

of the Proposed Amendment with their comment letters.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA") imposes certain obligations on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA.²⁶ The Proposed Amendment would require intermediaries to conduct an annual review of their registration information maintained with NFA. The information that would be reviewed in accordance with the Proposed Amendment is part of an approved collection of information. Moreover, the Proposed Amendment would not result in any material modifications to this approved collection. Accordingly, for purposes of the PRA, the Commission certifies that the requirements of the PRA are inapplicable to the Proposed Amendment.

List of Subjects in 17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity Futures, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission proposes to amend 17 CFR part 3 as follows:

PART 3—REGISTRATION

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

2. Section 3.10 is amended by adding paragraph (d) to read as follows:

§ 3.10 Registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(d) On a date to be established by the National Futures Association, and in accordance with procedures established by the National Futures Association, each registrant as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant shall, on an annual basis, review and update registration information maintained with the National Futures Association. The failure to complete the review and update within thirty days following the date established by the National Futures Association shall be deemed to be a

request for withdrawal from registration, which shall be processed in accordance with the provisions of § 3.33(f).

3. Section 3.33 is amended by revising paragraph (f) introductory text to read as follows:

§ 3.33 Withdrawal from registration.

(f) A request for withdrawal from registration will become effective on the thirtieth day after receipt of such request by the National Futures Association, or earlier upon written notice from the National Futures Association (with the written concurrence of the Commission) of the granting of such request, unless prior to the effective date:

Issued in Washington, DC, on April 23, 2007, by the Commission.

Eileen Donovan,

Acting Secretary of the Commission.

[FR Doc. E7-8025 Filed 4-25-07; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 260 and 284

[Docket Nos. RM07-10-000 and AD06-11-000]

Transparency Provisions of Section 23 of the Natural Gas Act; Transparency Provisions of the Energy Policy Act

April 19, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: In order to implement its authority under section 23 of the Natural Gas Act, which was added by section 316 of the Energy Policy Act of 2005 (EPAct 2005), the Commission proposes to revise its regulations to: require that intrastate pipelines post daily the capacities of, and volumes flowing through, their major receipt and delivery points and mainline segments in order to make available the information needed to track daily flows of natural gas throughout the United States; and require that buyers and sellers of more than a *de minimis* volume of natural gas report annual numbers and volumes of relevant transactions to the Commission in order to make possible an estimate of the size of the physical U.S. natural gas market, assess the importance of the use of index pricing in that market, and

determine the size of the fixed-price trading market that produces the information. These revisions would facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce.

DATES: Comments are due June 11, 2007. Reply comments are due July 10, 2007.

ADDRESSES: You may submit comments identified by Docket No. RM07-10-000, by one of the following methods:

- *Agency Web Site:* <http://ferc.gov>. Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.

- *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

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SUPPLEMENTARY INFORMATION:

I. Introduction

1. The Federal Energy Regulatory Commission (Commission), in order to facilitate market transparency in natural gas markets, proposes to revise its regulations to: (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 sales information. These proposals exercise expanded Commission authority under section 23 of the Natural Gas Act,¹ which was added by the Energy Policy Act of 2005 (EPAct 2005) to require reporting from entities not under the Commission's traditional jurisdiction.² At this time, as discussed *infra*, due to other market-related Commission initiatives, we do not propose additional regulations for transparency in electricity markets.

2. The first proposal, designed to make available the information needed to track daily flows of natural gas throughout the United States, would

¹ To be codified at 15 U.S.C. 717t-2.

² Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

²⁶ 26 44 U.S.C. 3501 *et seq.*

create a requirement that intrastate pipelines post daily to the Internet the capacities of, and volumes flowing through, their major receipt and delivery points and mainline segments. Postings would be required within 24 hours from the close of the gas day on which gas flows, *i.e.*, on or before 9 a.m. central clock time for flows occurring on the gas day that ended 24 hours before.

3. The second proposal, designed 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 price indices from the subset reported to index publishers, and (d) the relative size of major traders, would create an annual requirement that buyers and sellers of more than a *de minimis* volume of natural gas report numbers and volumes of relevant transactions to the Commission. As part of this proposal, the Commission would require each holder of blanket marketing certificate authority or blanket unbundled sales services certificate authority to notify the Commission as to whether it reports its transactions to publishers of electricity or natural gas price indices and whether any such reporting complies with certain standards. Currently, a holder of a blanket marketing certificate or a blanket unbundled sales service certificate is required to notify the Commission only when it changes its practice regarding such reporting. This part of the proposal would make notifications of reporting status more reliable.

II. Background

4. The Commission's market-oriented policies for the wholesale electric and natural gas industries require that interested persons have broad confidence that reported market prices accurately reflect the interplay of legitimate market forces. Without confidence in the basic processes of price formation, market participants cannot have faith in the value of their transactions, the public cannot believe that the prices they see are fair, and it is more difficult for the Commission to ensure that jurisdictional prices are "just and reasonable."³

5. The performance of Western electric and natural gas markets early in the decade shook confidence in posted market prices for energy. In examining these markets, the Commission's staff found, *inter alia*, that some companies

submitted false information to the publishers of natural gas price indices, so that the resulting reported prices were inaccurate and untrustworthy.⁴ As a result, questions arose about the legitimacy of published price indices, remaining even after the immediate crisis passed. Moreover, market participants feared that the indices might have become even more unreliable, since reporting (which has always been voluntary) declined to historically low levels in late 2002.

6. The Commission recognized staff concerns about price discovery in electric and natural gas markets as early as January 2003, when, prior to passage of EPAct 2005, the Commission made use of its existing authority under the Natural Gas Act and the Federal Power Act to restore confidence in natural gas and electricity price indices. The Commission expected that, over time, improved price discovery processes would naturally increase confidence in market performance. On July 24, 2003, the Commission issued a *Policy Statement on Electric and Natural Gas Price Indices* (Policy Statement) that explained its expectations of natural gas and electricity price index developers and the companies that report transaction data to them.⁵ On November 17, 2003, the Commission adopted behavior rules for certain electric market participants in its *Order Amending Market-Based Rate Tariffs and Authorizations* relying on section 206 of the Federal Power Act to condition market-based rate authorizations,⁶ and for certain natural gas market participants in *Amendments to Blanket Sales Certificates*, relying on section 7 of the Natural Gas Act to condition blanket marketing certificates.⁷ The behavior

⁴ See *Initial Report on Company-Specific Separate Proceedings and Generic Reevaluations; Published Natural Gas Price Data; and Enron Trading Strategies—Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices*, Docket No. PA02-2-000 (August 2003).

⁵ *Price Discovery in Natural Gas and Electric Markets, Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 (Policy Statement). Subsequently, in the same proceeding, the Commission issued an *Order on Clarification of Policy Statement on Natural Gas and Electric Price Indices*, 105 FERC ¶ 61,282 (Dec. 12, 2003) (Order on Clarification of Policy Statement) and an *Order on Further Clarification of Policy Statement on Natural Gas and Electric Price Indices*, 112 FERC ¶ 61,040 (July 6, 2005) (Order on Further Clarification of Policy Statement).

⁶ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218, at P 1, *superseded in part by Compliance for Public Utility Market-Based Rate Authorization Holders*, Order No. 674, 71 FR 9695 (Feb. 27, 2006), FERC Stats. and Regs. ¶ 31,208 (2006).

⁷ *Amendments to Blanket Sales Certificates*, Order No. 644, 68 FR 66,323 (Nov. 26, 2003), FERC Stats. and Regs. ¶ 31,153, at P 1 (2003) (citing 15

rules bar false statements and require certain market participants, if they report transaction data, to report such data in accordance with the Policy Statement. These participants must also notify the Commission whether or not they report prices to price index developers in accordance with the Policy Statement.⁸ On November 19, 2004, the Commission issued an order that addressed issues concerning prices indices in natural gas and electricity markets and adopted specific standards for the use of price indices in jurisdictional tariffs.⁹

7. In the Policy Statement, among other things, the Commission directed staff to continue to monitor price formation in wholesale markets, including the level of reporting to index developers and the amount of adherence to the Policy Statement standards by price index developers and by those who provide data to them.¹⁰ In adhering to this directive, Commission staff documented improvements in the number of companies reporting prices from back offices, adopting codes of conduct, and auditing their price reporting practices.¹¹ These efforts resulted in significant progress in the amount and quality of both price reporting and the information provided to market participants by price indices.¹² Further, in conformance with this directive, Commission staff recently concluded audits of three natural gas market participants with blanket certificate authority that were data providers subject to § 284.403 of the Commission's regulations.¹³

U.S.C. 717f (2000), *reh'g denied*, 107 FERC ¶ 61,174 (2003) (Order No. 644-A).

⁸ Certain portions of the behavior rules were rescinded in *Amendments to Codes of Conduct for Unbundled Sales Service and for Persons Holding Blanket Marketing Certificates*, Order No. 673, 71 FR 9709 (Feb. 27, 2006), FERC Stats. and Regs. ¶ 31,207 (2006). The requirement to report transaction data in accordance with the Policy Statement and to notify the Commission of reporting status were retained in renumbered sections. 18 CFR 284.288(a), 284.403(a).

⁹ *Price Discovery in Natural Gas and Electric Markets*, 109 FERC ¶ 61,184, at P 73 (2004).

¹⁰ Policy Statement at P 43.

¹¹ Federal Energy Regulatory Commission, Report on Natural Gas and Electricity Price Indices, at 2, Docket Nos. PL03-3-004 *et al.* (2004).

¹² See, e.g., General Accounting Office, Natural Gas and Electricity Markets: Federal Government Actions to Improve Private Price Indices and Stakeholder Reaction (December 2005).

¹³ See April 5, 2007 letter issued to Anadarko Energy Services Co. in Docket No. PA06-11-000 by Susan J. Court, Director, Office of Enforcement, and attached Audit of Price Index Reporting Compliance; April 5, 2007 letter issued to BG Energy Merchants, LLC. in Docket No. PA06-12-000 by Susan J. Court and attached Audit of Price Index Reporting Compliance; April 5, 2007 letter issued to Marathon Oil Co. in Docket No. PA06-13-000 by Susan J. Court, and attached Audit of Price Index Reporting Compliance.

³ See sections 4 and 5 of the Natural Gas Act, 15 U.S.C. 717c, 717d (2000); sections 205 and 206 of the Federal Power Act, 16 U.S.C. 824d, 824e (2000).

8. Congress recognized that the Commission might need expanded authority to mandate additional reporting to improve market confidence through greater price transparency and included in the Energy Policy Act of 2005 (EPAAct 2005)¹⁴ authority for the Commission to obtain information on wholesale electric and natural gas prices and availability. Under the Federal Power Act¹⁵ and the Natural Gas Act,¹⁶ the Commission has long borne a responsibility to protect wholesale electric and natural gas consumers. EPAAct 2005 emphasized the Commission's responsibility for protecting the integrity of the markets themselves as a way of protecting consumers in an active market environment. In particular, Congress directed the Commission to facilitate price transparency "having due regard for the public interest, the integrity of [interstate energy] markets, [and] fair competition."¹⁷ In the new transparency provisions of section 23 of the Natural Gas Act and section 220 of the Federal Power Act, Congress provided that the Commission may, but is not obligated to, prescribe rules for the collection and dissemination of information regarding the wholesale, interstate markets for natural gas and electricity, and authorized the Commission to adopt rules to assure the timely dissemination of information about the availability and prices of natural gas and natural gas transportation and electric energy and transmission service in such markets.

9. Consistent with the directive to facilitate price transparency in natural gas and electric markets as well as to explore options for action under EPAAct 2005's expansion of the Commission's authority, Commission staff met with interested entities in the summer of 2006. On September 26, 2006, staff conducted a workshop to review sources of energy market information with interested persons and to lay the groundwork for a technical conference held on October 13, 2006. In that conference, ideas for potential policy

actions by the Commission were identified.¹⁸

10. Based on those efforts, in this Notice of Proposed Rulemaking (NOPR), the Commission sets out two proposals regarding collection and dissemination of information about natural gas wholesale markets. The Commission does not propose action with respect to electric markets at this time. The Commission has recently addressed and is currently addressing electric market transparency in other proceedings. For example, in its final rule reforming the Open Access Transmission Tariff, the Commission referred to its authority under the electric transparency provisions to "promote greater transparency in the provision of transmission service * * *" ¹⁹ In that order, the Commission increased the transparency of a transmission provider's transmission planning,²⁰ the transparency of its calculations of Available Transfer Capability,²¹ and the transparency of its business rules and practices.²² These reforms are consistent with the electric transparency provisions because they will "provide information about the availability and prices of wholesale * * * transmission services" among others, as contemplated in the electric transparency provisions.²³ Furthermore, in the recently-initiated wholesale competition review, the Commission is reviewing a variety of market-related electricity issues in a series of public conferences evaluating the state of competition in wholesale power markets.²⁴ In the first conference, held February 27, 2007, among other issues, the Commission and panelists considered price transparency in the context of competition in the wholesale

markets.²⁵ As a separate matter, we note that wholesale electric transactions under market-based rates are submitted to the Commission and made publicly available through the Electric Quarterly Reports.²⁶ Further, in organized electricity markets, Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) provide transparency by publishing the results of auction markets and by posting spot market and day-ahead prices at pre-established intervals. The RTOs also provide additional information concerning the electric system capacity markets and financial transmission rights that provide further transparency concerning the RTO/ISO-administered markets.²⁷ For these reasons, we do not believe that additional action is needed at this time to implement the new electric transparency provisions of section 220 of the Federal Power Act.

III. Legal Context

11. With the passage of EPAAct 2005, Congress affirmed a commitment to competition in wholesale natural gas and electricity markets as national policy, the fifth major Federal law in the last 30 years to do so.²⁸ As part of this commitment to competition, in the transparency provisions, Congress charged the Commission with assuring the integrity of the wholesale markets and assuring fair competition by facilitating price transparency in those markets. It also significantly strengthened the Commission's regulatory tools in the transparency provisions, specifically, in new section 220 of the Federal Power Act and new section 23 of the Natural Gas Act.

12. In new section 23(a)(1) of the Natural Gas Act, Congress provided the Commission's mandate:

¹⁸ At the conference, the Commission convened two panels: (a) A panel of seven market participants to discuss price transparency in markets for the sale or transportation of physical natural gas in interstate commerce; and, (b) a panel of four market participants regarding price transparency in markets for the sale and transmission of electric energy in interstate commerce. See *Transparency Provisions of the Energy Policy Act of 2005, Program for the Technical Conference*, Docket No. AD06-11-000 (Oct. 6, 2006). In addition, for each panel, about ten representatives of information providers, such as price index publishers, attended to provide comment and answer questions.

¹⁹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12266 (March 15, 2007), FERC Stats. and Regs. ¶ 31,241 (2007), at P 80.

²⁰ *Id.* at P 69, 83.

²¹ *Id.* at P 84.

²² *Id.* at P 88.

²³ Section 220(a)(2) of the Federal Power Act, *to be codified at* 16 U.S.C. 824(a)(2).

²⁴ See, e.g., *Conference on Competition In Wholesale Power Markets*, Docket No. AD07-7-000.

²⁵ See, e.g., Transcript of Feb. 27, 2007 Conference, *Conference on Competition in Wholesale Power Markets*, Docket No. AD07-7-000, at 123, 153-154, 244-249.

²⁶ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 FR 31043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002), *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003).

²⁷ Comments of ISO/RTO Council, Docket No. AD06-11-000 (filed Oct. 5, 2006) (describing information provided by ISOs and RTOs).

²⁸ See Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (1992), codified as amended in scattered sections of 16 U.S.C.; Natural Gas Wellhead Decontrol Act of 1989, Pub. L. No. 101-60, 103 Stat. 157 (1989), codified in scattered section of 15 U.S.C.; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601-2645 (2000); Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3442 (2000).

¹⁴ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

¹⁵ 16 U.S.C. 824 *et seq.*

¹⁶ 15 U.S.C. 717 *et seq.*

¹⁷ Section 23(a)(1) of the Natural Gas Act, *to be codified at* 15 U.S.C. 717t-2(a)(1); *see also* section 220 of the Federal Power Act, *to be codified at* 16 U.S.C. 824t (identical language). Section 316 of EPAAct 2005 added section 23 to the Natural Gas Act (natural gas transparency provisions); section 1281 of EPAAct 2005 added section 220 to the Federal Power Act (electric transparency provisions) (together, the transparency provisions).

The Commission is directed to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce, having due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers.²⁹

In new section 23(a)(2) of the Natural Gas Act, Congress left to the Commission's discretion whether to enact rules to carry out this mandate and provided that any rules implementing the transparency provisions provide for public dissemination of the information gathered:

The Commission may prescribe such rules as the Commission determines necessary and appropriate to carry out the purposes of this section. The rules shall provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and in interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public.³⁰

13. In new section 23(a)(3) of the Natural Gas Act, Congress contemplated that the transparency provisions would differ from other provisions in the Natural Gas Act, both as to the entities covered by the Commission's jurisdiction and the possible involvement of third parties in implementing the rules. That section reads, with emphasis added:

The Commission may—

(A) Obtain the information described in paragraph (2) [*i.e.*, information about the availability and prices of natural gas sold at wholesale and interstate commerce] from *any market participant*; and

(B) Rely on *entities other than the Commission* to receive and make public the information, subject to the disclosure rules in subsection (b).³¹

By using the term “any market participant,” Congress deliberately expanded the universe subject to the Commission's transparency authority beyond the entities subject to the Commission's rate and certificate jurisdiction under other parts of the Natural Gas Act. The term “market participant” is not defined in the Natural Gas Act and is not on its face limited to otherwise jurisdictional entities.

²⁹ To be codified at 15 U.S.C. 717(v)(a)(1). The electric transparency provisions of the Federal Power Act are nearly identical as to the electric wholesale markets. Section 220 of the Federal Power Act, to be codified at 16 U.S.C. 824t. Because our proposals herein address natural gas transparency, we do not analyze the electric transparency provisions, although we expect that analysis of electric transparency provisions would be substantially similar.

³⁰ To be codified at 15 U.S.C. 717t–2(a).

³¹ To be codified at 15 U.S.C. 717t–2(a)(3).

14. Congress could have limited the scope of entities subject to the Commission's transparency authority by referring to “natural gas company” as defined in the Natural Gas Act³² or by referring to section 1, 3, or 7 of the Natural Gas Act.³³ The former approach would have excluded intrastate pipelines from the Commission's transparency authority. The latter approach would have entailed the jurisdictional limitations of those sections, which exclude from the Commission's jurisdiction first sales, sales of imported natural gas, sales of imported liquefied natural gas, and sales and transportation by entities engaged in production and gathering, local distribution, “Hinshaw” pipelines, or vehicular natural gas.³⁴ These limitations do not apply to the Commission's transparency authority. Given Congress's use of the term “market participant,” the Commission's transparency authority includes any person or form of organization, including, for instance, natural gas producers, processors and users.

15. The Commission's authority to obtain information from “any market participant” is not plenary. In the natural gas transparency provisions, Congress limited that authority in two respects: the scope of the markets at issue and the type of information to obtain and disseminate. First, Congress directed the Commission to “facilitate price transparency in markets for the

³² Section 2(6) of the Natural Gas Act, 15 U.S.C. 717a(6).

³³ 15 U.S.C. 717, 717b, 717f.

³⁴ Section 1(b)-(d) of the Natural Gas Act, 15 U.S.C. 717(b)-(d); section 3 of the Natural Gas Act, 15 U.S.C. 717b; section 7(f) of the Natural Gas Act, 15 U.S.C. 717f(f); see, also, section 601(a) of the Natural Gas Policy Act, 15 U.S.C. 3431(a). The Commission has previously explained that the Natural Gas Policy Act of 1978 (NGPA or Natural Gas Policy Act) and the Natural Gas Wellhead Decontrol Act of 1989 narrowed its jurisdiction under the Natural Gas Act:

Under the NGPA, first sales of natural gas are defined as any sale to an interstate or intrastate pipeline, LDC [Local Distribution Company] or retail customer, or any sale in the chain of transactions prior to a sale to an interstate or intrastate pipeline or LDC or retail customer. NGPA Section 2(21)(A) sets forth a general rule stating that all sales in the chain from the producer to the ultimate consumer are first sales until the gas is purchased by an interstate pipeline, intrastate pipeline, or LDC. Once such a sale is executed and the gas is in the possession of a pipeline, LDC, or retail customer, the chain is broken, and no subsequent sale, whether the sale is by the pipeline, or LDC, or by a subsequent purchaser of gas that has passed through the hands of a pipeline or LDC, can qualify under the general rule as a first sale on natural gas. In addition to the general rule, NGPA Section 2(21)(B) expressly excludes from first sale status any sale of natural gas by a pipeline, LDC, or their affiliates, except when the pipeline, LDC, or affiliate is selling its own production.

Order No. 644 at P 14.

sale or transportation of physical natural gas in interstate commerce * * *.”³⁵ Thus, any information collected and disseminated must be for the purpose of price transparency in those markets. We do not interpret this language to limit the Commission to obtaining information only about physical natural gas sales or transportation in those markets, provided that the information obtained and disseminated pertains to price transparency in those markets. Second, Congress provided 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 interstate commerce * * *.”³⁶ Thus, the Commission's authority is limited to “information about the availability and prices of natural gas sold at wholesale and in interstate commerce.”³⁷ Again, this language does not limit the type of information the Commission could collect to implement its mandate, provided that such information is “about” (*i.e.*, pertains to) the “availability and prices of natural gas sold at wholesale and in interstate commerce.” For instance, 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.

16. The natural gas transparency provisions further provide that the Commission shall “rely on existing price publishers and providers of trade processing services to the maximum extent possible.”³⁸ Thus, Congress authorized the Commission to rely on third parties to collect and disseminate transparency information. The Commission does not herein authorize or empower third parties to collect or disseminate information. Nonetheless, we expect that third parties may use the information collected pursuant to the proposals in this NOPR and repackage it, if sufficient demand for such services arises in the information marketplace.³⁹

17. Also, in the transparency provisions, Congress cautioned the Commission in providing for any

³⁵ Section 23(a)(1) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(a)(1).

³⁶ Section 23(a)(2) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(a)(2).

³⁷ *Id.*

³⁸ Section 23(a)(4) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(a)(4).

³⁹ We reiterate here our comments made previously regarding price index publishers, data hubs, and other trade processing services: we do not “endorse[e] any particular entity or approach, but continue to encourage industry participants to find optimal solutions to better wholesale price formation.” *Order on Further Clarification of the Policy Statement* at P 11.

dissemination of information pursuant to the transparency provisions to ensure that “consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors by untimely disclosure of transaction-specific information.”⁴⁰

18. Finally, new section 23(d)(2) of the natural gas transparency provisions mandates an exemption from any reporting for “natural gas producers, processors, or users who have a *de minimis* market presence * * *.”⁴¹ This paragraph does not exempt all producers and all processors from reporting, but exempts only producers that have a *de minimis* market presence and only processors that have a *de minimis* market presence.

IV. Reporting of Flow Volume and Capacity by Intrastate Pipelines

A. Proposal

19. The Commission proposes that in order to make available the information needed to track daily flows of natural gas throughout the United States, each intrastate pipeline would be required to post daily to the Internet the capacities of, and volumes flowing through, their major receipt and delivery points and mainline segments. Postings would be required within 24 hours from the close of the gas day on which gas flowed, *i.e.*, at or before 9 a.m. central clock time for flow that occurred on the gas day that ended 24 hours before. To illustrate, the volume of gas that flowed through a receipt point from 9 a.m. central clock time on Monday through 9:00 a.m. central clock time on Tuesday would be reported as a daily flow volume for that gas day and must be reported by 9 a.m. Wednesday central clock time. The Commission would implement this proposal by adding a new § 284.14 to its regulations.

20. As explained in greater detail below, by adding information on intrastate pipeline flows to the information already available from interstate pipelines, the Commission, market participants, and the public could develop a better understanding of daily supply and demand conditions that directly affect U.S. wholesale natural gas markets. While distinctions between intrastate and interstate natural gas markets may be meaningful from a legal perspective, they are not meaningful from the perspective of market price formation. The U.S. natural gas market produces geographically

diverse prices through the direct influence of supply, demand and transportation availability, but without ever differentiating interstate from intrastate commerce. Consequently, this proposal to increase information from intrastate pipelines would directly “facilitate price transparency for the sale * * * of physical natural gas in interstate commerce” as authorized in the natural gas transparency provisions.⁴²

B. Legal Considerations

21. As discussed above, the natural gas transparency provisions provide the authority for the Commission to obtain information from otherwise non-jurisdictional entities, including intrastate pipelines. The proposal to require intrastate pipelines to post flow information raises the additional issue whether such information qualifies as “information about the availability and prices of natural gas sold at wholesale in interstate commerce.”⁴³ If not, the Commission would be foreclosed from requiring the posting.

22. The Commission believes that the information covered by the instant proposal qualifies as “information about the availability and prices of natural gas sold at wholesale and in interstate commerce.” Notwithstanding their intrastate status, most major intrastate pipelines today transport or buy and sell wholesale natural gas that eventually enters or at least impacts the interstate natural gas market. Further, supply and demand in intrastate markets have a direct effect on prices of gas destined for interstate markets because both intrastate and interstate consumers draw on the same sources of supply. This is the case because of the statutory, regulatory and market changes that have taken place in the last three decades.

23. In 1978, in the Natural Gas Policy Act, Congress allowed an intrastate pipeline to transport natural gas in interstate commerce on behalf of any interstate pipeline or local distribution company served by an interstate pipeline, without losing its intrastate status.⁴⁴ Congress likewise permitted an intrastate pipeline to sell natural gas to any interstate pipeline or any local distribution company served by its interstate pipeline, without losing its

intrastate status.⁴⁵ In addition, at the same time that the Commission issued Order No. 636 in 1992, it promulgated a new subpart of Part 284 (revised several times in the past 15 years) that provides blanket authority to any person who is not an interstate pipeline (including intrastate pipelines) to make sales for resale of natural gas in interstate commerce.⁴⁶ This authorization is a limited jurisdiction certificate, which means that the holder does not become subject to the panoply of Natural Gas Act regulation by exercising its rights under the certificate.⁴⁷

24. The market understandably reacted to these statutory and regulatory changes since 1978. As relevant here, and explained in greater detail below, natural gas sold at or destined to be sold at wholesale in the interstate market is frequently exchanged or the transactions consummated at market hubs where interstate and intrastate pipelines are interconnected (*e.g.*, Waha, Katy, Houston Ship Channel, and Carthage in Texas and at Henry Hub in Louisiana). Prices formed at these hubs are, in effect, prices for wholesale transactions in interstate commerce, even if a portion of the gas priced at each market hub is consumed intrastate. In addition, transfer of natural gas can take place directly between parties who ship gas on both intrastate and interstate pipelines at any pipeline interconnection.

C. Discussion

25. Currently, through the availability of information regarding daily scheduled flows of natural gas through interstate pipelines, market participants have an increased, daily understanding of natural gas markets, including regional conditions and the pipeline capacity available to resolve different geographic supply/demand balances. This is due in part to Order No. 637, where the Commission required posting of capacity and scheduled volume information on interstate pipelines with

⁴⁵ See section 311(b) of the Natural Gas Policy Act, 15 U.S.C. 3371(b); see also 18 CFR part 284, subpart D (Certain Sales by Intrastate Pipelines).

⁴⁶ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats. & Regs. ¶ 30,939 (1992), order on reh'g, Order No. 636-A, 57 FR 36128 (Aug. 12, 1992), FERC Stats & Regs. ¶ 30,950 (1992), order on reh'g, Order No. 636-B, 61 FERC ¶ 61,272 (1992), order on reh'g, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom United Distribution Cos. v. FERC*, 88 F.3d 1104 (D.C. Cir. 1996), order on remand, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

⁴⁷ See 18 CFR part 284, subpart L (Certain Sales for Resale by Non-interstate Pipelines).

⁴² Section 23(a)(1) of the Natural Gas Act, *to be codified at* 15 U.S.C. 717t-2(a)(1).

⁴³ Section 23(a)(2) of the Natural Gas Act, *to be codified at* 15 U.S.C. 717t-2(a)(2).

⁴⁴ See section 311(a)(2) of the Natural Gas Policy Act, 15 U.S.C. 3371(a)(2); see also 18 CFR part 284, subpart C (Certain Transportation by Intrastate Pipelines).

⁴⁰ Section 23(b)(2) of the Natural Gas Act, *to be codified at* 15 U.S.C. 717t-2(b)(2).

⁴¹ Section 23(d)(2) of the Natural Gas Act, *to be codified at* 15 U.S.C. 717t-2(d)(2).

the direct intention of allowing shippers to monitor capacity availability.⁴⁸ Accordingly, interstate pipelines must post available capacity information, specifically:

The availability of capacity at receipt points, on the mainline, at delivery points, and in storage fields, whether the capacity is available directly from the pipeline or through capacity release, the total design capacity of each point or segment on the system; the amount scheduled at each point or segment whenever capacity is scheduled, and all planned and actual service outages or reductions in service capacity.⁴⁹

In Order No. 637, the Commission anticipated that such postings would provide useful information regarding supply and demand fundamentals:

The changes to the Commission's reporting requirements will enhance the reliability of information about capacity availability and price that shippers need to make informed decisions in a competitive market as well as improve shippers' and the Commission's

ability to monitor marketplace behavior to detect, and remedy anticompetitive behavior.⁵⁰

26. Today, interested market participants as well as commercial vendors retrieve this information from the Web sites of interstate pipelines to obtain schedule information that is then used to estimate a variety of supply and demand conditions including geographic and industrial sector consumption, storage injections and withdrawals and regional production in almost real-time.⁵¹ Market participants have come to rely on this information to help price transactions. Commission staff has also come to rely on this information to perform its oversight and enforcement functions. In fact, observers believe that this information posting has contributed to market transparency by revealing the underlying volumetric (or availability) drivers behind price movements.⁵²

27. Notwithstanding the contribution of posted interstate schedule information to the transparency of price and availability of natural gas, this information cannot provide a complete picture of natural gas flows in the United States—or even those flows directly relevant to the pricing of natural gas flowing in interstate commerce. Several major U.S. natural gas pricing points sit at the confluence of multiple interstate and intrastate pipelines. A recent study by the Department of Energy's Energy Information Administration (EIA) identified 28 national market centers or pricing hubs, of which 13 are served by a combination of interstate and intrastate pipelines.⁵³ The table below shows the capacity of interstate and intrastate pipelines connected to each of these 13 hubs.

TABLE 1.—INTER- AND INTRASTATE PIPELINE DELIVERY CAPACITY AT SELECTED U.S. NATURAL GAS PRICING POINTS

| Hub name | State | Receipt and delivery capacity | |
|----------------------|----------|-------------------------------|------------------------------|
| | | Interstate pipelines (MMcfd) | Intrastate pipelines (MMcfd) |
| Carthage | TX | 1,120 | 1,355 |
| Henry Hub | LA | 2,770 | 1,215 |
| Katy—Enstore | TX | 1,370 | 3,815 |
| Katy—DEFS | TX | 260 | 2,360 |
| Mid Continent | KS | 1,112 | 627 |
| Moss Bluff | TX | 1,050 | 1,800 |
| Nautilus | LA | 1,200 | 1,350 |
| Perryville | LA | 3,652 | 350 |
| Aqua Dulce | TX | 855 | 835 |
| Waha—Lone Star | TX | 810 | 1,140 |
| Waha—Encina | TX | 525 | 800 |
| Waha—El Paso | TX | 1,165 | 1,660 |
| Waha—DEFS | TX | 300 | 1,850 |

Source: Unpublished Energy Information Administration update to March 2005 of information presented in Natural Gas Market Centers and Hubs: A 2003 Update, October 2003.

28. Many of these pricing points are closely connected to other regions of the United States, influencing prices across

the country. The figure below shows the location and flow patterns of natural gas moving between intrastate and interstate

markets through several of these pricing points.

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⁴⁸ Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, 65 FR 10156, at 10204–10205, (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,091, at 31,320–31,321 (2000); order on reh'g, Order No. 637–A, 65 FR 35706 (June 5, 2000), FERC Stats. & Regs. ¶ 31,099 (2000); order on reh'g, Order No. 637–B, 65 FR 47284 (Aug. 2, 2000), affirmed in relevant part, Interstate Natural Gas Ass'n of America v.

FERC, 285 F.3d 18 (D.C. Cir. 2002), order on remand, 101 FERC ¶ 61,127, order on reh'g, 106 FERC ¶ 61,088, aff'd sub nom. American Gas Ass'n v. FERC, 428 F.3d 255 (D.C. Cir. 2005) (Order No. 637).

⁴⁹ 18 CFR 284.13(d).

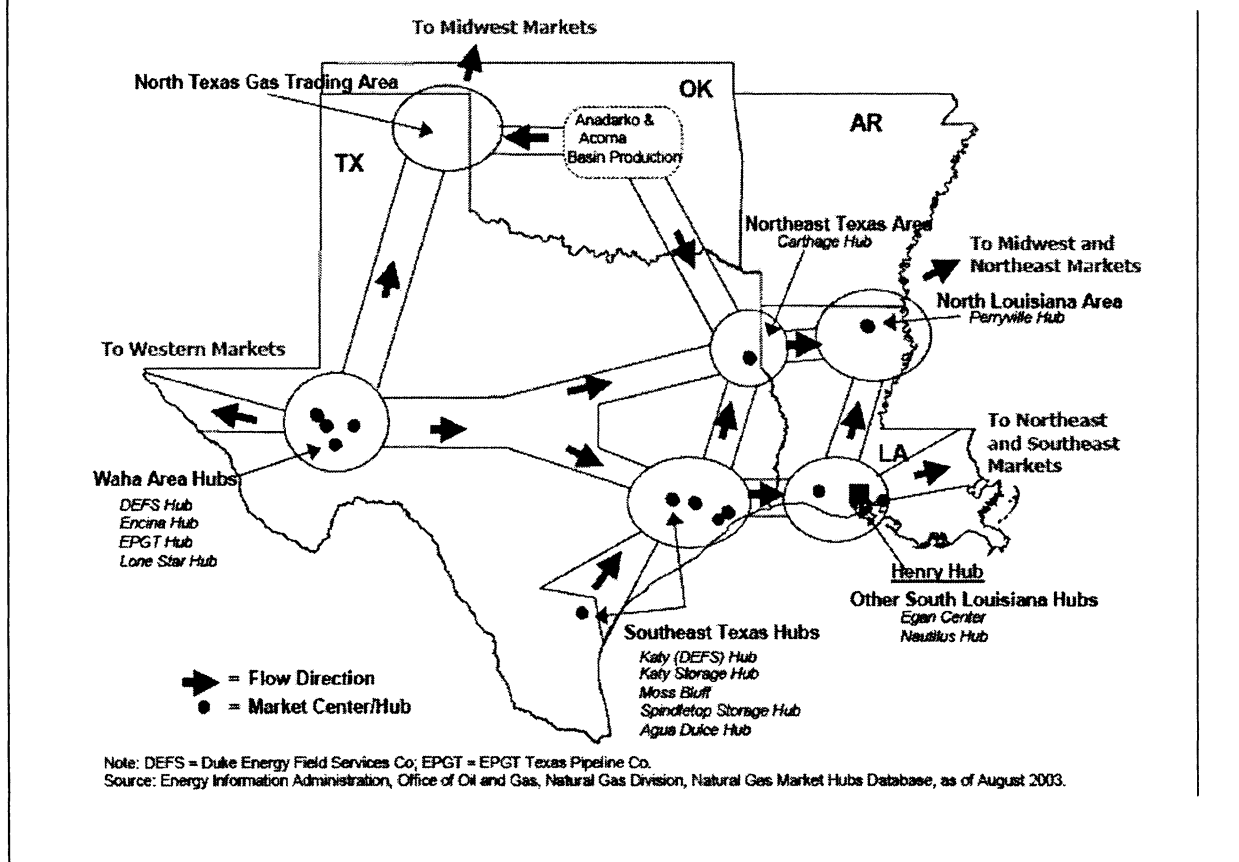
⁵⁰ Order No. 637, 65 FR at 10169.

⁵¹ See, e.g., Comments of Bentek Energy, LLC., Docket No. AD06–11–000 (filed Oct. 10, 2006).

⁵² See, e.g., Comments of Platt's, at p. 11–13, Docket No. AD06–11–000 (information regarding the supply and demand of natural gas explains prices and such information is available from interstate pipelines, but not intrastate pipelines).

⁵³ Department of Energy, Energy Information Administration, Natural Gas Market Centers and Hubs: A 2003 Update, Oct. 2003, http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2003/market_hubs/mkthubs03.pdf.

Figure 1
Texas and Louisiana Market Hubs and Their Connection to Other Regions in the United States



29. One pricing point directly connected to both interstate and intrastate pipelines is Henry Hub, Louisiana, the location for delivery of natural gas under the New York Mercantile Exchange's (NYMEX) futures contract. Monthly settlement of NYMEX's Henry Hub natural gas future contract has become important in determining a variety of monthly index prices used to set natural gas prices in a variety of transactions, some in interstate commerce, particularly along the East Coast and Gulf Coast of the United States. The nature of this influence is detailed in Commission staff's *2006 State of the Markets Report*.⁵⁴

30. Purchasers of natural gas in interstate commerce draw on the same sources of supply as users and buyers of

natural gas in intrastate commerce. For example, much of the recent Barnett Shale development in the Fort Worth basin flows into intrastate systems before moving into interstate markets. In total, slightly more than 40 percent of total on-shore production in Texas is connected to interstate pipelines, less than 60 percent in Louisiana and less than 80 percent in Oklahoma.⁵⁵ Though daily volume flowing from intrastate into interstate pipelines can be estimated, the supply dynamics that make these volumes available cannot.

31. Send-out from current liquefied natural gas (LNG) terminals—Cove Point, Elba Island, Everett and Lake Charles—is observable through interstate receipt point flow postings. Of seven approved, but not yet operational,

terminals in Texas and Louisiana, all would discharge in whole or in part to intrastate pipelines.⁵⁶

32. The Commission proposes to require posting of actual flow information from intrastate pipelines rather than scheduled volumes, as it does for interstate pipelines. Intrastate pipelines operate in different regulatory and business contexts from interstate pipelines, making scheduled volumes less helpful in estimating movement of natural gas. For example, interstate pipelines primarily operate as open access transporters, not as sellers of natural gas. Scheduled volumes represent the communication that must occur between the shipper and the pipeline to conduct most of their business. As a consequence, interstate receipt, transportation and delivery schedules, as updated before and

⁵⁴ Federal Energy Regulatory Commission, 2006 State of the Markets Report, at 48–50 (Jan. 2007), <http://www.ferc.gov/market-oversight/market-oversight.asp>, (follow link to the State of the Markets Full Report).

⁵⁵ BENTEK Energy, LLC analysis of supply scheduled into interstate pipelines compared with EIA data from its table Natural Gas Gross Withdrawals and Production for Texas and Oklahoma available at http://tonto.eia.doe.gov/dnav/ng/ng_prod_sum_dcu_NUS_m.htm.

⁵⁶ Texas Railroad Commission, Onshore LNG Supply Terminal Projects Proposed for Texas (June 28, 2006), <http://www.rrc.state.tx.us/commissioners/carrillo/press/LNGprojects.html>.

through the delivery day, reflect actual flows on their systems as well.⁵⁷ In contrast, intrastate pipelines often sell gas directly to customers under a variety of regulatory regimes. Much of such gas can flow without being scheduled, especially for customers' variable requirements. Similarly, many direct pipeline purchases from the wellhead and from smaller gathering systems need not be scheduled. Given the different business models, and the likelihood that scheduling information on intrastate pipelines would be unhelpful, we conclude that actual flow information, posted after-the-fact, would be needed to develop an understanding of these flows.

33. The daily posting of flow information by intrastate pipelines would provide several benefits to the functioning of natural gas markets in ways that would protect the integrity of physical, interstate natural gas markets, protect fair competition in those markets and consequently serve the public interest by better protecting consumers. First, by providing a more complete picture of supply and demand fundamentals, these postings would improve market participants' ability to assess supply and demand and to price physical natural gas transactions. Second, during periods when the U.S. natural gas delivery system is disturbed, for instance due to hurricane damage to facilities in the Gulf of Mexico, these postings would provide market participants a clearer view of the effects on infrastructure, the industry, and the economy as a whole. Finally, these postings would allow the Commission and other market observers to identify and remedy potentially manipulative activity. We discuss each of these points in turn.

34. First, the proposed daily intrastate pipeline capacity and volume postings would improve market participants' ability to assess supply and demand and price physical natural gas transactions by providing a more complete picture of supply and demand fundamentals.⁵⁸ As discussed above and noted in comments filed in these proceedings, interstate pipeline information does not provide a complete picture of the supply and demand fundamentals that apply to interstate commerce because much of

⁵⁷ In the case of "no-notice" service, see 18 CFR 284.7(a)(4), interstate pipeline schedules do not reflect flows. Consequently, information about interstate flows in areas using no-notice service is less useful.

⁵⁸ See, e.g., Comments of Platt's, at p. 11, Docket No. AD06-11-000 (filed Nov. 1, 2006) (explaining that, to understand prices, "the marketplace must look to * * * information on [the] availability of and demand for natural gas * * *").

the natural gas in the U.S. is moved through the intrastate pipeline system.⁵⁹

35. Second, the proposed daily intrastate pipeline capacity and volume postings would provide market participants—and the Commission in its market oversight efforts—a clearer view of the effects on infrastructure, the industry, and the economy as a whole during periods when the U.S. natural gas delivery system is disturbed. For example, after landfall of hurricanes Katrina and Rita in late 2005, even the most interested of governmental and commercial market observers were not able to obtain complete information regarding the extent of the damage at production facilities.⁶⁰ By monitoring receipt and delivery points for production facilities on interstate pipelines, market participants were able to obtain only a limited sense of production facility output.⁶¹ Similarly, market participants, State commissions and others were unable to assess effects on natural gas consumption in the Gulf Coast, including consumption by the petrochemical industry, for some period. The significance and duration of these effects on this industry—vulnerable to energy price and availability disruptions—remain unclear. This proposal would allow interested governmental and private parties to gain a much better picture of disruptions in natural gas flows in the case of future hurricanes in the Gulf region.⁶²

⁵⁹ See Comments of Platt's, at p. 13, Docket No. AD06-11-000 (filed Nov. 1, 2006) (stating that much of the fundamental supply and demand data is missing from natural gas markets and advocating for reporting by intrastate pipelines).

⁶⁰ See, e.g., Transcript of the Oct. 13, 2006 Technical Conference (Tr.), at 25, *Transparency Provisions of the Energy Policy Act of 2005*, Docket No. AD06-11-000 (Comments of Sheila Rappazzo, Chief of Policy Section of the Office of Gas and Water of the New York State Department of Public Service).

⁶¹ Tr. at 25 (Comments of Sheila Rappazzo) (describing how after the 2005 hurricanes data availability differed widely).

⁶² Along these lines, this proposal is consistent with a recent Commission final rule and a proposed survey by EIA. On August 23, 2006, the Commission revised its reporting regulations to require jurisdictional natural gas companies to report damage to facilities due to a natural disaster or terrorist activity that results in a reduction in pipeline throughput or storage deliverability. *Revision of Regulations to Require Reporting of Damage to Natural Gas Pipeline Facilities*, Order No. 682, 71 FR 51098 (Aug. 29, 2006), FERC Stats. and Regs. ¶ 31,227 (2006), *order on reh'g*, 118 FERC ¶ 61, (2007). On January 30, 2007, EIA proposed to survey natural gas processing plants "to monitor their operational status and assess operations of processing plants during a period when natural gas supplies are disrupted." *Agency Information Collection Activities*, 72 FR 4248 (Jan. 30, 2007). The purpose of the survey would be to "inform the public, industry, and the government about the status of supply and delivery activities in the area affected by the disruption." *Id.*

36. Third, the proposed daily intrastate pipeline capacity and volume postings would allow the Commission and other market observers to identify and remedy potentially manipulative activity more actively by tracking price movement in the context of natural gas flows.⁶³ In particular, information regarding availability on intrastate pipelines could be used to track manipulative or unduly discriminatory behavior intended to cause harm to consumers by distorting market prices in interstate commerce. For example, Commission staff overseeing markets routinely check for unused interstate pipeline capacity between geographically distinct markets with substantially different prices as a sign that flows may be managed to manipulate prices. Given the importance of intrastate pipeline connections to 13 major pricing hubs, including Henry Hub, as discussed above, the lack of flow information on intrastate pipelines hinders the Commission's market oversight and enforcement efforts.

37. This benefit comports with EPAct 2005, in which Congress directed the Commission to facilitate price transparency in physical, interstate natural gas markets "with due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers."⁶⁴ By this language, Congress intended that the improvement of Commission market oversight activities is a legitimate justification for proposing rules under the natural gas transparency provisions. Monitoring and preventing manipulative or unduly discriminatory activity would meet the Commission's responsibility for ensuring the integrity of the physical interstate natural gas markets. The proposal to make intrastate pipeline information available to the public would assist the Commission in fulfilling that responsibility.

D. Solicitation of Comments

38. The Commission seeks comments on its proposal to be codified in subpart A of part 284 of the Commission's regulations that intrastate pipelines be required to post daily to the Internet the capacities of, and volumes flowing through their major receipt and delivery

⁶³ See Prohibition of Energy Market Manipulation, Order No. 670, 71 FR 4244 (Jan. 26, 2006), FERC Stats. & Regs. ¶ 31,202 (2006) (implementing section 4A of the Natural Gas Act, to be codified at 15 U.S.C. 717c-1, which prohibits natural gas market manipulation), *reh'g denied*, 114 FERC ¶ 61,300 (2006).

⁶⁴ Section 23(a)(1) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(a)(1).

points and mainline segments.⁶⁵ In particular, the Commission seeks comment on whether market participants believe that the posting of flow information on intrastate pipelines would provide valuable additional information on supply and demand fundamentals for interstate markets and whether such information would be sufficient. The Commission also seeks comment on the burden this proposal would impose on intrastate pipelines. Those providing burden estimates should provide support for their estimate and compare that estimate to the burden currently borne by interstate pipelines that report capacity availability pursuant to § 284.13(d) of the Commission's regulations.

39. The Commission seeks comment on how to define "major" receipt and delivery points and mainline segments on intrastate systems. The Commission does not wish to include extremely small points connected to one or a few customers, which it would consider burdensome and possibly even anti-competitive in certain cases.

40. The proposal does not make an exception for intrastate pipelines transporting *de minimis* volumes. Although the natural gas transparency provisions mandate that the Commission create an exception from reporting requirements for "natural gas producers, processors, or users who have a *de minimis* market presence," they do not mandate a *de minimis* exception for natural gas pipelines.⁶⁶ The Commission seeks comment on whether the Commission should create a *de minimis* threshold under which certain intrastate pipelines should not be required to report or should create a method for certain intrastate pipelines to seek waiver of these requirements. How would such a *de minimis* threshold be measured, for instance, by throughput volume? The Commission also seeks comment on whether the proposed flow posting requirements should apply to all intrastate pipelines, or whether it should be limited to intrastate pipelines in states where a significant percentage of supply and demand information is not observable through current interstate pipeline posting requirements.

41. The Commission seeks comment on the difference in approach applied to

intrastate and interstate pipelines by requiring intrastate pipelines to post actual natural gas flows instead of scheduled flows. Should the Commission require intrastate pipelines to post information about capacity availability at major points on a daily basis, similar, or identical, to the information that interstate pipelines are required to post under § 284.13(c)? Is it possible to determine major intrastate pipeline flows using schedule information?

42. Regarding the method of posting, the Commission seeks comment on the format for posting flow information by intrastate pipelines, including whether intrastate pipelines should follow the standards of the North American Energy Standards Board. If not, what additional accommodations would need to be made for their different operations? Further, how would § 284.12, which outlines formatting requirements for interstate pipeline postings be modified to accommodate intrastate pipelines and to accommodate posting of flow information as opposed to scheduling information? Also, the timing in the proposal requires the posting of flow information within 24 hours from the close of the gas day on which gas flows (*i.e.*, on or before 9 a.m. central clock time for flows occurring on the gas day that ended 24 hours before). Does this timing create an undue burden? Is it sufficiently timely?

43. Finally, the Commission seeks comment on whether it should revise the posting requirements applicable to interstate pipelines provided in § 284.13(d)(1) of the Commission's regulations.⁶⁷ Since those posting requirements were mandated, have there been changes in technology or the marketplace that justify changing the posting requirements for interstate pipelines? In addition to current posting requirements, should interstate pipelines be required to post actual flow information as we propose to require intrastate pipelines to do? Would posting of actual flow information provide useful information regarding actual capacity use, for instance, by providing information regarding non-notice service?

V. Annual Reporting of Natural Gas Transactions

A. Proposal

44. The Commission proposes that buyers and sellers of more than a *de minimis* volume of natural gas be required to report aggregate numbers and volumes of relevant transactions in

an annual filing using an electronic form to be provided by the Commission on its Internet Web page. This proposal would be codified at § 260.401 of the Commission's regulations. This information would provide regularly an 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 price indices, and (d) the relative size of major traders. Although the natural gas transparency provisions authorize the Commission to require reporting of detailed transaction-by-transaction information, the Commission proposes obtaining this more limited set of information designed to assess the market. The requirement would be applied to companies both traditionally jurisdictional to the Commission and others. This form would also serve to identify users of blanket certificates and document their reporting status as required under § 284.403(c) and § 284.288(a), discussed further below. A proposed form for the report is set forth in Appendix A.⁶⁸

45. Under the proposed reporting requirement, certain natural gas buyers and sellers would identify themselves to the Commission and report summary information about physical natural gas transactions for the previous calendar year including: (a) Their total amount of physical⁶⁹ natural gas transactions by number and volume; (b) the breakdown of their transactions by purchases and sales; (c) the number and volume breakdown of their purchases and sales by whether they were conducted in monthly or daily spot markets; and (d) the number and volume breakdown of their purchases and sales by type of pricing, in particular whether that pricing was fixed or indexed.

⁶⁸ Pursuant to § 375.314(f) and (g), the Director of the Office of Enforcement or the Director's designee, could deny or grant waivers of the requirements of this form and could act on requests for extensions of time to file the form. 18 CFR 375.314(f) and (g). The Commission anticipates directing staff to make changes to the format of the form. *Cf. Revised Public Utility Filing Requirements*, 106 FERC ¶ 61,281 (2004) (directing staff to make future changes to the Electric Quarterly Reports).

⁶⁹ Although the standard contract for the most significant natural gas futures market traded on the New York Mercantile Exchange (NYMEX) requires physical delivery, the vast majority of those transactions do not go to delivery. For the purposes of this proposal, and despite the particulars of the futures contract language, we intend to explicitly exclude volumes of futures transactions from consideration. Indeed, information about volumes of futures transactions is already publicly available through a variety of commercial means or directly through NYMEX at <http://www.nymex.com>, so collection of the information would be redundant and unnecessary.

⁶⁵ The Commission is not proposing to amend subparts C and D of part 284, because those subparts govern interstate transactions by intrastate pipelines under the authority of the Natural Gas Policy Act. The instant proposal is based on the Commission's Natural Gas Act jurisdiction as amended by EPA Act 2005.

⁶⁶ Section 23(d)(2) of the Natural Gas Act, *to be codified at* 15 U.S.C. 717t-2(d)(2).

⁶⁷ 18 CFR 284.13(d)(1).

46. In addition, a natural gas seller would be required to state whether it operates under blanket certificate authority under § 284.402 of the Commission's regulations, and whether it reports transactions to price index publishers and whether any such reporting complies with the standards provided in § 284.403(a). Similarly, an interstate pipeline would be required to state whether it operates under blanket certificate authority under § 284.284 of the Commission's regulations, and whether it reports transactions to price index publishers and whether any such reporting complies with the standards provided in § 284.288(a).⁷⁰

B. Legal Considerations

47. The Commission intends "physical natural gas transaction" to mean a sale or purchase of natural gas with an obligation to deliver or receive physically, even if the natural gas is not physically transferred due to some offsetting or countervailing trade. Thus, with one explicit exception, even if the transaction does not go to physical delivery, it would still be included as a physical transaction. The exception is physically settled futures contracts. The Commission would require such a contract to be reported only if it actually goes to delivery. Although the language of the natural gas transparency provisions address sales of natural gas, it does not limit the Commission from seeking information about natural gas purchases as well as sales. They are simply different sides of the same transaction. Congress directed the Commission to "facilitate price transparency in markets for the sale * * * of physical natural gas in interstate commerce," but that language does not limit the Commission to seeking information regarding only sales.⁷¹ Purchases of physical natural gas are also a part of such markets; there is no market for the sale of natural gas that does not include purchases. Nor does the natural gas transparency provision language that provides for the "dissemination * * * of information about the availability and prices of natural gas sold at wholesale and interstate commerce" restrict the Commission.⁷² As a practical matter,

⁷⁰The Commission recognizes that few if any interstate natural gas pipelines still make wholesale sales. Nevertheless, if they were to sell gas at wholesale in interstate commerce, they would be subject to the proposed rule. More relevant, of course, is the fact that all of their affiliates making wholesale sales in interstate commerce would be subject to the proposed rule.

⁷¹Section 23(a)(1) of the Natural Gas Act, *to be codified at* 15 U.S.C. 717t-2(a)(1).

⁷²Section 23(a)(2) of the Natural Gas Act, *to be codified at* 15 U.S.C. 717t-2(a)(2) (emphasis added).

information regarding purchases of natural gas is necessary to evaluate the reliability of information regarding sales of natural gas. Both types of information are necessary to obtain a useful gauge of price transparency in natural gas markets.

48. Further, in its Policy Statement, the Commission states that data providers should provide both sale and purchase information to price index developers.⁷³ As the Policy Statement and related Commission initiatives were major Commission proceedings regarding this topic, we can presume that Congress was aware of this Policy Statement when it wrote the transparency provisions and, thus, contemplated that the Commission would continue its practice of seeking both sale and purchase information in facilitating price transparency.

49. The proposed public nature of the filings would comport with the transparency provisions which require that any such rules "provide for the dissemination, on a timely basis, of information * * * to the public."⁷⁴ The transparency provisions further direct the Commission to "rely on [existing price publishers and providers of trade processing services] to the maximum extent possible."⁷⁵ By requiring public filings by market participants, the Commission would provide an opportunity for trade publications and commercial vendors to aggregate the information and provide any analysis should a desire for such services arise in the energy information marketplace.

C. Discussion

50. Because of the way transactions currently take place in the natural gas industry, there is no way to estimate in even the broadest terms the overall size of the natural gas market or its breakdown by types of contract provision, including pricing and term (*e.g.*, spot or longer term forwards).⁷⁶ More particularly, there is no way to determine important volumetric relationships between the fixed-price day-or month-ahead transactions that form price indices or to determine the use of price indices themselves. As noted by the price index developer Platt's, the question of what is the total size of the traded market has "hung over

⁷³Policy Statement on Price Indices at P 34.

⁷⁴Section 23(a)(2) of the Natural Gas Act, *to be codified at* 15 U.S.C. 717t-2(a)(2).

⁷⁵Section 23(a)(4) of the Natural Gas Act, *to be codified at* 15 U.S.C. 717t-2(a)(4).

⁷⁶In its supplemental comments, Platt's provided information regarding its use of physical basis transactions in compiling monthly indices.

Supplemental Comments of Platt's, *Transparency Provisions of the Energy Policy Act*, Docket No. AD06-11-000 (filed Feb. 23, 2007).

the gas market for years."⁷⁷ Without the most basic of volumetric information, the Commission has been hampered in its oversight and its ability to assess the adequacy of price-forming transactions. Market participants are likewise unable to evaluate their use of indexed transactions. Typically, market participants rely on index-price transactions as a way to reference market prices without taking on the risks of active trading. These market participants rely on index prices, often whether or not those prices are derived from a robust market of fixed-price transactions.

51. Price formation in natural gas markets makes no distinction between transactions that are jurisdictional to the Commission under the Natural Gas Act absent new section 23 of that statute and those that are not. As discussed above, generally, while the Commission's traditional jurisdiction arising from sections 3 through 10 of the Natural Gas Act is limited to "natural gas compan[ies],"⁷⁸ this limitation is not applicable to the Commission's jurisdiction under new section 23 of the Natural Gas Act,⁷⁹ the natural gas transparency provisions. As a consequence, in order to assess the size and structure of U.S. natural gas markets, information is required from transacting companies whether or not they fall under the Commission's traditional jurisdiction.

52. Notwithstanding Congress's broadening of the scope of the Commission's jurisdiction in new section 23 of the Natural Gas Act with respect to transparency, Congress also mandated that the Commission exempt "natural gas producers, processors or users who have a *de minimis* market presence [from compliance] with the reporting requirements of this section."⁸⁰ In establishing a *de minimis* threshold for reporting, which would apply to all market participants, the Commission seeks to require reporting from only those market participants whose transactions could have an effect on the price for the sale of physical natural gas in interstate commerce and to obtain reporting from a sufficient number of market participants to ensure, in the aggregate, an accurate picture of the physical natural gas market as a whole. To this end, we propose to define such a *de minimis* market participant as a market

⁷⁷Comments of Platt's, at 6, *Transparency Provisions of the Energy Policy Act*, Docket No. AD06-11-000, (filed Nov. 1, 2006).

⁷⁸*See*, 15 U.S.C. 717b-717i (2000).

⁷⁹*To be codified at* 15 U.S.C. 717t-2.

⁸⁰Section 23(d)(2) of the Natural Gas Act, *to be codified at* 15 U.S.C. 717t-2(d)(2).

participant that engages in physical natural gas transactions that amount by volume to less than 2,200,000 MMBtus annually.⁸¹ This figure is based on the rather simple calculation of one-ten thousandth ($\frac{1}{10,000}$) of the annual physical volumes consumed in the United States, which is approximately 22 trillion cubic feet (Tcf) (or roughly 22,000,000,000 MMBtus).⁸² Consequently, a *de minimis* market participant would trade the equivalent of less than one standard NYMEX futures contract per day. Although a market participant that contracts for $\frac{1}{10,000}$ th of the nation's annual physical volume may appear to have little effect on natural gas prices, that participant may be transacting only at one location and, thus, have a much greater pricing effect there. Although we do not expect annual physical volumes consumed in the United States to remain constant, the figure of 22 Tcf is a useful snapshot of consumption and a useful starting-point for setting the *de minimis* exemption.

53. The proposed reporting requirement would also shift the notification regarding the index reporting practices of companies selling under blanket certificates to this annual form and away from the prior practice of a letter notification upon a change in company policy. Consequently, if a market participant makes use of its blanket certificate authority, even if its sales are *de minimis*, it would still be required to report, but only its identification information, whether it reports transaction information to price index publishers, and whether any such reporting complies with the regulations governing reporting to price index publishers. This proposal would be codified at § 284.403(a) for blanket marketing certificate holders and at § 284.288(a) for interstate pipelines with unbundled sales service certificates. The Commission would impose these requirements on all blanket certificate holders regardless of size.⁸³

54. In Order No. 644, the Commission required each holder of blanket

marketing certificate authority to notify the Commission whether it engages in reporting of its transactions to publishers of electricity or natural gas price indices according to the standards set out in the Commission's Policy Statement on Price Indices.⁸⁴ Pursuant to § 284.403(a) of the Commission's regulations, if a holder of a blanket marketing certificate changes its reporting standards, it is required to report that change to the Commission.⁸⁵ Pursuant to § 284.288(a) of the Commission's regulations, if an interstate pipeline that holds blanket unbundled sales service certificate, it is similarly required to report that change to the Commission.

55. Several data providers asked for clarification as to whether they may report certain classes of products traded, but not others. In one instance, related to electricity, the data provider was reporting all transactions other than next-hour electric transactions.⁸⁶ We clarify that a data provider remains eligible for the safe harbor provisions if it reports certain products but not others, provided that it provides all of the same type of transactions and that it notifies the Commission which products it will report in its annual filing or other notification. A data provider would be required to notify the commission of any change in the types of products it reports within 15 days of any such change. We intend to reiterate this clarification in the preamble of any final rule issued in these proceedings.

56. At the October 13, 2006 technical conference, several participants called for mandatory reporting of all fixed-price transactions.⁸⁷ Mandatory reporting would appear to provide additional benefits in that it could assist in determining whether the price indices are an accurate reflection of underlying fixed-price trading. Market participants, State commissions, and this Commission could gain a clearer sense of the volume and number of natural gas transactions that form prices by location and duration. For the following reasons, however, we believe

that mandatory reporting is not appropriate at this time.

57. First, mandatory reporting of certain transactions would create an incentive for wholesale buyers and sellers to consider structuring transactions based on avoiding reporting requirements rather than simply on the economics of the transaction. Even very subtle shifts in the form of transactions could easily make them non-reportable in any pre-defined system. For instance, if the Commission required reporting of fixed-price, day-ahead transactions, market participants could create two-day transactions, achieve substantially the same economic result and avoid reporting.

58. Second, buyers and sellers might shift away from fixed-price transactions to indexed-price transactions. Fixed-price transactions could easily decrease to the point that indices that rely on them would no longer represent reliable indicators of the market. Such indices would likely become more volatile as they moved more in response to fewer transactions. At the October 13, 2006 technical conference, several panelists raised similar concerns and advocated against mandatory price reporting.⁸⁸

59. Third, broad availability of detailed transaction data might prove to be anticompetitive. By contrast, our proposal herein is intended to adhere to the requirement provided in section 23 of the Natural Gas Act that the Commission "shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information."⁸⁹ In its comments in these proceedings, the Department of Justice echoed this caution, stating that the Commission "may be able to achieve the benefits of

⁸¹ Proposed 18 CFR 284.401 (defining *de minimis* market participant). The Commission proposes to define a market participant as "any buyer or seller that engaged in physical natural gas transactions for the previous calendar year." Proposed 18 CFR 284.401.

⁸² Department of Energy, Energy Information Administration, Natural Gas Summary, Data Series: Total Consumption, 2006, http://tonto.eia.doe.gov/dnav/ng/ng_sum_lsum_dcu_nus_a.htm.

⁸³ The Commission makes this proposal under section 4, 5 and 7 of the Natural Gas Act, 15 U.S.C. 717c, 717d, and 717f (2000), and, thus, is not required to create a *de minimis* exception for holders of blanket marketing certificates or for interstate pipelines that have blanket unbundled sales services certificates.

⁸⁴ Order No. 644 at P 70–72.

⁸⁵ 18 CFR 284.403(a).

⁸⁶ See, Pinnacle West Capital Corporation and Pinnacle West Marketing and Trading Co., LLC, *Investigation of Terms and Conditions of Market-Based Rate Tariffs and Authorizations*, Docket No. EL01–118–000 (filed Feb. 12, 2007).

⁸⁷ Tr. at 13–14 (Ms. Lewis-Raymond on behalf of the American Gas Association) (calling for mandatory reporting of fixed-price trades); Tr. at 18–19 (Mr. Les Fyock on behalf of the American Public Gas Association (APGA)) (calling for mandatory price reporting); Comments of the APGA, *Transparency Provisions of the Energy Policy Act*, Docket No. AD06–11–000 (filed Nov. 1, 2006) (same).

⁸⁸ See, e.g., Tr. at 12–13 (Mr. Christopher Conway on behalf of Conoco-Phillips Gas and Power, the Natural Gas Supply Association, and the Independent Producers Association of America) (asserting that mandatory price reporting could drive market participants away from reportable transactions, thereby, possibly reducing liquidity); Tr. at 35–36, 38–39 (Mr. Alex Strawn on behalf of the Process Gas Consumers Group) (asserting that mandatory reporting of fixed price transactions would drive market participants to use index-price transactions, thereby, reducing liquidity); Comments of Independent Petroleum Association of America, at p. 3, *Transparency Provisions of the Energy Policy Act*, Docket No. AD06–11–000 (filed Nov. 1, 2006) (mandatory reporting would push market participants away from reportable transactions and cause them to do more index-price transactions); Comments of Natural Gas Supply Association, *Transparency Provisions of the Energy Policy Act*, Docket No. AD06–11–000 (filed Nov. 1, 2006) (similar).

⁸⁹ Section 23(b)(2) of the Natural Gas Act, to be codified at 15 U.S.C. 717t–2(b)(2).

transparency while limiting its potential harm by aggregating, masking, and lagging the release of such information.”⁹⁰ The Commission’s proposal would not provide for the collection and disclosure of “transaction-specific information.” The proposal is intended to avoid facilitating anti-competitive behavior in several ways: (i) Reported information would not include specific price information; (ii) reported information would be aggregated information over a period of one year and not transaction-specific information; and (iii) reported information would be made on an aggregated, national level, and not by point or even region.

60. The Commission also does not propose that market participants report information regarding their financially-settled transactions nor regarding their physically-settled futures contracts that do not go to delivery.⁹¹ The Commission has noted significant interactions among financial, futures and physical natural gas markets.⁹² The most direct and important influence of this type on physical markets is from the futures market, which is regulated by the Commodities Futures Trading Commission (CFTC). The CFTC actively monitors that market, and communicates regularly with the Commission regarding market matters.⁹³

⁹⁰ Comments of the Department of Justice, Antitrust Division, *Transparency Provisions of the Energy Policy Act*, Docket No. AD06–11–000 (filed Jan. 25, 2007). The Department of Justice’s comments focused on the electricity markets, although it did note that the same general considerations that applied to electricity markets also applied to natural gas markets.

⁹¹ See, e.g., Tr. at 22–24, Comments of Industrial Energy Consumers of America, (arguing that because the physical and financial natural gas markets are linked, the Commission and the Commodity Futures Trading Commission should make Over-the-Counter markets more transparent.)

⁹² Federal Energy Regulatory Commission, 2006 State of the Markets Report, at 48–50 (Jan. 2007), <http://www.ferc.gov/market-oversight/market-oversight.asp>, (follow link to the State of the Markets Full Report).

⁹³ In the transparency provisions, Congress mandated that this Commission and the CFTC conclude a memorandum of understanding relating to information sharing to include “provisions ensuring that information requests to markets within the respective jurisdiction of each agency are properly coordinated to minimize duplicative information requests, and provisions regarding the treatment of proprietary trading information.” Section 23(c)(1) of the Natural Gas Act, 15 U.S.C. 717t–2(c)(1); see also section 220(c)(1) of the Federal Power Act, 16 U.S.C. 824t(c)(1) (identical language). The Commission and the CFTC entered into the memorandum of understanding on October 12, 2005. *Memorandum of Understanding Between FERC and the CFTC Regarding Information Sharing And Treatment Of Proprietary Trading And Other Information*, available at <http://www.ferc.gov/legal/maj-ord-reg/fed-sta/ene-pol-act.asp> (follow “Interagency/Tribal,” then, “MOU”).

61. By obtaining the number and volume of transactions conducted for each market participant, the Commission, market participants and others would be able to determine the overall level of activity of market participants in the physical natural gas market. In particular, the information would provide regularly an estimate of (a) The size of the physical U.S. domestic natural gas market, (b) the use of index pricing in that market, (c) the size of the fixed-price trading market that produces price indices, and (d) the relative sizes of major traders.

62. The information provided through the Commission’s proposal would improve the understanding of index pricing by interested entities, including the market participants and State energy regulators who use them. The number and volume break-down of transactions by price type, fixed-price or index-price, should permit an overall assessment of the ratio of index-using transactions to price-forming transactions, *i.e.*, fixed-price transactions. At present, we do not know how much fixed-price transactions are a part of the universe of natural gas transactions, although they may be the minority of natural gas transactions.⁹⁴

63. As noted in the introduction, the Commission has taken several steps to restore confidence in natural gas index prices and their formation.⁹⁵ By obtaining information regarding the extent that market participants make fixed-price transactions, market participants would be able to evaluate their confidence in the index prices that are formed by those fixed-price transactions. By collecting sales and purchases information, results could also be cross-checked to ensure that information was accurate. In effect, total sales should roughly equal total purchases, with some allowance for *de minimis* buyers and sellers.

64. The Commission also proposes to require a holder of blanket market certificates or an interstate pipeline with an unbundled sales service certificate to notify the Commission annually about its reporting of transaction information to price index publishers and whether any such reporting conforms to the Policy Statement. After the Policy Statement’s notification requirement took effect, we observed that blanket marketing certificate holders may have overlooked this requirement and we provided the opportunity for blanket

⁹⁴ Tr. at 32 (Comments of Ms. Jane Lewis-Raymond, American Gas Association) (surmising that we currently cannot know the amount of fixed-price transactions and the amount of fixed-price trades that make up an index).

⁹⁵ See *supra*, notes 5–11.

marketing certificate holders to notify the Commission by August 1, 2005 of their reporting status.⁹⁶ Based on Commission staff’s experience monitoring price indices and adherence to the Policy Statement, as discussed in the introduction, the Commission believes that notification on an annual basis would make the information more reliable. As a further benefit, notifying companies would have the opportunity to review their practices in coordination with their response to the data collection proposal described above.

D. Solicitation of Comments

65. The Commission seeks comment on this proposal, including whether market participant responses to the questions would provide useful information to market participants, State commissions, this Commission and the public in understanding the natural gas market, the price formation process, and the use of price indices.

66. In particular, the Commission encourages market participants to review the questions (in draft form at Appendix A) and determine whether they would result in useful information for understanding the prices and availability of physical natural gas in interstate commerce. What adjustments might improve these questions? What alternative or additional questions might add sufficient information to justify additional burden on filers? Does the format for responses ensure consistency for aggregation and analysis? The Commission anticipates holding meetings, if needed, to consider the details of this annual filing requirement.

67. The Commission seeks comment on its proposed definition of a *de minimis* market participant. Is this threshold sufficiently low to permit a comprehensive picture of the U.S. wholesale natural gas market? Is it sufficiently high so that persons or municipalities not able to prices of natural gas in interstate commerce are not required to report? Is there another, more effective bright-line measure that allows market participants to determine easily whether they are exempt? Further, the Commission seeks comment on the burden this proposal would impose on market participants. For instance, is it unduly burdensome for market participants to file the information by February 15 of each year?

68. The Commission seeks comments on its proposal that buyers and sellers of more than a *de minimis* volume of

⁹⁶ Order on Further Clarification of Policy Statement at P 21.

natural gas be required to report aggregate numbers and volumes of relevant transactions in an annual filing with the Commission. Does information regarding purchases of natural gas at wholesale “facilitate price transparency in markets for the sale and transportation of physical natural gas in interstate commerce,” as provided in the natural gas transparency provisions?⁹⁷

69. The Commission seeks comment on whether reporting information aggregated by calendar year is adequate. Would a monthly breakdown create an undue burden compared to providing the information by calendar year? Would it provide a better understanding of the physical natural gas market given the seasonal nature of the market?

70. The Commission seeks comment on the proposed modifications to the notification requirements regarding reporting of transactions to publishers of price indices imposed on those entities who hold blanket marketing certificates in proposed § 284.403(a) and imposed on intrastate pipelines with blanket unbundled sales service certificates in proposed § 284.288(a). Also, as currently codified, those sections refer to the procedural requirements for reporting to publishers of price indices “set forth in the Policy Statement on Electric and Natural Gas Price Indices, issued by the Commission in PL03–3–000 and any clarifications thereto.”⁹⁸ Instead of referring to policy statements in that proceeding for the procedural requirements, should the Commission codify in the regulations the procedural

requirements that such reporting entities must follow in reporting transactions to publishers of electric and natural gas price indices?

71. The Commission seeks comment on making public participant responses to these questions through public filing requirements. Commenters who suggest an alternate method, such as aggregating data received before disseminating it to the public, should address whether such an approach meets the objectives of the statute sufficiently.

72. The Commission seeks comment on whether, in lieu of this proposal, to require mandatory, detailed transaction reporting by market participants. Commenters should address the burdens and benefits of such an approach. Commenters supporting mandatory reporting of transactions should address the cautions set forth in the natural gas transparency provisions and echoed by the Department of Justice in the discussion above. If detailed transaction reporting were mandatory, could these concerns be addressed by making the reporting non-public, aggregating the reported information, and disseminating publicly only the aggregated information (either by the Commission or, as contemplated in the natural gas transparency provisions, by other entities) subject to sufficient disclosure rules?⁹⁹

VI. Information Collection Statement

73. The Office of Management and Budget (OMB) regulations require it to approve certain reporting and recordkeeping (information collection)

requirements imposed by an agency.¹⁰⁰ In this NOPR, the Commission makes two proposals that would require the posting or collection of information.¹⁰¹

The Commission is submitting notification of these proposed information collection requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995.¹⁰²

74. The proposal to require intrastate pipelines to post flow information would impose an information collection burden on intrastate pipelines. We presume that intrastate pipelines already collect flow information for receipt and delivery points and, thus, the burden that would be imposed by this proposed requirement is only for the posting of this information in the required format.¹⁰³ The proposal to require market participants to file annually a form regarding their physical natural gas transactions would impose an information collection burden on market participants. Again, we presume that market participants already collect transaction information and, thus, the burden imposed by this proposed requirement is only for completing and submitting the form.

75. OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Public Reporting Burden: The start-up and annual burden estimates for complying with this proposed rule are as follows:

| Data collection | Number of respondents | Number of responses per respondent (per year) | Estimated annual burden hours per respondent (hours) | Total annual hours for all respondents | Estimated start-up burden per respondent (hours) |
|------------------------------------|-----------------------|---|--|--|--|
| Part 284 FERC–xxx: | | | | | |
| Intrastate Pipeline Postings | 179 | 365 | 183 | 32,757 | 160 |
| Annual Reporting Requirement | 1,500 | 1 | 4 | 6,000 | 40 |
| Total | | | | 38,757 | |

The total annual hours for collection (including recordkeeping) for all respondents is estimated to be 38,757.

Information Collection Costs: The average annualized cost for each

respondent is projected to be the following (savings in parenthesis):

⁹⁷ Section 23(a)(1) of the Natural Gas Act, to be codified at 15 U.S.C. 717t–2(a)(1).

⁹⁸ 18 CFR 284.403(a); see, also, 18 CFR 284.288(a) (identical language).

⁹⁹ Section 23(a)(3)(B) and (b) of the Natural Gas Act, to be codified at 15 U.S.C. 717t–2(a)(3)(B) and (b).

¹⁰⁰ 5 CFR 1320.11.

¹⁰¹ The OMB regulations cover both the collection of information and the posting of information. 5 CFR 1320.3(c). Thus, the proposal to post information would create an information collection burden.

¹⁰² 44 U.S.C. 3507(d).

¹⁰³ See 5 CFR 1320.3(b)(2) (“The time, effort, and financial resources necessary to comply with a

collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the “burden” if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.”)

| | Annualized capital/ startup costs (10 year amortization) | Annual costs | Annualized costs total |
|---|--|--------------|---------------------------|
| FERC-xxx: | | | |
| Intrastate Pipeline Postings | \$1,600 | \$18,300 | \$19,900 |
| Transaction Reporting Requirement | 400 | 400 | 800 |

Title: FERC-xxx.
Action: Proposed Information Posting and Information Filing.
OMB Control No:
Respondents: Business or other for profit.

Frequency of Responses: Daily posting requirements and annual filing requirements.

Necessity of the Information: The daily posting of flow information by intrastate pipelines is necessary to provide information regarding the price and availability of natural gas to market participants, State commissions, the FERC and the public. The annual filing of transaction information by market participants is necessary to provide information regarding the size of the physical natural gas market, the use of the natural gas spot markets and the use of fixed and index price transactions.

Internal Review: The Commission has reviewed the requirements pertaining to natural gas pipelines and natural gas market participants and determined they are necessary to provide price and availability information regarding the sale of natural gas in interstate markets.

76. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information posting requirements. The Commission seeks comment on these estimates.

77. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer], phone: (202) 502-8415, fax: (202) 208-2425, e-mail: Michael.Miller@ferc.gov. Comments on the requirements of the proposed rule also may be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

78. Comments on the requirements of the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and

Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission] (202) 395-4650 or oir_submission@omb.eop.gov.

VII. Environmental Analysis

79. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.¹⁰⁴ The actions taken here fall within categorical exclusions in the Commission's regulations for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.¹⁰⁵ Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VIII. Regulatory Flexibility Act Analysis

80. The Regulatory Flexibility Act of 1980 (RFA) generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.¹⁰⁶ The two proposals in this NOPR will not have a significant economic impact on a substantial number of small entities.

81. The proposal to require daily postings by intrastate pipelines will not impact small entities. Natural gas pipelines are classified under NAICS code, 486210, Pipeline Transportation of Natural Gas.¹⁰⁷ A natural gas pipeline is considered a small entity for the purposes of the Regulatory Flexibility Act if its average annual receipts are less than \$6.5 million.¹⁰⁸ The Commission does not believe that any intrastate

pipeline has receipts less than \$6.5 million. Thus, the daily posting proposal will not impact small entities.

82. The proposal to require annual reporting of physical natural gas transactions will have minimal impact on small entities.¹⁰⁹ By incorporating a *de minimis* exemption into the regulations, the Commission has reduced the number of small entities subject to the requirements; *de minimis* entities without blanket certificates will not be required to report. This reporting proposal will affect small entities but the burden on them will be minimal. For each entity, small or otherwise, that is required to comply with the annual reporting requirement, the Commission estimates that the compliance would require a one-time cost of approximately \$4,000 and an annual cost thereafter of \$400. Although some costs would increase for market participants with a greater number of transactions, we expect that that increase would be likely offset because such entities would have already compiled information regarding their transactions in the aggregate. The Commission bases its one-time cost estimate on an assumption that it would take approximately one person one week to set up the reporting and file the report initially and that their time costs \$100 per hour. The Commission bases its annual estimate on an assumption that it would take one person four hours to compile the information and that his or her time costs \$100 per hour. On an annualized basis, costs would amount to approximately \$1,200 per entity. This amount is not a significant burden on small entities. The Commission seeks comment on its Regulatory Flexibility Act analysis and the assumptions on which it is based.

IX. Comment Procedures

83. The Commission invites interested persons to submit comments on the

¹⁰⁴ Order No. 486, *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

¹⁰⁵ 18 CFR 380.4(a)(5) and (a)(27).

¹⁰⁶ 5 U.S.C. 601-612.

¹⁰⁷ This industry comprises establishments primarily engaged in the pipeline transportation of natural gas from processing plants to local distribution systems. 2002 North American Industry Classification System (NAICS) Definitions, <http://www.census.gov/epcd/naics02/def/ND486210.HTM>.

¹⁰⁸ See Table of Small Business Size Standards, U.S. Small Business Administration (effective July 31, 2006), available at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.

¹⁰⁹ For the purposes of analyzing the impact of the proposed filing requirement on small entities, the Commission classifies market participants under the NAICS category of "Natural Gas Distribution," Code 221210, which includes gas marketers, and establishments engaged in gas distribution. Under that classification, a small entity is any entity with less than 500 employees. See Table of Small Business Size Standards, U.S. Small Business Administration (effective July 31, 2006), available at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.

matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due June 11, 2007. Reply comments are due July 10, 2007. Comments must refer to Docket No. RM07-10-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

84. Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and requests commenters to submit comments in a text-searchable format rather than a scanned image format. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

85. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

X. Document Availability

86. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

87. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

88. User assistance is available for eLibrary and the FERC's Web site during normal business hours from our Help line at (202) 502-8222 or the Public Reference Room at (202) 502-8371, Press 0, TTY (202) 502-8659. E-Mail the

Public Reference Room at public.referenceroom@ferc.gov.

List of Subjects

18 CFR Part 260

Natural gas; Reporting and recordkeeping requirements.

18 CFR Part 284

Continental Shelf; Incorporation by reference; Natural gas; Reporting and recordkeeping requirements.

By direction of the Commission.

Philis J. Posey,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 260 and 284 Chapter I, Title 18, Code of Federal Regulations, to read as follows.

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

1. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352.

2. Section 260.401 is added to read as follows:

§ 260.401 FERC Form No. [X], Annual Reporting of Natural Gas Transactions and Blanket Certificate Authorities.

Unless otherwise exempted or granted a waiver by Commission rule or order, each natural gas market participant that is not a *de minimis* market participant as defined in § 284.401 of this chapter and each *de minimis* market participant that holds a blanket marketing certificate under § 284.402 of this chapter or a blanket unbundled sales service certificate under § 284.284 of this chapter must file with the Commission by February 15, 2008, and by February 15 of each year thereafter, a report, FERC Form No. [X], for the prior calendar year. Every such report must be prepared in conformance with the Commission's software and guidance posted and available for downloading from the FERC Web site (<http://www.ferc.gov>).

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

3. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352; 43 U.S.C. 1331-1356.

4. Section 284.14 is added to read as follows:

§ 284.14 Intrastate pipeline flow information.

An intrastate pipeline must provide on a daily basis on an Internet Web site and in downloadable file formats, in conformity with § 284.12 of this chapter, access to information on flowing volumes and capacities at each major receipt point, mainline segment, and delivery point on its pipeline. This information must be posted within 24 hours from the close of the gas day on which gas flows, *i.e.*, on or before 9:00 a.m. central clock time for flows occurring on the gas day that ended 24 hours before.

5. In § 284.288, paragraph (a) is revised to read as follows:

§ 284.288 Code of conduct for unbundled sales service.

(a) To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller shall provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement on Natural Gas and Electric Price Indices*, issued by the Commission in Docket No. PL03-3-000 and any clarifications thereto. Seller shall notify the Commission as part of its annual reporting requirement in § 260.401 of this chapter whether it reports its transactions to publishers of electricity and natural gas indices. Seller shall notify the Commission within 15 days of any subsequent change to its transaction reporting status. In addition, Seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

* * * * *

6. In § 284.401, definitions of "*de minimis* market participant" and "market participant" are added in alphabetical order to read as follows:

§ 284.401 Definitions.

* * * * *

De minimis market participant. For purposes of this subpart, a *de minimis* market participant is a market participant that engaged in physical natural gas transactions that by volume amounted to less than 2,200,000 MMBtus for the previous calendar year.

Market participant. For purposes of this subpart, a market participant is any buyer or seller that engaged in physical natural gas transactions the previous calendar year.

7. In § 284.403, paragraph (a) is revised to read as follows:

§ 284.403 Code of conduct for persons holding blanket marketing certificates.

(a) To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller shall provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement on Natural Gas and Electric Price Indices*, issued by the Commission

in Docket No. PL03-3-000 and any clarifications thereto. Seller shall notify the Commission as part of its annual reporting requirement in § 260.401 of this chapter whether it reports its transactions to publishers of electricity and natural gas indices. Seller shall notify the Commission within 15 days of any subsequent change to its transaction reporting status. In addition, Seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

* * * * *

Note: The following Appendix will not be published in the *Code of Federal Regulations*.

Appendix A to Notice of Proposed Rulemaking—Transparency Provisions of Section 23 of the Natural Gas Act; Transparency Provisions of the Energy Policy Act of 2005, Docket Nos. RM07-10-000 and AD06-11-000: Proposed FERC Form No. [X]

Provide accurate and complete responses to the following questions.

| | Purchases by number | Purchases by volume (TBtu/Bcf) | Sales by number | Sales by volume (TBtu/Bcf) |
|---|---------------------|--------------------------------|-----------------|----------------------------|
| A. How much physical gas,* did you transact in the prior calendar year? | | | | |
| B. Of the amount reported in Row A, what number and volume are transacted for next-day delivery? | | | | |
| C. Of these next-day transactions, what number and volume are priced at a fixed price? | | | | |
| D. Of these next-day transactions, what number and volume are priced at an index price? | | | | |
| E. Of the amount reported in Row A, what number and volume are transacted for delivery in the next month? | | | | |
| F. Of your transactions for delivery in the next month, what number and volume are priced at a fixed price during bid week? ** | | | | |
| G. Of your transactions for delivery in the next month, what number and volume are priced at an index price? | | | | |
| H. Of your transactions for delivery beyond next-day or month, what number and volume are priced using next-day or next-month index prices? | | | | |

* Notwithstanding its physical delivery provisions, for the purposes of this form, exclude NYMEX futures contracts or any other physically-settled futures contract unless the contract actually goes to delivery.

** Bid week is defined as the last 5 working days prior to the delivery month. Please include those transactions in this row.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1051

[EPA-HQ-OAR-2006-0858; FRL-8305-7]

RIN 2060-A035

Exhaust Emission Test Procedures for All-Terrain Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In a rule published November 8, 2002, EPA promulgated new emission standards for recreational vehicles beginning in model year 2006. This included a newly regulated class of nonroad vehicles/engines commonly referred to as all-terrain vehicles. In that

rulemaking, a temporary provision was included allowing manufacturers to certify all-terrain vehicles over a steady-state, engine-based, duty cycle for exhaust emissions prior to the 2009 model year in lieu of the transient, chassis-based, Federal Test Procedure which was effective for 2006 and later model years. In this rulemaking we are proposing to extend the availability of this temporary provision for in some cases up to an additional six model years, after which the chassis-based Federal Test Procedure would become the only available test cycle. More specifically, manufacturers would have to certify exhaust emission engine families representing not less than 50 percent of their U.S.-directed production on the Federal Test Procedure in model year 2014 and 100 percent in 2015. Manufacturers with only one all-terrain vehicle exhaust emission engine engine family would not be required to use the Federal Test

Procedure until the 2015 model year. For those manufacturers who have not yet done so, this will allow additional time to certify to the previously promulgated Federal Test Procedure-based emission standards using either contract facilities or by obtaining in-house capability.

DATES: Written comments must be received by May 29, 2007. Request for a public hearing must be received by May 11, 2007. If we receive a request for a public hearing, we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0858, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- *E-mail:* a-and-r-docket@epa.gov.
- *Fax:* (202) 566-1741.