

Supporting Statement for
FERC Form 552, Annual Report of Natural Gas Transactions
As Proposed In Docket No. RM07-10-000 & AD 96-1-015
(Final Rule on Rehearing Issued September 19, 2008)

The Federal Energy Regulatory Commission (Commission) requests Office of Management and Budget (OMB) review and approval of **FERC Form 552, Annual Report of Natural Gas Transactions. FERC Form No. 552** (OMB Control No. 1902-0242) is a data requirement that amends Part 284 of the Commission's regulations in order to facilitate market transparency in natural gas markets as proposed in a Final Rule on Rehearing. FERC Form 552 is currently approved through March 31, 2011.

We estimate that the total annual reporting-burden related to the subject Final Rule will be 6,000 hours under Form 552 or unchanged from the Commission's estimate in the Final Rule. This is equal to an average of 4 hours per company under Form No. 552. All of the changes in the subject final rule on rehearing are provided for under sections 4 and 5 of the Natural Gas Act (NGA), and new section 23 of the NGA as added by section 316 of the Energy Policy Act of 2005 (EPAAct 2005).

Background

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"¹.

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.² 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.

¹ 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).

² 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).

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.³ 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,⁴ 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.⁵ The behavior 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.⁶ On November 19, 2004, the Commission issued an order that addressed

3 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).

4 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).

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

6 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 was retained in renumbered sections. 18 CFR 284.288(a), 284.403(a).

issues concerning prices indices in natural gas and electricity markets and adopted specific standards for the use of price indices in jurisdictional tariffs.⁷

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)⁸ authority for the Commission to obtain information on wholesale electric and natural gas prices and availability. Under the Federal Power Act⁹ and the Natural Gas Act¹⁰, 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."¹¹ 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.

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

⁷ Price Discovery in Natural Gas and Electric Markets, 109 FERC ¶ 61,184, at P 73 (2004).

⁸ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

⁹ 16 U.S.C. 824 et seq.

¹⁰ 15 U.S.C. 717 et seq.

¹¹ 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).

October 13, 2006. In that conference, ideas for potential policy actions by the Commission were identified.

NOPR (Docket No. RM07-10-000)

On April 19, 2007 as noted above, in Docket No. RM07-10-000 “Transparency Provisions of Section 23 of the Natural Gas Act; Transparency Provisions of the Energy Policy Act” FERC made two proposals to facilitate market transparency in natural gas markets. The first proposal, designed to make available the information needed to track daily flows of natural gas throughout the United States, would 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.

The second proposal and the subject of Order NO. 704 and this final rule on rehearing, was 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, FERC would require each holder of blanket marketing certificate authority or blanket unbundled sales services certificate authority to notify FERC 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 FERC only when it changes its practice regarding such reporting. This part of the proposal would make notifications of reporting status more reliable.

Final Rule (Docket No. RM07-10-000) (Order No. 704)

On December 26, in Docket No. RM07-10-000, FERC issued a final rule that implements regulations to require certain natural gas market participants to report information regarding their reporting of transactions to price index publishers and their blanket sales certificate status, and to report annually certain information regarding their wholesale, physical natural gas transactions for the previous calendar year. Certain market participants engaged in a de minimis volume of transactions will not be required to report information regarding their transactions for the calendar year. The reported information makes it possible to estimate the size of the physical U.S. natural gas market, to assess the use of index pricing in that market, and to determine the size of the fixed-priced trading market that produces the information. These regulations facilitate price transparency in markets for the wholesale sale of physical natural gas in interstate commerce. The final rule was the Commission’s first exercise of transparency authority under section 23 of the Natural Gas Act. It required market participants to file a new form regarding

their annual purchases and sales, Form No. 552. The regulations in Order No. 704 implemented the Commission's expanded authority under section 23 of the Natural Gas Act,¹² which was added by the Energy Policy Act of 2005 (EPAAct 2005) to require reporting from entities not under the Commission's traditional jurisdiction.¹³

The final rule required that any buyer or seller of more than a de minimis volume of natural gas report aggregate volumes of relevant transactions in an annual filing using Form No. 552. A market participant buying or selling less than a de minimis volume that operates under blanket sales certificate authority pursuant to § 284.402 or § 284.284 of FERC's regulations must also submit a Form No. 552 for identification and certain reporting purposes, but is not required to report aggregate volumes of relevant transactions. A market participant that buys or sells less than a de minimis volume but that does not operate under blanket sales certificate authority need not submit a Form No. 552.

Order No. 704 focused primarily on "price formation in spot markets" and accordingly sought information about the "amount of daily or monthly fixed-price trading that [is] eligible to be reported to price index publishers as compared to the amount of trading that uses or refers to price indices."¹⁴ As the Commission stated in the order, the "information collected under this requirement is focused specifically on daily and monthly physical spot or 'cash' market activity and the contracting based on the prices developed in those markets."¹⁵ The rationale for this focus is that a "[b]etter understanding of the role and functioning of wholesale natural gas spot markets can increase confidence that posted market prices of natural gas accurately reflect the interplay of legitimate market forces."¹⁶ Additionally, information on price index utilization and formation would greatly enhance the Commission's efforts to monitor price formation in the wholesale markets in support of the Commission's market-oriented policies.¹⁷ As the Commission explained, "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.'"¹⁸

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

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

14 Order No. 704 at P 3. See also id. P 13.

15 Id. P 67.

16 Id.

17 Id. P 7 and 62.

Subject Final Rule on Rehearing (Docket No. RM07-10-001)

The Commission issued a Final Rule on Rehearing on September 18, 2008 affirming its determinations made in the Final Rule (Order No. 704) (see above), but also granting rehearing in part and clarifying requirements so that certain natural gas market participants report information regarding their reporting of transactions to price index publishers and their blanket sales certificate status. These natural gas market participants must report annually certain information regarding their physical natural gas transactions for the previous calendar year. As clarified in this Order on Rehearing and Clarification, certain market participants engaged in a de minimis volume of transactions will not be required to report information regarding their transactions for the calendar year. The reported information will make it possible to assess the formation of index prices and the use of index pricing in natural gas markets. These regulations facilitate price transparency in markets for the wholesale sale of physical natural gas in interstate commerce as contemplated by section 23 of the Natural Gas Act, 15 U.S.C. § 717t-2.

Changes to FERC Form 552 since issuance of Order No. 704

- Modification of Form No. 552 to make clear that entities that meet or exceed the de minimis volume must submit the form.
- Requiring that volumetric entries on Form No. 552 be rounded to the nearest tenth of a TBtu. FERC recognizes that some participants at the technical conferences expressed confusion on the rounding of volume figures on Form No. 552. Form No. 552 currently requests reporting of volumes to the nearest TBtu (*i.e.*, a reportable volume of 2.499 TBtu would be reported as 2.0 TBtu). FERC will now require respondents to round volumes up or down, as appropriate, to the nearest tenth of a TBtu. Rounding to the nearest tenth of a TBtu will make the reporting obligation consistent with the proposed de minimis threshold volume calculation, which is measured to the nearest tenth of a TBtu. Further, more precise reporting of data would allow for a more accurate review of market activity and the Commission believes that aggregating volumes to the nearest tenth of a TBtu would be no more burdensome for respondents than the rounding currently required in the form.
- Exempting from reporting those volumes associated with bundled retail transactions made at state-approved tariff rates, while including volumes associated with direct pipeline-to-end-user and other end-user transactions, is appropriate. This modification regarding the reportability of certain end-use transactions necessitates changes to the language of Form No. 552.¹⁹

18 Id. P 66 (citing sections 4 and 5 of the NGA, 15 U.S.C. sections 717c and 717d).

- Order No. 704 provided that a market participant must categorize transaction volumes by whether each transaction was made at a “reportable location.” Reportable locations are locations where index developers currently collect fixed-price information for transactions with Next-Day or Next-Month Delivery obligations, and produce index prices. Order No. 704 tied the meaning of “fixed-price” reported volumes to volumes that may be reported to index developers at specific points. FERC staff listed on the Commission’s website all reportable locations at which fixed-price volumes were to be reported on Form No. 552.²⁰ However, in response to comments who said limiting reported data only to specific reportable locations would be more burdensome to most respondents than reporting all aggregate, relevant data, the Commission is providing that respondents need not categorize volumes based upon whether such volumes relate to transactions at specific price index locations.

A. Justification

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

Pursuant to sections 4, 5, and 16 of the NGA, (15 USC 717c - 717o, P.L. 75-688, 52 Stat. 822 and 830), and Title III of the NGPA, (15 USC 3301-3432, P.L. 95-621), a natural gas company must obtain Commission authorization for all rates and charges made, demanded, or received in connection with the transportation or sale of natural gas in interstate commerce. The Commission is authorized to investigate the rates charged by natural gas pipeline companies subject to its jurisdiction. If, after the investigation, the Commission is of the opinion that the rates are "unjust or unreasonable or unjustly discriminatory or unduly preferential," it is authorized to determine and prescribe just and reasonable rates. The NGA also provides the Commission with a means for considering the reasonableness of rates through settlement conferences or hearings.

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.²¹ As part of this commitment to competition, in the transparency provisions, Congress charged the Commission with assuring the integrity of the wholesale

19 One such modification is the definition of “Physical Natural Gas Transactions” in the Definitions portion of current Form No. 552. The definition clearly indicates that reportable volumes are only those that utilize, contribute to, or may contribute to the formation of price indices. The definition also explicitly excludes volumes associated with bundled retail sales and purchases at state-approved tariff rates.

20 Order No. 704 at PP 60 and 101-102.

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.

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

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.²²

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.²³

21 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 sections 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).

22 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 the Commission's proposals in the final rule addressed natural gas transparency, the Commission did not analyze the electric transparency provisions, although the Commission expects that analysis of electric transparency provisions would be substantially similar.

23 To be codified at 15 U.S.C. 717t-2(a).

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).²⁴

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....”²⁵ 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.

In Order No. 704, FERC required natural gas wholesale market participants, including a number of entities that may not otherwise be subject to the Commission's traditional Natural Gas Act (NGA) jurisdiction, to identify themselves and report summary information about their physical natural gas transactions on an annual, calendar year basis. To facilitate such reporting, Order No. 704 created FERC Transaction Report FERC Form No. 552: Annual Report of Natural Gas Transactions (Form No. 552) and various implementing regulations. Form No. 552 is to be filed by May 1, 2009, for transactions occurring in calendar year 2008 and by May 1 of each year thereafter for each previous calendar year.

For purposes of the annual reporting requirement, a market participant is defined as “any buyer or seller that engaged in wholesale, physical natural gas transactions in the previous calendar year.”²⁶ Specifically, on Form No. 552, a market participant must provide the Commission with contact information and answer questions about whether it sells pursuant to a blanket sales certificate and whether it reports to price index publishers. A market participant

²⁴ To be codified at 15 U.S.C. 717t-2(a)(3).

²⁵ Section 23(d)(2) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(d)(2).

²⁶ New 18 CFR 284.401(b).

that sold or purchased more than a specified de minimis volume of natural gas during the previous calendar year, regardless of whether it holds a blanket sales certificate, must also provide the following information:

- the total volume of transactions for the previous calendar year;
- the volume of transactions that were priced at fixed prices for next-day delivery and were reportable to price index publishers;
- the volume of transactions priced by reference to next-day gas price indices;
- the volume of transactions that were priced at fixed prices for next-month delivery and were reportable to price index publishers; and,
- the volume of transactions priced by reference to next-month gas price indices.

2. HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED AND THE CONSEQUENCES OF NOT COLLECTING THE INFORMATION

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.²⁷ 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.²⁸ As a practical matter, information regarding purchases of natural gas is necessary to evaluate the reliability of information regarding sales of natural gas. The information is necessary to obtain a useful gauge of price transparency in natural gas markets. The annual filing of transaction information by market participants is necessary to provide information regarding the size of the physical natural

²⁷ Section 23(a)(1) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(a)(1).

²⁸ Section 23(a)(2) of the Natural Gas Act, to be codified at 15 U.S.C. 717t-2(a)(2) (emphasis added).

This information will improve the understanding of index pricing by interested entities, including the market participants and state commissions who use them. The 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, the Commission does 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.²⁹ The Commission has taken several steps to restore confidence in natural gas index prices and their formation. By obtaining information regarding the extent that market participants make fixed-price transactions, market participants will 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 may also be cross-checked to ensure that information is accurate. In effect, total sales should roughly equal total purchases, with some allowance for de minimis buyers and sellers.

FERC Form No. 552 Annual Reporting of Natural Gas Transmission

Under the revised 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 physical³⁰ 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.

²⁹Tr. at 32 (Comments of Ms. Jane Lewis-Raymond, American Gas Association) (surmising that the Commission currently cannot know the amount of fixed-price transactions and the amount of fixed-price trades that make up an index).

³⁰ 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 the Order No. 704, and despite the particulars of the futures contract language, the Commission is explicitly excluding 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 www.nymex.com, so collection of the information would be redundant and unnecessary.

Order No. 704 also required a market participant to report whether it operated under a blanket sales certificate under the Commission's regulations, § 284.402 or § 284.284. This information will allow the Commission to measure overall market activity of the entities subject to its jurisdiction under the Natural Gas Act as well as allow the Commission to maintain records of such entities. The final rule will require a market participant to indicate whether it reports transactions to any price index publishers, and, if so, whether their reporting conforms to the standards set forth in § 248.403 or § 248.288, as applicable. This information will allow the Commission to ensure the accuracy of price indices and to monitor adherence to the Commission's transaction reporting standards.

As the Commission stated in Order No. 704, "the "information collected under this requirement is focused specifically on daily and monthly physical spot or 'cash' market activity and the contracting based on the prices developed in those markets."³¹ The rationale for this focus is that a "[b]etter understanding of the role and functioning of wholesale natural gas spot markets can increase confidence that posted market prices of natural gas accurately reflect the interplay of legitimate market forces."³² Additionally, information on price index utilization and formation would greatly enhance the Commission's efforts to monitor price formation in the wholesale markets in support of the Commission's market-oriented policies.³³ As we explained, "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.'"³⁴

FERC Form No. 552 is to be filed on May first of each calendar year, starting May 1, 2009 for calendar year 2008.

In summary: The form will aid the Commission and market observers in determining how price indices are formed and used. The stated goal is not only to understand the transactions used to form price indices, it is also to understand how influential price indices are in the valuation of natural gas in U.S. wholesale markets. In addition, the information reported would allow the Commission and other market observers to answer the question: how much volume is transacted in the physical natural gas market?

The annual filing of transaction information by market participants is necessary to

³¹ Id. P 67.

³² Id.

³³ Id. P 7 and 62.

³⁴ Id. P 66 (citing sections 4 and 5 of the NGA, 15 U.S.C. sections 717c and 717d).

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.

Order No. 704 along with the final rule on rehearing will facilitate transparency of the price formation process in natural gas markets by collecting information to understand in broad terms the size of the natural gas market and the use of fixed prices and of index prices. Currently, because of the way transactions 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 for delivery farther in the future).³⁵ As noted by the price index developer Platts, the question of what is the total size of the traded market has “hung over the gas market for years.”³⁶ More particularly, there is no way to determine important volumetric relationships between (a) the fixed-price, day-ahead or month-ahead transactions that form price indices; and (b) transactions that use price indices. Without the most basic information about these volumetric relationships, 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-priced 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.

3. DESCRIBE ANY CONSIDERATION OF THE USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN AND TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN

There is an ongoing effort to determine the potential and value of improved information technology to reduce burden. To alleviate the burden to respondents, they may file Form No. 552 electronically with the Commission.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2

³⁵In its supplemental comments, Platts 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).

³⁶Comments of Platts at 6, Transparency Provisions of the Energy Policy Act, Docket No. AD06-11-000 (filed Nov. 1, 2006).

Commission filings and data requirements are periodically reviewed in conjunction with OMB clearance expiration dates. This includes a review of the Commission's regulations and data requirements to identify any duplication. To date, no duplication of the proposed data requirements have been found. The Commission staff is continuously reviewing its various filings in an effort to alleviate duplication. There are no similar sources of information available that can be used or modified for use for the purpose described in Item A (1.).

The information sought in the FERC Form No. 552 is not obtainable elsewhere. Section 23(a)(4) of the Natural Gas Act requires the Commission to “consider the degree of price transparency provided by existing price publishers and providers of trade processing services....”³⁷ As the Commission stated in the NOPR, because of the way transactions currently take place in the natural gas industry, there is no way to estimate in even the grossest terms the overall size of the natural gas market or its breakdown by types of contract provision, including pricing (fixed prices or prices using or referring to price indices) and term (e.g., spot transactions for next-day or next-month delivery or forward transactions for longer-term delivery).³⁸ Further, currently there is no way to determine important volumetric relationships between the fixed-price, day-ahead or month-ahead transactions that form price indices or to determine the use of price indices themselves.

5. METHODS USED TO MINIMIZE BURDEN IN COLLECTION OF INFORMATION INVOLVING SMALL ENTITIES

The annual reporting requirement set forth in the Order on Rehearing and Clarification will not have a significant economic impact on a substantial number of small entities. The requirement for annual reporting of physical natural gas transactions will have minimal impact on small entities. 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 sales certificates will not be required to report. This reporting requirement 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

³⁷Section 23(a)(4) of the Natural Gas Act; 15 U.S.C. 717t-2(a)(4) (2000 & Supp. V 2005).

³⁸NOPR at 50 (“As noted by the price index developer Platt’s, the question of what is the total size of the traded market has ‘hung over the gas market for years.’”) (citing Comments of Platts at 6, Transparency Provisions of the Energy Policy Act, Docket No. AD06-11-000 (filed Nov. 1, 2006)).

participants with a greater number of transactions, the Commission expects that that increase would be likely offset because such entities would have already compiled information regarding their transactions in the aggregate. This amount is not a significant burden on small entities. The de minimis exemption provides a regulatory alternative that will reduce the economic impact on certain small entities from coverage of the rule.

6. CONSEQUENCE TO FEDERAL PROGRAM IF COLLECTION WERE CONDUCTED LESS FREQUENTLY.

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. This reporting frequency meets the provisions of OMB's guidance.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

These proposed information collection requirements meet all of OMB's section 1320.5 requirements.

The data provided in FERC-552 will be an annual filing with the Commission that will be filed electronically using Commission developed software and downloaded from its web site.

8. DESCRIBE EFFORTS TO CONSULT OUTSIDE THE AGENCY: SUMMARIZE PUBLIC COMMENTS AND THE AGENCY'S RESPONSE TO THESE COMMENTS

The Commission's procedures require that the rulemaking notice be published in the Federal Register, thereby allowing all pipeline companies, state commissions, federal agencies, and other interested parties an opportunity to submit comments, or suggestions concerning the proposal. The rulemaking procedures also allow for public conferences to be held as required. On the basis of the comments, the Commission has determined to adopt in large part the proposed annual reporting of certain natural gas transaction information, but to modify its proposal in several ways. Below are summaries of issues raised by commenters and the Commission's response.

Thirteen requests for rehearing or clarification of Order No. 704 were timely filed. No request for rehearing or clarification argued that the rule is unnecessary or should not have been issued. Rather, the requests sought modification or clarification of specific aspects of Order No. 704. Commission staff held two technical conferences during which potential filers of Form No. 552 and other industry stakeholders discussed the form. Stakeholders at these two technical conferences represented a broad spectrum of market participants and observers, including producers, interstate pipelines, intrastate pipelines, natural gas marketers, commodities traders; local distribution companies (LDCs), electric generation end-users, industrial end-users, and natural gas price index developers. Many conference participants filed comments following one or both of these conferences.

Comments

Section 23(d)(2) of the NGA requires the Commission to exempt from new transparency reporting requirements “natural gas producers, processors or users who have a de minimis market presence.”³⁹ Consistent with this directive, Order No. 704 provided that most buyers or sellers of less than a de minimis volume of natural gas are not required to submit Form No. 552.⁴⁰ The order set the de minimis threshold at 2.2 million MMBtus; that is, annual sales plus annual purchases of more than 2.2 million MMBtus required a market participant to report transaction information. In setting this threshold, the Commission “sought to require reporting from a sufficient number of significant market participants to ensure, in the aggregate, an accurate picture of the physical natural gas market as a whole.”⁴¹ The Commission explained that:

[T]he [2.2 million MMBtu] figure was based on the simple calculation of one-ten thousandth (1/10,000th) of the annual physical volumes consumed in the United States, which is approximately 22 trillion cubic feet (Tcf) (or roughly 22 billion MMBtus). Looked at another way, 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 1/10,000th 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,

³⁹ 15 U.S.C. section 717t-2(d)(2).

⁴⁰ Form No. 552 must be submitted by any section 204.402 or section 284.284 blanket certificate holder even if the entity has aggregate purchases and sales less than the de minimis threshold. Such an entity must provide identification information on Form No. 552 and must answer questions regarding price reporting to price index publishers, but need not submit Form No. 552’s aggregate volume data. Order No. 704 at P 60.

⁴¹ Id. P 78.

thus, have a much greater pricing effect there.

Copano Energy L.L.C. (Copano) requested rehearing of the de minimis threshold and argued that 2.2 million MMBtu is such a low threshold so as to render meaningless the NGA's directive that the Commission exempt from annual reporting requirements market participants that have a de minimis market presence.⁴² Copano argued that the Congressional purpose behind the de minimis threshold was to exclude entities that are too small to have an impact on market prices in the interstate, wholesale gas market. Copano stated that a threshold one-hundred times as large (i.e., 220 million MMBtu/year) would represent less than 1 percent of annual physical volumes of gas consumed in the country and "would therefore have no ability to impact prices in the wholesale, interstate natural gas market."⁴³ Copano noted that Order No. 704 justifies the selected threshold by noting that even small amounts of gas purchases can have a price effect at certain locations.⁴⁴ Copano believes that this reinforces its conclusion that a threshold should be established that measures market presence at market hubs.⁴⁵ Instead of a single-number de minimis threshold, Copano suggested a two-pronged approach that considers both the impact of a market participant's transactions on the overall wholesale gas market (a twenty-two million MMBtu threshold) and the impact of a market participant's transactions at market hubs (5 percent of the total jurisdictional sales at the hub).⁴⁶

American Public Gas Association (APGA) requested clarification of section 260.401(b) of the Commission's regulations. As currently written, the regulation exempts an entity that does not hold a blanket sales or marketing certificate from the reporting requirement if the entity either made fewer than 2.2 million Dth of wholesale sales or 2.2 million Dth of wholesale purchases. APGA proposed that the Commission clarify this language so as to ensure that an entity with fewer than 2.2 million MMBtu of purchases is exempted from reporting purchases and an entity with fewer than 2.2 million MMBtu of sales is exempted from reporting sales.⁴⁷

Shell requested that the Commission clarify whether purchases and sales should be aggregated for purposes of calculating an entity's total reportable volumes.⁴⁸ Additionally, Shell sought guidance regarding how market participants are to determine whether they fall into the de

42 Copano comments at 8.

43 Id. 5.

44 Id. at 6.

45 Id. at 7.

46 Id. at 7-8.

47 APGA comments at 2.

minimis exception when part of the relevant total sales or purchases are to an affiliate or under other circumstances.⁴⁹ Shell also requested clarification as to whether volumes that total exactly 2.2 TBtu fall into or out of the de minimis exception as the rule references amounts above and below the threshold, but not precisely at the threshold.⁵⁰

Commission's Response

Regarding the appropriate de minimis threshold, the Commission affirms its findings in Order No. 704 and retains the 2.2 million MMBtu level. As the Commission stated in Order No. 704, even market participants with total reportable volumes slightly above the threshold may have a significant effect on local wholesale markets.⁵¹ While it is possible that a respondent that exceeds the de minimis threshold exemption does not actually contribute to price formation, it is certain that some do and, in any event, market observers cannot yet know with any degree of assuredness which market participants have or do not have local price relevance. Likewise, these entities may rely upon price indices for a sizeable portion of their natural gas transactions. Form No. 552 seeks data only for volumes that either reference price indices or could contribute to the formation of price indices. A number of transactions are not reportable (as identified on Form No. 552, as discussed in Order No. 407, and as clarified in the Final Rule on Rehearing). Market participants should bear in mind that the Commission is not seeking data on all gas sales and purchases made by an entity, but rather a subset of these transactions.⁵²

Nothing in Copano's request for rehearing provides new information regarding the establishment of a proper de minimis threshold. While the Commission acknowledges that there are a number of rational ways to establish a de minimis threshold consistent with the Congressional mandate, the Commission continues to believe that 2.2 million MMBtu is an appropriate threshold for the reasons expressed herein and in Order No. 704.

Regarding APGA and Shell's requests involving how volumes are to be calculated to

48 Shell is, collectively, Shell Gulf of Mexico, Shell Offshore, Inc., Shell Rocky Mountain Production LLC, and SWEPI LP. Shell comments at 28.

49 Id. at 28-29.

50 Id. at 29.

51 Order No. 704 at P 81.

52 For example, the Commission clarifies in the Final Rule on Rehearing that a bundled retail transaction made at a state-approved tariff rate is not reportable. The Commission anticipates that this clarification will significantly limit the reporting obligation on smaller market participants.

determine whether an entity meets or exceeds the de minimis threshold, the Commission clarifies that an entity that has 2.2 million MMBtu of reportable sales or purchases must file Form No. 552. That is, a potential respondent with either reportable purchases equal to or greater than 2.2 million MMBtu or reportable sales⁵³ equal to or greater than 2.2 million MMBtu must submit the form. The following table, regarding reportable purchase and sale volumes, explains how the de minimis threshold will apply:

Reportable Sales Volumes	Reportable Purchase Volumes	Does the Entity Report?
≥ 2.2 million MMBtu	≥ 2.2 million MMBtu	Yes, both sales and purchases
≥ 2.2 million MMBtu	< 2.2 million MMBtu	Yes, both sales and purchases
< 2.2 million MMBtu	≥ 2.2 million MMBtu	Yes, both sales and purchases
< 2.2 million MMBtu	< 2.2 million MMBtu	No (unless the entity has a blanket certificate, in which case it will provide non-volume information only)

The Commission also clarified that sales and purchase volumes do not “net each other out” for purposes of determining whether an entity meets or exceeds the de minimis threshold. Additionally, an entity that must file Form No. 552 must report both reportable sales and reportable purchases regardless of the total volumes associated with each component volume. For example, if a potential respondent has annual reportable sales of 2.0 million MMBtu and reportable purchases of 3.0 million MMBtu, then it must file Form No. 552 as its purchases exceed the de minimis threshold of 2.2 million MMBtu. Further, it would report both its sales and purchases on the form.⁵⁴

The Commission further clarified that, if a transaction is reportable on Form No. 552, then volumes associated with the transaction should be counted towards the threshold. The converse is also true: if a transaction volume would not be included on the form, then volumes associated with it should not be counted towards the threshold. The Commission emphasizes that not all physical natural gas purchases and sales count towards the threshold.⁵⁵

⁵³ Reportable sales include off-system, balancing, and other assorted reportable sales as discussed elsewhere in this order.

⁵⁴ APGA’s request for clarification on this point was denied in the Final Rule on Rehearing.

⁵⁵ As detailed in the Final Rule on Rehearing, physical transactions of companies that fall below the de minimis threshold are excluded from the data collected by Form No. 552. Physical transactions need not be reported if they are not Next-Day or Next-Month transactions

If a company chooses to aggregate volumes from affiliates, then such volumes are aggregated for purposes of determining whether the corporation meets or exceeds the de minimis threshold. In response to Shell's requested clarification, Order No. 704 already makes clear that "a company with multiple affiliates may choose to report separately or in aggregate, as best meets its needs."⁵⁶ A company with multiple affiliates that chooses to aggregate must, however, aggregate all of its affiliates' data (i.e., it may not choose to aggregate some affiliates but not others). Consistent with Shell's other requests; we have modified Form No. 552 to make clear that entities that meet or exceed the de minimis volume must submit the form.

Modification of Final Rule's effective date

Under Order No. 704, respondents must submit Form No. 552 no later than May 1, 2009 for data collected in calendar year 2008.⁵⁷ At the technical conference, one participant requested that the Commission delay reporting of data until 2010 (for calendar year 2009 data). NiSource argued that it did not have the ability to electronically record data required by Form No. 552 and, given that the Commission had yet to issue an order on rehearing, it may be very difficult or impossible for some companies to comply with a 2009 filing date.

Commission's Response

The Commission declines to modify the effective date of the rule or the date by which Form No. 552 is first to be filed. The Commission notes that no entity raised this issue on rehearing or a formal request for clarification. The Commission has confidence in respondents' capabilities to report the general volume data requested on Form No. 552 by the May 1, 2009 filing date. With the adoption of a one-year safe harbor, concerns regarding the difficulty of collecting 2008 data for reporting in 2009 should be mitigated.

Responses to comments on Changes to FERC Form 552 since Order No. 704

Bid-week Fixed price

NGSA requested rehearing so that the definition of "Fixed Price" in Form No. 552 includes bid-week fixed price differential physical basis transactions tied to the last day of

as those terms are defined in Form No. 552. In this same vein, financial transactions, transactions between affiliates, and traditional retail transactions are not reportable on Form No. 552.

⁵⁶ Order No. 704 at PP 60 and 97.

⁵⁷ *Id.* P 105.

settlement.⁵⁸ NGSAs noted that these agreements form a material portion of the reported transactions at index points.⁵⁹ AGA, in supplemental comments in the docket, suggested that physical basis transactions be reported on a separate line on Form No. 552.⁶⁰ NGSAs argued that including these volumes would ease the administrative burden on respondents as these volumes would not need to be monitored and removed from aggregate volume numbers.⁶¹

Commission's Response

The Commission agrees that Form No. 552 should include bid-week, fixed price differential physical basis transactions. These transactions are a significant aspect of wholesale natural gas markets and utilize or could contribute to the formation of price indices. Consistent with AGA's recommendation, the Commission will include a new line item in Form No. 552, requiring the reporting of all physical basis transactions, including fixed differential basis transactions that can contribute to or rely upon a price index.

NYMEX Plus contracts

Order No. 704 excluded from reporting any type of financially-settled transaction.⁶² NEM requests clarification regarding reporting of "NYMEX Plus" contract volumes. Specifically, NEM requested clarification regarding the definition of Physical Natural Gas on Form No. 552.⁶³ The form excludes from reporting "any type of financially-settled transaction." NEM was uncertain whether NYMEX Plus contracts fall into this exclusion. NEM explained that under a NYMEX Plus contract an entity purchases or sells a volume of gas on a wholesale basis at a reportable location for a month or series of months with the price determined by reference to the monthly settlement price of a NYMEX futures contract plus an adder.⁶⁴ NEM was unsure whether such volumes should be reported on Form No. 552 line 5 as "prices that

58 These types of transactions involve transfers of physical natural gas utilizing basis differentials. The transactions are executed during the bid-week at a fixed differential to the last day of settlement.

59 NGSAs comments at 8.

60 AGA supplemental comments at 5-6.

61 NGSAs comments at 8.

62 Order No. 704 at P 111 and Form No. 552, Definition VII, Physical Natural Gas.

63 NEM comments at 4-6.

64 *Id.* at 3.

refer to published next-month gas price indices” or line 6 (the “other” category).⁶⁵ NEM was also uncertain as to: (1) the calendar year and months in which contract volumes related to a multi-month or multi-year NYMEX Plus contract should be reported; and (2) the price that should be reported on Form No. 552 if a price is to be set at a future date.⁶⁶

Commission’s Response

Based upon the facts as detailed by NEM, the Commission believes that only a subset of NYMEX Plus contracts should be reported. Specifically, the Commission clarifies that NYMEX Plus transactions are reportable only when: (1) executed during bid week and that can contribute to a next-month price index, or (2) they utilize a NYMEX settlement price during bid week that can contribute to a next-month index. In that regard, the Commission is adding a new line between current lines 6 and 7 to page 5 of Form No. 552 for the purpose of reporting data regarding NYMEX Plus and other “triggered” physical gas transactions.

Further, the Commission clarifies that, for all contracts where deliveries occur or may occur over multiple calendar years and such volumes are reportable, only volumes attributable for delivery that use or may contribute to the formation of price indices during the subject calendar year should be reported on Form No. 552. In Order No. 704, the Commission indicated that transactions are to be reported based upon whether their expected delivery dates are within the reporting year –contract formation dates are irrelevant.⁶⁷ For example, for a contract that could contribute to the formation of a price index and requires deliveries at times between July of the first year through February of the next, the respondent should report July-December volumes for the Form No. 552 corresponding to the first year’s volumes and January-February volumes in the next year’s Form No. 552. For a multi-year contract that relies on a price index to establish a price, the relevant volumes should be reported in the year in which the index is referenced.

Respondents Need Not Distinguish Between Transactions Based upon Location

Order No. 704 provided that a market participant must categorize transaction volumes by whether each transaction was made at a “reportable location.” Reportable locations are locations where index developers currently collect fixed-price information for transactions with Next-Day or Next-Month Delivery obligations, and produce index prices. Thus, Order No. 704 tied the

⁶⁵ Id. at 3-4.

⁶⁶ NEM comments at 4-5.

⁶⁷ Order No. 704 at P 60.

meaning of “fixed-price” reported volumes to volumes that may be reported to index developers at specific points. To this end, the Commission directed its staff to list on the Commission’s website all reportable locations at which fixed-price volumes were to be reported on Form No. 552.⁶⁸

NGSA requested rehearing of Order No. 704 so as to require submission of data at all trading locations rather than limited to specific reportable locations.⁶⁹ NGSA argued that this approach would be consistent with the Policy Statement on price reporting.⁷⁰ Further, NGSA stated that designated “reportable locations” will change over time, hampering the Commission’s long-term analysis of the market.⁷¹ NGSA argued that limiting reported data only to specific reportable locations would be more burdensome to most respondents than reporting all aggregate, relevant data.⁷² Lastly, NGSA asserted that different index developers utilize different means to collect data at the same index point and, thus, data collected from market participants for particular reportable points will not offer a reasonable comparison to reported indices.⁷³

Participants at the technical conferences echoed some of these themes. The NiSource Companies (NiSource) and Encana, for example, questioned how reporting was to be accomplished for certain reportable locations given that different reporting services defined the locations in multiple ways.

Commission’s Response

The Commission had granted rehearing of Order No. 704 on this issue and provides that respondents need not categorize volumes based upon whether such volumes relate to transactions at specific price index locations. The Commission agrees with NGSA that: (1) it would be substantially less burdensome for market participants to provide aggregate data regarding their transactions than to differentiate between volumes that occur within or outside reportable locations; (2) defining workable “reportable locations” would be difficult, would require substantial detail regarding geographic scope and types of transactions at specific

68 Order No. 704 at PP 60 and 101-102.

69 NGSA comments at 5.

70 *Id.* at 6 (citing the Policy Statement).

71 *Id.* at 6-7.

72 *Id.* at 7.

73 *Id.*

locations, and would unduly complicate respondents' Form No. 552 responses; and (3) specific reportable locations would change on a yearly basis, limiting the value of data collected by location. The Commission also understands that participants at the technical conferences indicated a substantial preference for this modification.

The Policy Statement provides that the minimum standards for data providers include a commitment to report "each bilateral, arm's-length transaction between non-affiliated companies in the physical (cash) markets at all trading locations."⁷⁴ Modification of Form No. 552 to eliminate data collected at specific reporting locations would make the annual reporting obligation consistent with the Policy Statement. Consequently, for respondents that already comply with the Policy Statement standards, data collection and reporting on Form No. 552 would be significantly less burdensome. In fact, the Commission believes that it would be easier for most entities that do not comply with the Policy Statement standards to provide aggregate data for all reportable transactions rather than to segregate data regarding transactions at specific locations.

Further, comments by conference participants and NGSAs' request for rehearing make clear that it would be administratively difficult to geographically define each reportable location in a way that would capture all transactions that were eligible for reporting to the various price indices. This is due to the fact that different data collection methodologies are used by index developers at the same point as well as the fact that different index developers accept different transactions from these points to form indices.

For these reasons, the Commission determines that respondents need only provide aggregated data for reportable transactions at all transaction locations. Respondents need not provide data segregated by reportable location.⁷⁵

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents in the proposed rule.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

The Commission generally does not consider the data posted concerning transactions to be confidential. Specific requests for confidential treatment to the extent permitted by law will be entertained pursuant to 18 C.F.R. Section 388.112.

⁷⁴ Policy Statement at P 34 (emphasis added).

⁷⁵ Consistent with the determination, we will no longer direct the Commission's staff to retain a list of reportable locations on the Commission's website.

At least one participant at the technical conference requested that the Commission act to protect allegedly proprietary information contained in a completed Form No. 552. Specifically, the concern was raised by Samson Resources Company (Samson) that, by requiring submission of data based upon transactions at specific locations, the form would provide sensitive commercial information to competitors who may already know the point or points where the respondent transacts. Samson also claimed that the names of affiliates should be confidential as well.

Commission's Response

The Commission reiterates that Form No. 552 data will be publicly available. In Order No. 704, the Commission addressed requests that data included on Form No. 552 be treated as confidential or proprietary.⁷⁶ The Commission found that Congress directed the Commission to provide aggregate information to the public. The Commission balanced this transparency goal with the asserted need for confidentiality. Among the factors the Commission considered were: (1) data would be reported in the aggregate; (2) no specific pricing information would be reported; (3) data would be reported on a national level, not locally or regionally; and (4) data would not be reported until four months following the reporting year.⁷⁷ The Commission sees no reason to modify its determination in this regard. The Commission notes, however, that its determination in the Final Rule on Rehearing to eliminate the reporting of data at specific reportable locations, further reduces any concerns that reported data is commercially sensitive.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE THAT ARE CONSIDERED PRIVATE

There are no questions of a sensitive nature proposed in the subject NOPR.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

The burden estimate of 6,000 hours (an average of 4 hours per entity) for information requirements/collections under FERC-552 as proposed in Order No. 704 is retained in the final rule on rehearing. The Commission assumed in Order No. 704 to require market participants to file annually a form regarding their physical natural gas transactions that it would impose an information collection burden on market participants. Additionally, the Commission presumed that market participants already collect transaction information and, thus, the burden imposed by the requirement is only for completing and submitting the form. The Commission did not receive any comments to Order No. 704 on its burden estimates and will therefore use those

⁷⁶ Order No. 704 at PP 82-84.

⁷⁷ Id. P 83.

same estimates in the Final Rule on Rehearing. The modifications made to both Form No. 552 and the regulations (de minimis threshold, fixed-price data and NYMEX contracts) should result in offsetting one another.

A detailed summary of FERC Form No. 552 burden estimates as submitted in Order No. 704 and inclusive of the Final Rule on Rehearing is shown below:

DATA REQUIREMENT (FERC-552)	CURRENT OMB	SUBMITTED	PROPOSED
Rule	INVENTORY*	In Final Rule	Rehearing
Estimated number of respondents	: 1,500	1,500	1,500
Estimated number of responses per respondent:	1	1	1
Estimated number of responses per year	: 1,500	1,500	1,500
Estimated number of hours per response	: 4	4	4
Total estimated burden (hours per year)	: 6,000	6,000	6,000
Program change in industry burden hours	:	-0-	
Adjustment change in industry burden hours ;		-0-	
<u>Total hours in the Final Rule on Rehearing</u>		-0-	

In requiring annual aggregated reporting of a limited set of transactions, the Commission intends that each market participant would have the data necessary to complete Form No. 552 in the course of its business operations, for instance, in the course of preparing year-end aggregations for management, accounting and shareholder reporting purposes. The information needed to complete Form No. 552 is information that can be extracted from the market participant's book of accounts that it would already have developed as part of its normal business operations. If a market participant buys or sells natural gas under complex arrangements, then it is likely to have an accounting system to manage the complexity and sort out the categories of purchases and sales. The Commission bases its estimated cost burden on a market participant adapting existing information to the standard format for Form No. 552 and submitting the form annually. This estimate does not include the regulatory and compliance costs attributable to reporting as those costs are part of the overhead that market participants bear as part of their participation in Commission-regulated markets. Although Sequent asserted that asset managers would have to renegotiate contracts to provide for the annual reporting requirement, the Commission considers it as likely that such asset management agreements already require collection of the transactions executed which could be used to complete Form No. 552.

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

The estimated annualized start-up and ongoing costs to respondents for the data collection/requirements stated in Order No. 704 will be continued in the Final Rule on Rehearing and is as follows :

FERC-552

For each entity, 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 (40 hours @\$100/hr, annualized for 10 years \$400 per year)**. Although some costs would increase for market participants with a greater number of transactions, the Commission expects 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 (**4 hours to fill in the form @\$100/hr for \$400 per year**). On an annualized basis, costs would amount to approximately **\$1,200** per entity.

	Annualized Capital/Startup Costs (10 year amortization)	Annual Costs	Annualized Costs Total
FERC-552			
Transaction Reporting Requirement	\$400	\$400	\$800

In summary, the Commission estimates that each entity will experience per year \$800 in costs (\$400 for start-up costs + \$400 operational costs). Amortized on a 10 year basis, this is equivalent to 1,500 (respondents) x \$800 (annual costs) = \$1,200,000 ÷ 10 (amortization) = \$1,200 per entity.

14 . ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

The estimated annualized cost to the Federal government related to the data collections/requirements as stated in the Order No. 704 are shown below:

Data Analysis Estimated FERC Forms Total Cost

Requirement of Data Number	(FTEs) ⁷⁹	x	Salary ⁷⁸ Per Year	+	Clearance (FY '07)	=	One Year's Operation ⁸⁰
FERC-552	.5		\$126,384		\$ 1,896		65,088
Total	.5		\$126,384		1,896		\$65,088

For annual transaction reporting, the burden to the Commission is for (a) creating the form electronically, (b) making sure it's current and (c) aggregating the information annually.

15. REASONS FOR CHANGES IN BURDEN INCLUDING THE NEED FOR ANY INCREASE

In Order No. 704 the Commission that 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), it was revising its regulations to: 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. The revisions of both Order No. 704 and this final rule on rehearing will facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce. However, as noted in item no. 12 above, the modifications made in this Final Rule on Rehearing should have offsetting results and therefore the burden estimates approved by OMB in Order No. 704 are not changed here.

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

Time Schedule for FERC-552 is as follows: An annual report/filing to the Commission for buyers and sellers of more than a de minimis volume of natural gas report numbers and volumes of relevant transactions. The report is 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. The forms will be due May 1, 2009 for year 2008 data.

78?/ "Salary" represents the allocated cost per gas program employee at the Commission based on its appropriated budget for fiscal year 2008. The \$126,384 "salary" consists of \$102,028 in salaries and \$24,355 in benefits.

79?/ An "FTE" is a "Full Time Equivalent" employee that works the equivalent of 2,080 hours per year.

80

17. DISPLAY OF EXPIRATION DATE

The information to be completed on the annual filing for Form No. 552 will be obtainable from the Commission's web site and the Commission will display the OMB control number and expiration date on the form.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

The Commission does not use statistical methodology for FERC Form No. 552.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

As noted in item number 18 above, the Commission does not use statistical methodology for FERC Form No. 552.