UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Enhanced Natural Gas Market Transparency) Docket No. RM13-1-000

INITIAL COMMENTS OF
THE NATURAL GAS SUPPLY ASSOCIATION

Pursuant to the Notice of Inquiry issued in the above-captioned dockets on November 15, 2012 ("NOI"), the Natural Gas Supply Association ("NGSA") submits its initial comments regarding the Federal Energy Regulatory Commission's ("FERC") inquiry on potentially requiring jurisdictional sellers to quarterly report natural gas transaction specific information.

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 advocating for increased natural gas supply. Communications and correspondence regarding this filing should be directed to:

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NGSA supports constructive, market-driven steps to enhance market transparency and integrity. However, those steps should not create undue burdens or harm competition and market efficiency. The NOI contemplates collection of every natural gas transaction within the Commission's jurisdiction that entails physical delivery for the next day (i.e., next day gas) or for the next month (i.e., next month gas).

In this regard, NGSA does not support the contemplated reporting requirement. Because the natural gas market is already highly transparent, there is no need for this additional information. Both the costs and complexity associated with the contemplated reporting requirement would result in an undue burden on natural gas market participants. If the FERC determines that it needs additional information for surveillance purposes, natural gas market transaction-level data is available to FERC from the Intercontinental Exchange ("ICE"). Subject to essential confidentiality and appropriate contractual arrangements, ICE can and has expressed a willingness to provide the Commission with access to natural gas market transaction-level data.

Continuing to maintain the confidentiality of transaction level data is critical to market efficiency and thus, the continued health of the market. Natural gas contract and transaction level data have always been confidential. Transaction level data is competitively sensitive and its disclosure, even with a 30-120 day lag, could damage market efficiency. The Department of Justice cautioned FERC on the competitive harm that could result from the public disclosure of material, non-public commercially sensitive data in its January 25, 2007 comments to FERC in Docket No. AD06-11, and in recent comments on February 1, 2013, in this docket.

Assuming confidentiality can be maintained, FERC access to ICE transactional data will provide FERC with the enhanced natural gas market surveillance capability noted as an objective in the NOI without burden to industry or a risk to market efficiency. Because of FERC's jurisdictional limits, the "ICE data approach" is likely to provide the Commission with more comprehensive insight into market transactions than the transactional data filing requirement contemplated in the NOI. For example, ICE estimates that for first of the month natural gas (i.e., Bid Week Assessments), ICE Trading and ICE eConfirm represents 71 percent of Platts volume (MMBtu), and that for daily natural gas (i.e., Gas Daily Asssessment) ICE Trading and ICE eConfirm represents 96 percent of Platts volume (MMBtu).

I. Natural gas market transparency, efficiency and integrity surpass that of other commodity markets, mitigating the market transparency need for the proposed report.

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. As large producers and marketers of natural gas, NGSA members invest in the natural gas market because they believe the market exhibits fundamental principles of: 1) transparency, 2) efficiency, and 3) integrity.

Transparency is the ability of market participants to view information associated with market orders and transactions. In the 2006 report, *Natural Gas Price Transparency and Liquidity*, Pete Locke found the natural gas market to be among the most transparent, surpassed only by the transparency of currencies and equities markets.[1] Since the time of that report, natural gas market transparency has continued to grow.

Natural gas market transparency stems from the on-going, market-driven evolution of a variety of market structures and trading venues to meet underlying trading needs. Natural gas market transparency is readily available via ICE, and the CME Group - New York Mercantile Exchange ("NYMEX"), and published price indices and volume reports, such as those from Platts' *Gas Daily* and *Natural Gas Intelligence*. History has proven that, given regulatory certainty, market forces will spur improvements in transparency without the risk to market efficiency that might stem from inefficient government interference in the market.

In addition, near real-time market fundamentals information is readily available through a variety of tools and services, including pipeline electronic bulletin boards ("EBBs"), storage reports developed by the Department of Energy – Energy Information Administration ("EIA") and the comprehensive market analytical tools available through the Commission's market oversight website.[2] The Commission's own oversight website appropriately illustrates the breadth of fundamentals information relevant to natural gas markets that an efficient market must absorb and it educates market participants on the variety of factors that may at times impact the natural gas market.

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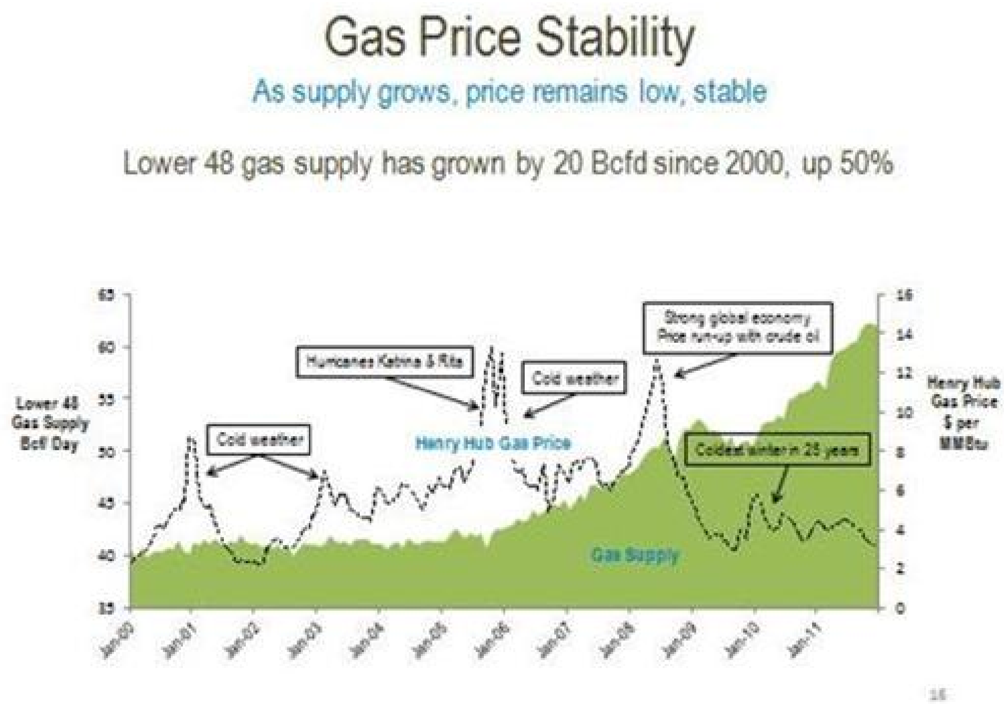
[1] *Natural Gas Price Transparency and Liquidity*, by Pete Locke for the Natural Gas Supply Association is available at http://www.ngsa.org/assets/Docs/Natural_%20Gas_Market_Transparency_October%202006_Final1.pdf

[2] See http://www.ferc.gov/market-oversight/market-oversight.asp.

The current efficiency in the natural gas market is illustrated by the "Gas Price Stability" slide excerpt from the NGSA 2012 Summer Outlook. The graphic illustrates a dramatic price response to cold weather during the diminished supply market conditions in the 2001-2002 timeframe. In contrast, the price response during record cold weather conditions in 2010-2011 was a fraction of the price response to similar weather in the prior decade largely because of the dramatic growth in natural gas supply. Although simple, this illustrates an efficient natural gas market that is responsive to changing market fundamentals of supply and demand.



In sum, the variety of trading platforms that offer transaction transparency, combined with the variety of information sources for data on market fundamentals, allow the market to quickly absorb new information, illustrating unparalleled market transparency and efficiency.

In the 2009 report, *Price Transparency in the U.S. Natural Gas Market,* William Albrecht explained that simply focusing on transparency loses sight of the big picture.

He further explains that the appropriate question is whether there is enough price transparency for market participants to make well-informed decisions when buying and selling. He concludes, "it is clear that, in the U.S. natural gas market, the answer is yes."[3]

The contemplated reporting requirement will not provide a meaningful enhancement to the transparency of the natural gas market. Without a clear market need, the burdens imposed by the proposed reporting requirement, particularly the complexity of determining which transactions are jurisdictional and reportable must be seriously considered.

II. Due to FERC's jurisdictional limits, the complexity of the contemplated reporting requirement makes any reporting obligation unworkable.

The contemplated requirement is not suitable for the Commission's stated objectives for several key reasons. First, the Commission appropriately notes that any reporting obligation must be limited to transactions within the FERC's jurisdiction. Congress has chosen to regulate the natural gas industry, not to the fullest limit of constitutional power, but instead by carefully designating areas to be regulated and defining those areas in which FERC cannot regulate. The FERC's jurisdiction over sales for resale in interstate commerce is limited by the exclusion of first sales found in the NGPA as amended by the Wellhead Decontrol Act, now codified at 15 USC §3301(21)

[3] See NGSA website at http://www.ngsa.org/assets/Docs/Issues/19a%20-%20US%20Natural%20Gas%20Market%20Transparency%20Study%20by%20Albrecht.pdf.

and §3431.

While the NOI acknowledges this limitation on FERC's jurisdiction, it also contemplates potential use of FERC's transparency authority under Section 23 to the Natural Gas Act ("NGA") to expand its authority over sellers or types of information it can collect.[4] Section 23, added by the Energy Policy Act of 2005, allows the FERC to obtain "information about the availability and prices" from "any market participant." Recently, the Fifth Circuit in *Texas Pipeline Association v. Federal Energy Regulatory Commission*, 661 F.3d 258 (5th Cir. 2011) found that the §23 transparency provisions of EPAct 2005 did not expand FERC's jurisdiction under §1(b) of the Natural Gas Act.

While *Texas Pipeline* examined §23 as applied to FERC's jurisdiction over intrastate pipelines, its analysis also applies to the scope of the FERC's jurisdiction over natural gas sellers. The court simply found that before any of the provisions of §23 can apply, an entity/sellers must first be included in the scope of the NGA as defined in §1(b). Because the entirety of the NGA is inapplicable to "first sellers" of natural gas under the NGPA as amended by the Wellhead Decontrol Act[5], neither §23's

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4 NOI at ¶¶ 2, 4.

5 The NGPA, 15 U.S.C. §3431, provides:

(A) Application to First Sales
For purposes of section 1(b) of the Natural Gas Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply to any natural gas solely by reason of any first sale of such natural gas.

* * *

(C) Natural Gas Company
For purposes of the Natural Gas Act, the term natural-gas company (as defined in section 2(6) of such Act), shall not include any person by reason of, or with respect to, any sale of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission do not apply to such sale solely by reason of Subparagraph (A) or (B) of this paragraph.

transparency provisions nor the phrase "any market participant" can apply to those sellers. The Commission lacks jurisdiction to require quarterly transaction reports from first sellers related to first sales.

The Commission's legal obligation to exclude first sale transactions from the contemplated requirement leads to a second and more pervasive problem. The farther downstream from the wellhead that a sale occurs, the more difficult it is to cost effectively identify volumes that are subject to a first sale. The task of distinguishing first sales volumes with assurance to the burner tip may be next to impossible in most cases. For instance, a consumer can purchase first sale volumes directly from a producer. Instead of consuming the entire purchase, the original buyer might choose to resell a portion of its first sale to another buyer. Furthermore, this subsequent sale and repurchase of the same volume can be repeated multiple times in a lengthy chain of ownership. Given the complexity of the market, there comes a point where it is improbable for most sellers, including producers and entities purchasing the first sales, to know if the full volume of a first sale transaction is consumed, much less if it was consumed before subsequent transportation or sale in interstate commerce. For this reason, the compliance obligation that would stem from the NOI's contemplated requirement is untenable.

The NOI recognizes this conundrum when it seeks comments relating to ways it could minimize any difficulties in determining whether a sale is subject to its NGA §1(b) jurisdiction. NGSA has not identified any reasonable way to minimize this recognized difficulty. In a reporting regime such as proposed by the NOI, it is not enough to identify the "first" first sale—that is those sales made by a producer or the equity production of an affiliate of an interstate or intrastate pipeline -- but each and every first sale in the chain of sales.[6] Without a clear solution to this issue, the NOI's contemplated requirement would place natural gas sellers at great compliance risk due to the inability to accurately distinguish the validity of any first sale. This could ultimately discourage participation in the market. At the core of the compliance issue is the fact that there is simply no molecule tracing that enables purchasers and sellers of natural gas to identify, in every transaction in the chain from wellhead to burner tip, whether the transaction is a "first sale."[7]

The inability to trace a molecule of natural gas from the wellhead to burner tip is just one of the reasons that the proposed quarterly reporting requirement cannot be likened to FERC's Electric Quarterly Report ("EQR") established by Order 2001 in Docket No. RM01-8. Importantly, according to FERC, the primary purpose of the EQR was to streamline and refine existing reporting requirements and assure greater consistency in public utility compliance with the Federal Power Act. Unlike the natural gas industry, much of the information required by the EQR was already publicly disclosed on a quarterly basis pursuant to FERC regulations or prior FERC determinations, which for the foregoing reasons do not translate to natural gas.

[6]Many producers own interests in intrastate pipelines to better ensure the ability to move their product to market and are considered "affiliates of intrastate pipelines" for purposes of the "first sale" exclusion.
[7] Any such first sales data submitted likely will be only a small subset of the total market. This subset would still be considered confidential proprietary information by the counterparties involved, as it would involve the disclosure of pricing, volume and counterparty data that is commercially sensitive with or without a disclosure time lag, and would not be appropriate for public disclosure because of the risk to market efficiency.

Because natural gas marketers are not regulated as public utilities by the FERC as power marketers are, there is no rate review requirement. Natural gas marketers are not required to file tariffs with FERC, and therefore are not subject to the same level of regulatory scrutiny. There is no rational equivalency argument that exists between the contemplated requirement and the EQR requirement. There simply is no regulatory similarity that would justify the imposition of a similar reporting requirement.

III. The compliance burden attributable to the contemplated proposal risks creating a disincentive for participation in the market.

Given the lack of a transparency need for the data, and the complexity of the proposed reporting requirement, the FERC should be mindful of the White House Executive Order 13563 issued on January 18, 2011, that required regulators to perform a cost/benefit analysis when contemplating new rules or regulations. The Executive Order stated that to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits; (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

Illustrating FERC's adherence to the spirit of the Executive Order, FERC Chairman Wellinghoff welcomed the President's executive order by highlighting his direction to FERC staff to perform an internal assessment of the effectiveness of FERC regulations. The Chairman further noted that the President's directive would be a useful addition to continuing efforts to ensure FERC regulations are effective, timely and up to date.[8]

Even more recently, on May 10, 2012, the White House issued a follow-up Executive Order once again calling for the streamlining of federal regulatory burdens. Specifically, within that order, the administration noted that 'during challenging economic times, we should be especially careful not to impose unjustified regulatory requirements.'"[9]

The complexity of identifying and reporting only those sales within the FERC's NGA 1(b) jurisdiction is significant, and no reasonable means are available to mitigate that complexity. Rather than impose a significant regulatory burden for transparency purposes, the FERC should employ the ICE data approach to monitor the market.

[8] Available at http://www.ferc.gov/media/news-releases/2011/2011-3/07-11-11.asp#skipnav.

[9] Available at http://www.whitehouse.gov/the-press-office/2012/05/10/executive-order-identifying-and-reducing-regulatory-burdens.

IV. If the FERC needs additional data for market surveillance, the ICE data approach is the most efficient mechanism for data gathering.

The Commission's surveillance goals can be accomplished through confidential Commission access to existing ICE transactional data. The Commission's confidential use of the ICE transactional data satisfies the Commission's surveillance goal without an increased cost or compliance burden to the industry, and does so in a manner that is consistent with existing jurisdiction. It also provides the Commission with access to a fairly comprehensive data set underlying the market. The ICE approach would provide the Commission with ready access to transaction-level data allowing more comprehensive surveillance of the vast majority of the market.

V. Conclusion

Given the existing level of market transparency and the confidential nature of natural gas market transactional data, the contemplated quarterly transactional reporting requirement is unnecessary and inefficient. Furthermore, it raises the potential for unintended market efficiency risks and costs that far outweigh any transparency gains or improved surveillance that can otherwise be achieved through the use of ICE data.

The U.S. natural gas market is already among the most transparent of all commodity markets in the world. The relative ease of participation in the market helps foster continued investment and liquidity in the U.S. energy market, ensuring infrastructure growth and the availability of a variety of cost effective risk management tools. The Commission should not risk harm to market liquidity and efficiency when there is a cost-effective and expedient solution to the Commission's oversight objectives already available. A well-functioning, transparent natural gas market is elemental to continued market investment in the production of natural gas and related technologies.

Respectfully submitted,

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