

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

**Collection of Connected Entity Data from
Regional Transmission Organizations and
Independent System Operators**

Docket No. RM15-23-000

COMMENTS OF THE NATURAL GAS SUPPLY ASSOCIATION

Pursuant to Commission’s Notice of Proposed Rulemaking (“NOPR”) in the referenced proceeding,¹ the Natural Gas Supply Association (“NGSA”) respectfully submits the following comments regarding the Commission’s proposal to impose new identification and data disclosure requirements for independent system operator (“ISO”) and regional transmission organization (“RTO”) market participants.

NGSA represents integrated and independent energy 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 supports the benefits of competitive markets. NGSA promotes increased supply and the reliable, efficient delivery of natural gas to customers. Our members, as producers and marketers of natural gas, have an interest in ensuring that any disclosure requirements imposed by the Commission are reasonably tailored to its market monitoring efforts. Although some NGSA members generate or sell electricity at wholesale and

¹ *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, 152 FERC ¶ 61,219 (2015) (“NOPR”).

directly participate in ISO/RTO markets, NGSA submits these comments on behalf of its members as natural gas producers and marketers.²

I. COMMUNICATIONS

Any communications with respect to these comments and this proceeding should be provided to:

Casey Gold
Regulatory Coordinator
Natural Gas Supply Association
1620 Eye Street, NW, Suite 700
Washington, D.C. 20006
(202) 326-9302
cgold@ngsa.org

II. COMMENTS

NGSA supports efforts by the Commission to improve ISO/RTO market transparency and to strengthen its ability to identify and prevent market manipulation. NGSA members benefit when ISO/RTO markets operate efficiently and properly. Nevertheless, the NOPR as issued raises numerous concerns for NGSA members. Although the proposed compliance obligations would not apply directly to the production, sale, or transportation of natural gas, the vague language in the NOPR as drafted arguably could make NGSA members “Connected Entities” for providing such services to ISO/RTO market participants. Additionally, the NOPR would increase the risk that commercially sensitive information regarding many types of natural gas-related services provided by NGSA members will be publicly disclosed (intentionally or inadvertently).

² Individual NGSA members may submit, join, or support additional comments in their capacity as ISO/RTO market participants in light of any direct participation they may have in wholesale electricity markets. NGSA’s comments herein do not address those concerns.

Fortunately, Commission Staff provided helpful clarifications at the December 8, 2015 technical conference in this docket (the “Technical Conference”) and through written responses to questions regarding the definition for “Connected Entity” (“Staff Responses”).³ These clarifications, if implemented, would prevent NGSAs members from becoming Connected Entities for providing many types of natural gas-related services to ISO/RTO market participants. Since the Commission already has the authority to obtain such information through individually-targeted information requests, NGSAs does not see a need for implementing the industry-wide Connected Entity disclosure requirements as proposed. However, should the Commission nevertheless promulgate the proposed regulations, NGSAs submits these comments to ask the Commission to have any final rule include and expand upon Staff’s clarifications, and to modify the proposal to reduce the likelihood that commercially sensitive information may be publicly disclosed.

A. The Final Rule Should Confirm Certain Clarifications Provided by Commission Staff After the NOPR’s Issuance Regarding Contractually Connected Entities.

NGSAs primarily seeks the clarifications regarding the intended interpretation of the portion of the Connected Entity definition Staff referred to informally as “Definition D.”⁴ As explained below, the Commission should:

- 1. Confirm that natural gas marketers do not constitute Connected Entities simply for supplying natural gas or otherwise providing natural gas-related services that do not result in decision-making authority over how to operate a generating resource.*

³ Available at <http://www.ferc.gov/CalendarFiles/20151210082928-Staff%20Responses%20to%20Connected%20Entity%20Definition%20Questions.pdf>.

⁴ Staff Responses at 4.

2. *Clarify what constitutes a transfer of control for asset management agreements, particularly those involving the utilization of natural gas pipeline capacity.*
3. *Explicitly state that the Commission will not require Connected Entities to obtain Legal Entity Identifiers (“LEIs”).*

1. The Final Rule Should Confirm That Gas Marketers Do Not Constitute Connected Entities For Providing Services That Do Not Confer Control Over Electric Generating Resources.

“Definition D” would create the following category of Connected Entities:

Entities that have entered into an agreement with the market participant that relates to the management of resources that participate in Commission-jurisdictional markets, or otherwise relates to operational or financial control of such resources, such as a tolling agreement, an energy management agreement, an asset management agreement, a fuel management agreement, an operating management agreement, an energy marketing agreement, or the like.⁵

This proposed language, absent modification or clarification, risks treating NGSA members as Connected Entities for common natural gas marketing activities that have no bearing on the NOPR’s purpose: examining ISO/RTO market activities to identify manipulation of those markets. For instance, the phrase “resources that participate in Commission-jurisdictional markets” neither defines “resources” nor includes language limiting it to ISO/RTO market. Because the Commission has regulatory oversight over some sales of natural gas at wholesale in interstate commerce, the proposed language arguably could make a natural gas marketer a Connected Entity merely for entering into an agreement with an ISO/RTO market participant simply for providing natural gas. Exacerbating this ambiguity, “Definition D” ends with the open-ended words “or the like.” In addition, the term “asset management agreement” has

⁵ NOPR at P 23(d); proposed 18 C.F.R. § 35.28(g)(4)(iv).

multiple meanings, including the management of a generating asset or the management of natural gas pipeline shipping capacity, which is not an electric resource.

Fortunately, after the Commission issued the NOPR, Commission Staff provided helpful clarifications on how “Definition D” will be interpreted. Specifically, “Definition D” applies only to those arrangements that grant control

over the trading activities, or over the unit commitment decisions, of the market participant. Therefore, fuel arrangements, tool sharing arrangements, physical maintenance arrangements, and standard power purchase agreements, would not be included.⁶

Staff also explained that “the resources are electric resources only, and the NOPR covers only activities in the organized electric markets, not in the gas markets,” that Connected Entities are those “participating in any or all of the RTO or ISO’s markets, physical and financial,” that “gas resources are not included,” and that “merely supplying gas to a generator would not confer control.”⁷ Staff also clarified whether agreements regarding transportation of natural gas, including asset management agreements for natural gas pipeline service, create Connected Entity relationships. According to Staff, an agreement simply to provide transportation service, and nothing more, would not create a Connected Entity relationship. If, however, the transportation service agreement allows the counterparty to curtail natural gas delivery “for economic reasons, then the contract confers an element of financial control over the generator, and would be included.”⁸ These clarifications address many of NGSAs’ concerns regarding “Definition D, thus we respectfully request that they are incorporated into the final rule.

⁶ Staff Responses at 4.

⁷ *Id.* at 5.

⁸ *Id.* at 6.

2) **The Commission Should Clarify Which Types of Asset Management Agreements Are Considered Connected Entities**

NGSA requests that the Commission also clarify the scope of the transfer of control through asset management agreements for natural gas supply and delivery arrangements that would create a Connected Entity relationship. Staff's clarifications state that control of a *natural gas resource* does not create a Connected Entity relationship under "Definition D."⁹ Staff's clarifications, however, also indicate that a third party can create a Connected Entity relationship through discretion over natural gas supply or transportation when it conveys control over a generating resource.¹⁰ NGSA would appreciate having the Commission provide an expanded discussion explaining what type of control leads to an asset manager becoming a Connected Entity, including what the Commission envisions would constitute the ability to curtail for "economic reasons." Asset Management Agreements may raise particularly complex issues for the NOPR, as they involve some level of decision-making control over a natural gas resource (*e.g.*, natural gas pipeline capacity) that may have an indirect effect on the operation of a generating resource.

Additionally, the Commission should refrain from including contract name categories in the regulatory language for "Definition D" to avoid confusion. Arrangements such as "energy management agreements," "asset management agreements," and "fuel management agreements" can convey varying amounts of control to service providers. For example, each "energy services agreement" can confer a different level of control – from none (*e.g.*, merely submitting energy

⁹ *Id.* at 5 (stating that "[g]as resources are not included" within Connected Entity "Definition D").

¹⁰ Staff Responses at 6 (explaining that "if [natural gas] service could be curtailed for economic reasons, then the contract confers an element of financial control over the generator, and would be included" within the definition of Connected Entity).

offers determined by the generating customer to the ISO/RTO) to complete ISO/RTO market bidding discretion. Furthermore, the term “asset management agreement” can refer to the operation of a generating resource or to the management of natural gas pipeline capacity for a shipper. Including these names in the promulgated regulations may risk unnecessarily declaring certain service providers as Connected Entities, not because they have obtained the type of control that raises any concerns regarding potential ISO/RTO market manipulation, but simply because of the words they used to title a contract. The best approach may be to use the discussion in the preamble to the regulations promulgated in the final rule to identify the different category types (e.g., asset management agreements, energy services agreements, tolling agreements) and explain the characteristics for each of these contract types that would and would not create a Connected Entity relationship, without using the contract names within the regulations themselves.

3) The Commission Should Confirm That Connected Entities Are Not Required to Obtain LEIs

The proposed regulatory language regarding LEIs requires participants to provide “the Legal Entity Identifiers of the market participants and their Connected Entities (if known).”¹¹ It does not directly address whether a Connected Entity must obtain an LEI. The NOPR includes language stating that a market participant must provide “the LEI of each of their Connected Entities, if the Connected Entity has obtained one,”¹² which does not expressly state whether a Connected Entity must obtain an LEI. At the Technical Conference, Staff clarified that the NOPR will not require Connected Entities to obtain LEIs. The Commission should make this

¹¹ NOPR, proposed 18 C.F.R. § 35.28(g)(4).

¹² NOPR at P 28;

point clear in the final rule. Specifically, the regulatory language the Commission promulgates should explicitly state that a Connected Entity is not required to obtain an LEI.

B. The Final Rule Should Take Additional Steps to Reduce the Risk That Commercially Sensitive Information Will Become Publicly Available.

NGSA also is concerned about the ability of the Commission and market monitors to protect the confidentiality of contractual provisions in agreements between market participants and Connected Entities. Although the Commission has substantial experience protecting the confidential nature of information filed under seal (a point Commissioner Clark underscored at the Technical Conference), the NOPR raises unique concerns. The NOPR would require *all* ISO/RTO market participants to disclose commercially sensitive information within *all* contracts that fall within a potentially wide range of services, many either non-jurisdictional or not normally required by the Commission to be filed. This risk is greater than, and distinguishable from, the disclosure by the Commission of provisions from contracts that must be filed with the Commission or that the Office of Enforcement obtains during the course of an investigation. Furthermore, the NOPR would require market participants to summarize the key terms of all such contracts through one document or spreadsheet. Inadvertent disclosure could, with the stroke of a key, make public the pertinent terms and conditions of all such contracts on the spreadsheet; making specific contract terms easily searchable and available to all market participants.

As explained below, NGSA recommends two steps for the Commission to take to address this concern:

- 1. Reduce the level of detail market participants must provide regarding Connected Entity relationships created by contract.*
- 2. Declare that the Commission will refrain from disclosing non-public information regarding contracts with Connected Entities.*

1. The Commission Should Reduce the Level of Detail Market Participants Must Disclose Regarding Commercially Sensitive Data.

To limit the risk of the public disclosure of commercially sensitive information, either inadvertently or intentionally, the final rule should clearly limit the level of detail requested regarding agreements that fall within “Definition D.” A brief description of the type of agreement at issue that generally explains the type of control it grants to a counterparty should be sufficient for a market monitor or the Office of Enforcement to understand whether a market participant is (or could be) using such an arrangement to engage in market manipulation.

The NOPR provides “by way of illustration” the type of contractual information market participants may have to provide regarding its Connected Entity relationships. Some of the examples provide an unnecessary level of detail regarding commercially sensitive aspects of such contracts that market participants may have to disclose.¹³ For instance, a market participant would have to disclose “matters pertinent to the type of contract, such as heat rate curve for a tolling agreement, the MW or MWh curves for a power purchase agreement, together with the identification of the generator or plant involved, the nature of any output sharing, and the like.”¹⁴ Although it is appropriate to require identification of the generating resource involved in such arrangements, it seems excessive and unnecessary to require the disclosure of the commercially sensitive details of all such agreements, such as heat rate curves.

Furthermore, the “and the like” language suggests an ambiguous and open-ended nature of the envisioned disclosure requirement, making it unclear just how much information the Commission expects to receive. Fearing an accusation of non-compliance, a market participant

¹³ *Id.* at P 33.

¹⁴ *Id.*

might provide more detail than necessary. Because the details may be commercially sensitive for the counterparties providing these services, but not to their customers, market participants may have little incentive to limit the amount of information they provide. As a result, it may be entities such as NGSAs's members that have the most to lose by the public disclosure of the commercially sensitive information, yet such service providers will not have control over what information a market participant discloses in compliance with the Connected Entity regulations. Potential Connected Entities would benefit from a final rule that clearly limits the amount of commercially sensitive information that market participants must disclose.

2. The Final Rule Should Declare That the Commission Will Refrain from Disclosing Non-Public Information Regarding Contracts with Connected Entities.

The Commission also should state in the final rule that it will refrain from disclosing any non-public information regarding contracts with Connected Entities. The Commission's current regulations already provide that "[t]rade secrets and commercial or financial information obtained from a person [that is] privileged or confidential" are exempt from public disclosure. The NOPR, even with Staff's clarifications, appears to hedge on whether the Commission will fully utilize this exception for non-public information regarding agreements between market participants and Connected Entities.¹⁵ The NOPR, for instance, merely states that commercially sensitive information "may" satisfy this exemption.¹⁶ A more forceful declaration by the

¹⁵ FERC Staff Presentation, Notice of Proposed Rulemaking for the Collection of Connected Entity Data from RTOs and ISOs Technical Conference at 11 (Dec. 8, 2015), *available at* http://www.ferc.gov/CalendarFiles/20151210082835-Staff%20Presentation_final.pdf ("Depending on the details of the FOIA request received, some Connected Entity information may be exempt from disclosure pursuant to FOIA exemptions 4 and 7.").

¹⁶ NOPR at P 21.

Commission regarding the treatment of non-public information will help ease concerns that compliance with the final rule may lead to harmful public disclosures.

III. CONCLUSION

NGSA asks the Commission to accept these comments, to implement their recommendations, and to address their requested clarifications.

Respectfully submitted,

/s/ Casey Gold
Casey Gold
Regulatory Coordinator
Natural Gas Supply Association
1620 Eye Street, NW
Suite 700
Washington, D.C. 20006
(202) 326-9302

Date: January 22, 2016