BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Transparency Provisions of Section 23 of the Natural Gas Act	**Docket No. RM07-10-000**
Transparency Provisions of the Energy Policy Act of 2005	**Docket No. AD06-11-000**

COMMENTS OF THE NATIONAL ENERGY MARKETERS ASSOCIATION

The National Energy Marketers Association (NEM)[1] hereby submits comments on the Commission's proposed reporting requirements pursuant to the April 19, 2007, Notice of Proposed Rulemaking and the May 30, 2007, Notice of Extension of Time issued in the above-referenced proceedings. The Commission proposes revisions to its regulations intended to facilitate market transparency in natural gas markets. The proposed revisions would: (a) require daily posting of some natural gas flow information by intrastate pipelines; and (b) require annual filings by buyers and sellers of natural gas in U.S. wholesale markets (that transact more than de minimis volumes) of aggregate annual purchase and sale information. (NOPR ¶ 1). The latter proposal is meant to, "permit the annual estimate of (a) the size of the physical domestic natural gas market, (b) the use of index pricing in that market, (c) the size of the fixed price trading market that produces

[1] NEM is a national, non-profit trade association representing wholesale and retail marketers of natural gas, electricity, as well as energy and financial related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, advanced metering, demand and load management firms, billing, back office, customer service and related information technology providers. NEM members are global leaders in the development of enterprise solution software for energy, advanced metering, information services, finance, risk management and the trading of commodities and financial instruments. NEM members also include inventors, patent holders, systems integrators, and developers of advanced power line surveillance and grid reliability technology with advanced uses in Power Line Communications (PLC) technologies as well as new and innovative electrical applications known as Smart Electricity.™

price indices from the subset reported to index publishers, and (d) the relative size of major traders." (NOPR ¶ 3). NEM's comments are focused on the proposed annual purchase and sale reporting requirements.

NEM submits these comments to recommend that the Commission utilize a voluntary reporting regime with a safe harbor for good faith reporting, and that retail transaction data be explicitly exempted from reporting. As more fully explained herein, NEM offers the following recommendations/requests for clarification:

1) The promotion of natural gas market transparency can be achieved with a voluntary price reporting regime;

2) The Commission should clarify that suppliers' retail transaction data is not intended to fall within the scope of the proposed reporting requirements and is exempt;

3) Reporting requirements should be narrowly tailored so as to minimize marketer record-keeping and compliance costs and risks; and

4) Clarification and/or modification of elements of the proposed reporting form is necessary to maximize the usefulness and relevancy of data collected and to minimize associated reporting burdens.

I. The Commission Can Promote Natural Gas Market Transparency With a Voluntary Price Reporting Regime

This Commission has already taken significant steps to increase transparency in natural gas markets. The issuance of the Policy Statement on Natural Gas and Electric Price Indices, in establishing a safe harbor for good faith reporting of transactions data to price index providers, accomplished the twin goals of encouraging voluntary price reporting and also instilling confidence in the "accuracy, reliability and transparency" of price indices.[2] NEM strongly supported the Commission's safe harbor solution at its inception,

[2] Docket PL03-3-000, Policy Statement on Natural Gas and Electric Price Indices, July 24, 2003.

and NEM continues to believe that a voluntary reporting regime with an accompanying reporting safe harbor is the appropriate means to support market transparency. By incenting voluntary reporting and data collection, the need for reliable data can be accomplished with a minimum of governmental intervention and potentially high cost regulatory mandates. Additionally, voluntary reporting lowers the private cost, time and resources spent on compliance while also assisting public agencies in their role of aggressive oversight, monitoring and fraud detection.

As noted in the NOPR, Congress in the Energy Policy Act left to the Commission's discretion whether or not implement rules on natural gas price transparency. There is no Congressional mandate that the proposed reporting requirement be imposed. Moreover, Congress directed that FERC, "shall rely on existing price publishers and providers of trade processing services to the maximum extent possible," rather than impose a separate, additional FERC reporting regime.

By the Commission's own assessment, voluntary reporting works. Staff monitoring of price formation in wholesale markets, as required by the Price Indices Policy Statement, yielded the Commission conclusion that, "[t]hese efforts resulted in significant progress in the amount and quality of both price reporting and the information provided to market participants by price indices." (NOPR ¶ 7). These findings support a voluntary reporting regime with a safe harbor for good faith reporting, not a costly reporting mandate.

II. NEM Requests Commission Clarification that Retail Transaction Data Was Not Intended to Fall Within the Scope of the Reporting Requirements and Is Exempt

By the terms of the Commission's proposal, buyers and sellers of more than a de minimis volume of natural gas would be required to report, on an annual basis, about aggregate numbers and volumes of relevant transactions. EPAct gave the Commission authority to obtain pricing information from "any market participant,"[3] although Congress left the term undefined. The Commission in this rulemaking interprets this language broadly to include "any buyer or seller than engaged in physical natural gas transactions for the previous calendar year" (NOPR Note 81) such that the proposed reporting requirement would apply, "to companies both traditionally jurisdictional to the Commission and others." (NOPR ¶ 44).

The Commission stated that its authority to obtain information from "any market participant" is limited by: 1) the scope of the markets at issue; and 2) the type of information to obtain and disseminate. (NOPR ¶ 15). With respect to the first point, EPAct directed FERC to "facilitate price transparency in markets for the sale of transportation of physical natural gas in interstate commerce."[4] In this rulemaking, FERC interprets the language to mean that information collected must "pertain" to price transparency in wholesale markets, but is not limited to information about physical natural gas sales or transportation in wholesale markets. (NOPR ¶ 15). On the second point, EPAct directs that any rules, "provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and in

[3] Section 23(a)(3) of the Natural Gas Act.
[4] Section 23(a)(1) of the Natural Gas Act.

interstate commerce."[5] Similarly, FERC interprets this to mean information that "pertains" to the "availability and prices of natural gas sold at wholesale and in interstate commerce" (NOPR ¶ 15). And, FERC states that, "some transportation or sales of natural gas is not in interstate commerce, but, nonetheless, would affect the availability and prices of natural gas at wholesale and in interstate commerce." (NOPR ¶ 15). NEM submits that this is a broad reading and requests FERC clarification that retail transaction data is not intended to fall within the reach of the proposed reporting requirement and is explicitly exempted.

The retail transactions of a supplier with end users should not be intended to be included in the reporting requirement. Requiring suppliers to submit retail transaction data would not advance the purpose of this Commission or Congress to assess and capture information about the size of the wholesale market, and indeed, could lead to duplicative reporting that would be contrary to this purpose. The reporting requirements designed for wholesale transactions are simply not compatible for use by suppliers to submit retail transaction data. Moreover, retail suppliers are already submitting information about sales under various state choice programs pursuant to EIA Form 910. In addition, given the approximate four million customers that nationally take service as retail residential customers from an alternative supplier through various choice programs, the number of transactions that would have to be reported each month if retail transaction are included would be significant, with very small consumption numbers. NEM recommends that a voluntary reporting regime with a safe harbor for good faith reporting be adopted, and that retail transaction data be explicitly exempted from reporting.

[5] Section 23(a)(2) of the Natural Gas Act.

There are a number of compelling reasons for the Commission to clarify that retail transaction data pertaining to suppliers serving retail end users is not intended to be subject to the proposed reporting requirement. Inclusion of this information in the reporting requirement could result in duplicative data thereby distorting the quality of the information. Obviously, data reporting that would negatively impact the reliability and accuracy of overall results should not be considered. The reporting burden on suppliers would be extreme in light of the large number of retail transactions (e.g., residential natural gas deliveries to hundreds of thousands of customer accounts) at extremely low volumes. In addition, under current competitive conditions, many of the costs of this rulemaking may be passed through to retail consumers in the form of higher energy prices. Moreover, investments, productivity, competition and innovation in the retail natural gas industry would be negatively impacted. Lastly, resources that would have been directed into developing new products and services to enhance retail competition would have to be diverted into reporting and record-keeping burdens.

NEM notes that the Commission proposes to exempt "de minimis market participants" from the reporting requirement. Such entities are proposed to be defined as, "a market participant that engages in physical natural gas transactions that amount by volume to less than 2,200,000 MMBtus annually," which the Commission estimates would be the trade equivalent of less than one standard NYMEX futures contract per day. (NOPR ¶ 52). NEM urges the Commission to consider defining the exemption such that retail transactions are excluded from reporting. Additionally, NEM urges the Commission to consider raising the de minimis exemption threshold. In some states local production is part of the total supply framework, but in most instances is a de minimis component in the overall state supply picture, and is even less noteworthy on the national scale. NEM would therefore also suggest that local production utilized within state boundaries be excluded from reporting requirements. NEM submits that the threshold is so low as to exempt very few market participants and as such is of limited usefulness now and will be of even more limited value assuming physical volumes consumed will increase with time. The threshold should be raised to be more reflective of market condition realities and the substantial burden that a reporting mandate would impose on the nascent retail gas industry, and local in-state production used intrastate should be excluded as well.

III. The Record-keeping and Compliance Responsibilities of the Proposed Mandatory Reporting Requirement Are Substantial

Notwithstanding NEM's request for clarification in Section II, and consistent with its recommendation that a voluntary reporting regime be utilized, NEM urges the Commission to consider the burden of the reporting requirements on wholesale (and retail) marketers. NEM requests that the reporting requirements be narrowly tailored so as to minimize marketer record-keeping and compliance costs and risks.

At the outset, NEM notes that marketers do not keep data in the format required under the proposed reporting form. NEM submits that the Commission estimate, "that the compliance would require a one-time cost of approximately $4,000 and an annual cost of thereafter of $400," (NOPR ¶ 82), is significantly understated. Inasmuch as data is not currently stored in a format that completes the Proposed Survey, ancillary information technology systems will need to be developed that store such data. The cost of such systems for each reporting entity could be significant and take months to complete for each reporting entity to develop such a system. As a result, marketers should be given at least a year from adoption of the regulations to put the systems in place and to gather relevant data in the format specified. Additionally, even though the Commission is requiring reporting on an annual basis, marketers will have to engage in on-going data collection throughout the year to ensure compliance. The burden of daily record-keeping would also be significant. At least one marketer estimates expending approximately 1.5 hours per day in the winter months of November through February and .5 hours per day for the remaining months in order to track daily volumes in the format proposed by this Commission. This amounts to a total annual expenditure of no less than approximately two hundred hours per year, or the equivalent of around ten percent of one full-time employee to comply with the proposed record-keeping requirements.

The proposed reporting requirement will also impose significant costs and risks associated with compliance. The compliance costs borne by marketers include establishment, design, development, purchase and maintenance of record-keeping and compliance equipment, implementation of compliance procedures and hiring and training new staff, plus the costs and risks associated with compliance failure. The functions necessary for marketers to comply with the proposed reporting requirement include compilation, review and retention of data and reports, data storage, and post-filing review internally and with FERC. After data is captured, analyzed, compiled and reviewed, reports are generated, and storage will have to be allocated to the data to protect against the eventuality of subsequent FERC compliance review.

These record-keeping and compliance costs and risks are substantial and burdensome and should not be mandated if a voluntary reporting regime can accomplish the desired result of natural gas market transparency. And, when marketers are forced to bear costly reporting burdens, they are less able to deliver energy cost savings and innovative product offerings to consumers.

IV. Clarification/Modification of Elements of the Reporting Form is Necessary

As noted throughout these comments, NEM urges the Commission to consider voluntary reporting of the purchase and sale information. In connection with a reporting regime, whether voluntary or mandatory, NEM notes the following issues in the proposed reporting form and requests Commission clarification or modification of the terms as appropriate to maximize the usefulness and relevance of the data collected and to minimize the associated burdens for reporting entities.

A) The Filing Deadline Should Be Modified

The Commission has proposed a February 15th filing deadline for the annual report. NEM notes that suppliers do not generally get pipeline statements on December gas flows until mid-January. As such, a February 15th turnaround time to assimilate required data may not be enough time. NEM urges the Commission to consider modifying the filing date to better reflect the realities of data availability.

B) Form Terminology Should Be Better Defined

NEM submits that some of the terminology used in the proposed form should be better defined to enhance the quality of reporting. For instance, the Commission uses the term "next day transaction" in the proposed form and it is not clear how that is to be interpreted in terms of actual market operations. It may be helpful for terminology clarification to be one of the subjects of the technical conference scheduled in this docket.

C) Good Faith Reporting Should Be Encouraged

As the Commission recognized in its Policy Statement on Price Indices, entities that report information in good faith on a best efforts basis should not risk penalties for inadvertent reporting errors. The rules should permit amended reporting upon discovery of an error. And, a safe harbor for good faith reporting should be explicitly recognized to incent voluntary reporting.

D) The Impact of Border Transactions Should Be Clarified

Some marketing entities that transact business on the U.S. border buy natural gas at international boundary points with Canada or Mexico. It is not clear whether these import purchase transactions are intended to be included in the reporting data. NEM requests clarification of this issue, or specific exemption for such transactions, inasmuch as these volumes are already reported monthly to the Department of Energy, Office of Natural Gas Regulatory Affairs, pursuant to import/export authorizations granted by the Office of Fossil Energy, Department of Energy under Section 3 of the Natural Gas Act.

V. Conclusion

For the foregoing reasons, NEM recommends that the Commission utilize a voluntary reporting regime with a good faith reporting safe harbor, and that retail transaction data be explicitly exempted from reporting. NEM continues to believe this is an appropriate manner to achieve natural gas market transparency without imposing costly reporting mandates on unregulated entities in a nascent industry.

Respectfully submitted,

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