

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

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

**THE NATURAL GAS SUPPLY ASSOCIATION, PROCESS GAS CONSUMERS
GROUP, AND THE NORTHWEST INDUSTRIAL GAS USERS REQUEST FOR
CLARIFICATION OR, IN THE ALTERNATIVE, REHEARING**

Pursuant to Section 19(a) of the Natural Gas Act, 15 U.S.C. § 717r(a)(2006), and Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 385.713 (2013), the Natural Gas Supply Association (“NGSA”), the Process Gas Consumers Group (“PGC”), and the Northwest Industrial Gas Users (“NWIGU”), each on behalf of its members, respectfully submit this Request for Clarification or, in the alternative, Rehearing, of Order No. 787,¹ issued November 15, 2013. Order No. 787 amends certain 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 with each other.

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. customers. NGSA is a trade association which represents integrated and independent companies that produce and market domestic natural gas. As such, members of NGSA supply natural gas to

¹ *Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators*, Order 787, 145 FERC ¶ 61,134 (2013) (“Order No. 787”).

gas-fired power generators and are shippers on interstate pipelines, and are impacted by Order No. 787.

PGC is a trade association of industrial consumers of natural gas, organized to promote the development and adoption of coordinated, rational, and consistent federal and state policies governing interstate natural gas service to industrial gas users. PGC members own and operate hundreds of manufacturing plants and facilities in virtually every state in the nation and consume natural gas delivered through interstate natural gas pipelines systems throughout the U.S. and as such, are impacted by Order No. 787.

NWIGU is a non-profit association comprised of thirty-eight end users of natural gas with major facilities in the States of Oregon, Washington, and Idaho. NWIGU was established in 1985 and played a major role in establishing open access on the interstate pipelines serving the Pacific Northwest. NWIGU members include diverse industrial interests, including food processing, pulp and paper, wood products, electric generation, aluminum, steel, chemicals, electronics, aerospace, oil refining, and home building materials. The association provides an informational service to its members and participates in various regulatory matters that affect member interests.

I. SPECIFICATION OF ERROR AND STATEMENT OF ISSUE

In accordance with Rule 713(c)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(c)(1):

1. To the extent the Commission declines to clarify that it will hold a technical conference to assess the effectiveness of the new communications standards in Order No. 787 as discussed herein, Order No. 787 is not the product of reasoned decision making, as the

Commission's refusal to provide for a technical conference to assess the impact of the Order is not supported by substantial evidence.² See 5 U.S.C. § 706(2)(E).

II. The Commission should clarify that it will hold a technical conference after an interim period to increase industry confidence in the sharing of commercially-sensitive information and to allow FERC to determine whether changes should be made to either further improve coordination and/or prevent abuse.

The Commission stated that Order No. 787 is intended to improve coordination by allowing gas and electric operators to “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.”³ As a threshold matter, NGSA, PGC, and NWIGU fully support the Commission's efforts to improve coordination between the gas and power sectors and agrees that increased communication between gas and electric transmission operators, as a part of a larger effort to address a host of gas/electric coordination issues, is necessary. However, NGSA, PGC, and NWIGU believe that the Commission, the two industry sectors, and all market participants would greatly benefit from an after-the-fact assessment of Order No. 787's effectiveness as well as a review of the scope of information being shared pursuant to this Order.

In its comments to the Notice of Proposed Rulemaking, NGSA proposed that the Commission should hold a technical conference after a period of one year to determine what information was shared under the new rule and how this shared information was used to promote

² See *PG&E Gas Transmission, Northwest Corp. v. FERC*, 315 F.3d 383, 386 (D.C. Cir. 2003); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 48 (1983); *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156 (1962); *N. States Power Co. v. FERC*, 30 F.3d 177 (D.C. Cir. 1994); *Town of Norwood v. FERC*, 962 F.2d 20 (D.C. Cir. 1992); *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486 (D.C. Cir.); *Int'l Ladies Garment Workers' Union v. Donovan*, 722 F.2d 795 (D.C. Cir. 1983).

³ Order No. 787 at P 1.

reliable service or operational planning.⁴ NGSA advocated that this technical conference would allow Commission Staff and the industry to assess whether further improvements to the communications rules were needed. Other entities filed comments making a similar request.⁵ However, the Commission did not provide for this after-the-fact assessment or any post-Order No. 787 implementation review of the new communications rules in its final order.

NGSA, PGC, and NWIGU hereby urge FERC to reconsider this decision and to require market participants to assess the impacts and efficacy of Order No. 787 in a technical conference in which market participants review the types of information being shared pursuant to the Order and the actions undertaken as a result of the information being shared, and allow the Commission and the market participants to determine whether additional improvements to the Order should be considered. The technical conference should take place after a period, such as one year from the date the Order was issued, to allow time for market participants to conform to the new rules and realize the rule's impact on the industry.

Order No. 787's relaxed restrictions on sharing otherwise non-public information remains a new and un-tested practice with which many market participants are not yet comfortable. In comments, NGSA and PGC 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. Specifically, PGC pointed out that a significant amount of pipeline information is

⁴ Comments of the Natural Gas Supply Association, Docket No. RM13-17-000 at 9-11 (Aug. 26, 2013) ("NGSA Comments").

⁵ The New England States Committee on Electricity, the National Rural Electric Cooperative, the Ohio Public Utilities Commission, and the Massachusetts Municipal Wholesale Electric Company each asked for an after-the-fact assessment of the rule. *See* Comments of The New England States Committee on Electricity, Docket No. RM13-17-000 at 6 (Aug. 26, 2013); Comments of the National Rural Electric Cooperative Association on Notice of Proposed Rulemaking, Docket No. RM13-17-000 at 4-5 (Aug. 26, 2013); Comments Submitted on Behalf of the Public Utilities Commission of Ohio, Docket No. RM13-17-000 at 6 (Aug. 26, 2013); Comments of the Massachusetts Municipal Wholesale Electric Company, Docket No. RM13-17-000 at 4 (Aug. 26, 2013).

already available to market participants,⁶ and NGSA expressed concern that the new regulations would allow transmission operators to share commercially sensitive information that could harm producers and marketers by revealing their positions in the market to outside parties.⁷ NGSA's concerns have not been alleviated. A technical conference would assist the Commission and the market participants in determining whether these concerns have materialized. In particular, a technical conference would allow the Commission, pipelines, and transmission operators to report, albeit anecdotally, on the types of information being shared and either allay any concerns that Order No. 787 may subject market participants' commercially sensitive information to inappropriate disclosure or point out infirmities in the communication protocols that require modification.

In prior rulemakings where there was such a change in policy, the Commission has recognized the need for a review after a certain period.⁸ For example, in Order No. 637, the Commission removed the price ceiling for short-term capacity release and noted that while changes in the industry supported this policy, it believed that market participants and the Commission would benefit from a review of two winters' experience.⁹ While NGSA, PGC, and NWIGU conceptually support the changes in the Final Rule, they believe that a similar review is appropriate.

For example, at the technical conference, FERC and industry could discuss: 1) whether the scope of allowed communications should be narrowed; 2) whether additional protections are needed to ensure commercially sensitive information is not released; and 3) whether utility

⁶ Comments of the Process Gas Consumers Group, Docket No. RM13-17-000 at 3-4 (Aug. 26, 2013).

⁷ NGSA Comments at 7.

⁸ See, e.g., *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, 90 FERC ¶ 61,109 ("Order 637").

⁹ *Id.* at pp. 35-36.

operators should be required to publicly post shared information that is not commercially sensitive. A one-year post-effective date “look back” of this nature would facilitate a fair determination of the answers to these, and other, important questions and would, regardless of the answers, foster transparency in the process.

Furthermore, in addition to allowing market participants to share best practices with one another based on their experience under the Order, a technical conference will also provide an opportunity to highlight additional coordination issues that have arisen after the barriers to communications have been removed.

Perhaps most importantly, industry feedback provided at a technical conference will publicly demonstrate the impact of Order No. 787 on day-to-day pipeline and transmission operator communications, and will thus materially assist the Commission in furthering its goal of “maintain[ing] the reliability of the pipeline and public utility transmission service.”¹⁰

¹⁰ Order No. 787 at P 1.

III. CONCLUSION

WHEREFORE, NGSA, PGC, and NWIGU request that the Commission grant clarification, or in the alternative, rehearing, and direct that a technical conference be convened for the purposes set forth above one year after the effective date of Order No. 787.

Respectfully submitted,

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December 16, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon those parties on the official Service List compiled by the Secretary in this proceeding.

Dated Washington, D.C. this 16th day of December, 2013.

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