

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

Collection of Connected Entity Data from)
Regional Transmission Organizations)
and Independent System Operators) Docket No. RM15-23-000

**COMMENTS OF THE
AMERICAN GAS ASSOCIATION**

Pursuant to the “Notice of Proposed Rulemaking” issued in the above-referenced proceeding,¹ and the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. Part 385, the American Gas Association (“AGA”) respectfully submits these comments regarding the Commission’s proposal, made pursuant to sections 222, 301(b), 307(a) and 309 of the Federal Power Act (“FPA”), to amend the Commission’s regulations to require each regional transmission organization (“RTO”) and independent system operator (“ISO”) to collect and deliver to the Commission certain “Connected Entity” data in order to enhance the Commission’s efforts to detect and deter market manipulation.

I. SUMMARY

AGA supports the Commission’s goal of increasing transparency and enhancing its ability to obtain information that is meaningful and necessary to monitor, detect and deter possible market manipulation. However, AGA urges the Commission to be clear regarding the scope and reach of any amended regulations to natural gas market participants, particularly

¹ Notice of Proposed Rulemaking, *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, Docket No. RM15-23-000, 80 Fed. Reg. 58382 (Sept. 29, 2015) (“Connected Entity NOPR” or “NOPR”).

natural gas local distribution companies (“LDCs”), in issuing any final rule, or supplemental or revised NOPR, in this proceeding.

While this NOPR proposes to amend regulations applicable to the tariffs and operations of Commission-approved RTO/ISO market participants and is issued under the authority of the FPA, AGA submits that there has been some uncertainty and that questions have been raised regarding the scope and the application of the proposed amended regulations to natural gas market participants. AGA believes, based on informal discussions with Commission Staff, information provided in the opening remarks during the December 8, 2015 Technical Conference (“Technical Conference”),² and the Commission Staff Responses to certain questions submitted for discussion during the Technical Conference,³ that members of the wholesale natural gas market, who are not participants in the RTO/ISO markets, have no obligations under the NOPR, and that LDCs likely would not need to be identified by RTO/ISO market participants as “Connected Entities.”

Concerns have been expressed by many, including AGA,⁴ that the NOPR is unclear in the scope of its application, its definitions, and its requirements. AGA appreciates that, in response, Commission Staff has been very willing to answer questions and also convened the Technical

² See *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, Order Granting Motion for Technical Conference and Request to Postpone Comment Deadline, Docket No. RM15-23-000, 80 Fed. Reg. 71755 (November 17, 2015) (“Technical Conference Order”).

³ See, Commission Staff Presentation (“Staff Presentation”) and Staff Responses to Connected Entity Definitions (“FERC Staff Responses”) (December 8, 2015), *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, Docket No. RM15-23-000. Available at http://www.ferc.gov/CalendarFiles/20151210082835-Staff%20Presentation_final.pdf and <http://www.ferc.gov/CalendarFiles/20151210082928-Staff%20Responses%20to%20Connected%20Entity%20Definition%20Questions.pdf>, respectively.

⁴ See *Comments of the AGA in Support of Motion for Technical Conference and Request to Postpone Comment Deadline*, Docket No. RM15-23-000, filed October 30, 2015.

Conference to provide further clarifications, answer submitted questions, and allow for and request further input and discussion. Given that some of the subsequent clarifying information that has been provided is not included in the NOPR itself and currently exists as non-binding staff guidance in this docket, AGA urges the Commission to ensure that any final rule, or supplemental or revised NOPR, specifically clarifies the scope of the reporting requirements, the proposed definition of “Connected Entity,” and other relevant definitions. It should also make clear that the associated filing requirements do not apply to members of the wholesale natural gas market who are not participants in the RTO/ISO markets, and that such entities have no reporting obligations. Any final rule or supplemental or revised NOPR should also be sufficiently detailed such that entities, including natural gas market participants, such as LDCs, can determine which of their transactions with RTO/ISO market participants, if any, would need to be reported. Additionally, as requested during the Technical Conference, AGA offers certain proposed modifications to the NOPR’s proposed regulatory text which AGA believes would provide additional clarity regarding the scope of the application of the regulations.

II. COMMUNICATIONS

All pleadings, correspondence and other communications filed in this proceeding should be served on the following:

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III. IDENTITY AND INTERESTS

The AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 71 million residential, commercial and industrial natural gas customers in the U.S., of which 94 percent — more than 68 million customers — receive their gas from AGA members. AGA is an advocate for local natural gas utility companies and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international gas companies and industry associates.⁵

Many of AGA's members do business with electric RTO/ISO market participants, by providing natural gas commodity supplies, natural gas distribution service, or other gas services to gas-fired electric generating facilities, and/or may be part of larger utility entities that provide electric power and transmission services in the footprint of RTOs and ISOs. AGA has been involved in this docket since the issuance of the NOPR in terms of raising questions informally with Commission Staff regarding the scope of the proposed rule, conferencing with Commission Staff to ask follow up questions, supporting and participating in the Technical Conference to provide additional clarity and discuss concerns regarding the NOPR, and submitting questions to be addressed during the Technical Conference. Accordingly, AGA's members have an interest in the issues raised in this proceeding.

IV. BACKGROUND

In the NOPR, the Commission stated that monitoring and surveillance activities are cited in its Strategic Plan as a key function in meeting the objective of detecting and deterring market manipulation.⁶ In recent years, the Commission has enhanced its capabilities by developing

⁵ For more information, please visit www.aga.org.

⁶ See Connected Entity NOPR at P. 2.

automated screens of market activities and setting up analytical procedures to detect potential market manipulation.⁷ The Commission stated that understanding the ownership, employment, debt, and contractual relationships of market participants would provide context for such data, and help determine whether there appears to be a legitimate business rationale for seemingly anomalous trading patterns, or whether there may be market manipulation, fraud, or abuse.⁸ However, the Commission explained that existing affiliate disclosure requirements do not appropriately enable the Commission to identify and monitor these business relationships.⁹

To assist the Commission in its screening and investigative efforts, the Connected Entity NOPR proposes to amend the Commission's electric regulations applicable to tariffs and operations of Commission-approved RTOs/ISOs at part 35¹⁰ to require each RTO and ISO to electronically deliver to the Commission, on an ongoing basis, data required from its market participants that would, among other things, include a list of "Connected Entities," a newly proposed term, which includes entities that have a common ownership, employment, debt, or contractual relationship to the market participants. The Commission stated that the uniform identification of market participants, together with the listing of entities that comprise a network of common interest, would enhance the Commission's efforts to detect and deter market manipulation.¹¹

V. COMMENTS

AGA generally acknowledges and supports the Commission's need for transparency and the overall goal of monitoring, detecting and deterring possible market manipulation in the

⁷ *Id.* at P. 2.

⁸ *Id.* at P. 2.

⁹ *Id.* at P. 2.

¹⁰ *See* 18 CFR Part 35.

¹¹ *See* Connected Entity NOPR at P. 1.

wholesale markets. Further, AGA appreciates Commission Staff's willingness to have informal discussions to discuss and address AGA member concerns regarding the intended scope and potential impact of the Connected Entity NOPR's proposed requirements on AGA members. In this regard, AGA believes the Technical Conference provided some important clarifications on the scope and application of the NOPR, as well as with respect to certain terms used within the NOPR.¹² AGA submits that it is important to include these clarifications in any final rule, or any supplemental or revised NOPR,¹³ issued in this proceeding.

Scope of Connected Entity NOPR

While the Connected Entity NOPR was issued under the authority of the FPA and proposes amendments to the Commission's RTO/ISO regulations, the definition of "Connected Entity," as proposed in the NOPR, is so broadly worded that, as a result, it raised concerns regarding whether the proposed regulations would apply to wholesale natural gas market transactions regarding the provision of natural gas services to natural gas-fired generation in an RTO/ISO market, and whether certain natural gas LDC transactions with a natural gas-fired generator in an RTO/ISO market could result in an LDC being reported to the Commission as a "Connected Entity."

The opening remarks at the Technical Conference addressed some high level concerns based on questions the Commission received prior to the conference. Among these, clarification was provided that the NOPR only applies to participants in the RTO/ISO markets as defined in the tariffs of those respective organizations, and that no party besides those participants has a

¹² See FERC Staff Responses.

¹³ See *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, Order Denying Motion to Withdraw the Proposed Rule and Issue a New/Revised/Supplemental Notice of Proposed Rulemaking, Docket No. RM15-23-000, 154 FERC ¶ 61,016 at P. 6 (January 13, 2016).

requirement to submit “Connected Entity” information to an RTO/ISO. Importantly, it was clarified that members of the wholesale natural gas market, who are not members of an RTO/ISO, have no obligations under the proposed rule.¹⁴ To address the uncertainty that gave rise to these clarifications and to address any future uncertainty, AGA urges the Commission to include these important high level clarifications in any final rule, or supplemental or revised NOPR, that is issued in this proceeding.

Proposed Definition of a “Connected Entity”

Subpart (iv) (also referred to as “Definition D”) in the proposed definition of a “Connected Entity” includes entities that are related to a reporting entity by contractual relationships, as follows: “entities that have entered into an agreement with the [RTO/ISO] market participant that relates to the management of resources that participate in Commission-jurisdictional markets, or otherwise relates to operational or financial control of such resources, such as a tolling agreement, an energy management agreement, an asset management agreement, a fuel management agreement, an operating management agreement, an energy marketing agreement, or the like.”¹⁵

Definition D raised some concerns for AGA members due to the uncertainty surrounding the scope and application of this subpart in particular. Thus, in advance of the Technical Conference, AGA submitted several questions regarding Definition D which it proposed to be addressed. During the Technical Conference, Commission Staff clarified that the phrase “participate in Commission-jurisdictional markets” does not include gas resources that

¹⁴ AGA believes that the Commission meant to include in this clarification that members of the wholesale natural gas market, who are not “participants in RTO/ISO markets” have no obligation under the proposed rule.

¹⁵ Connected Entity NOPR at P. 23. AGA is uncertain as to the meaning and scope of the term “fuel management”.

participate in Commission-jurisdictional gas markets.¹⁶ Further, in response to the question regarding whether Definition D includes contracts covering control over natural gas resources or natural gas supplies that participate in Commission-jurisdictional gas markets, including an LDC that has a marketing affiliate that either provides gas supplies or is an energy manager for an RTO/ISO market participant, Commission Staff stated that such activities are not included, and that, in the example given, as understood by AGA, merely supplying gas supplies to a generator would not constitute management of a resource nor confer operational or financial control over electric resources. Commission Staff also clarified that if an RTO/ISO market participant has a natural gas transportation contract with a pipeline, such a contract, without more, would not confer control over electric resources. FERC Staff noted that under the Definition D, in order to create a connected entity relationship, the agreement must also include operational control of the electric resource that participates in the RTO/ISO markets.¹⁷

AGA appreciates and supports the above-referenced clarifications provided by Commission Staff during the Technical Conference. Given the importance of these clarifications in addressing some uncertainty surrounding the scope of the proposed rule and to provide additional clarity, AGA urges the Commission to include these clarifications in any final rule issued in this proceeding. Specifically, AGA suggests that the Commission consider clarifying in Definition D that, “no entity shall be considered to have operational or financial control over an electric supply resource nor to be managing such a resource solely because of its role in supplying natural gas distribution, transportation or gas commodity service to the resource.”

¹⁶ *See*, FERC Staff Responses at p. 5 regarding Definition D, but also note here, AGA is uncertain as to the meaning and scope of the term “gas resources” referenced in the Staff Response.

¹⁷ *Id.*

This clarification would provide entities further clarity as to who may be considered a “Connected Entity,” and would particularly address uncertainty for entities, including AGA members, that provide natural gas commodity, distribution and/or other state-regulated services, and who may enter into contracts with RTO/ISO market participants regarding such transactions.

Additionally, Commission Staff clarified at the Technical Conference that for LDCs and gas suppliers that have the ability by tariff or contract to curtail gas service to a generator for operational reasons, such as to protect the pipeline, this would not cause the contract to fall within the definition of a “Connected Entity.”¹⁸ However, Commission Staff continued that if service could be curtailed for economic reasons, then the contract confers an element of financial control over the generator, and would be included in the definition.¹⁹ On this point, AGA believes that the clarification should be revised with respect to an LDC and that such a circumstance should not place an LDC within the definition of a “Connected Entity.”

An LDC must provide natural gas commodity, distribution service, or LDC system transportation service of customer-owned gas, according to the statutes, rules, regulations and policies applicable in the state in which the LDC operates, including the provisions in the LDC’s state utility commission-approved tariff and regulated terms of service. In situations when an LDC must limit service, it must operate under the applicable state commission-regulated rules and priorities. As described in its terms of service, an LDC providing transportation of customer-owned gas may have the ability, or may be required, to curtail or allocate service during specified periods due to operational reasons to maintain service to higher priority customers. The LDC’s terms of service will set forth the service priority based on the level of

¹⁸ *Id.*

¹⁹ *Id.*

service, such as firm or interruptible, but it may also prescribe further granularity in the priority scheme by specifying economic or other considerations that would be used if necessary to curtail or allocate service.²⁰

Even in cases where economic considerations are not explicitly used to allocate or curtail service, AGA is concerned that the broad language of the proposed rule could be interpreted to mean that LDC gas service and/or gas transportation service agreements are subject to reporting under the NOPR simply because interruptible customers pay a lower rate for service. This would provide little benefit to the Commission, because although the specifics of service priority and curtailment procedures vary from LDC to LDC, all have a common purpose of enabling the LDC to maintain the integrity of its system and ensuring that it can make deliveries to its customers. The curtailment provisions do not confer operational or financial control by the LDC over an entity.

AGA believes that LDC terms of service, which may contain state PUC-approved language specifying economic considerations, directly or indirectly, in detailed curtailment or service allocation provisions, should not create a “Connected Entity” relationship that creates an obligation for an RTO/ISO market participant to report such relationship in the context of these proposed rules. Including such agreements within the definition of “Connected Entity” does not further the underlying objectives of the NOPR for many reasons, because such utility service agreements are neither hidden nor unusual relationships, nor do they involve hidden incentives in the wholesale electric market that the proposed rule seeks to address and monitor. Rather, they

²⁰ The practices of allocating service based on the rate paid is common among interstate pipelines. *See, e.g.*, Tennessee Gas Pipeline, L.L.C. Tariff, General Terms and Conditions Section IV – Scheduling of Receipts and Deliveries; and Northwest Pipeline LLC Tariff, General Terms and Conditions Section 12.1(c), Third Revised Sheet No. 220 – Scheduling Priorities And Curtailment Policy.

are necessary relationships with the routine service allocation and curtailment provisions necessary to maintain reliable gas service for all LDC customers. For these reasons, and again to provide clarity to AGA members in the provision of their regulated gas utility services, AGA urges that any final rule in this proceeding specifically exclude the need for an RTO/ISO market participant to report natural gas services it purchases from LDCs. The language that AGA has suggested above would also address this issue.

I. CONCLUSION

Wherefore, for the reasons provided above, the American Gas Association respectfully requests that the Commission consider the above comments and requested clarifications, and include the proposed edits to the regulatory text language, as part of any final rule issued in this proceeding.

Respectfully submitted,

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