

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

<b>Transparency Provisions of Section 23</b>	)	
<b>Of the Natural Gas Act;</b>	)	<b>Docket Nos. RM07-10-000</b>
<b>Transparency Provisions of the</b>	)	<b>and AD06-11-000</b>
<b>Energy Policy Act</b>	)	

**INITIAL COMMENTS OF  
THE NATURAL GAS SUPPLY ASSOCIATION**

Pursuant to the Notice of Proposed Rulemaking issued in the above-captioned dockets on April 19, 2007 (“NOPR”), the Natural Gas Supply Association (“NGSA”) submits its initial comments regarding the Federal Energy Regulatory Commission’s proposal to revise its regulations to 1) require daily posting of natural gas flow information by intrastate pipelines and 2) require annual filings by buyers and sellers of natural gas.

NGSA represents integrated and independent companies that produce and market natural gas in the United States. NGSA supports regulatory and legislative actions that foster competitive markets and downstream efficiencies while fostering increased natural gas supply.

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## I. Executive Summary

NGSA's members adhere to a number of bedrock principles for natural gas markets. Key among them are: 1) Integrity, 2) Transparency and 3) Efficiency. NGSA's members are major participants in the U.S. natural gas market, entering into thousands of physical market transactions daily and investing billions of dollars in the long-term development of natural gas supply for sale in the U.S. natural gas market. As large producers and marketers of natural gas, our members would not be participating in the physical natural gas market if they did not believe the market exhibits these fundamental principles.

NGSA continues to support constructive, market-driven steps to enhance market transparency and integrity without also harming underlying competition and market efficiency. However, as the physical natural gas market continues to evolve, regulators should continue to assure a stable, predictable regulatory environment that encourages, not hinders, market participation and maintains market efficiency. The natural gas market's response to supply and demand fundamentals has been linked by some to a lack of transparency, even though no amount of increased reporting or government oversight will eliminate the price volatility that results from tightening supply and demand fundamentals.

The Commission's policy statement for good faith price reporting established a framework for the market to improve the integrity of the indices. Recent history has shown that market forces can spur both increases in information regarding these underlying fundamentals, providing price transparency very rapidly. In a transparent

and efficient market, additional regulatory requirements could be counterproductive and risk harming existing market efficiency. Continued ease of participation in the market, coupled with access to more domestic natural gas resources, will allow the U.S. energy market to grow with the U.S. economy.

NGSA understands the Commission's need to respond to Congressional and market participant inquiries regarding the market. To ensure accurate information, a number of clarifications and modifications to the proposed regulations are essential. The following key points are discussed more fully in the body of these comments:

- The proposal to require the posting of intrastate pipeline flow data, subject to certain clarifications and modifications, supplies additional market fundamental information.
- The Commission may wish to consider a requirement for the public posting of existing interstate pipeline flow volumes at major points.
- Any additional regulatory reporting requirements can become a barrier to entry and discourage participation in the market.
- NGSA concurs with the Commission's conclusions regarding the negative impact that can stem from a price reporting mandate or the detailed reporting of proprietary transactional data.
- The definition of market participant should conform with the limitation on FERC's authority under NGA Section 23(a)(2).
- Safe harbor protections for good faith reporting and certain clarifications to annual transaction report are needed.

**II. The natural gas market's response to supply and demand fundamentals has been mistakenly linked to a lack of transparency when, in fact, the physical natural gas market is among the most transparent of all commodity markets in the world.**

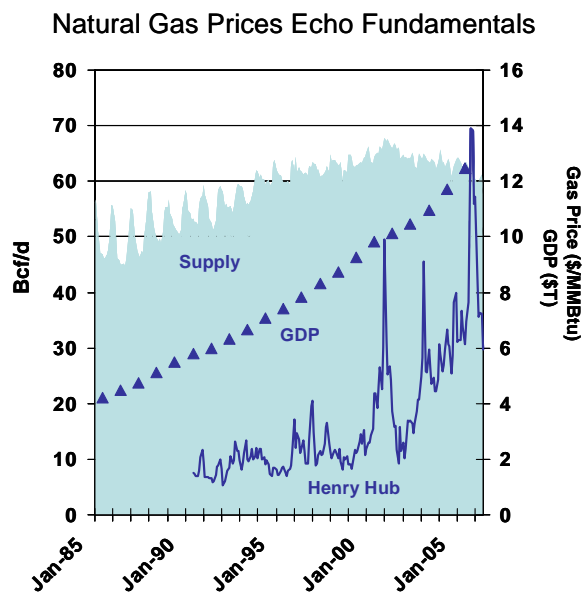
NGSA continues to support constructive, market-driven steps to enhance market transparency and integrity without also harming underlying competition and market efficiency. However, as large producers of natural gas, NGSA members would not be selling into the market if they did not believe the market exhibited transparency, integrity and efficiency.

NGSA appreciates that there are political concerns about market transparency, but the physical U.S. natural gas commodity market is robust and functioning well, and is considered to be among the most transparent of all commodity markets in the world.<sup>1</sup> The natural gas market's response to supply and demand fundamentals has been linked by some to a lack of transparency even though no amount of increased reporting or government oversight will eliminate the price volatility that results from these fundamentals. Rather than indicating a lack of transparency, natural gas prices are responding to economic growth, and supply and demand fundamentals. The chart below compares the growth in the U.S. economy (Gross Domestic Product or GDP) to the growth in natural gas supply.

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<sup>1</sup> "Natural Gas Price Transparency and Liquidity" White Paper by Pete Locke, Prepared for the Natural Gas Supply Association, October 2006, filed in Docket No. AD06-11, Transparency Provisions of the Energy Policy Act of 2005 on October 13, 2006.

Specifically, GDP has nearly tripled in just 20 years, while domestic natural gas production flattened during the last 10 years. Since 2000, despite increasing rig counts and imports, natural gas supply has been flat or declining and not kept pace with demand, being driven higher by economic growth, as well as national environmental concerns.



The natural gas price environment stems from demand for limited supply from a maturing resource base. Thus, policies addressing supply and demand fundamentals continue to be the appropriate way to help alleviate volatility and pressure on natural gas prices.

**III. The market itself responds better and faster than the government if enhancements to the underlying market data or transparency improvements are necessary. Recent history provides the example.**

NGSA continues to believe that there is no need for additional government interventions in the market or mandated reporting requirements. This belief is based on two key observations.

First, market participants rely on information about underlying market fundamentals (supply and demand) to support the business decisions behind a natural gas contract.

Recognizing the need for information, commercial entities, such as Bentek Energy, LLC,

responded and now provide the market with the majority of the benefit of physical market fundamentals data through the reporting of scheduled volumes, and flow tracking and estimation services.

Second, the market is already evolving to increase the level of natural gas price transparency. Statistics from competitive index publishers are the best indicator of the market's evolution toward increased transparency. For instance, there has been an overall trend up in the level of reported volume and number of transactions captured by competitive index publishers. The charts<sup>2</sup> show the upward trend in the volume and number of transactions

reported to index publishers.

Specifically, Platts and NGI

Bidweek survey statistics show

that the volume and number of

reported transactions have

roughly doubled since January

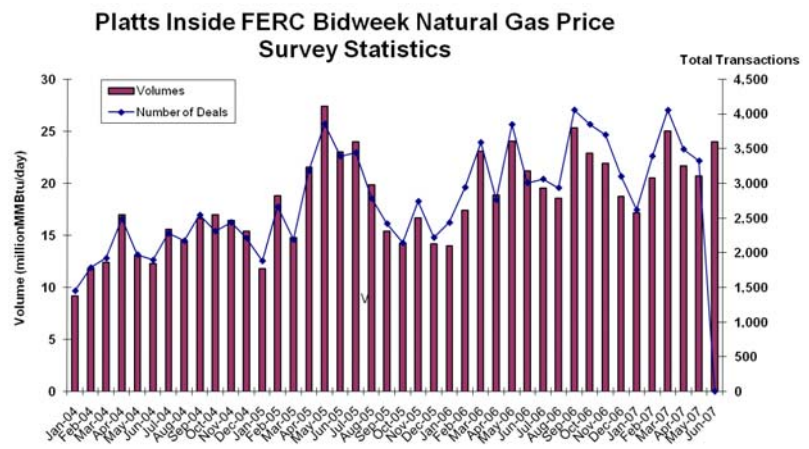
2004 definitively illustrating

that market transparency is

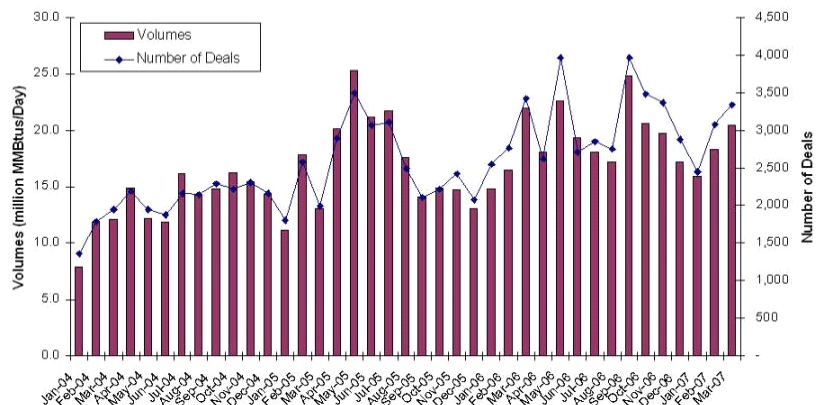
evolving rapidly. Furthermore,

in addition to the index

publishers, market participants



NGI Bidweek Natural Gas Price Survey Statistics



<sup>2</sup> SOURCE: [www.NaturalGas.org](http://www.NaturalGas.org) with information supplied by Platts and Natural Gas Intelligence.

are actively exploring additional innovations such as a voluntary non-government energy database or data hub.

Recent history illustrates that markets evolve naturally and that market forces spur improvements to the available information within a market when necessary more quickly than government action without the risk of inefficiency. However, along with the evolution of the market, a number of regulatory and legislative changes have been effectuated to provide confidence and trust in natural gas markets. These changes include the 2003 FERC Policy Statement on good faith price reporting and publishing (Docket No. PL03-3) and the Commission's 2006 Rule Prohibiting Market Manipulation (Order No. 670). In addition, the Commission has recently implemented a memorandum of understanding with the Commodity Futures Trading Commission ("CFTC") to share market oversight information, and made public its Market Oversight webpage which provides timely, free, and unbiased energy market data.<sup>3</sup>

Finally, Section 316 of the Energy Policy Act of 2005 (EPACT), directed the Commission to facilitate price transparency in physical natural gas market but in a discretionary, not prescriptive, manner. In this context, the Commission's NOPR should not be considered as an isolated action but as the culmination of a series of efforts designed to provide confidence in the price reporting process.

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<sup>3</sup> Significantly, it should also be pointed out that in December 2005, the Government Accountability Office produced an in depth report on the development of price indices and concluded that the federal government had taken a "number of steps to encourage improved availability and accuracy of price indices," and that these actions have "increased industry confidence in price and other market information provided in spot price indices."

**IV. The Commission proposal to increase the amount of publicly available data regarding underlying fundamentals and to determine the size of the market needs some clarifications and modifications.**

If the Commission's goal is to increase the amount of publicly available data regarding underlying fundamentals and the overall size of the market, then such proposal needs some clarifications and additions to make the information more accurate and reliable.

**a. Pipeline Flow Volume**

- 1. The Commission's proposal to require the posting of intrastate pipeline flow data subject to the clarifications and modifications discussed below will add additional market fundamentals information.**

The Commission's proposed requirement for posting of intrastate pipeline capacity and flow volumes subject to the clarifications and modifications discussed below will not harm the competitive market.<sup>4</sup> Intrastate pipeline flow data will provide regulators with insight into regional natural gas flow information that will provide them with additional information regarding real-time supply and demand fundamentals.

Prior to the finalization of the proposed rules, an industry dialogue regarding the characteristics of the intrastate pipeline points where flow is to be captured should be determined. NGSAs offers the following suggestions:

In response to the Commission's questions in the NOPR regarding the definition of

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<sup>4</sup> The Commission's proposal with respect to the intrastate pipeline flow data posting requirement is consistent with the comments filed by NGSAs on October 13, 2006 in Docket No. AD06-11.

“major receipt and delivery points and mainline segments,” the threshold considerations for determining whether or not flow information might be captured at a particular point on the intrastate pipeline grid should be whether or not a point is significant in size and has electronic telemetering or EFM<sup>5</sup>, to minimize added costs to the industry. To further lessen the burden, intrastate pipelines should be permitted to obtain an exemption from the flow posting requirements by showing that the flow volume is (1) captured at another posted point nearby, (2) received from a non-material production basin, or (3) delivered to a small utility market.

Because the Alaska natural gas market is not physically interconnected with the Lower-48 states, the Commission should clarify that the intrastate flow data posting requirement applies to on-shore, intrastate pipelines within the Continental U.S. The Commission should also clarify that the requirement for posting of intrastate pipeline flow data does not include flow information from natural gas gathering systems which could otherwise lead to inaccurate market conclusions regarding the amount of supply (or Btu) that will ultimately enter the market.

**2. The Commission may wish to consider a requirement for the public posting of existing interstate pipeline flow volumes at major points.**

NGSA believes that a large amount of physical market fundamentals data is already attained through the reporting of scheduled volumes and flow tracking and estimation services provided by commercial entities such as Bentek Energy, LLC. Nevertheless, the

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<sup>5</sup> Flow meters with the ability to communicate real time information to a control center.

Commission may wish to consider a requirement for the public EBB posting of existing interstate pipeline flow volumes information.<sup>6</sup>

The Order 637 requirement for interstate pipelines to post capacity and “scheduled” volumes is important to the market but actual flow data could lead to an even more accurate and near real-time indication of underlying market supply and demand fundamentals. This is particularly true where there is a heavy reliance on “no-notice” volumes and pipeline imbalance tolerances.

Because “no-notice” volumes and imbalance tolerance flows are not “scheduled” without pipeline flow information, regulators cannot see the entire transportation picture. On heating season peak days or days with wide intra-day weather swings, no-notice volumes can be significant; therefore, scheduled volumes are not a proxy for physical flow and, thus, do not necessarily provide an accurate picture of underlying market fundamentals.

Like the posting of intrastate pipeline flow data, the posting of interstate pipeline flow data will improve the accuracy of public information and help regulators quickly understand and evaluate regional the market differences that underpin and explain regional market volatility. Also, the posting of interstate pipeline flow data at key points may help minimize market “guesswork” about supply outages, storage inventories, changing demand levels and the impact of *force majeure* events. Importantly, NGSa is not suggesting a change to the existing requirement for the posting of capacity and

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<sup>6</sup> NGSa Comments, Docket No. AD06-11, Transparency Provisions of the Energy Policy Act of 2005, October 13, 2006.

scheduled volumes.

## **b. Annual Transactional Report**

As stated earlier, NGSa believes the physical U.S. natural gas market is among the most transparent of all commodity markets in the world. NGSa acknowledges the Commission's interest in determining the size of the market and believes that the proposed annual transactional report will meet that need. However, accomplishing the objective of determining the size of the natural gas market and the number of fixed price versus indexed transactions should not be confused with improvements to market transparency, integrity or efficiency. The Commission and market participants should realize that any additional regulatory reporting requirements can become a barrier to entry and discourage participation in the market.

- 1. NGSa concurs with the Commission's conclusion regarding the negative impact that can stem from a price reporting mandate or the detailed reporting of proprietary transactional data.**

NGSAs is opposed to a reporting requirement that involves more detailed transaction-level information or more frequently filed information. The Commission noted three reasons why mandatory reporting of transactions details would be detrimental to the market: 1) mandatory reporting would create an incentive for wholesale buyers and sellers to structure transactions to avoid reporting requirements, 2) buyers and sellers might shift away from fixed-price transactions to indexed-price transactions deteriorating the foundation of the index and 3) broad availability of detailed transaction

data might prove to be anticompetitive. NGSAs concur with the Commission's conclusion regarding the negative impact that can stem from a price reporting mandate or the detailed reporting of proprietary transactional data.

**2. The definition of market participant in Section 284.401 of the proposed regulations should be altered to conform with the limitation on the Commission's authority under NGA Section 23(a)(2).**

The NOPR is being proposed pursuant to Section 316 of EPACT, which amends the Natural Gas Act (NGA) by adding a new Section 23 to the NGA. The scope of the Commission's authority to act is thus circumscribed by the express terms of this new NGA provision and the Commission's new authority in this area is not unlimited. NGA Section 23(a)(2) (as promulgated under EPACT Section 316) makes it clear that any rules issued under that provision must relate to the "availability and prices of natural gas sold at *wholesale and in interstate commerce*....." (emphasis added). Thus, not all natural gas sales transactions are covered. For instance, retail sales by a LDC to an end user or retail purchases by an end user from a LDC would presumably not be subject to NGA Section 23.

While NGA Section 23(a)(3)(A) permits FERC to obtain "information.....from any market participant", (the latter term is not defined in the statute) it is clear that the "information" referred to therein is only that which relates to wholesale transactions in interstate commerce. As a consequence, even though NGA Section 23(a)(3)(A) refers to any gas market participant, it appears to cover such parties only to the extent they are transacting at wholesale and in interstate commerce. Indeed, the Commission recognizes

this limitation in the very first sentence of the NOPR by stating that it is requiring annual reports “by buyers and sellers of natural gas in U.S. *wholesale markets*.....” (emphasis supplied). At numerous other points in the NOPR, the Commission repeats that acknowledgement.

However, the Commission’s definition of “market participant” in the text of its proposed regulations, at Section 284.401, does not comport with the NGA Section 23(a)(2) limitation on FERC’s authority. That definition states that a “market participant is any buyer or seller that engaged in physical natural gas transactions the previous calendar year”. Read literally, and in conjunction with proposed regulation 260.401, which calls for all market participants above the *de minimis* level<sup>7</sup> (or which hold blanket marketing certificates) to file an annual report, this definition would appear to require all such buyers or sellers to file an annual report even if none of the transactions they are engaged in involve sales or purchases of natural gas “at wholesale and in interstate commerce.” This does not appear to be consistent with the plain language of the statute.

The Commission’s statements at pages 14-15 of the NOPR also suggest that the relevant EPCRA language gives the Commission the authority to obtain pricing information not only with respect to actual physical sales in interstate commerce, but also sales that “pertain” to, or are “about,” prices of natural gas sold at wholesale and in interstate commerce. The practical problem is that such an assertion provides no

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<sup>7</sup>EPCRA requires FERC to exempt entities with a *de minimis* market presence from requirements implemented under the transparency provisions. Because of the high degree of transparency already present in the market today, a *de minimis* exemption would need to be small. The proposed 2.2 Bcf per year *de minimis* exemption threshold is small enough to allow FERC to accurately determine the size of the market.

guidance as to which transactions that are not “wholesale sales in interstate commerce” should be included in the annual report.

Therefore it is important that the Commission to modify the market participant definition in proposed Section 284.401 to read as follows:

“For purposes of this subpart, a market participant is any buyer or seller engaged in physical natural gas transactions at wholesale and in interstate commerce during the previous calendar year”.

With this change, it will be clear that not every physical buyer or seller of natural gas must file an annual report, which is the implication of the current market participant definition, but rather that such reports must only be filed by market participants who are transacting at wholesale and in interstate commerce above the de minimis level.

NGSA does not perceive that the Commission is actually intending to require the reporting of non-wholesale transactions in the annual report, particularly in light of the significant ambiguity surrounding the transactions referenced by the Commission. If, however, contrary to NGSA’s assumption, the Commission generally intends for such transactions to be included in the report, then the Commission must clarify, with sufficient specificity, exactly which transactions must be included and which may be excluded. Otherwise, reporting parties will be left in the dark as to the totality of transactions that must be reported.

**3. The Commission should clarify that the annual transaction report, with a few exceptions, applies to all non-affiliated third parties.**

The Commission should also clarify that wholesale sales and purchases in interstate commerce subject to the Commission's annual reporting requirement are those transactions done with a non-affiliated third-party, such as sales to a local distribution company and sales or purchases directly off interstate pipelines or FERC jurisdictional storage facilities. In addition, FERC should clarify the entity responsible for reporting working interest volumes marketed under Joint Operating Agreements ("JOAs"). Further, the Commission should specifically clarify that the following transactions should not be reported in the annual transaction report: 1) natural gas LNG import transactions before regasification i.e. prior to the first qualifying transaction after the natural gas enters the U.S.; 2) natural gas exports from LNG liquefaction facilities; 3) transactions related to export for re-import; 4) transactions among affiliates; 5) sales and purchases in Alaska, and 6) sales to or purchases by an end-user behind a LDC city-gate.

**4. The Commission should clarify that the annual transaction report can be done on behalf of a corporate family by a single designated entity.**

If the Commission requires an annual transaction report, the Commission should clarify that the reporting obligation applies to each legal entity making the transactions and that transactions between affiliated companies are excluded. The regulations should allow parent companies to designate the entity within the corporate family who will

submit the report, and the Commission should specify that sales and purchases between its affiliates will not be included. Further, the *de minimis* threshold test should be applied at the parent company level, based on the aggregate of all external transactions done by any legal entity within the corporate family. Reporting should be done on behalf of the corporate family<sup>8</sup> with the option for parent companies to designate the entity within the corporate family who will submit the report.

**5. The Commission should clarify that the annual transaction report is subject to safe harbor protections and clarify certain aspects of the proposed annual transaction report.**

The Commission should clarify that the information provided in the report should be consistent with the price reporting guidelines issued on July 24, 2003, in Docket No. PL03-3. However, the Commission should recognize that due to prior period adjustments, cuts in scheduled deliveries by the pipeline, disruptions in deliveries or receipts due to *force majeure* events or otherwise, the volumetric data may not be identical to that included in price reporting since price reporting is based on the transaction as entered into rather than the actual volume flowed. Also, as noted above, transactions between affiliates should be excluded from the annual transactional report. This is consistent with the Commission's price reporting guidelines.

Importantly, like price reporting, if parties exercise due diligence in the compilation

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<sup>8</sup> Often the transactional data is aggregated at the corporate level and some of the legal entities are not familiar to market participants outside the parent. Because of this, it is NGSAs view that a company-wide annual report would be more meaningful and less burdensome on the industry.

of the information for the annual report, the Commission should clarify that a safe harbor for good-faith reporting will apply and the requisite scienter for a claim of manipulation will not be met.

There are several specific issues about the data where the Commission should provide clarification. For instance, the Commission should be aware that there may be physical market transactions that do not fit categories B through H listed in the proposed annual transactional report. For this reason, the sum of the volumes provided in categories B through H of the proposed report will not be equal to the volume in category A. The Commission should also clarify that the data to be reported is for volumes of natural gas that actually flowed during a calendar year and not include volumes associated with transactions entered into during a calendar year but that are for natural gas deliveries in future months beyond the reporting calendar year. The proposed filing date for the annual transaction report should be modified.

**6. The proposed filing date for the annual transaction report should be modified.**

The proposed new Section 260.401 requires that the annual transaction report be filed by February 15<sup>th</sup> of each year for the previous year. If the Commission requires the annual transaction report, NGSU urges the Commission to modify this date such that the report is due on May 1<sup>st</sup> of each year or as an alternative, the same April 18<sup>th</sup> deadline as the FERC Form 2 Annual Report for major natural gas companies. Since many, if not

most, of the reporting companies will also be finalizing various corporate filings during the first part of each calendar year, a later date is needed to provide the proper time to consolidate the required data.

## V. Conclusion

NGSA adheres to a number of bedrock principles for natural gas markets. Key among them are integrity, transparency and efficiency. The U.S. natural gas market is among the most transparent of all commodity markets in the world and the relative ease of participation in the market helps foster investment in the U.S. energy market. The market response to the regulatory framework established by the Commission over the last several years has restored the integrity of the natural gas price indices and resulted in a market that is transparent and efficient. Combined with the pipeline flow data, which sheds additional light on underlying supply and demand fundamentals, the government has already taken the steps necessary to facilitate price transparency and ensure the integrity of the markets. Going forward, regulatory policies should reduce barriers to entry, especially as world competition for energy resources continues to grow. Continued ease of participation in the U.S. natural gas market, coupled with access to more domestic natural gas resources will allow the U.S. energy market to grow with the U.S. economy and play a vital role in meeting U.S. and world environmental goals.

Respectfully submitted,



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