| **Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators Notice Of Proposed Rulemaking Docket No. RM13-17-000[[1]](#footnote-1) Issued July 18, 2013** |
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| P # | **Text** |  **(Y/N/?)[[2]](#footnote-2)** | **NAESB Consideration Notes** |
| 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. 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, 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. | No | Summary of the NOPR and the permission discussed through the additional proposed regulations referenced at the end of the NOPR  |
| 2 | In recent years, reliance on natural gas as a fuel for electric generation has steadily increased. This trend is expected to continue into the future, resulting in greater interdependence between the natural gas and electric industries. Several events over the last few years, such as the Southwest Cold Weather Event, 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. | No | General background information |
| 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. 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 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. | No | General background 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. 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. | No | General background information |
| 5 | On November 15, 2012, the Commission issued an order directing further technical conferences and reports. 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. 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. | No | General background information |
| 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. 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 and Technical Conference, and more than 350 persons, representing a cross-section of industry, registered for the technical conference. | No | General background information |
| 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. 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. For example, INGAA stated that there 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. MidAmerican and AGA also expressed concerns that the Standards of Conduct 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. 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. | No | General background information |
| 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. 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. 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. | No | General background information |
| 9 | Some commenters expressed concern regarding the potential harm to industry participants or the potential for improper use of material resulting from increased communications. 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. 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. 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 critical to maintain reliability) to the extent it is shared as part of these communications. NYTOs stated that they would not support disclosure of market-sensitive information unless strong measures were in place to prevent and punish market abuses. | No | General background information |
| 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. Moreover, to the extent 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. | No | General background 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. | No | Notes the permissive approach of the proposed regulation and allows flexibility to determine what, when and how non-public operational information is voluntarily shared.No changes needed to existing NAESB standards |
| 12 | To provide context for the proposed regulations discussed below, the Commission first reviews the existing statutory and regulatory requirements applicable to communications between the gas and electric industries. Both the FPA and the comparable provisions of the NGA prohibit undue discrimination or preference. 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. | No | Background information concerning “undue” preference or advantage.  |
| 13 | FPA section 205(b) and NGA section 4(b) do not forbid preferences, advantages and prejudices per se. Rather, FPA section 205(b) and NGA section 4(b) prohibit “undue” preferences, advantages and prejudices. A difference in treatment is not unduly discriminatory when the difference is justified. In interpreting FPA section 205(b) and NGA section 4(b), the courts have held that transmission providers cannot treat similarly situated customers differently 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. 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. 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. 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. | No | Background information concerning “undue” preference or advantage.  |
| 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 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. | No | No changes needed to existing NAESB standards |
| 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. 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. This coordination helps ensure the safe and reliable transmission of electric power across a region. | No | General background information  |
| 16 | Likewise, in Order No. 698, the Commission authorized the exchange of operational information between the industries. 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.” 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 011-1.6, also incorporated in the Commission’s regulations, 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. | No | Background information on NAESB standards  |
| 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. | No  | Background information – other examples |
| 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. Interstate natural gas pipelines and 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. Moreover, we are proposing additional safeguards as discussed below. | No | Background information – describing existing safeguards |
| 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. | No | No changes needed to existing NAESB standards |
| 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. As the Commission has previously stated, the Standards of Conduct apply to communications only within the same organization (in other words, between the affiliated entities of a single corporate family) and therefore, do not limit communications between unaffiliated pipelines and electric transmission providers. | No | No changes needed to existing NAESB standards |
| 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. | No | No changes needed to existing NAESB standards |
| 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. Proposed 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. | No | Summary of the NOPRNo changes needed to existing NAESB standards |
| 23 | Proposed sections 38.3(a) [38.2(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 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.
 | No | No changes needed to existing NAESB standards |
| 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. | No | No changes needed to existing NAESB standardsCommission seeking specific comments which may impact NAESB standards depending on Commission determination |
| 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. If so, the Commission seeks comment on how such a requirement could be implemented. | No | No changes needed to existing NAESB standardsCommission seeking specific comments which may impact NAESB standards depending on Commission determination |
| 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) [38.2(b)?] and 284.12(b)(4)(ii) 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. Sections 38.3(b) [38.2(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. Proposed sections 38.3(b) [38.2(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. | No | No changes needed to existing NAESB standards |
| 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. | No | No changes needed to existing NAESB standards  |

1. The NOPR can be accessed at <http://www.naesb.org/pdf4/ferc071813_nopr_geh.pdf>. The table does not include footnotes, Information Collection Statement, Environmental Analysis, Regulatory Flexibility Act Certification, Comment Procedures, and Document Availability sections. [↑](#footnote-ref-1)
2. This column denotes an indicator of whether NAESB action is required. [↑](#footnote-ref-2)