

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

Coordination between Natural Gas and Electricity Markets	) ) )	Docket No. AD12-12-000
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**COMMENTS OF THE  
AMERICAN PUBLIC GAS ASSOCIATION**

Pursuant to the Notice of Request for Comments (“Notice”) issued by the Federal Energy Regulatory Commission (“Commission” or “FERC”) in the above-captioned proceeding on December 7, 2012, the American Public Gas Association (“APGA”) hereby submits its response to certain of the questions posed by the Notice. As a general matter, APGA supports the Commission’s recognition of the significant gas-electric coordination issues that need to be addressed and emphasizes the need to address these issues in a manner that ensures continued reliable and affordable natural gas service to residential, commercial, and industrial consumers of local distribution companies, while at the same time accommodating, to the extent possible in that context, the recent and anticipated growth in the use of natural gas for electric generation.

APGA is the national, non-profit association of publicly-owned natural gas distribution systems, with some 700 members in 36 states. Overall, there are some 950 publicly-owned systems in the United States. Publicly-owned gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities, not a few of which also own and operate electric systems.

## COMMENTS

In APGA's view, the key question asked by the Commission in the Notice is the third one, as follows:

Should natural gas pipeline and electric utility system operators be allowed to exchange information that is not publicly posted? If so, what kinds of information should be permitted to be shared and under what circumstances? If information is shared, is there a need for enhanced protections against the improper use of the material communicated and what protections would be appropriate? Is the answer the same if a natural gas pipeline or its affiliate sells or buys wholesale electric power? If there are concerns that the increased communications might cause potential harm to industry participants, please explain those concerns. Please consider examples of information sharing that include both verbal and digital information.

This question is very broadly worded such that it is not clear whether the "information that is not publicly posted" is information that is not made available because it is non-public information the disclosure of which would violate the Commission's Standards of Conduct or, while not within the ambit of the Standards of Conduct, it is not made available to the public for other reasons such as competitive sensitivity. APGA will address it both ways.<sup>1</sup>

If the information is non-public transmission information within the Standards of Conduct, then APGA is hard-pressed to imagine what circumstances, other than a dire emergency, would warrant disclosure. Transportation information is usually non-public for a reason, which is the potential such information provides for gaming, market manipulation, and other like violations of the Natural Gas and Federal Power Acts. The potential for bad actors to reap huge gains seems especially significant in the various Regional Transmission Organizations ("RTOs") and Independent System Operator ("ISO") regions because of, among other factors, the rippling effects of rigged market-clearing prices, i.e., market-clearing prices established in

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<sup>1</sup> APGA counsel conferred with an FERC contact person about this language and was advised that the terminology was purposefully broad and should be deemed to encompass both scenarios.

the context of the inappropriate disclosure of competitive information that affects market outcomes.

It does not take an active imagination to develop scenarios in which inappropriate information sharing could cause vast amounts of money to change hands inappropriately. If, for example, in the case of gas-fired generators that rely on non-firm pipeline transportation, third parties (be it the generators themselves or pipeline marketing affiliates or employees of RTOs/ISOs or others active in the market) know in advance whether non-firm transportation will or will not be available during a given period, thereby affecting next-day schedules of generators and resulting market-clearing prices, the potential for abuse is huge. The Commission has adopted strict Standards of Conduct to minimize the likelihood of such abuses,<sup>2</sup> and it has been given enforcement authority by Congress to punish bad actors that do not abide by or that circumvent those Standards of Conduct.<sup>3</sup>

In adopting the Final Rule on Standards of Conduct for Transmission Providers, the Commission observed that one of the main purposes of the restated rules was “to refocus the rules on the areas where there is the greatest potential for abuse.”<sup>4</sup> The Commission also noted that “[t]here are potentially an infinite number of ways undue preferences might arise, and the

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<sup>2</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, 33 FR 63796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008)(“Order No. 717”); *order on reh’g*, Order No. 717-A, 74 FR 54463 (Oct. 22, 2009), FERC Stats. & Regs. ¶ 31,297 (2009)(“Order No. 717-A”); *order on reh’g*, Order No. 717-B, 74 FR 60153 (Nov. 20, 2009), 129 FERC ¶ 61,123 (Nov. 16, 2009)(“Order No. 717-B”); *order on reh’g*, Order No. 717-C, 75 Fed. Reg. 20,909 (Apr. 22, 2010), 131 FERC ¶ 61,045 (April 16, 2010)(“Order No. 717-C”); *order on reh’g*, Order No. 717-D, 135 FERC ¶ 61,017 (April 8, 2011)(“Order No. 717-D”). “[A] transmission provider must treat all transmission customers, affiliated and non-affiliated, on a not unduly discriminatory basis, and must not make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage with respect to any transportation of natural gas or transmission of electric energy in interstate commerce or with respect to the wholesale sale of natural gas or of electric energy in interstate commerce.” 18 C.F.R. § 358.2(a) (2011).

<sup>3</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005); 15 U.S.C. § 717t-1; 16 U.S.C. § 825o; *see* 18 C.F.R. §§ 1c.1 & 1c.2.

<sup>4</sup> Order No. 717 at P 1.

Standards are not intended to be exhaustive.”<sup>5</sup> Thus, the Commission must be ever-vigilant in ensuring that non-public information is not shared as between transmission-function employees and marketing-function employees except in limited circumstances where there is both a demonstrated need to know and adequate protection against the sort of undue discrimination that the Order No. 717 series was issued to prevent. After-the-fact punishment of undue discrimination offenses, while necessary as an indirect prophylactic, is not a substitute for preventive action.

In the situation where the information that is not publicly posted is not precluded from being shared by the Standards of Conduct but is competitively sensitive, the key question seems to be whether the benefits to be gained by sharing such information outweigh the potential risks of misuse of such information by third parties. Because this type of information can affect, for example, which generators are running or not running and hence, among other things, market-clearing prices, APGA believes the Commission must be convinced that the circumstances are such that information sharing is required in the public interest (for example, absent such sharing, there is a real and present danger to grid reliability) and that proper protections against the improper exposure of competitively sensitive information are in place before sanctioning such information exchanges. APGA is not arguing that there are no such circumstances – only that they must be viewed carefully and skeptically by the Commission because the downside potential is significant. Stated another way, APGA suggests that the proponents of disclosure of sensitive data must be required to make a compelling case for disclosure so that the Commission and interested parties can assess the pros and cons of permitting disclosure of such data, weighed against the competitive harm that may occur. In making their case for disclosure, the proponents

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<sup>5</sup> *Id.* at P 294.

should provide actual examples of how the absence of disclosure in the past has adversely affected reliability or resulted in unnecessary rents being paid by consumers or otherwise harmed the public in some fashion.

Another problem that requires attention is that while the release by, for example, a pipeline of not publicly posted information to a utility system operator may not have adverse competitive ramifications for the pipeline, and thus it has no qualms about releasing this information, it may have adverse competitive ramifications for others in the market place that stand to make/lose money depending upon what generators are/are not dispatched on a given day or even during given hours of a day. Thus, if non-posted information is going to be shared with some but not all market participants, there must be clear guidelines so that the releasing entity is sensitized to the potential competitive harm that such information can cause. In addition, there need to be clear rules for informing relevant entities, such as market monitors, when non-public information is shared so that they can be vigilant as to unusual market activity during the relevant time periods.

In reviewing questions 1 and 2 in the Notice, as well as certain sub-questions under item 3, APGA concludes that those entities that believe that better, more enhanced communications are necessary for effective gas-electric coordination need to make their case, i.e., be very specific as to, among other things, what types of data need to be shared that are not shared today, how such data exchanges will benefit the market, how the absence of such data exchanges in the past has harmed the market, and how the proponents of enhanced data exchanges would guard against the abusive use in the marketplace of such information. APGA does not challenge that greater data exchanges *may* be beneficial in some instances; however, there should be a heavy burden on those arguing for greater data exchanges involving non-public information to demonstrate both

the need for such data and the measures that would be taken to ensure that such data exchanges do not cause competitive harm and/or open the door to windfall profits.

A good illustration of the tensions involved in determining whether to sanction limited disclosure of competitively-sensitive information is found in the ongoing proceeding in *ISO New England Inc.*, Docket No. ER13-356-000, 141 FERC ¶ 61,196 (2012), *reh'g pending*. APGA is not a party to this proceeding and takes no position on the merits of the case; APGA relies exclusively on the pleadings in that proceeding as the basis for the facts recited below.<sup>6</sup>

ISO New England (“ISO-NE”) seeks to amend its information exchange protocol to permit it to share with the operating personnel of the five natural gas pipelines in the New England area confidential information concerning the forecasted schedules and actual operation of natural gas-fired generation resources. Until now, only aggregated data has been shared. ISO-NE maintains that more granular sharing of such operational data is required because of “significant reliability concerns regarding generator performance,”<sup>7</sup> which have been precipitated by, among other things, (i) much greater reliance on natural gas-fired generation in New England (rising from 15% in 2000 to 51% in 2011), and (ii) the fact that the “vast majority” of the gas-fired generation today relies on interruptible gas transportation. (ISO-NE Nov. 13, 2012 Transmittal Letter at 1-2.) The primary goal of the enhanced information sharing is that the affected pipelines, informed by where gas will likely be needed, will be able to better inform

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<sup>6</sup> The Commission invited comments on this proceeding (Notice at 3).

<sup>7</sup> For example, “[i]n some instances natural-gas fueled generators have not provided energy when dispatched for reasons associated with the claimed inability to procure natural gas or transportation services (or the required amount of natural gas) or because gas was viewed as too expensive in real time.” Testimony of John Norden at 3 (appended to the ISO-NE Transmittal Letter).

ISO-NE as to anticipated gas transportation availability at the plants in question, which will affect ISO-NE's ability to maintain reliable operations.<sup>8</sup>

The problem, of course, is that such information sharing opens the door to the potential misuse of competitively sensitive data and likewise lawsuits regarding same. This issue has surfaced in the *ISO New England* case in the context of the proposed non-disclosure agreements (NDAs). The pipelines do not want to be exposed to third-party lawsuits by the generators should some of the confidential data be leaked, and the generators do not want to forego their rights as putative third party beneficiaries of the NDAs to sue the pipelines should the generators be harmed by such leaks. And, putting aside the liability exposure concerns of the pipelines and generators, there is the broader public interest concern about market manipulation resulting from the sharing of information that would otherwise be kept confidential.

This case not only illustrates the troubling issues that arise with enhanced information sharing in the pursuit of greater reliability, but also raises questions about whether this situation is avoidable. Since greater reliance on natural gas to fuel generation seems to be a given, at least for the near-term future, the variable in the equation seems to be the generators' reliance in New England on interruptible pipeline transportation.<sup>9</sup> It is well understood in the industry that pipeline companies will not build new pipeline without firm customers to underwrite it, and thus the infrastructure problem in New England seems to be largely a function of generators' desire to minimize costs (and to remain as competitive as possible) - understandable goals in a functioning

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<sup>8</sup> "The substantive aspects of the information policy change would allow ISO-NE and pipeline operators to communicate on the potential feasibility of delivering natural gas at the unit level and not just on an aggregate basis....By communicating information at the unit level, the ISO is more likely to become aware of individual unit availability issues that could involve the contingency dispatch of both online and offline resources." *Id.* at 7.

<sup>9</sup> As the regional conferences on gas-electric coordination held by the Commission demonstrated, the problems experienced by one region are not necessarily endemic to other regions. For example, in contrast to New England, it appears that utilities in the Southeast rely to a great extent on firm pipeline transportation to deliver natural gas to gas-fired generators; thus, the type of reliability issues noted by ISO-NE is not prevalent in the Southeast. The moral, of course, is that one-size-fits-all solutions in this area are likely to be inappropriate.

marketplace. But since information sharing is not a long-term solution to the reliability issues being experienced by ISO-NE, only a possible stopgap measure (assuming the gaming and liability issues can be worked out), the Commission must look elsewhere for long-term answers. There are, of course, all sorts of pricing mechanisms within an RTO that might be considered in order to address the need for adequate infrastructure, such as, for example, socializing firm transportation costs within an RTO region.

APGA does not view these comments as the vehicle for suggesting long-term solutions to the sort of reliability problems being experienced by ISO-NE. Rather, APGA believes it is important for the Commission to realize that the sort of information-sharing issues raised in *ISO New England* are reflective of a larger reliability problem whose root causes are unrelated to information-sharing and the answers to which need to be addressed separately and thoughtfully. Information sharing may under the proper circumstances be a helpful band-aid; it is not a long-term answer.

Respectfully Submitted,

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