UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Actions Regarding the Commission's)
Policy on Price Index Formation and)
Transparency, and Indices Referenced)
in Natural Gas and Electric Tariffs)

Docket No. PL20-3-000

COMMENTS OF THE NATURAL GAS SUPPLY ASSOCIATION IN SUPPORT OF PROPOSED REVISED POLICY STATEMENT

Pursuant to the Federal Energy Regulatory Commission's ("FERC") Notice of Proposed Revised Policy Statement, published in the Federal Register on December 23, 2020,[1] the Natural Gas Supply Association ("NGSA") respectfully submits comments in support of the Commission's proposals to enhance its policies on natural gas price indices. NGSA is pleased that the Commission has proposed to update its price indices policies and to codify the safe harbor policies in response to the comments made by market participants and price indices developers at the June 29, 2017 Technical Conference.[2] Price index reporting is an important component of the competitive natural gas market and clear and balanced regulatory policies for price reporting will ensure that a high level of confidence in the market is maintained for industry participants, index developers and the Commission.

For companies to see value in voluntarily reporting their fixed-price transactions, the Commission must create an environment that is conducive to market participants engaging in price reporting and develop a framework that encourages the liquidity and price transparency that results

[1] Actions Regarding the Commission's Policy on Price Index Formation and Transparency, and Indices Referenced in Natural Gas and Electric Tariffs, 85 FR 83940 (Dec. 17, 2020).

[2] FERC. 2017. "Technical Conference on Developments in Natural Gas Index Liquidity and Transparency (Docket No. AD17-12-000), Price Discovery in Natural Gas and Electric Markets (Docket No. PL03-3-000) and Natural Gas Price Formation (Docket No. AD03- 7-000)." *Technical Conference June 29.* FERC, Washington, DC.

from robust price reporting in the market for natural gas. This requires policies to be transparent and uncomplicated, with virtually no regulatory risk from limited inadvertent errors. The Commission's actions in this proceeding are welcome steps in this direction. Also, NGSA asks the Commission to consider additional changes to its audit process that would create an even more balanced regulatory environment that is conducive to greater price reporting.

I. INTEREST OF NGSA

Founded in 1965, NGSA represents integrated and independent energy companies that produce and market domestic natural gas. NGSA is the only national trade association that solely focuses on producer-marketer issues related to the downstream natural gas industry. NGSA encourages the use of natural gas within a balanced national energy policy and has a long-established commitment to promoting a public policy environment that fosters a growing, competitive market for natural gas. NGSA has consistently advocated for enhancements to price reporting policies to encourage continued and more robust price reporting to help support a vibrant market for natural gas.

II. COMMENTS

1. Natural Gas Market Participants Remain Confident in Price Indices in Which Voluntary Reporting Remains a Critical Component.

NGSA has confidence both in the indices utilized by market participants to buy and sell natural gas in the U.S. and in the mechanisms used by price index developers to report fixed price transactions. Natural gas price indices continue to be an accurate representation of the price at which sellers and buyers agree to transact and thus represent the market value for the natural gas traded. The fact that market participants continue to rely on the indices for billions of dollars in natural gas market transactions is a resounding indicator of confidence.

Market participant reliance on the indices suggests that the indices are well-aligned with individual corporate views of a just and reasonable market price. Independent corporate assessments of underlying fundamentals remain at the heart of natural gas transaction decisions regardless of whether the transaction is done at a fixed price, at index or at a hybrid of the two. While there was a decline in the level of price reporting as evidenced by the FERC Form 552 data, FERC's analysis of the FERC Form 552 data reveals that market participants' reliance on the indices for transaction pricing also increased.[3]

Market participants need the flexibility to make decisions based on their own independent assessment of underlying fundamentals. This is a self-correcting characteristic that is inherent in a healthy market. The variety of available transaction alternatives and data sources, the freedom to choose where, when, and how to transact, coupled with the freedom to decide if price reporting is or is not the right corporate decision are fundamental to maintaining the health and efficiency of the natural gas market.

Companies that report do so because they believe their reportable fixed price transactions contribute to the accuracy of the indices. Such companies have undoubtedly made the decision that the value of their contribution to the indices outweighs the cost of managing and submitting the data. The tipping point differs for each company but likely centers on the volume of reportable data and the availability of sufficient resources to implement FERC's good-faith price reporting guidelines. For this reason, we are appreciative that FERC acknowledges that a regulatory mandate for price reporting could inadvertently create a disincentive for engaging in reportable/fixed price

[3] While reported fixed-price transactions declined by approximately 54% from 2010 until 2019, the traded volumes at index increased from 69% to 82% in 2019. *See,* Actions Regarding the Commission's Policy on Price Index Formation and Transparency, and Indices Referenced in Natural Gas and Electric Tariffs, 85 FR 83940 (Dec. 17, 2020), pg. 4-5.

transactions and is not proposing such a reporting requirement. As such, NGSA supports continuing voluntary price reporting.

2. FERC's Proposal to Allow Data Providers to Report Either Daily or Monthly Transactions Will Likely Enhance the Level of Reporting.

FERC proposed to modify the Policy Statement to allow market participants to elect to report either all non-index based next-day transactions, all non-index based bidweek next-month transactions, or both non-index based next-day and non-index based bidweek next-month transactions. NGSA strongly supports this proposal and believes it will foster more robust levels of participation in reporting, particularly for bid-week transactions.

As noted in our post-conference comments and in the industry coalition white paper on enforcement, the monthly and daily physical natural gas markets are different, distinct product markets.[4] Although both markets involve the sale of natural gas, the "product" is vastly different – one is a day's worth of natural gas while the other is an even volume of natural gas every day for the subsequent month. Corporate strategies differ in terms of how the two different markets are used, and it is not uncommon for different companies to use one market more extensively than the other simply because of unique business needs. The cost-benefit balance of price reporting transactions in either the daily or the monthly markets may differ from the cost-benefit balance for price reporting transactions in both markets. For this reason, it is more appropriate to allow market participants to determine whether to price report in either the daily or monthly market without the risk that doing so may be considered by FERC as "selective" reporting. Therefore, NGSA believes

[4] Applebaum, D., & Brecher, T. (2019). *Enhancing the Transparency, Efficiency, and Fairness of the Federal Energy Regulatory Commission's Enforcement Program*, [White Paper], Submitted on Behalf of American Gas Association, Edison Electric Institute, Electric Power Supply Association, Interstate Natural Gas Association of America, and Natural Gas Supply Association.

that allowing parties to make this distinction is likely to create a stronger incentive for more companies to report their fixed price transactions.

3. NGSA Supports the Commission's Clarification that There is No Limitation on Reporting Transactions to Multiple Price Index Developers While Still Allowing Data Providers to Choose to Whom They Report.

The Commission proposes to clarify that data providers can report to more than one price index developer and encouraged data providers to report to as many price index developers as possible. Given that some conference participants believed that there was confusion and that the current policy could be misconstrued to limit reporting to one price index developer, the Commission's clarification helps data providers fully understand that there is no limit to the number of price index developers that they decide to report their fixed-price transactions.

While we understand FERC's desire to encourage data providers to report to as many index developers as possible, it is important that data providers continue to have the freedom to make the determination of which index developers they choose to report fixed price transactions based on their own individual corporate assessments. Companies choose to report to different index publishers for a variety of reasons and allowing this choice creates healthy competition among index publishers. Also, requiring data providers to report to more than one index developer would place a greater burden on already strained resources and is likely to be perceived as further increasing the regulatory risk of reporting; leading some companies to find that the value of reporting is offset by the costs and further reducing the number of participants reporting.

4. Moving to Biennial Self Audits Reduces Reporting Burden and Could Result in More Robust Price Reporting.

In this proceeding, the Commission proposes to allow data providers the option to perform a self-audit on a biennial basis, which means that data providers can choose to perform an audit every other year for the previous two years. Also, the Commission stated that, to the extent that the terms and costs for an external audit are overly burdensome, the Commission will allow companies to continue to rely on internal auditors to perform the self-audits, to avoid raising barriers to voluntary reporting. NGSA strongly supports these proposals and believes they are likely to encourage more price reporting, thereby enhancing overall market liquidity.

As NGSA stated in its 2017 post-conference comments, price reporting, including the resources for staffing for the annual internal independent audit requirement, places a substantial strain on resources and diverts limited compliance resources, which is a significant concern especially when companies are doing all they can to streamline costs in the current market environment. However, we stated that the cost of the annual self-audit requirement could be cut by half if the audit requirement is simply changed to an every-other-year requirement. Therefore, we believe that FERC's proposal to allow for biennial audits minimizes the overall reporting burden and encourages greater reporting while still allowing FERC to maintain strong safeguards and oversight over the price reporting process. As outlined in the following section, we believe there are other audit enhancements that should be considered in conjunction with FERC's new price indices policy.

5. Additional Enhancements to FERC-initiated Audits Will Eliminate Unnecessary Regulatory Risks Inherent in the Current Process and Create an Environment More Conducive to Price Reporting.

As detailed more fully in the 2019 industry coalition white paper on FERC's enforcement program, FERC-initiated audits can be more onerous and burdensome than is necessary, creating a deterrent for companies deciding to voluntarily price report.[5] Industry experience is that FERC audits can be random and open-ended without a specific projected completion date and it can take more than a year to complete an audit even when the focus of the audit is on inadvertent, clerical

[5] Ibid, 28-30.

de minimis errors and has no impact on the published index price. Because audits are routinely disclosed in company financial statements, the true cost often goes well beyond the resources expended to comply with the audit by impacting corporate reputational risk as well as overall enterprise value.

Also, the industry coalition white paper details how companies devote substantial time and resources to FERC-initiated audits and how those costs are exacerbated when: (a) the initial scope of the audit is overly broad without a well-defined scope of review; (b) the scope of the audit expands or changes significantly over the course of the audit; and (c) the scope requires the use of resources that are disproportionate to the magnitude of the issue being audited. Since some companies have cited the cumulative cost and risk associated with potential random, lengthy and costly FERC audits as a significant deterrent to price reporting, we urge FERC to consider further enhancements to make Commission-initiated audits more efficient and less burdensome.

A significant improvement to the audit process would be for the Commission to adopt a more targeted approach to audits (rather than random screening) so that FERC-initiated audits are conducted based on more objective criteria. Also, the Commission could take steps to ensure that the scope of its audits is tailored to a specific set of issues. It is also important that the data provider clearly understands the scope of the audit and that audit staff is committed to completing the audit within a reasonable set timeframe, which should not exceed six months absent extraordinary circumstances. FERC should refrain from changing or expanding the scope of the audit without good cause, and should immediately communicate any change in scope, audit completion dates and audit status to the subject of the audit.

We believe that, with the safe harbor provisions codified in the regulations, a biennial internal audit requirement, and FERC-initiated audits that are more targeted with a well-defined scope and limited duration, the Commission will have successfully designed a well-balanced and strong price reporting auditing program that provides a strong incentive for more parties to participate in reporting their fixed price trades in addition to ensuring that those that currently report continue to do so. Like the Commission, our goal is to have sound price indices policies that are conducive to greater price reporting that entails both high levels of price transparency and price discovery that contribute to the competitive marketplace in which we operate.

6. NGSA Supports FERC's Clarification of its Liquidity Standards for Price Index References if Such Changes Are Applied Prospectively.

The Commission is proposing changes to the minimum level of activity that must be met for a price index trading location to be referenced in a FERC-jurisdictional tariff, which is also referred to as liquidity standards. In this proceeding, FERC proposes to modify the review period over which the price index location should meet the minimum level of activity for indices referenced in FERC-jurisdictional tariffs from 90 days to at least 180 continuous days out of the most recent 365 days from the filing date of any such proposal.

NGSA does not oppose expanding the number of days of market activity that will be reviewed or changing the review timeframe to the most recent 365 days. These modifications will allow newly proposed tariff price index locations to better reflect current pricing based on data over the past year. However, we ask FERC to limit this new policy to future tariff filings that propose new or updated price index locations and allow those previously approved to remain in effect. Applying the new criteria to index pricing locations previously approved could inadvertently disrupt contractual arrangements that were based on what was already approved by the Commission in a pipeline's tariff.

III CONCLUSION

NGSA believes that the Commission has proposed tangible enhancements to the current policy statement on price indices and overall, these proposals will encourage increased price reporting and thereby promote price transparency and market liquidity by reducing the burden, resource expenditures and regulatory risk associated with price reporting, while continuing to ensure that FERC's audit and review processes remain robust with effective oversight of natural gas price index formation. We ask the Commission to also consider additional changes to the audit process that will help to further reduce compliance costs and lessen overall regulatory risk.

Respectfully submitted,

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