

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

**Standards of Conduct for
Transmission Providers**

)
)

Docket No. RM07-1-000

**REPLY COMMENTS OF
THE NATURAL GAS SUPPLY ASSOCIATION**

The Natural Gas Supply Association (“NGSA”) hereby submits reply comments in the above captioned proceeding.¹ Although the NOPR did not specifically provide for reply comments, NGSA believes that there were extensive proposals made in the initial comments which require a response in order to ensure the clarity and appropriate applicability of the Standards of Conduct. Accordingly, NGSA asks the Commission to accept NGSA’s limited comments on reply.

I. COMMUNICATIONS

NGSA represents integrated and independent companies that produce and market domestic natural gas. Established in 1965, NGSA encourages the use of natural gas within a balanced national energy policy and promotes the benefits of competitive markets to ensure reliable and efficient transportation and delivery of natural gas and to increase the supply of natural gas to U.S. consumers.

¹ *Standards of Conduct for Transmission Providers*, “Notice of Proposed Rulemaking,” Docket No. RM07-1-000, FERC Stats. & Regs. ¶ 32,630 (Mar. 21, 2008) (“Standards of Conduct NOPR” or “NOPR”).

Notices and communications concerning these comments should be addressed as follows:

Patricia W. Jagtiani
Vice President of Regulatory Affairs
Natural Gas Supply Association
805 15th Street, NW, Suite 510
Washington, DC 20005
(202) 326-9311
pjagtiani@ngsa.org

II. EXECUTIVE SUMMARY

As stated in NGSAs initial comments, with minor modifications to the proposed rules, the Standards of Conduct proposed in the instant proceeding strike a fair balance between clearer regulations and safeguarding pipeline shippers. Other parties submitted comments in response to the NOPR suggesting a significant number of revisions to the Commission's proposals. After carefully examining those comments, NGSAs believes that limited comments in response are needed prior to a Commission final rule in this proceeding. In NGSAs reply comments herein, we ask the Commission to consider the following:

- A. Transparency provided by pipeline discount and waiver postings should not be lost in applying a narrower interpretation of the Standards of Conduct.
- B. Pipelines require added guidance regarding postings of waivers and acts of discretion, including a requirement that waivers not available to all shippers must be posted.
- C. All non-public transmission information disclosed to the marketing affiliate must be publicly posted.
- D. The No Conduit Rule should be clarified to broaden its applicability to the affiliate's marketing function employees.

- E. The No-Conduit Rule does not adequately prevent the transfer of information when exempt and non-exempt marketing function employees share the same facilities or a single trading floor. In those instances, structural and/or physical separation must be imposed or the standards of conduct should apply to all marketing function employees located in the same area.

III. REPLY COMMENTS

A. *Transparency Provided by Pipeline Discount and Waiver Postings Should Not be Lost in Applying a Narrower Interpretation of the Standards of Conduct.*

In the NOPR, the Commission proposes that the Standards apply only to interstate natural gas pipelines “which transport gas for others and conduct transmission transactions with an affiliate that engages in marketing functions.”² Similarly, INGAA proposes that the rules apply only to interstate pipelines whose affiliates “hold or control capacity on the affiliated pipeline.”³ Moreover, INGAA requests that the Commission exempt from the marketing functions definition in the Standards “sales of natural gas by a seller that does not ship such gas using capacity held or controlled by the seller on the Affiliated Transmission Provider.”⁴

NGSA does not oppose these proposals to limit the application of the Standards of Conduct to those pipelines affiliated with marketing companies that do business on their system. However, as the applicability of the Standards of Conduct continues to narrow and the exemptions continue to expand, we are concerned that a greater number of pipelines may no longer be required to comply with the non-discrimination

² See proposed Section 358.1(a)

³ *Standards of Conduct for Transmission Providers*, Docket No. RM07-1-000, “Comments of the Interstate Natural Gas Association of America,” at 9 (filed May 12, 2008) (“INGAA Comments”).

⁴ *Id.* at 12.

regulations under Section 358.4, requiring postings of discounts and waivers of tariff provisions. NGSAs asks the Commission to clarify that it is not their intention for the gas industry to lose this important transactional information, which is integral to shippers in determining if undue discrimination has occurred.

In support of its proposed language on posting discounts, waivers, and acts of discretion, the Commission states that these postings are “[i]n accordance with the *general aim* of preventing undue preference.”⁵ As the Commission recognizes in that statement, the required postings of discounts and waivers in the NOPR are general in nature and are needed in order to allow customers to determine whether undue discrimination has occurred. While the Standards of Conduct proposed are intended to govern relationships between transmission providers and their marketing affiliates, these specific provisions provide shippers with vital information on the services provided by all pipelines to all customers. Specifically, these sections address general tariff implementation issues such as discounting and timing, requests for transportation service and the maintenance of a log as well as postings on the pipeline’s website detailing waivers from the pipeline’s tariffs.⁶ Therefore, we ask the Commission to ensure that this transparency continues to be provided to all customers by applying these non-discrimination posting requirements to all transmission providers

⁵ NOPR at P 52 (emphasis added).

⁶ Currently, proposed Section 358.4(a)(5) does not specify a minimum time that postings of waivers must remain on the pipeline’s website. Consistent with Section 358.4(b), “Discounts,” at a minimum, the Commission should also require that the posting of waivers and exercises of discretion “must remain on the OASIS or Internet website for 60 days from the date of posting.”

irrespective of whether the transmission provider has marketing affiliates or whether those marketing affiliates operate on their parent pipeline.

Alternatively, if the Commission finds this request to be outside the scope of this proceeding, we urge the Commission to initiate an expedited companion proceeding without delay that incorporates these generally applicable waiver and discount posting requirements.⁷ By establishing these postings as general pipeline reporting requirements and not merely requirements applicable to a particular subset of pipelines, the Commission will ensure that there is no gap in the availability of transparent transaction reporting.

B. Pipelines Require Added Guidance Regarding Postings of Waivers and Acts of Discretion, Including a Requirement That Waivers Not Available to All Shippers Must Be Posted.

Proposed Section 358.4(a)(5) requires a transmission provider to, within one business day, “post on the OASIS or Internet website, as applicable, notice of each waiver of a tariff provision that it grants, and notice of each exercise of discretion that it exercises, detailing the circumstances and manner under which the waiver or exercise of discretion occurred.” INGAA suggests in its comments that the Commission should not include all exercises of discretion in its posting requirements, when those acts are

⁷ While all of the non-discrimination requirements are important, continued waiver postings as required by Section 358.4(a)(5) are particularly important given that there are no other mechanisms by which this information is currently provided. Section 284.13, reporting requirements for interstate pipelines, requires reporting of contract information including the rate charged, no later than the first nomination under the transaction. However, the Standards of Conduct require discount postings “contemporaneous with the time that the offer is contractually binding.” To the extent that a significant subset of interstate pipelines is no longer subject to the Standards of Conduct, the Commission should revise Section 284.13 as part of a general pipeline posting requirements proceeding.

already provided for in the pipeline's tariff.⁸ Also, INGAA states that the Commission should provide meaningful guidance regarding the scope of the posting requirements.⁹ NGSAs support these requests made by INGAA and ask the Commission to provide transmission providers with the additional clarity and guidance needed so they are fully aware of the expectations of what must be posted and in what manner it should be posted. However, as detailed below, all waivers provided outside the scope of the tariff which are not generally available to all shippers must be posted.

If pipelines choose to provide discretionary waivers, there should be a much higher standard for postings. When pipelines waive certain provisions of their tariff, shippers have a right to know what specific service has been provided. The purpose of posting waivers is to ensure the transparency of pipelines' discretionary actions so that shippers can determine whether they are being treated comparably and not in an unduly discriminatory manner.¹⁰ Requiring pipelines to post those occasions when actions are taken that are not specified in their tariffs allows a shipper to not only determine whether it is being treated properly, but also to take action in the event that it is not. In turn, these postings help the Commission and pipeline shippers to have confidence that the pipeline is not providing preferential or favorable service to one or more selected shippers, irrespective of whether those shippers are a marketing affiliate.

⁸ INGAA Comments at 52.

⁹ *Id.* at 51.

¹⁰ See *Standards of Conduct for Transmission Providers*, "Notice of Proposed Rulemaking," Docket No. RM07-1-000, FERC Stats. & Regs. ¶ 32,611, at P 27 (Jan. 18, 2007).

A cursory review of pipeline posting mechanisms indicates that pipelines are using numerous approaches for posting waivers of their tariff provisions. Many pipelines post in their tariff or on their website general statements that certain tariff provisions may be waived on occasions when needed or operationally feasible. Some pipelines post this general statement and then adequately supplement the general statement with a posting each time the waiver is exercised.¹¹ Yet other pipelines do not believe they are required to post the specific instances in which they waived their tariff. NGSAs urge the Commission to provide transmission providers with express guidance that a general statement that a tariff provision may be waived from time-to-time is not sufficient notice to shippers and that actual instances whereby the pipeline exercises their right to waive the tariff must be posted.

A simple, workable rule of discretionary disclosure should be very straightforward. If the waiver is generic in application, is posted, is available to all shippers, and cannot be denied when requested, then the pipeline does not need to post each individual use of that waiver. However, if the waiver is not generic in application and is not applied upon every request of a shipper or is applied to a specific shipper, then that discretionary waiver should be posted.¹² For example, a pipeline could post on its website a general posting that states, that “From today until Friday, all shippers in Zone 1 can exceed the tariff specified gas quality limits by 2%.” However, stating

¹¹ A good example is Transcontinental Gas Pipe Line Corp. and its “discretionary waiver” provisions, which provides their shippers with notice that it may waive certain tariff provisions yet the pipeline has also committed to logging and posting the individual instances in which they exercise these waivers, consistent with the standards of conduct requirements.

¹² Of course, there could be some “general” posting of specific offerings outside the scope of the tariff that are available to all shippers which do not require a transaction-specific posting.

that “the pipeline will waive its gas quality tariff provisions when operationally feasible” is not sufficiently detailed to allow its customers to understand that there is a general offering.

C. *All Non-Public Transmission Information Disclosed to the Marketing Affiliate Must Be Publicly Posted.*

INGAA asked the Commission to revise Section 358.7(2) to only require a Transmission Provider to provide *notice* of information disclosure and not the information itself, if a Marketing Function Employee receives non-public transmission information from a third party.¹³ INGAA’s requested revision permits pipelines to escape the posting of transmission information that is disclosed to its marketing affiliate based solely on whether the affiliated marketing function employee received that information directly from the pipeline or whether he received it indirectly from the pipeline through a third-party. Only providing notice of disclosure, as opposed to posting the information itself, is inconsistent with the Commission’s proposed Section 358.7(a)(1) that states, “if a transmission provider discloses non-public transmission function information, other than non-public transmission customer information, in a manner contrary to the requirements of Section 358.6(a), the transmission provider must immediately post the *information* that was disclosed on the OASIS or Internet website,

¹³ INGAA Comments at 45 (“if a Marketing Function Employee receives non-public Transmission Information from a third party who is not acting as a conduit for the Transmission Provider...,the Transmission Provider must, as soon as it becomes aware of the disclosure, immediately post notice on the ... Internet website, ... that... non-public Transmission Information was disclosed.”)

as applicable.”¹⁴ Therefore, NGSAs urge the Commission to require consistent treatment of the posting of non-public information disclosed to an affiliate, regardless of whether that information was provided to the affiliate directly or indirectly through a third-party source.

There is no justification for disparate treatment of non-public transmission information disclosed to the marketing affiliate based on the source. As EPSA has stated, the simultaneous disclosure of non-public transmission-related information to affiliates and to the public provides a “Gordian Knot” solution to undue discrimination in the provision of sensitive information.¹⁵ To ensure that non-public transmission information disclosed to a marketing function employee is posted regardless of whether it was disclosed directly by the transmission provider itself or indirectly by a third-party source, the Commission should modify INGAA’s proposed regulatory text as follows:

§358.7 Transparency rule.

(a) Contemporaneous disclosure.

(2) if a Marketing Function Employee receives non-public Transmission Information from a third party who is not acting as a conduit for the Transmission Provider...,the Transmission Provider must, as soon as it becomes aware of the disclosure, immediately post the information that was disclosed notice on ... Internet website, ...

As a related matter, it should be incumbent upon the marketing function employee to immediately alert its affiliated transmission provider when he becomes

¹⁴ See proposed Section 358.7(a)(1) (emphasis added).

¹⁵ *Standards of Conduct for Transmission Providers*, Docket No. RM07-1-000, “Comments of Electric Power Supply Association” at 4-5 (filed Mar. 30, 2007).

aware that he has received non-public transmission information. The Commission should impose a requirement on the marketing affiliate to immediately alert the pipeline when the affiliated marketer first becomes aware that it has received non-public transmission information. The Commission took similar action by proposing, in Section 358.6 (4), a requirement prohibiting the affiliate of a transmission provider that engages in marketing functions from disclosing non-public transmission function information. To incorporate this requirement, NGSAs suggests that the Commission insert the following section into the contemporaneous disclosure section of the Transparency rule.

§358.7 Transparency rule.

(a) Contemporaneous disclosure.

(3) a Marketing Function Employee must, as soon as he becomes aware that he received non-public Transmission Information from a third party, immediately alert the Transmission Provider of this disclosure in order for the Transmission Provider to post the information that was disclosed as required in Section 358.7(2).

Additionally, the Transmission Provider should be required to take all necessary steps to ensure that its affiliates covered under the Standards are well-trained and have an understanding of their responsibility to alert the pipeline immediately if the affiliated marketer first becomes aware that it has received non-public transmission information.

D. The No Conduit Rule Should Be Clarified to Broaden Its Applicability to the Affiliate's Marketing Function Employees.

The No Conduit Rule in the Standards of Conduct aims to prevent a pipeline company's transmission function employees from disseminating non-public

transmission information. The intent of this rule is to prohibit unfair access to this information and thus to prevent the discriminatory advantage afforded to the recipients of this information. As written in the NOPR, however, the No Conduit Rule could be interpreted to only limit the distribution of non-public transmission information to the pipeline's in-house marketing function employees and not to the pipeline affiliates' marketing function employees. For example, Section 358.6(a)(1) states that "[a] transmission provider's transmission function employees are prohibited from disclosing non-public transmission function information to their *transmission provider's* marketing function employees."¹⁶ In most instances, gas pipelines do not have their own gas marketing function employees. Instead, in the gas industry, it is much more likely that an affiliate of the transmission provider would be the party that has gas marketing function employees.

The Commission's definition of a marketing function employee, as provided in Section 358.3(d), explicitly encompasses both the transmission provider and the affiliate of the transmission provider. However, singling out the "transmission provider" in the No Conduit Rule could be interpreted to not encompass the affiliate's marketing function employee. Therefore, NGSAs suggests eliminating any possible confusion as to whom the No Conduit Rule applies by deleting the superfluous words "transmission provider."

¹⁶ See proposed Section 358.6(a)(1) (emphasis added).

To more clearly reflect the structure of the natural gas industry and more effectively achieve the Commission's stated aim of preventing undue affiliate preference on the part of natural gas pipelines, NGSAA suggests revising the No Conduit Rule at §358.6 (a) as follows:

§ 358.6 No conduit rule.

(a) Prohibited disclosure and receipt.

(1) A transmission provider's transmission function employees are prohibited from disclosing non-public transmission function information to ~~their~~ ~~transmission provider's~~ marketing function employees.

~~(2) A transmission provider's Marketing function employees are prohibited from receiving non-public transmission function information from any source.¹⁷~~

(3) A transmission provider is prohibited from using anyone as a conduit for the disclosure of non-public transmission function information to ~~its~~ marketing function employees.

(4) An employee of a transmission provider, and an employee of an affiliate of a transmission provider that is engaged in marketing functions, is prohibited from disclosing non-public transmission function information to any ~~of the~~ ~~transmission provider's~~ marketing function employees.

E. *The No Conduit Rule Does Not Adequately Prevent the Transfer of Information When Exempt and Non-Exempt Marketing Function Employees Share the Same Facilities or a Single Trading Floor. In Those Instances, Structural and/or Physical Separation Must Be Imposed or the Standards of Conduct Should Apply to All Marketing Function Employees Located in the Same Area.*

INGAA has asked the Commission to exempt from the Standards "[s]ales of natural gas by a seller that does not ship such gas using capacity held or controlled by

¹⁷ As stated in NGSAA's initial comments, non-affiliated third parties should not have the ability to receive prohibited information from transmission providers under current rules. Moreover, transmission providers will be subject to the No Conduit rule that prohibits using anyone as a conduit for disclosure. Based on these safeguards, NGSAA does not believe that Section 358.6 (a)(2) is a necessary component of the final rule.

the seller on the Affiliated Transmission Provider.”¹⁸ While not opposed to this exemption, NGSA believes that, in those instances where employees share the same facilities (or the same trading floor), the Standards should apply to all marketing function employees, even those who would otherwise not be captured under INGAA’s proposed Standards of Conduct.

The No Conduit rule cannot be fully relied upon when affiliated marketing function employees sit on the same trading floor with other marketing function employees who are exempt from the Standards of Conduct. Generally speaking, all employees on a trading floor can hear the same business transactions. In fact, the purpose of a modern gas and power trading floor is to foster open and unrestricted market communication between all parties on the floor. Such open communication cannot distinguish between employees of exempt and non-exempt marketing affiliates who sit in close proximity. Thus, in such an environment, the No Conduit rule cannot be relied upon to control the flow of restricted information to marketing function employees who conduct business on the parent transmission provider.

In circumstances where some marketing function employees are subject to the Standards of Conduct while others on the same trading floor are not, there must be physical and/or structural separation of these employees. Otherwise, the rules should apply equally to all marketing function employees who are located together. This would be true regardless of whether their employer does business with the affiliated pipeline or whether they work for the same affiliated marketing company or for

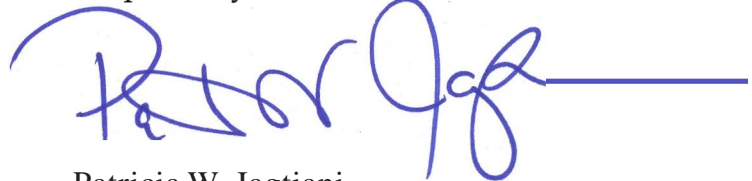
¹⁸ INGAA Comments at 12.

separate but affiliated marketing companies. However, the Commission should not prescribe what constitutes adequate physical and/or structural separation. Rather, affiliates of the transmission provider that are engaged in marketing functions should be permitted to establish their own arrangements to ensure that such separation is effectuated.

IV. CONCLUSION

NGSA respectfully requests that the Commission consider adopting the revisions and clarifications as proposed herein. If adopted, these changes will maintain industry transparency and will provide needed guidance to parties that seek to fully comply with the Standards of Conduct.

Respectfully submitted,



Patricia W. Jagtiani
Vice President of Regulatory Affairs
Natural Gas Supply Association
805 15th Street, NW, Suite 510
Washington, DC 20005
(202) 326-9311
pjagtiani@ngsa.org