.

<sup>37</sup> *Id.* at 11 & n.28.

<sup>38</sup> NJBPU Comments at 3.

<sup>39</sup> Consumers Energy Comments at 3.

contracts. Consumers Energy believes contractually specified flow rates and nominations limitations have provided and can continue to provide the information that is necessary to ensure a continued high level of reliability of interstate natural gas pipelines and that this will, in turn, ensure a continued high level of reliability of the electric transmission grid.<sup>40</sup> Consumers Energy further contends that RTOs' resource adequacy-related tariff provisions adequately inform them as to the availability of resources under their dispatch. Lastly, Consumers Energy states that, rather than permitting the communication of non-public, operational information between transmission operators to ensure service reliability, the appropriate solution to the problem of ensuring service reliability in the face of increased reliance on natural gas as a fuel for electric generation is to recognize the true cost of such reliability.<sup>41</sup> This, Consumers Energy contends, will serve to increase investment in the interstate natural gas pipeline and LDC infrastructure that will be needed to serve this expanding load.

### **3. Commission Determination**

27. We conclude that we need to revise our existing regulations to provide greater certainty to electric transmission operators and interstate natural gas pipelines regarding the permissibility of sharing non-public, operational information, including customer-specific information, for the purpose of promoting reliable service or operational planning. As discussed above, the record and the operational realities of the two

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<sup>40</sup> *Id.* at 4.

<sup>41</sup> *Id.* at 5.



industries show that the exchange of non-public, operational information would be valuable to foster reliability. While interstate natural gas pipelines and electric transmission operators publicly post a significant amount of important information needed by interstate natural gas pipeline shippers and electric transmission customers, interstate natural gas pipelines and electric transmission operators need other operational information, including non-public information, in order to reliably manage the operations of these systems. Interstate natural gas pipelines already provide non-public operational information to other interconnected physical parties to ensure accurate scheduling of flows on their systems. Electric transmission operators similarly communicate non-public interchange scheduling information and other information among themselves and with Balancing Authorities. Permitting interstate natural gas pipelines and electric transmission operators to exchange non-public, operational information with each other will help them better plan for day-to-day operations as well as better manage their respective system needs during potential coincident peaks that may limit the flexibility of both systems.

28. Further, the adoption of a No-Conduit Rule, together with existing safeguards, reasonably addresses the concerns around the improper use of non-public, operational information.<sup>42</sup>

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<sup>42</sup> As discussed earlier, interstate natural gas pipelines and electric transmission operators are not similarly situated to other customers since they (1) are not typically customers of each other; and (2) operate physical systems and require information about physically interconnected and interdependent systems in order to maintain efficient and reliable service to their customers.

29. We disagree with APGA's characterization that the proposed rule lacks value.

The majority of commenters expressly support the rule and in many of their comments they affirm that the rule would promote reliable service. We are persuaded by these comments that argue that expressly permitting the sharing of non-public, operational information will promote reliable service and operational planning. For example, representatives and members of the interstate natural gas pipeline industry, including INGAA and Boardwalk Pipelines, are among the many commenters that expressly support the rule. Also, several entities, including electric transmission operators, have specifically identified non-public information that they would like to receive from or share with interstate natural gas pipelines under the rule because they believe it would promote reliable service or operational planning on both systems. Such information includes real-time pipeline flow information, generator service nominations and priority, and generator outage information. Improved reliability and operational planning amongst transmission operators will benefit both electric and natural gas industries as well as ultimate consumers.

30. We do not agree with Consumers Energy and APGA that this rule is unnecessary because the exchange of information can be achieved solely through the use of tariffs and contracts or through a case-by-case evaluation. As explained above, interstate natural gas pipelines and electric transmission operators may need a variety of information from each other depending on individual circumstances and may not be in a position to anticipate in advance exactly what information needs to be exchanged. Despite this need, these transmission operators have expressed concerns that the Commission's current

regulations and uncertainty over their ability to share non-public, operational information acts as an impediment to exchange of this information. Adopting regulations that eliminate transmission operator concerns about such exchanges will provide the flexibility that they require.

31. APGA also suggests that the real issue is the lack of pipeline capacity resulting from generators' failure to subscribe to adequate firm transportation service. That does not diminish the need for transmission operators to be able to exchange non-public, operational information. No one disputes that the electric industry has become increasingly dependent on gas-fired generation and coordination is integral to promoting reliable service. Natural gas and electric coordination has many facets including communications, scheduling, and capacity release.<sup>43</sup> In this Final Rule, the Commission is focused solely on communications.

32. The Commission also finds that existing safeguards, together with the adoption of a No-Conduit Rule, reasonably address APGA's and NJBPU's concerns regarding the improper use of non-public, operational information, whether by an initial recipient of

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<sup>43</sup> *Coordination between Natural Gas and Electricity Markets*, Docket No. AD12-12-000 (July 5, 2012) (Notice of Technical Conferences) (*available at* <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13023450>); 77 FR 41184 (July 12, 2012) (*available at* <http://www.gpo.gov/fdsys/pkg/FR-2012-07-12/pdf/2012-16997.pdf>); *Coordination between Natural Gas and Electricity Markets*, Docket No. AD12-12-000 (Dec. 7, 2012) (Notice Of Request for Comments and Technical Conference) (<http://www.ferc.gov/EventCalendar/Files/20121207134434-AD12-12-000TC1.pdf>); 77 FR 74180 (Dec. 13, 2012) (<http://www.gpo.gov/fdsys/pkg/FR-2012-12-13/pdf/2012-30063.pdf>); *Coordination between Natural Gas and Electricity Markets*, Docket No. AD12-12-000 (Mar. 5, 2013) (Notice of Technical Conference).

non-public, operational information or in a subsequent disclosure. In addition, the Commission's regulations expressly preclude the type of abuse, gaming, and market manipulation that NJBPU warns against.<sup>44</sup> As we have noted, both interstate pipelines and electric transmission operators must comply with their tariffs and applicable Commission regulations when making capacity allocation and other operational determinations.<sup>45</sup> Moreover, under the Standards of Conduct and the No-Conduit Rule adopted in this proceeding, interstate natural gas pipelines and electric transmission operators cannot share this information with their marketing function employees.<sup>46</sup> Nor can they provide this information to third-parties. While any exchange of non-public information may pose some disclosure risks, we find that, on balance, the regulations adopted here, including the No-Conduit Rule, appropriately balance the significant benefits to be gained by robust information exchange among interdependent transmission operators against the potential risks from disclosure of non-public information.

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<sup>44</sup> The Commission would have jurisdiction to pursue violations of the Commission's Anti-Manipulation Rule, 18 CFR 1c (2013) if an entity (including a non-jurisdictional entity) uses a fraudulent scheme or makes a material misrepresentation that would operate as a fraud or deceit upon any entity or market; has the requisite scienter; and in connection with a transaction subject to the Commission's jurisdiction.

<sup>45</sup> See *ISO New England Inc.*, 142 FERC ¶ 61,058, at P 23 (2013) (available capacity must be dispatched "consistent with the pipeline's tariff" and "[t]he pipelines are required to allocate available capacity on a not unduly discriminatory basis among the various requestors of capacity.")

<sup>46</sup> See 18 CFR 358.6 and 358.7 (2013).

**B. Scope of Information****1. NOPR**

33. In the NOPR, the Commission proposed to authorize public utilities providing transmission service and interstate natural gas pipelines to share non-public, operational information when such information is for the purpose of promoting reliable service or operational planning. The Commission stated that the term “non-public, operational information” is information that is not publicly posted, yet helps transmission operators to operate and maintain either a reliable pipeline system or a reliable electric transmission system on a day-to-day basis, as well as during emergency conditions or for operational planning. The NOPR stated that non-public, operational information may also include generator, pipeline, or transmission-specific information. In using the term “non-public, operational information,” the Commission intends that transmission operators would be permitted to share information dealing with actual, anticipated, or potential effects on the ability to provide electric and gas service based on the respective operator’s experience and understanding of the operational capability and customer demands on their respective systems.

34. The NOPR sought comment on the scope of the non-public, operational information that transmission operators may share under the proposed regulations.<sup>47</sup> The Commission stated that the proposed regulations were structured to provide significant

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<sup>47</sup> NOPR, FERC Stats. & Regs. ¶ 32,699 at P 24 (cross-referenced at 144 FERC ¶ 61,043).

flexibility to individual transmission operators—who have the most insight and knowledge of their systems—to determine what non-public operational information, if any, would promote reliable service on their systems, without fear of violating the Commission’s prohibitions on undue discrimination and undue preference or such an exchange being considered an unjust or unreasonable practice.<sup>48</sup> In proposing the regulations, the Commission stated its intent to remove barriers to the sharing of non-public, operational information, not just during emergencies, but also for day-to-day operations, planned outages, and scheduled maintenance.<sup>49</sup>

## 2. Comments

35. Several commenters express support for allowing transmission operators to determine the specific non-public, operational information to share, as opposed to the Commission providing a prescriptive, exhaustive list of information that may be shared.<sup>50</sup> In supporting the NOPR’s proposed scope, these commenters state that the proposed rule would permit flexible communications that are appropriately suited to the differences in information needs of each region. For example, NEPGA states that the NOPR provides

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<sup>48</sup> *Id.* P 11.

<sup>49</sup> *Id.* P 10.

<sup>50</sup> MMWEC Comments at 4; NEPGA Comments at 3; PG&E Comments at 4 and 5; TVA Comments at 2; NYTOs Comments at 7; MISO Comments at 3; INGAA Comments at 2 and 4; Enable Comments at 1; APPA Comments at 5; PUCO Comments at 6; NRECA Comments at 7; CAISO Comments at 3; and EEI Comments at 4 and 5.

for an appropriate amount of deference by defining the categories and scope of information that may be shared without narrowly defining each type of information.<sup>51</sup>

36. AGA agrees with the Commission that the proposed communications are important not only during emergencies or critical situations, but also when conditions, or emerging conditions, could lead to events on either system that have the potential to threaten the integrity or reliability of one or both of the systems.<sup>52</sup> NERC contends that the exchange and availability of real-time, day-ahead, and season-ahead gas flow information and data to transmission system operators will best address electric vulnerabilities related to natural gas fuel disruptions.<sup>53</sup>

37. Beyond supporting the approach proposed in this rulemaking, some commenters warned of the dangers of trying to develop an exhaustive list of the permitted communications. For example, MMWEC expressed concern about the chilling effect on system operators that would result if the Commission issued a specific list of information permitted to be shared. MMWEC states that under such a proscriptive approach, operators would be wary of violating Commission rules by sharing information not specifically identified.<sup>54</sup> MMWEC further argues that it is better to encourage a broad range of information sharing rather than a restrictive approach considering the critical

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<sup>51</sup> NEPGA Comments at 3.

<sup>52</sup> AGA Comments at 5.

<sup>53</sup> NERC Comments at 6.

<sup>54</sup> MMWEC Comments at 4.

situation in New England.<sup>55</sup> PG&E notes that the use of a specific list of information may also impede communications should such a list exclude a key type of information.<sup>56</sup>

38. A few commenters, however, oppose the generality of the proposed scope of communications permitted in the NOPR and request greater specificity of the non-public, operational information that may be shared between transmission operators.<sup>57</sup> For example, NGSA contends that the lack of specific parameters on what information sharing is acceptable creates further uncertainty and concern for market participants.<sup>58</sup> NGSA argues that the scope of the NOPR, which allows the sharing of any information for the purpose of promoting reliable service and operational planning, is overly broad and could allow operators to share commercially sensitive information.<sup>59</sup> NGSA proposes that the Commission limit interstate natural gas pipeline and electric transmission operators' ability to share non-public information by setting parameters for what information is acceptable for operators to share.<sup>60</sup> NGSA contends that providing parameters for what information can be shared would reduce confusion and give industry greater confidence that commercially sensitive information was not being disclosed

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<sup>55</sup> *Id.*

<sup>56</sup> PG&E Comments at 5.

<sup>57</sup> AEP Comments at 4; NGSA Comments at 6-9; and NJBPU Comments at 3.

<sup>58</sup> NGSA Comments at 6.

<sup>59</sup> *Id.* at 7.

<sup>60</sup> *Id.* at 8.



without companies' knowledge. NJBPU states that the Commission should provide clear and explicit limits as to what information should be kept confidential and what information may be disclosed.<sup>61</sup>

39. Consumers Energy is concerned that because the proposed rule does not provide a specific list of non-public, operational information that can be shared, the proposal raises the potential for compliance issues related to interpreting what information may and may not permissibly be shared.<sup>62</sup> Consumers Energy is also concerned with the potential consequences for unknowingly receiving information that could not permissibly be shared and the consequences of taking action, or failing to act, based on the receipt of such information.

40. In addition, some commenters believe that the sharing of non-public, operational information should be limited to emergencies. In particular, ELCON urges the Commission to emphasize that the central purpose of information sharing between interstate natural gas pipelines and electric transmission operators is to address system reliability and information sharing and, therefore, should focus on unusual non-routine circumstances and not on normal day-to-day operations.<sup>63</sup> ELCON states that outages, potential delivery restrictions, or curtailments that could occur during extreme weather events are examples of such unusual circumstances that would warrant the information

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<sup>61</sup> NJBPU Comments at 3.

<sup>62</sup> Consumers Energy Comments at 5.

<sup>63</sup> ELCON Comments at 2.

sharing between operators. NE Gas Industry states that the proposed communications are critical in emergency situations of imminent reliability concerns when the communications can have the most immediate and positive impact, but should not be relied upon by the RTOs/ISOs on a day-to-day basis in ensuring the reliability of the natural gas-fired generators in their service territories.<sup>64</sup>

### **3. Commission Determination**

41. The Commission adopts the NOPR proposal to provide explicit authority to transmission operators to share non-public, operational information with each other for the purpose of promoting reliable service or operational planning on either the public utility or interstate natural gas pipeline's system. In adopting the NOPR proposal, the Commission is intentionally permitting the communication of a broad range of non-public, operational information to provide flexibility to individual transmission operators, who have the most insight and knowledge of their systems, to share that information which they deem necessary to promote reliable service on their system. The Commission is not persuaded by the requests of NGSA, AEP, and NJBPU that the Commission specify the communications that transmission operators may share under the rule. As described above, the exchange of non-public, operational information between transmission operators would be to promote the reliability and operational integrity of both the electric transmission and pipeline systems. Given the wide variety of non-public operational information that may be needed for this purpose both now and in the future, it

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<sup>64</sup> NE Gas Industry Comments at 8.

is not practicable to develop a specific and exhaustive list defining the permissible communications.<sup>65</sup> The Commission finds that the inclusion of such a list in the regulations would unreasonably limit the flexibility of transmission operators to determine what information they need based upon the individual circumstances of their systems.

42. In addition, the Commission recognizes that the informational needs of system operators vary by region and, therefore, a specific and exhaustive list of permissive communications that may be relevant in one region may not address the communications and operational needs of transmission operators in another region. The Commission also recognizes that the informational needs of transmission operators may evolve over time as the generation mix in regions change and as transmission operators develop further insight into, and gain additional experience with, gas and electric coordination issues. In response to Consumers Energy's concern about what information may permissibly be shared, to the extent that a transmission operator is uncertain as to what information may and may not permissibly be shared, the Commission's compliance help desk is available to industry for informal guidance.<sup>66</sup>

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<sup>65</sup> Below in section III.C we address comments regarding the examples of non-public operational information included in the NOPR.

<sup>66</sup> The Compliance Help Desk is available for persons seeking technical assistance involving compliance with the statutes, rules, regulations, and tariffs administered by the Commission. See <http://www.ferc.gov/contact-us/compliance-help-desk/compliance-help-desk.asp>.

43. The Commission reaffirms its intention, as stated in the NOPR, to remove barriers to the sharing of non-public, operational information between transmission operators not just during emergencies, but also for day-to-day operations, planned outages, and scheduled maintenance. The communication of non-public, operational information permitted under this Final Rule will be applicable in all operational situations, that is, during both emergency and non-emergency situations. While communications permitted under the rule will be especially valuable in emergency situations, transmission operators should feel confident in their ability to engage in robust communications with each other, subject to the No-Conduit Rule, whenever necessary to promote reliable service, including on a day-to-day basis.

44. The Commission disagrees with ELCON that information sharing permitted under the rule should focus on unusual, non-routine circumstances such as outages during extreme weather events. The Commission's intent in providing explicit authority to transmission operators to share non-public, operational information with each other is to provide certainty. In part, the rule is designed to permit exchanges of information that may limit or prevent extreme weather events from having the impacts about which ELCON is concerned. It could create further confusion or complexity to require transmission operators to decipher whether system conditions have risen to the level of unusual or non-routine before they engage in communications that promote reliable service or operational planning. Therefore, the Commission declines to limit communications or to create a new definition of what constitutes an emergency for the purpose of expressly authorizing communications under this rule.

45. In order to maintain reliability, it will be important for transmission operators to coordinate planned outages and scheduled maintenance on both natural gas and electric systems so that any potential challenges may be identified more quickly, thus allowing more time to develop reliable solutions. The Commission is encouraged by the ongoing efforts regions are undertaking to improve coordination of scheduled maintenance and planned outages, and is hopeful that this Final Rule will allow for greater collaboration between the industries. The Commission re-emphasizes that communications for both electric transmission operators and interstate natural gas pipelines are voluntary, and encourages regions to develop the communications processes or protocols appropriately tailored to the needs of transmission operators in each individual region.

**C. Entities Covered Under the Rule**

**1. NOPR**

46. In the NOPR, the Commission proposed 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 either the public utility's or pipeline's system.

47. The NOPR recognized the existing exchanges of information among pipelines and among electric transmission operators that promote reliable service or operational planning. It also noted that, while the Commission regulates interstate service provided by intrastate pipelines, Hinshaw pipelines, and LDCs, the companies themselves are

subject to state regulation and may exchange information subject to any state regulations that govern their operations.

48. It was also noted in the NOPR that communications between transmission operators and generators are not covered by the proposed rule, but that transmission operators may always discuss generator-specific information with the relevant generator.

## **2. Comments**

49. AGA and Duke urge the Commission to clarify that public utilities and interstate natural gas pipelines may share non-public, operational information with intrastate pipelines and LDCs for the purpose of promoting reliable service or operational planning.<sup>67</sup> In its reply comments, NGSAs states that, to the extent that LDCs, intrastate pipelines, gatherers and generators are allowed to communicate with interstate natural gas pipelines and electric transmission operators, the Commission should require that the No-Conduit Rule be extended to them as a measure of protection for any non-public information that may have been inadvertently conveyed. Applying the No-Conduit Rule to all entities that are allowed to communicate under the proposed rule, NGSAs asserts, could help protect commercially sensitive information.<sup>68</sup>

50. The NYTOs urge the Commission to make clear in the Final Rule that transmission operators may share non-public, operational information with LDCs on a

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<sup>67</sup> AGA Comments at 5-6, 8; Duke Comments at 3.

<sup>68</sup> NGSAs Reply Comments at 4-5.

confidential basis.<sup>69</sup> While the NYISO is aware that state regulations govern the operations of intrastate pipelines, Hinshaw pipelines, and LDCs,<sup>70</sup> the NYISO states that receiving information from intrastate and LDC pipelines would be helpful and urges the Commission to encourage the same shared communication between these entities and transmission operators.<sup>71</sup> The NYTOs state that, like transmission operators, LDCs are not similarly situated to other customers because they require access to non-public information from a variety of sources to assist in ensuring the reliability and integrity of their systems.<sup>72</sup> Further, the NYTOs state that LDCs are not generally customers of electric system operators and RTOs/ISOs are not customers of LDCs. The NYTOs state that, while LDCs are shippers on interstate natural gas pipelines, for the purposes of maintaining reliability and operational planning, LDCs' actions are more akin to a system operator than a gas customer – especially when evaluating fuel security risks for gas-fired generation located behind their city-gates.

51. AGA asserts that LDC employees directly responsible for operating the local gas system need access to such non-public, operational information to assist in ensuring the

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<sup>69</sup> NYTOs Comments at 6.

<sup>70</sup> NYISO Comments at 3.

<sup>71</sup> *Id.* at 2-3. NYISO asserts that the majority of New York Control Area gas-fired generators are located behind an LDC, as opposed to directly connected to the interstate pipelines.

<sup>72</sup> NYTOs Comments at 6.

integrity of their system. Moreover, AGA believes that such communications are not currently prohibited under the NGA or the Commission's Standards of Conduct.<sup>73</sup>

52. Further, AGA states that the Commission's proposed revisions are unclear with respect to LDCs.<sup>74</sup> AGA states that proposed sections 38.2 and 284.12 refer to pipelines covered by section 284.12(b)(4) of the Commission's regulations as entities authorized to receive non-public, operational information for the purposes of promoting reliable service or operational planning. AGA states that it is unclear whether the term "pipelines" in that context is limited to interstate natural gas companies subject to the Commission's jurisdiction under section 1(b) of the NGA or includes any pipeline providing service under the Commission's Part 284 regulations implementing the Natural Gas Policy Act of 1978. AGA states that, if the former, LDCs would not be considered pipelines authorized to receive non-public, operational information and, if the latter, an LDC would only be considered a pipeline authorized to receive non-public, operational information to the extent the LDC provides interstate transportation or storage service under Part 284, Subpart C or G. AGA states that LDCs in their traditional role as bundled retail sales or gas service providers would not be considered "pipelines" under the Commission's proposal.<sup>75</sup> AGA, therefore, recommends that the Commission clarify that public utilities

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<sup>73</sup> AGA Comments at 6.

<sup>74</sup> *Id.* at 7.

<sup>75</sup> *Id.* at 7-8.



and interstate natural gas pipelines may share non-public, operational information with LDCs for the purpose of promoting reliable service or operational planning.<sup>76</sup>

53. As a separate issue, AGA is also concerned that “the interpretation that ‘pipelines’ under proposed sections 38.2 and 284.12(b)(4) would include an intrastate or Hinshaw pipeline providing interstate transportation or storage service under Part 284, Subpart C or G, may impose new obligations on LDCs contrary to the Commission’s permissive approach in this proceeding.”<sup>77</sup> AGA states that, currently, the Commission’s Standards of Conduct apply to interstate natural gas pipelines and impose no regulatory obligations directly on LDCs. AGA further states that, if an intrastate or Hinshaw pipeline were to be considered a “pipeline” subject to revised section 284.12(b)(4), questions arise regarding whether and how it must comply with the proposed No-Conduit Rules, which prohibit disclosure to marketing function employees as defined in section 358.3(d). In light of the potential ambiguity, AGA urges the Commission to “reiterate its intent not to impose new regulatory obligations in this proceeding and clarify that an intrastate or Hinshaw pipeline providing interstate service under Part 284 of the Commission’s regulations is not a ‘pipeline’ for purposes of proposed section 284.12(b)(4).”<sup>78</sup>

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<sup>76</sup> *Id.* at 8.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

54. EEI and Duke Energy request confirmation that otherwise permissible communications will not be impacted by the NOPR.<sup>79</sup> Specifically, EEI requests that the Final Rule include regulatory text that expressly states that its scope does not and is not intended to prohibit otherwise permissible communication between market participants.<sup>80</sup> EEI states that this would include, for example, communications between: public utilities and their customers; interstate natural gas pipelines and their customers; interstate natural gas pipelines and LDCs; and LDCs and generators, as there are many generation units that are served by LDCs behind the city gate.

55. Similarly, Duke Energy requests that the Commission clarify that communication between interstate natural gas pipelines and LDCs, and LDCs and generators (served behind the city gate), as well as communications among the pipelines, transmission operators, generators being served by the interstate natural gas pipeline and transmission operator, and other non-marketing employees of the transmission operator, are not prohibited, provided that the Standards of Conduct No-Conduit Rule is followed and non-public transmission or customer information is not shared with marketing function employees.<sup>81</sup>

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<sup>79</sup> Duke Comments at 2; EEI Comments at 3.

<sup>80</sup> EEI Comments at 3-4.

<sup>81</sup> Duke Comments at 2.

### 3. Commission Determination

56. In this Final Rule, the Commission adopts proposed sections 38.2 and 284.12(b)(4) as proposed in the NOPR. The Commission finds that the nature and scope of non-public, operational information that may expressly be shared under the rule, including commercially sensitive, customer-specific information, warrants limiting the blanket authorization of the exchange of such information granted herein to interstate natural gas pipelines and public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce subject to the Commission's jurisdiction.<sup>82</sup> As discussed below, we decline to authorize in this Final Rule the disclosure of non-public, operational information, which may include commercially sensitive, customer specific information, to LDCs, intrastate pipelines, or gatherers. However, we clarify that the No-Conduit Rule adopted in this Final Rule only applies to the non-public, operational information an electric transmission operator provides to the interstate pipeline pursuant to this rule or vice versa. Therefore, the No-Conduit Rule adopted in this Final Rule does not otherwise affect the ability of interstate natural gas pipelines to exchange operational information among themselves or with LDCs regarding actual or potential pipeline or distribution system operational conditions affecting the gas flow between these physically interconnected parties. Nor does it affect the ability of an

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<sup>82</sup> *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 423 (2008) (cross-referenced at 125 FERC ¶ 61,071 (2008)) (Commission determined that it was necessary to retain the practice of masking the identity of participants when releasing offer and bid data).

electric transmission operator to share its own information with an LDC, if otherwise permitted under its tariff. Similarly, the No-Conduit Rule does not otherwise affect the ability of interstate natural gas pipelines and intrastate natural gas pipelines and gatherers to exchange operational information regarding operational conditions affecting the gas flows between these physically interconnected parties. Moreover, this Final Rule does not prohibit electric transmission operators from sharing non-public, operational information received from a pipeline pursuant to this Final Rule with LDCs, if the information sharing and appropriate safeguards to prevent inappropriate use or disclosure of shared information is separately authorized by the Commission, for example pursuant to a FPA section 205 tariff filing by an ISO or RTO.

57. We recognize that LDCs and other parties do have a significant role to play in maintaining reliability of both interstate natural gas pipeline transportation systems and electric transmission systems, as the commenters point out, particularly since many electric generators take service from LDCs, rather than directly from interstate pipelines. However, because the Commission generally does not have jurisdiction over LDCs, and because the scope of the authorized non-public, operational information exchange between interstate natural gas pipelines and electric transmission operators under this Final Rule is broad, we are reluctant to authorize blanket authority for interstate natural gas pipelines or electric transmission operators to pass such information to non-jurisdictional LDCs. Instead, we prefer to proceed on a case-by-case basis with respect to electric transmission operators sharing non-public, operational information received from a pipeline pursuant to this Final Rule with LDCs. Electric transmission operators

that see the need for such communication given the circumstances on their systems may develop tariff provisions that establish acceptable procedures for the handling and protection from inappropriate disclosure or use of such information.<sup>83</sup>

58. For example, in a recent, unprotested tariff filing by the California Independent System Operator (CAISO),<sup>84</sup> CAISO amended its tariff to specifically authorize the CAISO to share, under a non-disclosure agreement, outage information with natural gas transmission and distribution utilities operating interstate and/or intrastate natural gas pipelines that serve natural gas-fired generation resources within the CAISO Balancing Authority Area, with or without notice to the affected market participant. The information CAISO may share includes, but is not limited to, the identity of individual natural gas-fired generation resources that are needed to support reliability of the CAISO Balancing Authority Area in the event of a natural gas shortage, natural gas pipeline testing and maintenance, or other curtailment of natural gas supplies. If they believe it necessary or appropriate, other electric transmission operators may make similar FPA section 205 tariff filings to facilitate greater sharing of non-public, operational information received from a pipeline pursuant to this Final Rule with entities such as LDCs. We encourage those electric transmission operators that are concerned about generators that are located behind an LDC to consider developing such tariff revisions.

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<sup>83</sup> For example, such tariff conditions might require the LDC to enter into a non-disclosure agreement (NDA).

<sup>84</sup> *Cal. Indep. Sys. Operator Corp.*, Docket No. ER12-278-000 (Dec. 8, 2011) (delegated letter order).

59. AGA requests clarification as to the whether the term pipeline includes intrastate pipelines. The Commission clarifies that the term “pipeline” in section 284.12(b)(4) adopted in this Final Rule refers to interstate natural gas pipelines that transport gas under subparts B or G of Part 284.<sup>85</sup> Section 284.12(b)(4) is a new subsection of existing section 284.12(b). The first sentence of that section makes clear that the word “pipeline” as used throughout section 284.12(b) refers only to “an interstate pipeline that transports gas under subparts B or G of this part.” Thus, an intrastate or Hinshaw pipeline providing interstate service under Part 284 of the Commission’s regulations is not a “pipeline” for purposes of section 284.12(b)(4).

**D. The No-Conduit Rule and Competitive Concerns**

**1. NOPR**

60. In the NOPR, the Commission proposed to adopt a No-Conduit Rule that would prohibit all public utilities and interstate natural gas pipelines, as well as their employees, contractors, consultants, or agents, from disclosing, or using anyone as a conduit for the disclosure of, non-public, operational information they receive under this rule to a third party or to its marketing function employees, as that term is defined in section 358.3 of the Commission’s regulations. The Commission stated that the No-Conduit Rule, in addition to protections already in place, would ensure that any non-public, operational information shared under the proposed regulations remains confidential and is shared

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<sup>85</sup> See 18 CFR 284.12(b) (2013).

among transmission operators in a manner that is consistent with the prohibition on undue discrimination.<sup>86</sup>

61. In describing the need for the No-Conduit Rule, the Commission explained that the existing No-Conduit Rule under the Standards of Conduct would not sufficiently limit the disclosure of the information received under this proposed rule.<sup>87</sup> Therefore, the Commission proposed a No-Conduit Rule tailored to the entities and information covered by the proposed rule and extends the disclosure prohibition to non-affiliates.

62. The Commission also noted the concerns expressed by some entities that generator-specific, non-public information provided to a pipeline by an electric transmission operator could provide the pipeline with a competitive advantage over the generator in pricing transportation services.<sup>88</sup> The Commission found no need to propose additional protections regarding interstate natural gas pipeline transportation. The Commission reasoned that interstate pipelines are required to allocate service, on a not unduly discriminatory basis, based on their tariffs, at a rate not exceeding the just and reasonable rate on file. The Commission also explained that pipelines are not required to discount services, and if they choose to discount, are permitted to obtain information

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<sup>86</sup> NOPR, FERC Stats. & Regs. ¶ 32,699 at P 26 (cross-referenced at 144 FERC ¶ 61,043).

<sup>87</sup> *Id.* P 26 & n.50.

<sup>88</sup> *Id.* P 27.

from any source to demonstrate that the shipper requesting the discount has competitive alternatives.<sup>89</sup>

63. The Commission stated that unauthorized disclosure of any non-public, operational information may subject the entity or individual making the prohibited disclosure to the enforcement provisions of the FPA and NGA, including potential civil penalties.<sup>90</sup>

64. Thirteen commenters filed in support of the proposed No-Conduit Rule.<sup>91</sup> Arguing that the No-Conduit Rule was either too strict or not strict enough, several commenters proposed modifications to or requested clarifications of the No-Conduit Rule. Those comments are discussed below.

## 2. Adequacy of No-Conduit Rule to Protect against Competitive Harm

### a. Comments

65. Several commenters are concerned that the proposed No-Conduit Rule is inadequate to prevent the misuse of non-public, operational information exchanged between electric transmission operators and pipelines and protect against competitive

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.* P 26 & n.52 (citing section 22 of the NGA, 15 U.S.C. 717t2-1 (2012), and section 316A of the FPA, 16 U.S.C. 825o-1 (2012)).

<sup>91</sup> AEP Comments at 5-6; CAISO Comments at 5; Duke Energy Comments at 3; ELCON Comments at 3; EPSC Comments at 7; MISO Comments at 2; MMWEC Comments at 5; NESCOE Comments at 4,6; NRECA Comments at 5; NYTOs Comments at 1; PG&E Comments at 2-3; PUCO Comments at 5; TVA Comments at 3.



harm to generators, natural gas marketers, and others. These commenters recommend that the Commission adopt various modifications to the No-Conduit Rule or place additional limits on the information which transmission operators may share, as discussed below.<sup>92</sup>

66. EPSA and NGSA seek clarification that the No-Conduit Rule covers non-operational interstate natural gas pipeline employees that market transportation capacity.<sup>93</sup> NGSA states that giving access to non-public, operational information to pipeline capacity marketing employees that negotiate shipper discounts could be problematic.<sup>94</sup> NGSA states that, for example, a pipeline capacity marketing employee could decide not to discount interruptible capacity because they have prior knowledge of a transmission operator's intent to ramp up gas-fired generators, increasing demand on the pipeline. Or, the pipeline capacity marketing employee could use knowledge of upcoming generator outages to lower interruptible prices for a period to compete with capacity releases. NGSA states that, while the Commission correctly notes that its non-discrimination rules already forbid any discriminatory behavior, it still would seem

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<sup>92</sup> AEP Comments at 6; APGA Comments at 2-3; Duke Comments at 3; NGSA Comments at 2-3; and PUCO Comments at 7.

<sup>93</sup> EPSA Comments at 4; NGSA Comments at 4-6.

<sup>94</sup> NGSA Comments at 4.

prudent to limit access to non-public, operational information for pipeline transportation capacity sellers.<sup>95</sup>

67. Washington Gas is concerned that the NOPR does not explain how information can or cannot be shared within a public utility that receives non-public operating information.<sup>96</sup> Washington Gas contends that if the generator employees only serve the function of purchasing gas—rather than selling energy at wholesale—they may not come within the definition of “marketing function employees” because the currently effective Standards of Conduct do not consider gas purchasing to be a marketing function activity. Washington Gas argues, if non-public information is shared within a public utility, it would create a preference for public utility-owned generation over independent generators because independent generators would be "third parties" prohibited from information sharing. Washington Gas concludes that, if the Commission relies on a No-Conduit Rule to protect information from reaching beyond transmission function employees, the Commission should provide detailed examples of exactly how the No-Conduit Rule will be implemented to protect the fairness of the market and assure that no shipper is afforded an undue preference.<sup>97</sup>

68. Washington Gas claims that the best way to resolve the tension between information sharing and market fairness is to continue to make critical operating

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<sup>95</sup> *Id.* at 5.

<sup>96</sup> Washington Gas Comments at 10.

<sup>97</sup> *Id.* at 11.

information public. Washington Gas contends that certain of the examples of “non-public, operational information” listed in the NOPR should never be considered non-public, operational information.<sup>98</sup> Rather, Washington Gas contends, this information should be considered public information to be promptly posted. Washington Gas believes that the only information properly shared on a non-public basis would be transaction-specific information.<sup>99</sup> Accordingly, Washington Gas urges the Commission to clarify that all pipeline facility outage and maintenance information needs to be made public and posted on the pipeline’s internet website and to establish clear instructions as to what exact information must be posted and what can be shared voluntarily in a non-public way.<sup>100</sup>

69. Similar to Washington Gas, AGA states that it assumes that the Commission would continue to require interstate pipelines to provide all shippers with equal access to information regarding system conditions, maintenance schedules and outages, and available capacity so as not to create competitive advantages for certain shippers.<sup>101</sup>

70. PUCO supports the proposed No-Conduit Rule, but contends that proposed section 38.2 should be modified to include additional language to require that no non-public information be shared with any person or company affiliate except to ensure the

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<sup>98</sup> *Id.* at 3.

<sup>99</sup> *Id.* at 4.

<sup>100</sup> *Id.* at 3-4.

<sup>101</sup> AGA Comments at 5 & n.14.

reliable and efficient operations of the pipeline, transmission grid, and the delivery of generation service.<sup>102</sup>

71. Duke Energy notes that there are a number of small public utilities who currently have waivers of the requirement to abide by the Standards of Conduct or are otherwise not subject to the Standards of Conduct. Duke Energy requests that the Commission address its concern that these entities could receive commercially sensitive and non-public transmission information under the NOPR which could potentially give them an unfair advantage.<sup>103</sup>

72. To alleviate concerns of confidential information disclosure, TVA recommends that, in addition to the No-Conduit Rule, the Commission should encourage and support the execution of confidentiality agreements between electric transmission operators and natural gas pipelines relative to these discussions.<sup>104</sup>

73. ELCON proposes two modifications to the No-Conduit Rule. First, ELCON asserts that the Commission should require electric transmission operators and interstate natural gas pipelines to submit an annual filing with the Commission listing entities with whom they have entered into information sharing arrangements and further certify that they acknowledge and comply with the No-Conduit Rule. Second, ELCON argues that

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<sup>102</sup> PUCO Comments at 5.

<sup>103</sup> Duke Energy Comments at 3.

<sup>104</sup> TVA Comments at 3-4.

the Commission should require electric transmission operators and pipelines to maintain and implement a written compliance policy.<sup>105</sup>

74. PUCO also maintains that the Commission should, via an expansion of the instant proceeding, arrive at the appropriate requisite sanctions for the inappropriate sharing of potentially commercially sensitive, non-public information in violation of the No-Conduit Rule.<sup>106</sup>

75. Some commenters expressed concern about the scope of the non-public, operational information to be shared under the rule based on competitive concerns about the use of that information. NGSAs are also concerned that the NOPR could allow transmission operators to share commercially sensitive information that could harm producers and marketers by revealing their positions in the market to outside parties.<sup>107</sup> NGSAs state, for example, that a marketer's commercial strategy could be revealed if the confidential details of the scheduling priorities it has contracted with its clients were shared.<sup>108</sup> NGSAs further contend that while it may be useful for utility operators to share information on overall pipeline capacity, sharing commercially sensitive

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<sup>105</sup> ELCON Comments at 3.

<sup>106</sup> PUCO Comments at 5.

<sup>107</sup> NGSAs Comments at 7.

<sup>108</sup> *Id.*

information such as individual shipper nominations offers little insight into the reliability of deliveries and could cause significant harm to some market participants.<sup>109</sup>

76. Along the same lines, PUCO argues that electric transmission operators should be required to furnish pipelines with aggregated, non-unit specific generation data to ensure against inadvertently providing pipelines with confidential or proprietary information that could result in a competitive advantage concerning the pricing of gas to that facility.<sup>110</sup>

**b. Commission Determination**

77. In this Final Rule, the Commission adopts the proposed No-Conduit Rule as set forth in sections 38.2(b) and 284.12(b)(4)(ii) of the NOPR, without modification. The No-Conduit Rule prohibits all public utilities and interstate natural gas pipelines, as well as their employees, contractors, consultants, or agents, from disclosing, or using anyone as a conduit for the disclosure of, non-public, operational information they receive under this rule to a third party or to its marketing function employees, as that term is defined in § 358.3 of the Commission's regulations. The Commission concludes that the No-Conduit Rule, as proposed, is necessary to ensure that any non-public, operational information shared under the regulations in this Final Rule remains confidential and is shared among transmission operators in a manner that is consistent with the prohibition on undue discrimination. As several commenters, including generators, pointed out, the

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<sup>109</sup> *Id.*

<sup>110</sup> PUCO Comments at 7.

No-Conduit Rule addresses many of the concerns over the sharing of commercially sensitive, customer-specific information among transmission operators.

78. At this time, we do not see the need to expand the No-Conduit Rule to explicitly prohibit disclosures to other employees or entities. We believe that, through this Final Rule and other Commission rules and regulations, we have adequate safeguards in place.

In response to the comments received, we take this opportunity to explain the Commission's requirements associated with the sharing of information and remind industry of the information already made available by the Commission's regulations.

79. Washington Gas, NGSAs, and EPSAs assert that certain employees may fall outside the Standards of Conduct definition of "marketing function employees" and therefore may receive information under this Final Rule, and be in a position to use that information to provide an undue preference.

80. First, Washington Gas expresses concern that the proposed rule does not explain how non-public, operational information received by a public utility can or cannot be shared within that public utility, including with employees that fall outside the definition of "marketing function employee," in particular, public utility employees that purchase gas. In Order Nos. 717 and 717-A, the Commission restricted its affiliate rule to cover only those employees that participate in electric sales markets and eliminated or rejected

proposals that would have expanded the rule to cover other employees.<sup>111</sup> The

Commission explained:

The Commission agrees that restricting the definition of marketing functions to include only sales, rather than purchases, more closely matches the statutory prohibitions against undue preferences. Furthermore, the removal of purchases from the definition of marketing functions frees companies to conduct the informational exchanges necessary to engage in integrated resource planning....<sup>112</sup>

For similar reasons, the Final Rule is limited and therefore we find it is not appropriate to expand the No-Conduit Rule adopted here to include employees who are not “marketing function employees,” such as gas purchasing employees.

81. In addition, Washington Gas has not provided sufficient reason to expand the No-Conduit Rule to gas purchasing employees or other employees of the public utility who are not marketing function employees. In this Final Rule the Commission’s intent is to remove barriers to the sharing of non-public, operational information between

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<sup>111</sup> See *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 77, 103 (cross-referenced at 125 FERC ¶ 61,064 (2008)); Order No. 717-A, FERC Stats. & Regs. ¶ 31,297 at P 35 (cross-referenced at 129 FERC ¶ 61,043 (2009)).

<sup>112</sup> Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 77 (cross-referenced at 129 FERC ¶ 61,043 (footnotes omitted)). See also Order No. 717-A, FERC Stats. & Regs. ¶ 31,297 at P 35 (cross-referenced at 129 FERC ¶ 61,043) (explaining that restricting the definition of marketing function to include only sales more closely matches the statutory prohibitions against undue preference. Specifically, sections 205 and 206 of the Federal Power Act prohibit undue preference or advantage to any person with respect to “any transmission or sale subject to the jurisdiction of the Commission . . . .” Similarly, sections 4 and 5 of the Natural Gas Act prohibit undue preference with respect to “any transportation or sale of natural gas subject to the jurisdiction of the Commission.).



transmission operators for the purpose of promoting reliable service and operational planning. While certain gas purchasing employees may fall outside the definition of marketing function employees, within a vertically integrated utility, it may be necessary for an electric transmission operator, based on information received by an interstate natural gas pipeline, to inform its gas purchasers that it needs additional natural gas at another generating unit. Restricting such internal disclosure may limit the effectiveness of any such communication in responding to operational problems.

82. Moreover, under section 284.13(d) of the Commission regulations,<sup>113</sup> pipelines are already required to post important capacity and outage information at each scheduling opportunity. This includes “equal and timely access to information relevant to the availability of all transportation services whenever capacity is scheduled, including, but not limited to, the availability of capacity at receipt points, on the mainline, at delivery points, and in storage fields; whether the capacity is available directly from the pipeline or through capacity release; the total design capacity of each point or segment on the system; the amount scheduled at each point or segment whenever capacity is scheduled; and all planned and actual service outages or reductions in service capacity.”

Washington Gas has not provided sufficient justification that, given the extent of these posting requirements, the potential risks it identifies associated with permitting the exchange of non-public, operational information between transmission operators, outweighs the efficiency and reliability benefits of permitting such communications.

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<sup>113</sup> 18 CFR 284.13(d) (2013).

83. While non-public, operational information falls outside of the posting requirements, we are not convinced such information needs to be disclosed to all shippers. For example, certain information may be relevant only to the operations of the public utility and may not need to be disclosed to all shippers.

84. We also deny EPSA's and NGSA's requests to expand the No-Conduit Rule to prohibit disclosures to interstate natural gas pipeline employees who market pipeline capacity, as well as PUCO's request to require electric transmission operators to furnish pipelines aggregated, non-unit specific generation data to ensure against providing pipelines with confidential or proprietary information that could result in a competitive advantage concerning the pricing of gas to that facility. The Commission agrees with NGSA that "marketing function employees," as that term is defined in the Standard of Conduct, does not include employees that market transportation capacity. However, EPSA and NGSA have not shown that employees who market pipeline capacity can use non-public, operational information shared under this Final Rule to provide an undue preference or unduly discriminate in a manner inconsistent with the Commission's policies or regulations. NGSA's specific concern is that employees who market transportation capacity could use non-public, operational information shared under this rule to discriminate in their allocation or pricing of capacity. In response, we note that interstate natural pipelines are required by the NGA and their tariffs to allocate service on a not unduly discriminatory basis at a rate not exceeding the just and reasonable rate on file. Further, the Commission does not require pipelines to discount services below the pipeline's maximum tariff rate, which the Commission has found just and reasonable. If

a pipeline chooses to provide selective discounts based on the elasticity of demand of its customers,<sup>114</sup> the pipeline needs to obtain information to demonstrate that a shipper requesting a discount does have competitive alternatives justifying the discount in order to ensure that it treats all similarly situated customers on a comparable basis.<sup>115</sup>

85. We also deny PUCO's request to expand the No-Conduit Rule to require that non-public, operational information not be shared with any person or company affiliate except to ensure the reliable and efficient operations of the pipeline, transmission grid, and the delivery of generation service. As we explain elsewhere in this Final Rule, the Commission is concerned that adding further qualifiers to the definition of operational information will restrict the flexibility of transmission operators to determine what information it must share to promote reliable service and engage in effective operational planning. Moreover, adding further qualifiers is unnecessary, given our conclusion that the existing safeguards (e.g., the Standards of Conduct, prohibition against undue

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<sup>114</sup> See *Associated Gas Distributors v. FERC*, 824 F.2d 981 (D.C. Cir. 1987) (permitting selective discounting only when justified by competitive alternatives and elastic demand conditions); *Williston Basin Interstate Pipeline Co.*, 85 FERC ¶ 61,247 (1998) (finding that a pipeline does not necessarily have to offer the same discount to all customers at a point when the pipeline knows, if some customers at the point have elastic demand, while others have inelastic demand).

<sup>115</sup> See, e.g., *Panhandle Eastern Pipe Line Co.*, Opinion No. 395, 71 FERC ¶ 61,228, at 61,867 (1995) (Commission cited to pipeline's policy of requiring documentation from its customers detailing the competitive circumstances justifying their need for a discount, such as potentially sensitive information concerning the end use customer for whom the gas will be transported, and competitive energy supplies, including the customer's source and cost of alternative natural gas supplies or the type and cost of alternative fuels); *Panhandle Eastern Pipe Line Co.*, Opinion No. 404, 74 FERC ¶ 61,109, at 61,405 (1996).

discrimination or preference, prohibition on market manipulation) together with the third-party limitation in the No-Conduit Rule we are putting in place are sufficient to protect against unnecessary disclosure.

86. TVA proposes that, in addition to the No-Conduit Rule, the Commission require confidentiality agreements, while ELCON proposes that the Commission also require annual filings and written compliance procedures. Under this Final Rule, communication and sharing of non-public, operational information is voluntary. While the Commission will not embed such a requirement in its regulations, we note that CAISO and ISO-NE have both adopted such practices, and this Final Rule does not prescribe the mechanics of how voluntary sharing will be conducted. To the extent a transmission operator has a need for additional or changed information sharing procedures such as confidentiality agreements, the Commission will evaluate such requests on a case-by-case basis. With respect to PUCO's comments regarding sanctions, the Commission reiterates that unauthorized disclosure of any non-public, operational information may subject the entity or individual making the prohibited disclosure to the enforcement provisions of the FPA and NGA, including potential civil penalties.<sup>116</sup> The Commission declines to further delineate the specific sanctions that might apply in the event of an unauthorized disclosure, as any sanctions would need to be tailored to the facts and circumstances of the disclosure at issue.

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<sup>116</sup> See Section 22 of the NGA, 15 U.S.C. 717t2-1 (2012), and section 316A of the FPA, 16 U.S.C. 825o-1 (2012).

87. Duke argues that some small public utilities that currently have waivers of the requirement to abide by the Standards of Conduct could be given an unfair advantage if they receive commercially sensitive and non-public transmission information under the Final Rule. The Commission clarifies that existing waivers from the Standards of Conduct do not automatically apply to the No-Conduit Rule adopted in this Final Rule. That is, an existing waiver of the Standards of Conduct does not waive the No-Conduit Rule adopted here. In this Final Rule, the Commission is expressly authorizing the exchange of non-public, operational information that could include commercially sensitive, customer-specific information. The No-Conduit Rule was developed to address concerns that broadly sharing this kind of information with marketing function employees or third parties could cause competitive harm. Given that the information covered by this rule is potentially commercially sensitive, the Commission finds that a determination as to whether a waiver of the No-Conduit Rule adopted here is appropriate is best made on an individual basis, pursuant to a filing under FPA section 205 or NGA section 4.

88. In response to comments raising general concerns about the competitive impact of the use of non-public, operational information exchanged under this rule, the Commission finds that the No-Conduit Rule is sufficient to address these concerns. For example, NGSAs asserts that a natural gas marketer's commercial strategy could be revealed if the confidential details of the scheduling priorities it has contracted with its clients are revealed. While the Commission recognizes that a natural gas marketer's scheduling priorities for its downstream clients are commercially sensitive, the No-

Conduit Rule should ensure that the electric transmission operators, with whom pipelines may share such information, do not disclose that information to third party participants in the natural gas sales market. NGSAs has not explained how a pipeline's sharing of a natural gas marketer's nominations with an electric transmission operator would cause competitive harm to the natural gas marketer, so long as the electric transmission operator complies with the No-Conduit Rule.

89. The Commission similarly is not persuaded by PUCO's concern that an electric transmission operator's sharing of confidential unit-specific generator information with interstate pipeline providers could result in "a competitive advantage concerning the pricing of gas to that facility."<sup>117</sup> Interstate natural gas pipelines only provide unbundled transportation service and do not sell gas except for incidental sales required for the conduct of their transportation service. As discussed above, there are protections already in place to prevent undue discrimination or preference in the pipeline's sale of transportation service.<sup>118</sup> Given the protections already in place, we see no need to propose additional protections regarding pipeline transportation at this time.

### **3. Exceptions to the No-Conduit Rule**

#### **a. Comments**

90. Several parties contend that the No-Conduit Rule is too restrictive and recommend that the Commission adopt various modifications, as discussed below. For example, NE

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<sup>117</sup> PUCO Comments at 7.

<sup>118</sup> *See, e.g.*, 18 CFR 284.286 (2013).

Gas Industry and INGAA request that the proposed No-Conduit Rule be modified in the Final Rule to include an exception to allow sharing of non-public, operational information between all relevant industry participants in an emergency.<sup>119</sup> INGAA, for example, states that there should be no limit on sharing of non-public, operational information between transmission operators during an emergency, including communications between third parties, subject to a record of the exchange as soon as practicable after the fact.<sup>120</sup> NE Gas Industry and INGAA propose that communications in such emergencies could include RTOs and ISOs, interstate natural gas pipelines, generators of all fuel types, LDCs, liquefied natural gas suppliers, producers, marketers, asset managers, and other relevant participants in the energy industry.<sup>121</sup> Alternatively, NE Gas Industry requests that the Commission clarify that the No-Conduit Rule does not prohibit such larger group discussions and apart from the Final Rule, pipelines and public utilities are permitted to share non-public, operational information with all relevant entities as necessary to mitigate or solve an emergency that threatens the reliability of electric or natural gas service.

91. In its reply comments, NGSA states that the Commission should deny requests to suspend the communications rules during emergencies or clearly define what constitutes

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<sup>119</sup> NE Gas Industry at 3-4, INGAA Comments at 7. NE Gas Industry states that existing focus groups and joint industry task forces in New England can serve as the mechanisms to facilitate such open communication in times of emergency.

<sup>120</sup> INGAA Comments at 7.

<sup>121</sup> NE Gas Industry Comments at 5; INGAA Comments at 7.

an emergency.<sup>122</sup> NGSA is concerned that identifying what situations constitute an emergency can be subjective. NGSA states that at a minimum, the Commission should strictly maintain the No-Conduit Rule, restricting communications to operational (i.e. non-marketing) employees, at all times, regardless of any relaxation of the associated communications rules.

92. Enable contends that the Commission should adopt a modified version of the No-Conduit Rule that allows interstate pipelines to share non-public, operational information with non-marketing function employee third parties for the purpose of promoting reliable service and operational planning.<sup>123</sup> Enable asserts that the NOPR provides no rational basis for distinguishing between (A) “non-public, operational information” received from electric public utilities through this new regime, which interstate natural gas pipelines are barred from disclosing to anyone, and (B) general “non-public, operational information,” which pipelines may share with non-marketing function employees for operational reasons.<sup>124</sup> Enable asserts that currently, interstate pipelines receive non-public, operational information from a variety of sources and the NOPR sets forth no evidence that such information, when received from public utilities, would not be sufficiently protected by the current No-Conduit Rule as stated in the Standards of Conduct or by a

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<sup>122</sup> NGSA Reply Comments at 5.

<sup>123</sup> Enable Comments at 9-10.

<sup>124</sup> *Id.* at 6.



less restrictive No-Conduit Rule.<sup>125</sup> Enable states that the NOPR gives interstate gas pipelines access to information from electric public utilities for the purpose of improving reliability, but at the same time bars those pipelines from sharing such information with third parties with whom they would normally share operational information for that purpose (e.g., interconnected intrastate and gathering lines).<sup>126</sup>

93. Enable also contends that the NOPR's No-Conduit Rule creates two classifications of "non-public, operational information" and different rules regarding interstate pipelines' sharing of each, thereby imposing significant administrative burdens and compliance challenges on the pipelines.<sup>127</sup> Enable states that under the current rules, interstate pipelines may exchange information with employees of their intrastate pipeline and gathering affiliates, provided those employees are not marketing function employees. Enable states that the proposed No-Conduit Rule creates an inconsistency and potential compliance difficulty because these employees of the non-jurisdictional affiliates would be allowed to receive some operational information but not the new category of non-public information received from electric public utilities.<sup>128</sup> Enable states that the proposed No-Conduit Rule renders impractical—if not impossible—interstate pipelines' otherwise-appropriate sharing of non-marketing function employees with affiliated

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<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 7.

<sup>128</sup> *Id.*

intrastate pipelines and gatherers.<sup>129</sup> Additionally, Enable states that interstate pipelines will need to implement two separate compliance walls regarding operational information: one wall to prevent the disclosure of non-public transmission function information or customer information (directly or through a conduit) to the pipeline's marketing function employees; and another wall to prevent the disclosure of non-public, operational information received from public utilities to the pipeline's marketing function employees or to any third party (including the pipeline's own intrastate pipeline and gathering affiliates).<sup>130</sup>

94. Enable maintains that the NOPR does not identify a need for the absolute prohibition against interstate pipelines' disclosure of operational information to non-marketing function employee third parties for the purpose of system reliability.<sup>131</sup> Enable argues that the NOPR points only to the theoretical threat of harmful disclosure of the electric public utility's non-public information and undue discrimination or preference

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<sup>129</sup> *Id.* at 8.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 9 (citing *National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 844 (D.C. Cir. 2006) (indicating that FERC must supply a factual basis for its administrative actions or, in the absence of such a basis, explain how potential dangers, unsupported by a record of abuse, justifies costly rules); 5 U.S.C. § 553(c) ("After consideration of the relevant matter presented [through notice and comment], the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose."); *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 56 (1983) (requiring agency to explain reasons for decision); *St. James Hosp. v. Heckler*, 760 F.2d 1460, 1469 (7th Cir. 1985) (finding explanation for rule not adequately supported by evidence offered as justification)).

and provides no explanation of how the potential danger of improper disclosure by interstate pipelines, unsupported by a record of abuse, justifies such a broad and burdensome prophylactic rule.

95. AGA and Duke Energy express concern that the proposed No-Conduit Rule could be interpreted to prohibit communications that are currently permitted under the Standards of Conduct.<sup>132</sup> Specifically, AGA and Duke maintain the rule should not prevent a public utility or interstate pipeline from disclosing non-public, operational information to a third-party LDC, especially where such information would promote reliable service or operational planning with regard to gas-fired generators located on an LDC's system.

**b. Commission Determination**

96. As stated above, the Commission adopts the No-Conduit Rule as set forth in the NOPR, without modification. The non-public, operational information permitted to be shared under this Final Rule could include the exchange of confidential generator information, and as explained below, the scope of the information allowed to be shared under this Final Rule warrants the restrictions in the No-Conduit Rule, as proposed.

97. AGA, Duke Energy and Enable request exceptions to the third party restriction in the No-Conduit Rule. The Commission denies these requests. As stated earlier, the No-Conduit Rule does not prohibit transmission operators from sharing their own operational information with other interconnecting entities involved in ensuring the reliability of

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<sup>132</sup> AGA Comments at 7, Duke Energy Comments at 3.

system operations, such as LDCs, intrastate pipelines or gathering facilities. The No-Conduit Rule only applies to the subsequent disclosure of non-public, operational information, including commercially sensitive, customer-specific information, received by an interstate natural gas pipeline or electric transmission operator under the rule and does not otherwise affect the ability of an interstate natural gas pipeline or electric transmission operator to exchange operational information about its own system with its customers/stakeholders or members under the same rules and conditions as it currently does. Moreover, the information that may permissibly be shared under this rule is not limited to “transmission function” information covered under the Standards of Conduct. The scope of information that transmission operators may permissibly share under this rule is broader than transmission function information and, as a result therefore warrants the restriction on disclosure to third parties, as well as marketing function employees, via the No-Conduit Rule.

98. The Commission similarly denies NE Gas Industry’s and INGAA’s requests that, if the Commission does not eliminate the third-party prohibition, the Commission at least include an exception to permit sharing of non-public, operational information between all relevant industry participants during emergencies. We see little reason to create an emergency exception since, as we explained, the Final Rule does not otherwise affect the ability of an interstate natural gas pipeline or electric transmission operator to exchange operational information about its own system with its customers/stakeholders or members under the same rules and conditions as it is currently does, including during an emergency. In addition, the Commission clarifies that the proposed No-Conduit Rule

does not prohibit, either during routine or emergency circumstances, electric transmission or interstate natural gas pipeline operators from jointly and simultaneously communicating non-public, operational transmission or transportation information (except for customer-specific information) with all market participants. Because such information is being shared contemporaneously with all market participants, it would not be considered non-public and its disclosure would not be unduly preferential or discriminatory. Undue discrimination concerns only arise when communications take place with some, but not all, market participants.

99. Enable is concerned that the proposed No-Conduit Rule creates a new compliance issue for pipeline companies that have operational personnel who are involved in operational planning for an interstate pipeline and affiliated gathering facilities or intrastate pipelines. While the No-Conduit Rule would prohibit such disclosures to the employees shared with the affiliated gathering facilities or intrastate pipeline, we do not find that a broad exemption for communication of the non-public, operational information is warranted. To the extent that interstate natural gas pipelines share operational employees with LDCs or other affiliates, which makes compliance with the No-Conduit Rule difficult, the interstate natural gas pipelines can seek a waiver of this Final Rule's No-Conduit Rule.

### **III. Questions Posed by the Commission**

#### **A. Generator to Electric Transmission Operator Communications**

##### **1. NOPR**

100. In the NOPR, the Commission recognized that although the proposal applies only to communications between interstate natural gas pipelines and electric transmission operators, natural gas-fired generators may have relevant information regarding their own capabilities to acquire natural gas (or other fuels) not available to the interstate natural gas pipeline serving the generator.<sup>133</sup> Therefore, the Commission sought comments on whether additional regulations were needed to require a generator to inform its electric transmission operator of the possibility its natural gas service may be disrupted. As an example, the Commission asked whether a generator should be required, at the request of the electric transmission operator, to provide its electric transmission operator with information pertaining to any communications received from an interstate natural gas pipeline regarding potential failures by the generator to conform to flow rates or nominations.

##### **2. Comments**

101. EEI, EPSA, MISO, MMWEC, NEPGA, NRECA, and PG&E believe that additional regulations requiring information sharing between generators and electric

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<sup>133</sup> NOPR, FERC Stats. & Regs. ¶ 32,699 at P 25 (cross-referenced at 144 FERC ¶ 61,043).

transmission operators are not necessary.<sup>134</sup> On the other hand, the IRC, ISO-NE, NYISO, and NYPSC support additional regulations requiring generators to share information regarding their fuel status with an electric transmission operator.<sup>135</sup>

Likewise, in the absence of cooperative information sharing, APPA, MMWEC, NRECA and the NE Gas Industry believe that additional regulations should be implemented to ensure information sharing.<sup>136</sup>

102. Along the same lines, TVA and Ohio PUC believe that electric transmission operators should be allowed to require any critical information that may impact electric reliability.<sup>137</sup>

103. In support of such a requirement, NYISO states that, while it expects that its generators will react to fuel availability concerns by derating their capacity when circumstances dictate, additional detailed information, particularly during cold weather events, is desirable.<sup>138</sup> Similarly, ISO-NE states that although it often learns about gas

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<sup>134</sup> EEI Comments at 5-6; EPSA Comments at 4-5; MISO Comments at 4; MMWEC Comments at 4; NEPGA Comments at 4-5; NRECA Comments at 8; PG&E Comments at 5.

<sup>135</sup> IRC Comments at 4, ISO-NE Comments at 8-9, NYISO Comments at 2; NYPSC Comments at 5. NYPSC states that if the Commission requires a generator to provide its electric transmission operator communications received from a natural gas pipeline, the NYPSC would also include communications from the LDC. NYPSC at 4-5.

<sup>136</sup> APPA Comments at 7, NRECA Comments at 8, NE Gas Industry Comments at 9; MMWEC at 4.

<sup>137</sup> TVA Comments at 3; Ohio PUC Comments at 7.

<sup>138</sup> NYISO Comments at 4.

interruptions only after a generator is offline, it understands that information regarding potential interruptions due to insufficient gas supply is available much earlier.<sup>139</sup>

104. CAISO and EEI point out that some electric transmission operators already have the ability to work with their stakeholders and/or to file tariff changes that may be necessary to require generators to provide this information.<sup>140</sup> CAISO, EEI, EPSA, IRC, MISO, and NEPGA also point out that some electric transmission operators already require generators to share this type of information.<sup>141</sup> EEI, for example, states that PJM Interconnection L.L.C. (PJM) already requires capacity resources to report fuel data to enable PJM to assist the market in providing solutions in emergency situations.<sup>142</sup> NEPGA stated that, 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.<sup>143</sup> Similarly, MISO states that in its markets, generator owners and/or operators are required to notify MISO of anticipated fuel supply disruptions.<sup>144</sup> CAISO states that its tariff currently requires generators to inform it of any change or potential

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<sup>139</sup> ISO-NE Comments at 8-9.

<sup>140</sup> EEI Comments at 5-6.

<sup>141</sup> EEI Comments at 5-6, EPSA Comments at 4; NEPGA Comments at 4-5, MISO Comments at 4; CAISO Comments at 4.

<sup>142</sup> EEI Comments at 5 (citing PJM Manual 13, Emergency Operations, Section 6.4 Fuel Limitation Reporting. Effective date June 1, 2013).

<sup>143</sup> NEPGA Comments at 4.

<sup>144</sup> MISO Comments at 4.



change in the generators status, including any fuel supply concerns of which the generator is aware.<sup>145</sup> EPSA asserts that each transmission operator already has rules regarding communication between the transmission operator and generators which obligates generators to provide the type of information discussed in the NOPR.<sup>146</sup> IRC notes that providing electric transmission operators with timely information regarding a generator's fuel status is consistent with existing reliability standards.<sup>147</sup> CAISO states that, if the Commission adopts a regulation applicable to generators, it should apply that requirement across all fuel types.<sup>148</sup>

### **3. Commission Determination**

105. Based upon the comments received, the Commission finds that it is unnecessary in this proceeding to require a generator to notify its electric transmission operator that its natural gas service may be disrupted. However, to the extent they do not already exist, electric transmission operators may file tariff provisions pursuant to FPA section 205 to require generators to notify electric transmission operators of information they require to maintain reliable service, such as anticipated fuel supply disruptions. As noted by several commenters, some electric transmission operator tariffs require generators to notify

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<sup>145</sup> CAISO Comments at 4.

<sup>146</sup> EPSA Comments at 5.

<sup>147</sup> IRC Comments at n.7 (citing reliability standards EOP-001, EOP-004, IRO-010, and TOP-002).

<sup>148</sup> CAISO Comments at 4.

electric transmission operators of anticipated fuel supply disruptions. While some entities would prefer that the Commission adopt generic regulations requiring the provision of this type of information from a generator to an electric transmission operator, those entities do not explain why current tariff requirements are, or new tariff requirements would be, inadequate. Consistent with the Final Rule, this approach would give electric transmission operators significant flexibility to determine what information they require from generators to promote reliable service on their systems.

**B. Three-Way Communication of Non-Public Operational Information**

**1. NOPR**

106. In the NOPR, the Commission sought comments on whether the proposed rule should require transmission operators to include the customer as part of a three-way communication to the extent the non-public, operational information exchanged between transmission operators involves customer-specific information (such as information about individual generators) and if so, how such a requirement could be implemented.<sup>149</sup>

**2. Comments**

107. Commenters were split on this issue, with slightly more commenters opposed to requiring three-way communications when customer-specific information is shared.

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<sup>149</sup> NOPR, FERC Stats. & Regs. ¶ 32,699 at P 25 (cross-referenced at 144 FERC ¶ 61,043).

AEP, APPA, Duke, EEI, EPSA, MMWEC, NERC, NEGPA, and NRECA support requiring three-way communications,<sup>150</sup> while CAISO, INGAA, ISO-NE, IRC, MISO, NE Gas Industry, NYISO, NYTO, PG&E and Washington Gas oppose such a requirement.<sup>151</sup>

108. Many of the commenters that support such a requirement contend that including the relevant customer or generator would prove more efficient, as well as ensure the accuracy of the communications. NEPGA contends that generator access to these communications is vital to allow the generator to guarantee that the transmission operator does not take dispatch actions based on incomplete information held by either the interstate natural gas pipeline or electric transmission operator.<sup>152</sup> EEI, for example, notes that a public utility would not know if a generator has back-up supply or other fuel arrangements without contacting the generator.<sup>153</sup> NRECA states that involving individual customers could prove more efficient than excluding them from the sharing of their information because individual customers and generators can have information

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<sup>150</sup> AEP Comments at 5-6; APPA Comments at 6-7; Duke Comments at 4; EEI Comments at 6; EPSA Comments at 6-7; MMWEC Comments at 5; NERC Comments at 8; NEGPA Comments at 5-6; NRECA Comments at 5-6.

<sup>151</sup> CAISO Comments at 4-5; INGAA Comments at 5; ISO-NE Comments at 9-10; IRC Comments at 5; MISO Comments at 4-5; NE Natural Gas Industry Comments at 9; NYISO Comments at 4; NYTO Comments at 8-9; PG&E Comments at 5-6, and Washington Gas Comments at 9.

<sup>152</sup> NEPGA Comments at 5.

<sup>153</sup> EEI Comments at 6.

relevant to operations that transmission operators do not have or do not have available as early in time as the individual customers and generators.<sup>154</sup> Duke and EPSA believe that, in the event transmission operators cannot contact the customer prior to sharing customer-specific information, the transmission operators must inform the generator of what information was shared so that the generator can respond to or correct any misinformation.<sup>155</sup> AEP argues that a stakeholder's non-public data should only be shared with the explicit consent of that stakeholder.<sup>156</sup>

109. Many of the commenters that oppose such a requirement maintain that requiring three-way communications would prove impracticable and hamper reliability. The IRC and ISO-NE express concern that including generators in the discussions with pipelines and electric transmission operators would be inappropriate and difficult to implement for real-time operations when decisions need to be made quickly.<sup>157</sup> The IRC and ISO-NE also state that gas and electric system contingencies usually affect multiple generators receiving gas from one interstate natural gas pipeline that are competitors with each other. They argue that it may not be practical in real-time to schedule separate discussions with each generator and to the extent discussions involved multiple generators, it would be inappropriate to discuss confidential, generator-specific

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<sup>154</sup> NRECA Comments at 6.

<sup>155</sup> Duke Comments at 4; EPSA Comments at 6-7.

<sup>156</sup> AEP Comments at 5.

<sup>157</sup> ISO-NE Comments at 9; IRC Comments at 5.

information with other generators.<sup>158</sup> INGAA and the NE Gas Industry believe that such a requirement would serve to limit conversations and have a chilling effect on communications the Commission intends to foster through the proposed regulations.<sup>159</sup>

110. Likewise, PG&E states that its gas transmission operators already communicate daily with CAISO and incorporating every individual customer into these calls would be logistically difficult and hamper effective communications with CAISO.<sup>160</sup> PG&E also asserts that such communications may be unnecessary, as their gas transmission operators already communicate daily with their generation customers and as a result, those customers are frequently informed regarding relevant non-public, operational information.

111. The NYTOs are also concerned that such three-way conversations may unnecessarily result in the disclosure of market sensitive information to generators or fuel managers.<sup>161</sup> Similarly, Washington Gas argues that the NOPR has not made a convincing case for giving one class of shipper preferential access to non-public pipeline information in a three-way meeting.<sup>162</sup> Washington Gas argues that if a need exists for three-party communications, the pipeline could arrange “all shipper” meetings, which

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<sup>158</sup> ISO-NE Comments at 9-10; IRC Comments at 5.

<sup>159</sup> INGAA Comments at 5; NE Gas Industry Comments at 9.

<sup>160</sup> PG&E Comments at 5-6.

<sup>161</sup> NYTOs Comments at 9.

<sup>162</sup> Washington Gas Comments at 9.

have been used for the release of critical information since open access and are often supplemented by handouts simultaneously posted on electronic bulletin boards (EBBs).

112. Several commenters, including MISO, NYISO, NYTO, INGAA and NE Gas Industry, oppose a mandatory three-way communication rule but acknowledge the value of three-way communication in some situations and thus, support a permissive approach to three-way communications.<sup>163</sup> For instance, the NYISO states that it may be appropriate to have three-way communications regarding the availability of gas transmission capability, particularly if the generator's dispatch is critical to reliability, but stresses that transmission operators need flexibility in deciding whether to include generators in different circumstances.<sup>164</sup> The NYTOs believe that electric generators and their fuel managers are the sole source of reliable information about many fuel-related concerns and should be permitted to participate in three-way communications involving those concerns, especially during emergency conditions. However, the NYTOs state there is the potential for misuse of non-public, operational information to the extent it is shared as part of three-way communications since generators and their fuel managers are merchant entities in New York. Thus, the NYTOs maintain that the NOPR's proposed No-Conduit Rule should be extended to the generator and fuel manager in those instances and the Commission should clarify that the generator and fuel manager may not enter into

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<sup>163</sup> NYISO Comments at 4; NE Gas Industry Comments at 9; NYTOs at 9; and INGAA Comments at 5.

<sup>164</sup> NYISO Comments at 4.

unrelated transactions based upon such information.<sup>165</sup> NE Gas Industry argues that generators should be included in broader industry communications in the event of an emergency.<sup>166</sup> MISO suggests that, rather than require mandatory three-way communications, necessary information could be shared through alternate means such as through a designated representative or EBB.<sup>167</sup> WGL suggests that rather than engage in three-way communications, all shippers could be given the opportunity to receive critical information simultaneously either by phone, webcast or in person.<sup>168</sup>

113. Regarding implementation of a requirement for three-way communications, commenters suggest various approaches. EEI suggests that public utilities and pipelines should discuss with stakeholders the best way to enact such a requirement in the various regions.<sup>169</sup> TVA suggests that NERC and NAESB standards could serve as implementation mechanisms with allowances for regional differences through organized market rules.<sup>170</sup>

114. AEP recommends the use of three-party confidentiality agreements that include the electric generators, interstate natural gas pipelines and electric transmission operators

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<sup>165</sup> NYTO Comments at 8-9.

<sup>166</sup> NE Gas Industry Comments at 9.

<sup>167</sup> MISO Comments at 5.

<sup>168</sup> WGL Comments at 9.

<sup>169</sup> EEI Comments at 6.

<sup>170</sup> TVA Comments at 3.

or, in lieu of a confidentiality agreement, commercially sensitive data should be handled in a manner in which the generator is the central point of contact, i.e., only the generator would have “all of the information regarding commercially sensitive fuel supply options, gas transportation contracts, power obligations, etc.”<sup>171</sup> NRECA suggests that either electric transmission operators have in place a non-disclosure agreement, through which customers could pre-approve timely sharing of their non-public information provided they are made aware of the disclosure within a reasonable period of time, or the adoption of notice provisions by electric transmission operators and pipelines, “whereby disclosure will not be made until the customer is provided with notice and opportunity to oppose the release (e.g., 5 days).”<sup>172</sup>

### **3. Commission Determination**

115. The Commission will not require three-way communications when customer-specific information is shared between electric transmission owners and interstate natural gas pipelines. The Commission is concerned that implementing such a requirement would prove impracticable and could discourage interstate natural gas pipelines and electric transmission operators from sharing valuable information. Moreover, the inclusion of the No-Conduit Rule in this Final Rule should ensure that any customer-specific information shared between transmission operators is not disclosed to other

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<sup>171</sup> AEP Comments at 6.

<sup>172</sup> NRECA Comments at 5-6.



market participants, addressing many of the concerns of those commenters supporting a three-way communication requirement.

116. The Commission is also concerned that three-way communications conducted with one customer could result in the electric transmission operator or interstate natural gas pipeline inadvertently sharing non-public, operational information with only that customer. Selectively sharing information with a limited class of shippers or market participants without a rational justification could be characterized as permitting a public utility or interstate natural gas pipeline to make or grant an undue preference. Further, as noted in the NOPR, transmission operators may always discuss customer-specific information with the relevant customer and transmission operators but cannot deviate from the terms of their tariffs and cannot operate in an unduly discriminatory manner.

### **C. Examples of Non-Public Operational Information**

#### **1. NOPR**

117. In the NOPR, the Commission stated that the term “non-public, operational information” is information that is not publicly posted, yet helps transmission operators to operate and maintain either a reliable pipeline system or a reliable electric transmission system.<sup>173</sup> The Commission noted that non-public, operational information may also include generator, pipeline, or transmission-specific information. The Commission further stated that, in using the term “non-public, operational information,” the

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<sup>173</sup> NOPR, FERC Stats. & Regs. ¶ 32,699 at P 23 (cross-referenced at 144 FERC ¶ 61,043).

Commission intended that transmission operators would be permitted to share information dealing with actual, anticipated, or potential effects on the ability to provide electric and gas service based on the respective operator's experience and understanding of the operational capability and customer demands on their respective systems.

118. The Commission provided examples of the types of information that non-public, operational information could include, but emphasized in the NOPR that the Commission was not proposing a specific list of information that can be shared in order to provide flexibility to individual operators. Examples of such information included, but were not limited to, the following types of information:

- real-time and anticipated system conditions that have or are anticipated to impact natural gas transportation by changing near term gas flows;
- actual and anticipated electric service interruptions to gas compressor locations;
- verification that there is sufficient pipeline operational capability available at a specific delivery point to change the quantity of natural gas delivered to the generator as identified by the electric transmission operator;
- actual and projected gas transportation restrictions to electric generators;
- real-time actual flow and operational capacity data at all receipt and delivery points; real-time pipeline pressure at all receipt and delivery points;
- nominated and scheduled quantities of shippers who are or who supply gas-fired generators; and,

- scheduled dates and duration of generator, pipeline, and transmission maintenance and planned outages.

The Commission sought comment on the specific categories of information identified.

## 2. Comments

119. EEI, NERC, NYISO, CAISO, APPA and IRC support the examples of non-public, operational information provided in the NOPR.<sup>174</sup> IRC states that, as a general matter, the more information that interstate natural gas pipelines can provide the electric transmission operator regarding pipeline system conditions, the better position the electric transmission operator will be in to use that information to address system contingencies.<sup>175</sup> EEI states that the NOPR's general definition and examples of non-public, operational information provide sufficient guidance to public utilities and interstate natural gas pipelines as to the types of information that the Commission contemplates could be conveyed under the proposal.<sup>176</sup>

120. Some commenters provide comments specific to the examples included in the NOPR and describe in detail the importance of particular categories of information for

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<sup>174</sup> EEI Comments at 4-5; NERC Comments at 7; NYISO Comments at 3; CAISO Comments at 3; APPA Comments at 5; and IRC Comments at 3.

<sup>175</sup> IRC Comments at 3.

<sup>176</sup> EEI Comments at 4-5.

promoting reliable service or operational planning.<sup>177</sup> Other commenters express concern with some of the examples of non-public, operational information provided in the NOPR.<sup>178</sup> Some commenters also recommend that other types of information be shared in addition to the examples listed in the NOPR.<sup>179</sup>

121. A few commenters request clarification regarding the list of examples in the NOPR, or propose modifications to the list of examples in the NOPR.<sup>180</sup> The NYTOs, for example, request that the Commission clarify that RTOs and ISOs are permitted to share unit-specific, generator dispatch schedules with interstate natural gas pipelines (and LDCs) for the purpose of promoting reliable service or operational planning, subject to the No-Conduit Rule.<sup>181</sup> In addition, INGAA seeks further clarification regarding what non-public, operational information regarding future “operational planning” transmission operators may share under the proposed rule.<sup>182</sup>

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<sup>177</sup> See e.g., ISO-NE Comments at 5-8; ITC Comments at 4; NERC Comments at 7; NYISO Comments at 3; ISO-NE Comments at 4-8; Washington Gas Comments at; and NGSA Comments at 6-7.

<sup>178</sup> See, e.g., NE Gas Industry Comments at 8; NGSA Comments at 7.

<sup>179</sup> ITC Comments at 4; NYISO Comments at 3-4; NYPSC Comments at 6.

<sup>180</sup> NERC Comments at 7; NYPSC Comments at 4.

<sup>181</sup> NYTOs Comments at 7-8.

<sup>182</sup> INGAA Comments at 4.

122. Finally, PGC and Washington Gas state that many of the examples of information proposed to be shared between pipelines and transmission operators could be made public and shared with all market participants.<sup>183</sup>

### 3. Commission Determination

123. The Commission finds that the term “non-public, operational information” is sufficiently clear to describe the information that may be shared under this Final Rule. The examples provide guidance to public utilities and interstate natural gas pipelines as to the types of information that may be communicated under the rule. In general, we respond to comments regarding the specific list of examples provided in the NOPR with the guidance that we expect transmission operators to exchange that information which they find relevant to promote reliable service or operational planning on their systems. As explained in the NOPR, and reaffirmed here, the Commission is providing flexibility to transmission operators—who have the most insight and knowledge of their systems—to determine what non-public, operational information, if any, they deem valuable to maintain the reliability and integrity of their systems.

124. Regarding concerns of onerous requests by one transmission operator to another, we reiterate that the communications permitted under the Final Rule are voluntary and to the extent a transmission operator chooses not to share the requested non-public, operational information, the transmission operator is free to do so. For example, the Commission does not anticipate that an interstate natural gas pipeline will automatically

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<sup>183</sup> PGC Comments at 3 and 4; Washington Gas Comments at 2-4.

share with an electric transmission operator all of the pipeline's non-public operational information in its possession. Rather, the interstate natural gas pipeline will share non-public operational information as necessary to promote reliable service and operational planning.

125. In response to PGC and Washington Gas, the Commission disagrees that the non-public, operational information transmission operators are permitted to share with one another should generally be made public. The Commission is providing explicit authority to transmission operators to exchange confidential and potentially commercially sensitive information, including generator-specific information, with one another for the purpose of promoting reliable service or operational planning. As discussed in more detail *infra*, the Commission is adopting a No-Conduit Rule due to concerns regarding the improper use of such information if disclosed to a third party or to a transmission operator's marketing function employees.

#### **IV. Clarification Regarding Table-Top Exercises**

##### **A. NOPR**

126. In the NOPR, the Commission provided clarification of the applicability of the Standards of Conduct and statutory prohibition against undue discrimination to exchanges of information with regard to table-top exercises involving market affiliates of transmission providers and inter-industry participants.<sup>184</sup> The Commission clarified that,

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<sup>184</sup> NOPR, FERC Stats. & Regs. ¶ 32,699 at PP 20-21 (cross-referenced at 144 FERC ¶ 61,043).

under the Standards of Conduct, marketing function employees may participate in table-top exercises that include a wide range of industry participants who will have equal access to non-public transmission information. However, the Commission re-emphasized that non-public transmission information cannot be provided during private table-top exercises involving only the transmission provider and marketing function employees since they would receive preferential access to non-public transmission information or preferential access to transmission facilities.

### **B. Comments**

127. EEI and NGSAs request that the Commission clarify the meaning of a “tabletop exercise.”<sup>185</sup> EEI also requests that the Commission clarify that marketing function employees can continue to participate in these exercises without violating the No-Conduit Rule in the NOPR.<sup>186</sup> NGSAs also requests that the Commission clarify that commercially sensitive information should not be disclosed at these events without consent of the relevant companies.<sup>187</sup>

### **C. Commission Determination**

128. As used in the NOPR, the term “table-top exercise” refers to an exercise used to assess inter- or intra-industry coordination and communications, usually during an emergency situation. For example, the NYTOs stated in earlier comments that the

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<sup>185</sup> EEI Comments at 7; NGSAs Comments at 11.

<sup>186</sup> EEI Comments at 7.

<sup>187</sup> NGSAs Comments at 11.

electric and gas industries in New York regularly participate in separate “tabletop” reliability drills. They stated that the NYISO and NYTOs conduct drills prior to each summer season to simulate the restoration of service after a gas supply-related outage and the Northeast Gas Association holds annual emergency communications exercises among gas utilities and interstate pipelines serving the northeast that simulate conditions following major system emergencies.<sup>188</sup>

129. As requested by EEI, we clarify that under the Standards of Conduct and under the Final Rule, marketing function employees may participate in table-top exercises that include a wide range of industry participants who will have equal access to non-public transmission or operational information. However, non-public transmission or operational information cannot be provided during private table-top exercises involving only the transmission provider or operator and marketing function employees since they would receive preferential access to non-public transmission or operational information or preferential access to transmission facilities.

130. The Commission also clarifies that, under the Standards of Conduct and the Final Rule, the disclosure of commercially sensitive, customer-specific information at these events is not permitted without the consent of the relevant entities.

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<sup>188</sup> NYTOs Comments, Docket No. AD12-12-000, at 5 (filed Jan. 7, 2013).



**V. Miscellaneous****A. Monitoring, Existing Tariff Requirements, Document Destruction****1. Comments**

131. AEP requests that the Commission designate an entity to ensure that reliability and market protections are in place because of the potential for disagreement between the two industries with regard to confidential information sharing.<sup>189</sup>

132. NRECA states that the Commission should maintain in the Final Rule the explicit requirement that “to the extent that an electric transmission operator or interstate natural gas pipeline has a tariff provision which precludes a communication that would otherwise be authorized under the proposed regulations, it [must] make a filing under the FPA or NGA to revise that provision to permit such exchanges of information.”<sup>190</sup> However, NRECA states that the Commission should clarify that to the extent market participants’ confidential information is required by tariff to be protected from public disclosure, the Final Rule in this proceeding cannot be deemed to supersede those tariff provisions.<sup>191</sup> NRECA states that in addition to protecting against disclosure of confidential information which is subject to existing tariff provisions, the Final Rule should also provide assurance that existing notice provisions regarding disclosure of confidential information will be

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<sup>189</sup> AEP Comments at 7.

<sup>190</sup> NRECA Comments at 5 (citing NOPR, FERC Stats. & Regs. ¶ 32,699 at P 10 (cross-referenced at 144 FERC ¶ 61,043).

<sup>191</sup> NRECA provides as an example PJM’s Amended and Restated Operating Agreement which prohibits disclosure of confidential information except in defined circumstances, including to NERC and applicable regional entities for reliability.

followed for sharing of non-public operational information.<sup>192</sup> NRECA states that the Final Rule should adopt the Commission's proposal to clarify that existing tariffs must be complied with absent a Commission-approved revision.

133. NEPGA asserts that the Commission should establish rules for the destruction or return of written or recorded information within six months to protect generators' commercial interests.<sup>193</sup> NEPGA contends that this requirement is an important protection against the potentially harmful effects of the distribution of generator-specific, commercially sensitive information.

## **2. Commission Determination**

134. In response to AEP, the Commission reaffirms that the communications permitted under the Final Rule are voluntary and that to the extent a transmission operator chooses not to share the requested non-public, operational information, the transmission operator is free to do so. To the extent this voluntary approach proves inadequate to promote reliable service or operational planning, the Commission may revisit the need to require certain communications or information sharing between transmission operators in the future. However, the Commission finds that providing explicit authority to transmission operators—who have the most insight and knowledge of their systems—to share non-public, operational information with each other will promote reliable service or

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<sup>192</sup> NRECA states that PJM's Operating Agreement requires notice to the affected Member before PJM can make any disclosure of confidential information if required by law.

<sup>193</sup> NEPGA Comments at 3-4.

operational planning on both the public utility's and pipeline's system. Furthermore, the Commission declines to adopt AEP's proposal to designate an entity to supervise interstate natural gas pipeline-electric transmission operator communications. We see no need for such supervision of this voluntary information sharing program at this time.

With regard to requests for added market protections, as discussed above, we conclude that the No-Conduit Rule, together with the requirements that natural gas pipelines and electric transmission operators abide by their tariffs, provides a reasonable balance between the exchange of important information and protection against the disclosure of non-public operational information, including confidential information.

135. In response to NRECA's comments regarding the relationship of this Final Rule to existing tariff provisions, we note that this Final Rule does not supersede any existing tariff provisions.<sup>194</sup> Thus, to the extent an electric transmission operator or interstate natural gas pipeline has an existing tariff provision that precludes a communication that would otherwise be authorized under the regulations adopted here, before it may share such precluded information under the express authorization provided in this Final Rule, it must make a filing under the FPA or NGA to revise that provision to permit such exchanges of information. In short, if a transmission operator wants to take advantage of the explicit authority provided by the Commission under the Final Rule, and that transmission operator has tariff provisions prohibiting the communications permitted

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<sup>194</sup> *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, 101 FERC ¶ 61,127, at P 36 (2002).

under this rule, it must make a filing with the Commission to revise the relevant tariff provisions to permit such exchanges of information. Similarly, we clarify that any existing tariff provisions requiring notice regarding the disclosure of confidential information, including the non-public, operational information at issue here, remain in place unless proposed revisions to those tariffs are approved by the Commission.

136. In response to NEPGA, the Commission declines to generically establish rules for the destruction or return of written or recorded information within six months to protect generator's commercial interests. As discussed previously, the Commission is adopting a No-Conduit Rule which, together with the requirements that natural gas pipelines and electric transmission operators abide by their tariffs, should adequately protect against the harmful disclosure or distribution of non-public operational information, including generator-specific, commercially sensitive information.

## **B. Costs of Information Sharing**

### **1. Comments**

137. ELCON suggests that Commission require natural gas pipelines and electric transmission operators to account for the costs of information sharing.<sup>195</sup> ELCON requests that the Commission direct natural gas pipelines and electric transmission operators to not incur costs that are not commensurate with an identified benefit. ELCON suggests that the NOPR's flexibility and non-binding examples of information sharing raise the specter that the Commission contemplates implementation of extensive

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<sup>195</sup> ELCON Comments at 2-3.

information sharing systems whose costs outweigh the benefits to system reliability and contingency planning. ELCON requests that the Commission explicitly state that it is not intending to encourage the development and implementation of information sharing systems whose costs are not commensurate with their benefits.<sup>196</sup>

## 2. Commission Determination

138. The Commission finds that ELCON's request for transmission operators to account for the costs of information sharing are premature and outside the scope of this Final Rule. In this Final Rule, the Commission is providing explicit authority for transmission operators to share non-public, operational information with each other for the purpose of promoting reliable service or operational planning. In addition, the Commission reiterates that in adopting the proposed regulations, the Commission is providing flexibility to individual transmission operators—who have the most insight and knowledge of their systems—to share that information which they deem necessary to promote reliable service and operational planning on their system. Issues related to the costs of systems or procedures developed to allow for the information sharing permitted by this Final Rule may be appropriately raised in other proceedings, including transmission operators' rate cases.

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<sup>196</sup> *Id.*

## C. Implementation

### 1. Comments

139. NGSAs suggests that the Commission implement its proposed rule on an interim basis and reassess the impacts of allowing the proposed communication between utilities after some experience under the new communications regime. NGSAs states that this approach would be similar to past rulemaking proceedings such as the natural gas capacity release rulemaking.<sup>197</sup> NGSAs proposes that after an interim period of one year, transmission operators should report to the Commission what information was shared and how this information sharing promoted reliable service or operational planning.<sup>198</sup> NGSAs suggests that the information would need to be provided in a manner that protects confidential or proprietary data. After the interim period, transmission operators would also report what actions were taken based on information exchanges to allow the Commission to more accurately assess the benefits of increased communications. NGSAs also suggests that the Commission release a report summarizing the impacts of this information sharing rule and hold a technical conference for industry to assess the impacts of the rule. NGSAs states that at the technical conference, the Commission and industry should assess whether: (1) the scope of allowed communications should be narrower; (2) additional protections are needed to ensure commercially sensitive

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<sup>197</sup> NGSAs Comments at 9-10 (citing *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091 (2000) (cross-referenced at 90 FERC ¶ 61,109 (2000))).

<sup>198</sup> *Id.* at 10.

information is not released; and (3) transmission operators should be required to publicly post shared information that is not commercially sensitive.<sup>199</sup>

140. NGSA suggests that the assessment and technical conference would allow the Commission to determine whether further improvements to the communications rules are needed. After receiving reports from transmission operators and pipelines, the Commission could consider whether some publicly available and not commercially sensitive communications should be publicly posted, for example, on a pipeline EBB. NGSA contends that the Commission could also determine whether market participants' information is sufficiently protected under the proposed rule. NGSA suggests that requiring pipelines and transmission operators to report what information they communicated during an interim test period will allow the Commission and industry to determine what additional protections might be needed. NGSA suggests that market participants would have greater confidence in expanded communications knowing that there would be an opportunity to learn what information was shared and that the Commission would make changes to the rule if needed.<sup>200</sup>

141. NRECA suggests that the Commission require “status report” filings by transmission operators to explain progress made in the sharing of non-public, operational information.<sup>201</sup> NRECA states that the reports could be part of a comprehensive

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<sup>199</sup> *Id.* at 10-11.

<sup>200</sup> NGSA Comments at 11.

<sup>201</sup> NRECA Comments at 5.

submission to be submitted at regular intervals (e.g., quarterly or semi-annually), similar to the reports required by RTOs and ISOs on gas-electric coordination issues, or could focus only on implementation of the Final Rule in this proceeding. Either way, NRECA suggests that the Final Rule include a mechanism for the Commission to gauge response and outcome of the Final Rule, and its impact on gas-electric coordination efforts.<sup>202</sup>

142. APPA suggests that, after a period of time, the Commission could revisit its revised regulations in this area to determine whether it needs to further define the term “non-public, operational information” and to evaluate how the voluntary approach is working.<sup>203</sup> PUCO also states that it would be appropriate for the Commission to periodically review which non-public information is shared and whether that exchange of information is adequate to maintain reliability.<sup>204</sup> PUCO further states that because different regions will have diverse practices concerning the level and type of non-public information shared, the Commission should use the collection of such data to arrive at a proposed best practices solution that is most effective to ensure efficient operations and to promote reliability. NESCOE also encourages the Commission to undertake periodic assessments of the efficacy of the changes made in the Final Rule, the extent to which

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<sup>202</sup> *Id.*

<sup>203</sup> APPA Comment at 5.

<sup>204</sup> PUCO Comments at 6.



impediments to communications and information sharing remain, and consider additional actions if needed.<sup>205</sup>

## **2. Commission Determination**

143. The Commission will not adopt NGSAs' suggestion of implementing the proposed rule on an interim basis. The Commission is concerned that existing barriers—real or perceived—to the sharing of non-public, operational information could impede transmission operators' ability to reliably manage the operation of interstate natural gas pipeline and electric transmission systems. Therefore, the Commission is taking action to ensure that transmission operators covered by this rule may communicate non-public, operational information, subject to the No-Conduit Rule.

144. The Commission declines to adopt the suggestion of NRECA, APPA, PUCO and NESCO that transmission operators submit status report filings describing progress made in the sharing of non-public, operational information. We fully expect market participants in both industries, as they experience the communications contemplated by this Final Rule, to keep the Commission informed about progress, issues and areas of possible improvement. We see no reason to impose a requirement for status reports at this time.

## **VI. Information Collection Statement**

145. The collection of information contained in this Final Rule is being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the

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<sup>205</sup> NESCOE Comments at 6.

Paperwork Reduction Act of 1995 (PRA).<sup>206</sup> OMB's regulations require approval of certain information collection requirements imposed by agency rule.<sup>207</sup> Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to this collection of information if the collection of information does not display a valid OMB control number.

146. Public Reporting Burden: The communications and information sharing (described in new 18 CFR 38.2 and 18 CFR 284.12(b)(4)) are voluntary, take place between various industry entities (and are not submitted to the Commission), and are intended to promote reliable service or operational planning. In the NOPR, the Commission solicited comments on the need for this information and the frequency of providing it (number of responses per respondent). No filed comments addressed the proposed Information Collection Statement, including the estimated public reporting burden, or the proposed Regulatory Flexibility Act Certification, including the estimated impact on small entities. Commenters acknowledged that reliability and operational planning on interstate natural gas pipelines and electric transmission systems could be further enhanced by information sharing. While the extent of such communications likely will vary significantly across the country, the annual estimates represent an expected average and reflect the burden for operational planning and emergencies.

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<sup>206</sup> 44 U.S.C. 3507(d) (2012).

<sup>207</sup> 5 CFR 1320.

147. In the Final Rule, the Commission explains that to the extent an electric transmission operator or interstate natural gas pipeline has a tariff provision which precludes a communication that would otherwise be authorized under the proposed regulations, it must make a filing under section 205 of the FPA or section 4 of the NGA to revise that provision to permit such exchanges of information.

148. The reporting requirements in the Final Rule include: the voluntary communication of non-public, operational information among interstate natural gas pipelines and electric transmission operators, and possibly necessary tariff filings by electric transmission operators and natural gas pipelines. The additional estimated annual burden and cost follow.

<b>FERC-923, Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators, Final Rule in Docket No. RM13-17<sup>208</sup></b>					
<b>Type of Entity (1)</b>	<b>No. of Respondents (2)</b>	<b>Number of Responses Per Respondent (3)</b>	<b>Average Burden Hours per Respondent (4)</b>	<b>Total Annual Burden Hours (2)*(3)*(4)=(5)</b>	<b>Total Annual Cost (\$) (5)*(\$/hr)=(6)<sup>209</sup></b>

<sup>208</sup> Columns 5 and 6 are rounded.

<sup>209</sup> For communications, the estimated hourly cost (for salary plus benefits) is \$60.41; estimated annual costs are \$125,647 (based on 2,080 hours per year). It is based on data from the Bureau of Labor Statistics Occupational Outlook Handbook, 2012-2013 edition for the top 10% of “Power Plant Operators, Distributors, and Dispatchers” (at <http://www.bls.gov/ooh/>).

For tariff filings, the average hourly cost (for salary plus benefits) is \$44.25. This hourly estimate will be used for public utility transmission operators and interstate natural gas pipelines. It is based on data provided by the Bureau of Labor Statistics Occupational Outlook Handbook, 2012 – 2013 edition for the median for “Lawyers,” “Paralegal and Legal Assistants,” and “Secretaries and Administrative Support” (at

(continued...)

			e (4)		
<b>Public Utility Transmission Operator, communications</b>	167 <sup>210</sup>	12 <sup>211</sup>	0.50	1002	\$60,531
<b>Interstate Natural Gas Pipelines, communications</b>	137 <sup>212</sup>	12	0.50	822	\$49,657
<b>Public Utility Transmission Operator (tariff</b>	4 <sup>213</sup>	2	8 <sup>214</sup>	64	\$2,832

<http://www.bls.gov/ooh/>). The estimated annual costs (salary plus benefits) for Lawyers, Paralegal and Legal Assistance, and Secretaries and Administrative Support are \$160,398, \$66,401, and \$49,303, respectively. The hourly cost (based on 2080 hours per year) is \$77.11, \$31.92 and \$23.70 for the three occupations, respectively.

For the estimate of the benefits component, see <http://www.bls.gov/news.release/ecec.nr0.htm>.

<sup>210</sup> The estimate for the number of respondents is based on the North American Electric Reliability Corporation (NERC) Compliance Registry as of April 30, 2013, minus the Transmission Operators within ERCOT. Using the Small Business Administration (SBA) definition, 31 of the 167 Public Utility Transmission Operators are considered “small.”

<sup>211</sup> The Commission estimates an annual average per entity of 12 responses (including electric and gas emergency and/or operational contacts).

<sup>212</sup> The 2012 filings of the FERC Forms 2 and 2A indicated that there are 137 interstate natural gas pipelines. Of those pipelines, eight (8) are considered small using the definition of the Small Business Administration (at 13 CFR 121.301), including the affiliates.

<sup>213</sup> Of the 167 Public Utility Transmission Operators, the Commission estimates that four will make tariff filings.

<sup>214</sup> The Commission estimates that the public utility transmission operator will require eight work hours to file the amendment to the tariff from a team that consists of a “Lawyer,” a “Paralegal and Legal Assistant,” and a “Secretary and Administrative Support.”

<b>change)</b>					
<b>Interstate Natural Gas Pipelines (tariff change)</b>	4 <sup>215</sup>	1	8 <sup>216</sup>	32	\$1,416
<b>Total</b>				1,920	\$114,436

Title: FERC-923, “Communication of Operational Information between Natural Gas Pipelines, and Electric Transmission Operators.”

Action: Proposed FERC-923.

OMB Control Nos.: 1902-0265 (FERC-923).

Respondents: Public utility transmission operators and interstate natural gas pipelines.

Frequency of Responses: FERC-923, as needed.

Necessity of the Information: In this Final Rule, the Commission is revising Parts 38 and 284 of the Commission’s regulations to authorize 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 for the purpose of promoting reliable service and operational planning on either the public utility’s or pipeline’s system. Such sharing is voluntary.

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<sup>215</sup> Of the 137 interstate natural gas pipelines, the Commission estimates that four will make tariff filings.

<sup>216</sup> The Commission estimates that an interstate natural gas pipeline will require eight work hours to file the amendment to the tariff from a team that consists of a “Lawyer,” a “Paralegal and Legal Assistant,” and a “Secretary and Administrative Support.”

149. The revised regulations will help promote the reliability of pipeline and public utility transmission service by permitting transmission operators to share information that they deem necessary to promote the reliability and integrity of their systems with each other.

150. Internal Review: The Commission has reviewed the requirements and determined that the proposed amendments are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, e-mail: [DataClearance@ferc.gov](mailto:DataClearance@ferc.gov), phone: (202) 502-8663, fax: (202) 273-0873].

151. Please send comments concerning the collection of information and the associated burden estimates to the Commission, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395-4638, fax: (202) 395-7285]. For security reasons, comments to OMB should be submitted by e-mail to: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Comments submitted to OMB should include Docket Number RM13-17-000, FERC-923 (OMB Control No. 1902-0268).

**VII. Environmental Analysis**

152. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>217</sup> The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this Final Rule under section 380.4(a)(2)(ii) of the Commission's regulations, which provides a categorical exemption for proposals for legislation and promulgation of rules that are clarifying, corrective, or procedural, or that do not substantively change the effect of legislation or regulations being amended.<sup>218</sup>

**VIII. Regulatory Flexibility Act**

153. The Regulatory Flexibility Act of 1980 (RFA)<sup>219</sup> generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA's) Office of Size Standards develops the numerical definition of a small

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<sup>217</sup> *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

<sup>218</sup> 18 CFR 380.4(a)(2)(ii) (2013).

<sup>219</sup> 5 U.S.C. 601-612 (2012).

business.<sup>220</sup> The SBA has established a size standard, for electric utilities, electric power distribution, and electric bulk power transmission and control, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed four million megawatt hours.<sup>221</sup> For pipeline transportation of natural gas, the SBA defines a small entity as having a maximum annual receipt of \$25.5 million dollars.<sup>222</sup> For a “Natural Gas Distribution” company, the SBA defines a small entity as having less than 500 employees.<sup>223</sup>

154. The Commission estimates a total of 39 “small” entities<sup>224</sup> (or 12.8 percent of the total of 304 entities), and an average annual cost for each entity of \$376.<sup>225</sup> This

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<sup>220</sup> 13 CFR 121.101 (2012).

<sup>221</sup> 13 CFR 121.201, Sector 22, Subsector 221, Utilities & n.1.

<sup>222</sup> Based on 13 CFR 121.201, Sectors 48-49, Subsector 486, Pipeline Transportation, the annual receipts indicate the maximum allowed for a concern and its affiliates to be considered “small.”

<sup>223</sup> 13 CFR 121.201, Sector 22, Subsector 221, Utilities, NAICS code 221210.

<sup>224</sup> Based on the SBA definitions and including affiliates, the number of “small” entities is estimated to be: (1) for public utility transmission operators, 31 small public utilities; and (2) for interstate natural gas pipelines, eight small interstate natural gas pipelines.

<sup>225</sup> The information sharing and communications permitted in this Final Rule are voluntary. For small entities which do not serve or take service from natural gas-fired electric generators, no such communications are necessary or required and their burden will effectively be zero. For small entities which do not wish to participate in communications among transmission operators serving or being served by natural gas-fired electric generators, their burden is also zero.



proposal will enable entities of all sizes to communicate voluntarily and to share non-public, operational information for the purpose of promoting reliable service or operational planning, thereby easing and improving the normal business process.

Accordingly, the Commission certifies that this rule will not have a significant impact on a substantial number of small entities and no regulatory flexibility analysis is required.

#### **IX. Document Availability**

155. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

156. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

157. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

**X. Effective Date and Congressional Notification**

158. These regulations are effective [insert date 30 days from publication in Federal Register]. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of [**insert date 30 days after publication in the FEDERAL REGISTER**]. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a “major rule” as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

**List of Subjects****18 CFR Part 38**

Conflict of interests, Electric power plants, Electric utilities, Incorporation by reference, Reporting and recordkeeping requirements.

**18 CFR Part 284**

Natural gas, Reporting and recordkeeping requirements

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

In consideration of the foregoing, the Commission amends Part 38 and Part 284, Chapter I, Title 18, Code of Federal Regulations, as follows:

**PART 38—STANDARDS FOR PUBLIC UTILITY BUSINESS OPERATIONS AND COMMUNICATIONS**

1. The authority citation for Part 38 continues to read as follows:

**Authority:** 16 U.S.C. 791-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. The heading of Part 38 is revised to read as set forth above:

**§ 38.1 [Removed]**

3. Remove § 38.1.

**§ 38.2 [Redesignated as § 38.1 ]**

4. Redesignate § 38.2 as § 38.1

5. In newly redesignated § 38.1, paragraph (a) is revised to read as follows:

**§ 38.1 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.**

(a) Any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce or for the sale of electric energy at wholesale in interstate commerce and any non-public utility that seeks voluntary compliance with jurisdictional transmission tariff reciprocity conditions must comply with the following business practice and electronic communication standards promulgated by the North American Energy Standards Board Wholesale Electric Quadrant, which are incorporated herein by reference:

\* \* \* \* \*

6. New § 38.2 is added to read as follows:

**§ 38.2 Communication and information sharing among public utilities and pipelines.**

(a) Any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce is authorized to share non-public, operational information with a pipeline, as defined in § 284.12(b)(4) of this chapter, or another public utility covered by this section for the purpose of promoting reliable service or operational planning.

(b) Except as permitted in paragraph (a) of this section, a public utility, as defined in this section, and its employees, contractors, consultants, and agents are prohibited from disclosing, or using anyone as a conduit for the disclosure of, non-public, operational information received from a pipeline pursuant to § 284.12(b)(4) of this chapter to a third party or to its marketing function employees as that term is defined in § 358.3(d) of this chapter.

**PART 284 – CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES**

7. The authority citation for Part 284 continues to read as follows:

**Authority:** 15 U.S.C. 717-717z, 3301-3432; 42 U.S.C. 7101-7352; 43 U.S.C. 1331-1356.

8. In § 284.12, paragraph (b)(4) is added to read as follows:

**§ 284.12 Standards for pipeline business operations and communications.**

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(b) \*\*\*

(4) *Communication and information sharing among pipelines and public utilities.*

(i) A pipeline is authorized to share non-public, operational information with a public utility, as defined in § 38.2(a) of this chapter or another pipeline covered by this section, for the purpose of promoting reliable service or operational planning.

(ii) Except as permitted in paragraph (b)(4)(i) of this section, a pipeline and its employees, contractors, consultants, and agents are prohibited from disclosing, or using anyone as a conduit for the disclosure of, non-public, operational information received from a public utility pursuant to § 38.2 of this chapter to a third party or to its marketing function employees as that term is defined in § 358.3(d) of this chapter.