

144 FERC ¶ 61,043  
DEPARTMENT OF ENERGY  
Federal Energy Regulatory Commission

18 CFR Parts 38 and 284

[Docket No. RM13-17-000]

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

(Issued July 18, 2013)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to revise 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.

DATES: Comments are due **[insert date 30 days after publication in the FEDERAL REGISTER]**.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

- Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document

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SUPPLEMENTARY INFORMATION:

144 FERC ¶ 61,043  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

NOTICE OF PROPOSED RULEMAKING

(Issued July 18, 2013)

1. In this Notice of Proposed Rulemaking, the Commission is proposing to revise 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> This proposal will help ensure the reliability of pipeline and public utility transmission service by permitting transmission operators to share the information that they deem necessary to promote the reliability and integrity of their systems with each other. However,

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<sup>1</sup> For ease of reference, we will refer to these parties collectively as "transmission operators."

recipients of that non-public, operational information would be subject to a No-Conduit Rule that prohibits subsequent disclosure of that information to an affiliate or third party.

## **I. Background**

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

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<sup>2</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), available at [http://www.navigant.com/insights/library/energy/2012/gas\\_fired\\_generation/](http://www.navigant.com/insights/library/energy/2012/gas_fired_generation/); 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), available at [http://www.iso-ne.com/committees/comm\\_wkgrps/strategic\\_planning\\_discussion/materials/natural-gas-white-paper-draft-july-2012.pdf](http://www.iso-ne.com/committees/comm_wkgrps/strategic_planning_discussion/materials/natural-gas-white-paper-draft-july-2012.pdf).

<sup>3</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>4</sup> show the crucial interconnection between natural gas pipelines and electric transmission operators 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. While entities from both industries have already begun efforts to improve coordination, further sharing of non-public, operational information between transmission operators could enhance system reliability and contingency planning in both industries.

3. On February 15, 2012, the Commission issued a notice in Docket No. AD12-12-000 requesting comments on various aspects of gas-electric interdependence and coordination in response to questions posed by members of the Commission.<sup>5</sup> In order to better understand the interface between the electric and natural gas pipeline industries and identify areas for improved coordination, the questions covered a variety of topics including market structure and rules, scheduling, communications, infrastructure and

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<sup>4</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>5</sup> *Coordination Between Natural Gas and Electricity Markets*, Docket No. AD12-12-000 (Feb. 15, 2012) (Notice Assigning Docket No. and Requesting Comments) (available at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12893828>). See also Commissioner Philip D. Moeller, *Request for Comments of Commissioner Moeller on Coordination between the Natural Gas and Electricity Markets* (Feb. 3, 2012), available at <http://www.ferc.gov/about/com-mem/moeller/moellergaselectricletter.pdf>; Commissioner Cheryl A. LaFleur, *Statement regarding Standards for Business Practices for Interstate Natural Gas Pipelines* (Feb. 16, 2012), available at <http://www.ferc.gov/media/statements-speeches/laflaur/2012/02-16-12-lafleur-G-1.asp>.

reliability. In response to the notice, the Commission received comments from 79 entities, with some raising concerns that current laws, regulations, or tariffs may hinder the sharing of such information.

4. During August 2012, the Commission convened five regional conferences for the purpose of exploring these issues and obtaining further information from the electric and natural gas industries regarding coordination between the industries. Representatives from a cross-section of both industries attended the regional conferences, with total attendance exceeding 1,200 registrants. Among the topics discussed at the conferences were communications, coordination, and information-sharing. Participants at multiple conferences again expressed concern that Commission rules and policies could be impeding further efforts to improve communication between the industries.<sup>6</sup> Some natural gas pipelines and Regional Transmission Organizations and Independent System Operators (RTOs/ISOs) also noted that, although they make significant amounts of operational information publicly available, there is reluctance to share information on a more granular level because of concerns about violating statutory prohibitions against undue preference for any customer or customer class.<sup>7</sup>

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<sup>6</sup> See *FERC Staff Report on Gas-Electric Coordination Technical Conferences* (Nov. 2012), available at <http://www.ferc.gov/legal/staff-reports/11-15-12-coordination.pdf> (November 15 Staff Report).

<sup>7</sup> November 15 Staff Report at 24.

5. On November 15, 2012, the Commission issued an order directing further technical conferences and reports.<sup>8</sup> In the November 15 Order, the Commission acknowledged the concerns regarding communications between the two industries, but found that there was little specific discussion of potential clarifications or potential changes to the Commission's regulations.<sup>9</sup> The Commission, therefore, directed Commission staff to convene a technical conference to identify areas in which additional Commission guidance or potential regulatory changes could be considered.<sup>10</sup>

6. Pursuant to the November 15 Order, on December 7, 2012, a Notice of Request for Comments and Technical Conference to be held on February 13, 2013 was issued on information sharing and communication issues between the natural gas and electricity industries.<sup>11</sup> Interested parties were asked to file comments prior to the technical conference on three questions related to communications and information sharing. Twenty-seven comments were filed in response to the Notice of Request for Comments

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<sup>8</sup> *Coordination Between Natural Gas and Electricity Markets*, 141 FERC ¶ 61,125 (2012) (November 15 Order).

<sup>9</sup> *Id.* P 5.

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

<sup>11</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 Fed. Reg. 74180 (Dec. 13, 2012) (<http://www.gpo.gov/fdsys/pkg/FR-2012-12-13/pdf/2012-30063.pdf>).

and Technical Conference,<sup>12</sup> and more than 350 persons, representing a cross-section of industry, registered for the technical conference.

7. In response to the Notice of Request for Comments and Technical Conference, and at the February 13 technical conference itself, natural gas and electric industry participants described a variety of actions that are currently being taken to improve communications and information sharing between the two industries. However, 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.<sup>13</sup> 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>14</sup> For example, INGAA stated that there

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<sup>12</sup> A list of commenters with the abbreviations used to identify them is attached as an Appendix.

<sup>13</sup> *See, e.g.*, MISO Comments, Docket No. AD12-12-000, at 3 (filed Jan. 7, 2013), 6; ISO-NE Comments, Docket No. AD12-12-000, at 4 (filed Jan. 7, 2013); SPP Comments, Docket No. AD12-12-000, at 5 (filed Jan. 7, 2013); PJM Comments, Docket No. AD12-12-000, at 3 (filed Jan. 11, 2013); MidAmerican Comments, Docket No. AD12-12-000, at 9-10 (filed Jan. 7, 2013); BPA Comments, Docket No. AD12-12-000, at 6 (filed Jan. 7, 2013); NYTOs Comments, Docket No. AD12-12-000, at 4 (filed Jan. 7, 2013); AGA Comments, Docket No. AD12-12-000, at 4 (filed Jan. 7, 2013); National Grid Comments, Docket No. AD12-12-000, at 8 (filed Jan. 7, 2013).

<sup>14</sup> *See, e.g.*, Spectra Comments, Docket No. AD12-12-000, at 3-5 (filed Jan. 7, 2013); MISO Comments, Docket No. AD12-12-000, at 5 (filed Jan. 7, 2013); INGAA Comments, Docket No. AD12-12-000, at 9-11 (filed Jan. 7, 2013); ISO-NE Comments, Docket No. AD12-12-000, at 4 (filed Jan. 7, 2013); PJM Comments, Docket No. AD12-12-000, at 4 (filed Jan. 11, 2013).

is some risk that a pipeline could be subject to an allegation of undue discrimination in violation of section 4 of the Natural Gas Act (NGA) if it provides an electric transmission operator with non-public transmission information with respect to any transportation or sale of natural gas without contemporaneously disclosing that information to all other shippers or potential shippers.<sup>15</sup> MidAmerican and AGA also expressed concerns that the Standards of Conduct<sup>16</sup> or the Commission's prohibition on "undue discrimination" may present a real or perceived barrier to effective participation in certain table-top reliability exercises or emergency or system planning exercises among regional stakeholders.<sup>17</sup> Accordingly, INGAA and several others 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.<sup>18</sup>

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<sup>15</sup> INGAA Comments, AD12-12-000, at 11 (filed Jan. 7, 2013).

<sup>16</sup> 18 CFR Part 358 (2012).

<sup>17</sup> MidAmerican Comments, Docket No. AD12-12-000, at 8 (filed Jan. 7, 2013); AGA Comments, Docket No. AD12-12-000, at 8 (filed Jan. 7, 2013).

<sup>18</sup> INGAA Comments, Docket No. AD12-12-000, at 11 (filed Jan. 7, 2013). *See also* NYTOs, Docket No. AD12-12-000, at 4, 9 (filed Jan. 7, 2013); MidAmerican Comments, Docket No. AD12-12-000, at 10 (filed Jan. 7, 2013); AGA Comments, Docket No. AD12-12-000, at 4 (filed Jan. 7, 2013); Spectra Comments, Docket No. AD12-12-000, at 5 (filed Jan. 7, 2013).

8. 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 a pipeline operator without the generator's knowledge. For example, We Energies asserted that excluding the generator operator from discussions between RTOs/ISOs and natural gas pipelines regarding the status of a generator's fuel supplies will increase the risk that generator capability will be misrepresented.<sup>19</sup> We Energies also stated that a generating unit's-specific market sensitive information, such as run times and dispatch levels provided to a pipeline by the RTO prior to the generator having arranged for any needed incremental gas transportation requirements, could provide the pipeline with a competitive advantage over the generator in pricing its transportation services to that generator.<sup>20</sup> National Grid stated that commercially sensitive information from individual generators should not be shared with natural gas pipeline representatives or affiliates that sell or buy wholesale electric power or market natural gas.<sup>21</sup>

9. Some commenters expressed concern regarding the potential harm to industry participants or the potential for improper use of material resulting from increased

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<sup>19</sup> We Energies Comments, Docket No. AD12-12-000, at 3 (filed Jan. 7, 2013).

<sup>20</sup> We Energies Comments, Docket No. AD12-12-000, at 5 (filed Jan. 7, 2013).

<sup>21</sup> National Grid Comments, Docket No. AD12-12-000, at 8-9 (filed Jan. 7, 2013).

communications.<sup>22</sup> For example, MidAmerican stated that customer specific information is commercially sensitive and must be subject to strict limitations, including appropriate protocols ensuring that generator unit-specific gas usage and transportation information is not publicly posted or disclosed to non-directly connected pipelines. AF&PA stated that generally information that is potentially commercially sensitive should only be disseminated when there is an articulable and rational reason to expect such exchanges would further improve reliability or efficiency on either or both systems.<sup>23</sup> In addition, APGA argued that transportation information provides the potential for gaming, market manipulation, and other violations of the NGA and Federal Power Act (FPA). EPSA asserted that, when system operators share information with natural gas pipelines, pipelines should have appropriate limitations on who has access to this information. EPSA stated that specific guidelines are needed when the same person at a pipeline who sells and schedules capacity could have access to shared information.<sup>24</sup> NYTOs noted that, since generators and fuel managers in New York are merchant entities, there is potential for misuse of confidential information (for example, whether a generator is

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<sup>22</sup> See, e.g., MidAmerican Comments, Docket No. AD12-12-000, at 10 (filed Jan. 7, 2013); APGA Comments, Docket No. AD12-12-000, at 5 (filed Jan. 7, 2013); AEP Comments, Docket No. AD12-12-000, at 7 (filed Jan. 7, 2013); AF&PA Comments, Docket No. AD12-12-000, at 2 (filed Jan. 7, 2013); EPSA Comments, Docket No. AD12-12-000, at 7 (filed Jan. 7, 2013).

<sup>23</sup> AF&PA Comments, Docket No. AD12-12-000, at 5 (filed Jan. 7, 2013).

<sup>24</sup> EPSA Comments, Docket No. AD12-12-000, at 7 (filed Jan. 7, 2013).

critical to maintain reliability) to the extent it is shared as part of these communications.<sup>25</sup> NYTOs stated that they would not support disclosure of market-sensitive information unless strong measures were in place to prevent and punish market abuses.

## II. Discussion

10. Communications occur today in the normal course of business between transmission operators and those communications serve a valuable and necessary purpose to help ensure reliability. 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 proposes to revise its regulations to authorize expressly the exchange of non-public, operational information between electric transmission operators and interstate natural gas pipelines. The Commission intends to remove any 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. However, in consideration of the concerns regarding the exchange of non-public operational information, the Commission also proposes 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 any other entity.<sup>26</sup> Moreover, to the extent

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<sup>25</sup> NYTOs Comments, Docket No. AD12-12-000, at 7 (filed Jan. 7, 2013).

<sup>26</sup> Conduct and Affiliate Restrictions. *See* 18 CFR 358.6 and 18 CFR 35.39(g). Moreover, the Commission determined in Order No. 717 that the No-Conduit Rule was a critical component of the regulatory scheme of the Standards of Conduct. *See Standards*

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that an electric transmission operator or pipeline has a tariff provision which precludes a communication that would otherwise be authorized under the proposed regulations, it would have to make a filing under the FPA or NGA to revise that provision to permit such exchanges of information.

11. The Commission has structured the proposed regulations to provide significant 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. Notably, the Commission is proposing a permissive approach to the sharing of non-public information. To the extent this voluntary approach proves inadequate to promote reliable service or operational planning on natural gas pipelines and electric transmission systems, the Commission may revisit the need to require certain communications or information sharing between transmission operators in the future.

**A. Undue Discrimination or Preference**

12. To provide context for the proposed regulations discussed below, the Commission first reviews the existing statutory and regulatory requirements applicable to

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*of Conduct for Transmission Providers*, Order No. 717, 73 FR 63796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280, at P 198 (2008).

communications between the gas and electric industries. Both the FPA and the comparable provisions of the NGA prohibit undue discrimination or preference.<sup>27</sup>

Specifically, section 205(b) of the FPA provides that no public utility:

shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.<sup>28</sup>

13. FPA section 205(b) and NGA section 4(b) do not forbid preferences, advantages and prejudices per se.<sup>29</sup> Rather, FPA section 205(b) and NGA section 4(b) prohibit “undue” preferences, advantages and prejudices.<sup>30</sup> A difference in treatment is not unduly discriminatory when the difference is justified.<sup>31</sup> In interpreting FPA section 205(b) and NGA section 4(b), the courts have held that transmission providers cannot

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<sup>27</sup> 16 U.S.C. 824d(b) (2006); 15 U.S.C. 717c(b) (2006).

<sup>28</sup> The language of the NGA is virtually identical. 15 U.S.C. 717c(b) (2006).

<sup>29</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>30</sup> See, e.g., *Boroughs of Chambersburg v. FERC*, 580 F.2d 573, 577 (D.C. Cir. 1978).

<sup>31</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)).

treat similarly situated customers differently<sup>32</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>33</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>34</sup> The Commission’s Standards of Conduct seek to deter undue discrimination by prohibiting the exchanges of information between transmission providers and their marketing functions in certain situations.<sup>35</sup> The comments in the proceeding in Docket No. AD12-12-000 focus on the applicability of both the statutory prohibitions on undue discrimination and the Standards of Conduct.

14. The first issue is whether the statutory restrictions in the FPA and NGA regarding undue discrimination or unjust and unreasonable acts and practices prevent the exchange of information between operators of pipeline transportation systems and electric

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<sup>32</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>33</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>34</sup> See *St. Michaels Utilities Comm'n v. Fed. Power Comm'n*, 377 F.2d 912, 915 (4th Cir. 1967).

<sup>35</sup> Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 3.

transmission operators. The Commission believes that the sharing of non-public, operational information between public utilities and natural gas pipelines for the purpose of promoting reliable service or operational planning is reasonable and not unduly discriminatory or preferential. The undue discrimination provisions apply to ensure that similarly situated customers are not subject to disparate rates or terms and conditions of service. As discussed below, 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 ensure the reliability and integrity of the transportation and transmission systems. In addition, natural gas pipelines are generally not customers of electric transmission operators. Likewise, in the case of RTOs/ISOs, they are not shippers on pipelines. We recognize that some vertically integrated transmission owners may have marketing function employees or affiliates, such as generators or local distribution companies who handle gas transactions. However, putting in place the proposed No-Conduit rule will serve as a safeguard to ensure that the transmission owners comply with the prohibitions against undue discrimination or preference with respect to their marketing function or affiliated entities.<sup>36</sup>

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<sup>36</sup> The Standards of Conduct at 18 CFR 358.6 and 358.7 govern the preferential sharing of transmission function information from a transmission provider to its marketing function employees as defined in 18 CFR 358.3(c).

15. In order to operate natural gas pipelines and electric transmission systems effectively, transmission operators historically and necessarily have shared non-public information with other parties operating transportation or transmission facilities. For example, pipeline operators routinely exchange nomination and scheduling information with other pipeline operators and with upstream and downstream entities (that may be shippers on the pipeline) to confirm transportation nomination requests and to coordinate flows between the parties.<sup>37</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>38</sup> This coordination helps ensure the safe and reliable transmission of electric power across a region.

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<sup>37</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.

<sup>38</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, PSE [Purchasing-Selling Entity], GPE [Generator-Providing Entity], Load-Serving Entity

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16. Likewise, in Order No. 698, the Commission authorized the exchange of operational information between the industries.<sup>39</sup> There, the Commission incorporated North American Energy Standards Board (NAESB) Wholesale Gas Quadrant (WGQ) Standard 0.3.12 into its regulations. This standard requires 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>40</sup> In addition, this standard ensures that 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 power plant operators with information as to whether hourly flow deviations can be honored. NAESB Wholesale Electric Quadrant (WEQ) Standard 011-

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[LSE], and any TPSE [a PSE whose transmission approval rights are cited].”) NAESB WEQ Business Practice Standards (Version 003), published July 31, 2012.

<sup>39</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 standards adopted by NAESB.

<sup>40</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 (cross-referenced at 140 FERC ¶ 61,036) (2012), (incorporating by reference the Version 2.0 WGQ Business Practice Standards) (to be codified at 18 CFR 284.12).

1.6, also incorporated in the Commission's regulations,<sup>41</sup> requires that ISOs, RTOs, and other independent system operators establish written operational communication procedures with the appropriate pipeline to be implemented when an extreme condition occurs.

17. Sharing of operational information between natural gas pipelines and electric transmission operators is akin to the sharing of operational information among interconnected parties. Both the natural gas pipelines and the electric transmission operators need to know whether scheduled transactions on their respective systems will be honored by the other. This sharing of information is crucial to the effective operations of both systems and is not the type of private sharing of information with select customers at which the undue discrimination provisions of the respective statutes were targeted.

18. There are already several safeguards in place to protect against undue discrimination. For example, 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>42</sup> Interstate natural gas pipelines and

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<sup>41</sup> 18 CFR Part 38 (2012).

<sup>42</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").

electric transmission operators are also subject to the same limitations on sharing information with their marketing function employees as provided under the Standards of Conduct.<sup>43</sup> Moreover, we are proposing additional safeguards as discussed below.

19. Based on the critical need for such exchanges of information to promote the reliability and the operational integrity of industries the Commission regulates, and the protections against undue discrimination, we find 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.

**B. Clarification Regarding Table-Top Exercises**

20. Several comments requested 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 marketing affiliates of transmission providers and inter-industry participants. The Standards of Conduct govern, among other things, communications between interstate natural gas pipelines and their employees and affiliates that engage in marketing functions, and public utilities that own or operate electric transmission facilities and their employees and affiliates that engage in marketing functions.<sup>44</sup> As the Commission has previously stated, the Standards of Conduct apply to communications only within the same organization (in other words,

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<sup>43</sup> 18 CFR 358.6 and 358.7.

<sup>44</sup> 18 CFR 358.1(a) and (b) (2012).

between the affiliated entities of a single corporate family) and therefore, do not limit communications between unaffiliated pipelines and electric transmission providers.<sup>45</sup>

21. 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, as the Commission has explained, 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.<sup>46</sup>

### **C. Revisions to Regulations**

22. Consistent with the foregoing discussion of existing statutes and regulations, to provide additional certainty to transmission operators regarding the permissibility of sharing of non-public, operational information, the Commission is proposing to revise its regulations to authorize expressly the exchange of non-public, operational information between electric transmission operators and interstate natural gas pipelines.<sup>47</sup> Proposed

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<sup>45</sup> November 15 Order, 141 FERC ¶ 61,125 at P 6. *See also* 18 CFR 358.1.

<sup>46</sup> *See Ameren Services Co., et al.*, 86 FERC ¶ 61,079, at 61,290 (1999). *See also South Carolina Electric and Gas Co.*, 111 FERC ¶ 61,217 (2005).

<sup>47</sup> The proposed regulations also recognize the existing exchanges of information among pipelines and among electric transmission operators that promote reliable service or operational planning.

section 38.3 applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce subject to a No-Conduit Rule. Similar changes are proposed in section 284.12(b), which applies to any interstate pipeline.<sup>48</sup>

**1. Permissible Disclosure of Non-Public, Operational Information**

23. Proposed sections 38.3(a) and 284.12(b)(4) authorize public utilities providing transmission service and natural gas pipelines to share non-public, operational information when such information is for the purpose of promoting reliable service or operational planning. 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. 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

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<sup>48</sup> While the Commission also regulates interstate service provided by intrastate pipelines, Hinshaw pipelines, and local distribution companies, the companies themselves are subject to state regulation and may exchange information subject to whatever state regulations govern their operations.

capability and customer demands on their respective systems. Examples of such information include, but are 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 point 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.

24. The Commission is not proposing a specific list of non-public, operational information that can be shared in order to provide flexibility to individual operators—who have the most insight and knowledge of their systems—to determine what operational information, if any, would promote reliable service or operational planning on their systems. The Commission seeks comment on the scope of the non-public, operational information transmission operators may share under the proposed regulations, including the specific categories of information identified above.

25. The Commission recognizes that the provisions of this proposal apply only to communications between pipelines and electric transmission operators and that natural gas-fired generators may have relevant information regarding their capabilities to acquire natural gas not available to a pipeline. Therefore, the Commission seeks comment on whether additional regulations are needed to require a generator to share necessary

information with its electric transmission operator to inform it of the possibility that the generator's natural gas service may be disrupted. For example, the Commission seeks comment on 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 a natural gas pipeline regarding potential failures by the generator to conform to flow rates or nominations. In addition, the Commission seeks comment on whether the proposed rule should require that, to the extent the non-public, operational information exchanged between transmission operators involves customer-specific information (such as information about individual generators), the transmission operators must seek to include the customer as part of a three-way communication.<sup>49</sup> If so, the Commission seeks comment on how such a requirement could be implemented.

## 2. Limitations on Disclosure

26. The Commission is proposing several protections, in addition to the existing protections described above, to ensure that any non-public, operational information shared under these proposed regulations remains confidential, and to ensure that information is shared among transmission owners in a manner that is consistent with the prohibition on undue discrimination. Proposed sections 38.3(b) and 284.12(b)(4)(ii)

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<sup>49</sup> The Commission notes that communications between transmission operators and generators are not covered by this proposed rule; transmission operators may always discuss generator-specific information with the relevant generator.

adopt a No-Conduit Rule that prohibits all public utilities and 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 proposed rule to a third party.<sup>50</sup> Sections 38.3(b) and 284.12.(b)(4)(ii) similarly prohibits the disclosure of such non-public, operational information to marketing function employees, as that term is defined in § 358.3 of the Commission's regulations.<sup>51</sup> Proposed sections 38.3(b) and 284.12(b)(4)(ii) do not prohibit communications between transmission operators covered by this rule. As discussed previously, together with the requirements that natural gas pipelines and transmission owners abide by their tariffs, these additional disclosure limitations should adequately protect against the harmful disclosure of non-public information and undue discrimination.<sup>52</sup>

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<sup>50</sup> The Commission does not believe the existing No-Conduit Rule under the Standards of Conduct will sufficiently limit the disclosure of the information received under this proposed rule. The proposed No-Conduit Rule has a broader prohibition on disclosure, since it applies to all third parties, not just marketing function employees. Furthermore, the Standards of Conduct, and thus the No-Conduit Rule under the Standards of Conduct, do not apply to RTOs/ISOs. Therefore, the Commission is proposing a No-Conduit Rule in this part of the regulations that is tailored to the entities and information covered by the proposed rule, and extends the disclosure prohibition to non-affiliates.

<sup>51</sup> Since RTOs/ISOs do not have marketing function employees as defined in the Standards of Conduct, this provision would not apply to them.

<sup>52</sup> Unauthorized disclosure of any non-public, operational information may subject the entity or individual making the prohibited disclosure to the enforcement provisions of

(continued...)

27. We Energies and EPSA expressed concerns that generator-specific non-public information provided to a pipeline by an electric transmission operator prior to the generator having arranged for any needed incremental gas transportation requirements could provide the pipeline with a competitive advantage over the generator in pricing transportation services. We see no need to propose additional protections regarding pipeline transportation at this time. 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. Pipelines are not required to discount services, and if they choose to discount, are permitted to obtain information from any source to demonstrate that the shipper requesting the discount has competitive alternatives.<sup>53</sup>

### **III. Information Collection Statement**

28. The following collection of information contained in the Proposed Rule is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the

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the FPA and NGA, including potential civil penalties. See section 22 of the NGA, 15 U.S.C. 717t2-1 (2006), and section 316A of the FPA, 16 U.S.C. 825o-1 (2006).

<sup>53</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). Consistent with that policy, in the next rate case after providing discounts, the Commission only permits pipelines to reduce their rate design volumes to reflect discounting upon a showing that the discounts they offered were required by competition. See, e.g., *Panhandle Eastern Pipe Line Co.*, Opinion No. 395, 71 FERC ¶ 61,228, at 61,867 (1995) (requiring documentation from its customers justifying their need for any discounts that they request); *Panhandle Eastern Pipe Line Co.*, Opinion No. 404, 74 FERC ¶ 61,109, at 61,405 (1996).

Paperwork Reduction Act of 1995 (PRA).<sup>54</sup> OMB's regulations require that OMB approve certain reporting and recordkeeping requirements (collections of information).<sup>55</sup>

Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the information collection requirements of this rule will not be penalized for failing to respond to this collection of information unless the collection of information displays a valid OMB control number.

29. The Commission will submit the information collection requirements to OMB for its review and approval under section 3507(d) of the PRA. The communications permitted under this proposed rule are not mandatory. The proposed rule would clarify that the requirements of the FPA and NGA do not prohibit certain voluntary communications between transmission providers.<sup>56</sup> Comments are solicited on the need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the

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<sup>54</sup> 44 U.S.C. 3507(d) (2006).

<sup>55</sup> 5 CFR 1320.11 (2012).

<sup>56</sup> The OMB regulations, 5 CFR 1320.3, provide that "voluntary" collections of information must be reported to OMB. The regulations do not define what is meant by voluntary, but it appears that the term was included to ensure review of agency's issuing voluntary surveys to the public. *See* J. Lubbers, Paperwork Redux: The (Stronger) Paperwork Reduction Act of 1995, 49 Admin. L. Rev. 111,119 (1997). While this justification for the requirement does not appear to apply to an interpretation of a statutory requirement, we nonetheless are submitting this NOPR to OMB as a collection of information.

information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

30. Public Reporting Burden: The proposed communications and information sharing 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.

While the extent of such communications likely will vary significantly across the country, the following estimates represent an expected average. The annual estimates reflect burden for operational contacts and emergencies.

<b>FERC-923, Communication of Operational Information Between Natural Gas Pipelines and Electricity Transmission Operators, as proposed in NOPR in Docket No. RM13-17<sup>57</sup></b>					
<b>Type of Entity (1)</b>	<b>No. of Respondents (2)</b>	<b>Number of Responses Per Respondent<sup>58</sup> (3)</b>	<b>Average Burden Hours per Response (4)</b>	<b>Total Annual Burden Hours (2)*(3)*(4)=(5)</b>	<b>Total Annual Cost)<sup>59</sup> (5)*(\$60.41/hr.)=(6)</b>
<b>Public Utility Transmission Provider</b>	132 <sup>60</sup>	12	0.50	792	\$47,845
<b>Interstate Natural Gas Pipelines</b>	137 <sup>61</sup>	12	0.50	822	\$49,657
<b>Total</b>	269	12	0.50	1,614	\$97,502

Title: Communication of Operational Information between Natural Gas Pipelines and Electricity Transmission Operators.

Action: Proposed FERC-923.

<sup>57</sup> Columns 5 and 6 are rounded.

<sup>58</sup> The Commission estimates an annual average per entity of 12 responses (including electricity and gas emergency and/or operational contacts).

<sup>59</sup> The hourly costs (for salary plus benefits) are based on the Bureau of Labor Statistics Occupational Outlook Handbook, 2012-2013 edition (*at* <http://www.bls.gov/ooh/>). The estimated costs are \$125,647 annually or \$60.41 hourly.

<sup>60</sup> Of the 132 public utility transmission providers, 5 are considered “small” using the SBA definition.

<sup>61</sup> The 2012 filings of the 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 affiliate.

OMB Control No.: To be determined (1902-TBD).

Respondents: Public electricity transmission providers; interstate natural gas pipelines.

Frequency of Responses: As needed.

Necessity of the Information: In this NOPR, the Commission is seeking comment on a proposal to revise Parts 38 and 284 of the Commission's regulations to authorize electric transmission providers and interstate natural gas pipelines to share non-public, operational information for the purpose of promoting reliable service and operational planning.

31. This proposal is intended to address industry concerns and thereby remove any barriers, real or perceived, to electric transmission operators and natural gas pipelines sharing necessary information. The Commission is not requiring that data be submitted to the Commission or to third parties. Rather, the Commission is removing actual or perceived barriers to voluntary communications and information sharing that might otherwise have been part of the normal business process.

32. Internal Review: The Commission will submit the information collection requirements to OMB for its review and approval under section 3507(d) of the PRA. Comments are solicited on the need and utility for this information, and the accuracy of the provided burden estimate.

33. 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, phone: (202) 502-8663, fax: (202) 273-0873].

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: oira\_submission@omb.eop.gov. Comments submitted to OMB should include Docket Number RM13-17, FERC-923, and OMB Control Number 1902-TBD.

#### **IV. Environmental Analysis**

34. 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>62</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>63</sup>

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<sup>62</sup> *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

<sup>63</sup> 18 CFR 380.4(a)(2)(ii) (2012).

## V. Regulatory Flexibility Act Certification

35. The Regulatory Flexibility Act of 1980 (RFA)<sup>64</sup> generally requires a description and analysis of proposed 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 proposed 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 business.<sup>65</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>66</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>67</sup> The Commission estimates a total of 13 "small" entities<sup>68</sup> (or 5% out of the total 269 entities) affected by the NOPR.

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<sup>64</sup> 5 U.S.C. 601-612 (2006).

<sup>65</sup> 13 CFR 121.101 (2012).

<sup>66</sup> 13 CFR 121.201, Sector 22, Subsector 221, Utilities & n.1.

<sup>67</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."

36. To address industry concerns, the Commission is removing actual or perceived barriers to communications and information sharing (that might otherwise have been part of the normal business process). This 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. The estimated annual cost of the proposal for each respondent, large or small, is \$362.46.<sup>69</sup> Accordingly, the Commission certifies that the revised requirements set forth in the Notice of Proposed Rulemaking will not have a significant economic impact on a substantial number of small entities, and no regulatory flexibility analysis is required.

## **VI. Comment Procedures**

37. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due **[INSERT DATE 30 days after publication in the FEDERAL REGISTER]**. Comments must refer to

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<sup>68</sup> Based on the SBA definitions and including affiliates, the number of “small” entities is estimated to be:

- for public utility transmission providers, 5 small public utilities; and
- for natural gas pipelines, 8 small interstate natural gas pipelines.

<sup>69</sup> The estimated annual cost per respondent is \$362.46 (12 annual responses X 0.50hour/response X \$60.41/hour).

Docket No. RM13-17, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

38. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

39. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

40. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

## **VII. Document Availability**

41. 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 the Commission's Home Page (<http://www.ferc.gov>) and in the Commission'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.

42. From the Commission'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.

43. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's 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).

**List of subjects in 18 CFR Part 38**

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

**List of subjects in 18 CFR Part 284**

Incorporation by Reference, Natural gas, Reporting and recordkeeping requirements  
By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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

**PART 38 – BUSINESS PRACTICE STANDARDS AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES**

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 follows:

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

**§ 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), 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), a public utility, as defined in § 38.2, 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) to a third party or to its marketing function employees as that term is defined in § 358.3(d).

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

1. 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.

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

(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) or another pipeline covered by this section, for the purpose of promoting reliable service or operational planning.

(ii) Except as permitted in paragraph (i), 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 to a third party or to its marketing function employees as that term is defined in § 358.3(d).

**Note: The following appendix will not appear in the *Code of Federal Regulations*.**

## Appendix

### LIST OF COMMENTERS AND ABBREVIATIONS

Abbreviation	Name
AEP	American Electric Power Service Corporation
AF&PA	American Forest & Paper Association
AGA	American Gas Association
APGA	American Public Gas Association
BPA	Bonneville Power Administration
CAISO	California Independent System Operator Corporation
EPSA	Electric Power Supply Association
ERCOT	Electric Reliability Council of Texas, Inc.
FES	First Energy Solutions
INGAA	Interstate Natural Gas Association of America
ISO-NE	ISO New England, Inc.
MidAmerican	MidAmerican Energy Holdings Company
MISO <sup>70</sup>	Midwest Independent Transmission System Operator, Inc.

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<sup>70</sup> Effective April 26, 2013, MISO changed its name from “Midwest Independent Transmission System Operator, Inc.” to “Midcontinent Independent System Operator, Inc.”

MMWEC	Massachusetts Municipal Wholesale Electric Company
National Grid	National Grid USA, Inc.
NE LDCs	New England Local Distribution Companies
NERC	North American Electric Reliability Corporation
NYISO	New York Independent System Operator
NYTOs	New York Transmission Owners
NIPSCO	Northern Indiana Public Service Company
PG&E	Pacific Gas and Electric Company
PJM	PJM Interconnection, L.L.C.
Texas PUC	Public Utility Commission of Texas
SCE	Southern California Edison Company
Spectra	Spectra Energy Transmission, LLC
SPP	Southwest Power Pool, Inc.
We Energies	Wisconsin Electric Power Company and Wisconsin Gas LLC