

Supporting Statement for  
**FERC Form 552, Annual Report of Natural Gas Transactions**  
As Proposed In Docket No. RM07-10-002 (See RIN No. 1902-AD32)  
(Final Rule on Rehearing Issued June 17, 2010)

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 amended 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. This Order (Order No. 704-C) grants clarification and makes various revisions to FERC Form No. 552. FERC Form 552 is currently approved through December 31, 2011.

We estimate that the total annual reporting-burden related to the subject Order on Rehearing will be 2,960 hours under Form 552, this a reduction from the Commission's estimate in Order No. 704. 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 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"<sup>1</sup>.

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.<sup>2</sup> 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.

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<sup>1</sup> 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).

<sup>2</sup> 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).

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)<sup>3</sup> authority for the Commission to obtain information on wholesale electric and natural gas prices and availability. Under the Federal Power Act<sup>4</sup> and the Natural Gas Act<sup>5</sup>, 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."<sup>6</sup> In the 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.

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

On December 26, 2007, the Commission issued a Final Rule in Order No. 704,<sup>7</sup> which amended Part 260 of its regulations to require the annual submission of a new form, Form No. 552. Order No. 704 has its genesis in the Energy Policy Act of 2005 which added as noted above, section 23 of the Natural Gas Act (NGA). Section 23 of the NGA, among other things, directs the Commission "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, and the protection of consumers."<sup>8</sup> Accordingly, Order No. 704

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

4 16 U.S.C. 824 et seq.

5 15 U.S.C. 717 et seq.

6 Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t-2(a)(1); see also section 220 of the Federal Power Act, 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).

7 *Transparency Provisions of Section 23 of the Natural Gas Act*, Order No. 704, FERC Stats. & Regs. ¶ 31,260, 73 Fed. Reg. 1,014 (2007) (Final Rule).

8 15 U.S.C. §717t-2(a)(1) (2009).

required natural gas wholesale market participants, including a number of entities that may not otherwise be subject to the Commission's traditional NGA jurisdiction, to report certain information concerning their natural gas sales and purchases annually.

**Final Rule on Rehearing (Docket No. RM07-10-001) Order Nos. 704-A & 704-B<sup>9</sup>**

The Commission issued a Final Rule on Rehearing (Order No. 704-A) on September 18, 2008 affirming its determinations made in 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 have to report annually on their physical natural gas transactions for the previous calendar year. This would include data on transactions involving volumes that use next-day or next-month price indices, volumes that are reported to any price index publisher, and all volumes that could be reported to an index publisher, even if the respondent has chosen not to report to a publisher. Volumes that could be reported to an index publisher include bilateral, arms-length, fixed price, physical natural gas transactions between non-affiliated companies at all trading locations.

Order No 704-A also removed the requirement that data be reported only for specific reportable locations. Participants had to report transactions that do not occur at a specific location designated by an index developer as a reporting location. The rule also clarified that balancing, cash-out, operational and other similar transactions must be reported on the FERC Form No. 552 to the same extent as other types of transactions. The rule exempted from filing entities that have both reportable sales totaling less than 2.2 million British thermal units (MMBtu) and reportable purchases totaling less than 2.2 million MMBtu. The exemption applies only for those entities not holding blanket certificates.

The reported information makes it possible to assess the formation of index prices and the use of index pricing in natural gas markets. The issuance of these regulations facilitates 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.

On December 13, 2008, the Commission issued a Final Rule on Rehearing, Order No. 704-B affirming its determinations made in the Final Rule and Final Rule on Rehearing (Order No. 704 & 704-A) (see above). Additionally, the Commission responded to a request by the Interstate Natural Gas Association of America (INGAA) seeking clarification of the definition of "Physical Natural Gas Transaction" as defined in Form No. 552. INGAA stated that the

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<sup>9</sup> *Transparency Provisions of Section 23 of the Natural Gas Act*, Order No. 704-A, FERC Stats. & Regs. ¶ 31,275, 73 Fed. Reg. 55,726 (2008) (Order No. 704-A). *Transparency Provisions of Section 23 of the Natural Gas Act*, Order No. 704-B, 125 FERC ¶ 61,302 (2008) (Order No. 704-B).

Commission made clear in Order No. 704-A that cash-out transactions must be reported if they “rely on, contribute to, or could contribute to price index.”<sup>10</sup> INGAA also asserted that while the definition of “Physical Natural Gas Transaction” specifically contemplates that cash-out transactions will be reported on Form No. 552, the definition also provides that transactions should be reported only if they are for Next-Day Delivery or Next-Month Delivery. INGAA claimed that cash-out transactions are “payments in settlement of over-deliveries or under-deliveries” and, therefore, are not for Next-Day Delivery or Next-Month Delivery.<sup>11</sup> INGAA argued that, should the Commission retain the requirement to report cash-out volumes, the Commission should clarify the instructions of Form No. 552 indicating the specific line on which cash-out volumes should be reported.

The Commission agreed with INGAA and clarified that cash-out, balancing, and in-kind transactions are reportable on Form No. 552 if they rely on, contribute to, or could contribute to a price index. Form No. 552 was amended to provide that Fixed Price transactions are reportable only if they are for Next-Day Delivery or Next-Month Delivery. Index-based transactions are reportable even if they are not for Next-Day Delivery or Next-Month Delivery. The Commission also clarified that cash-out, balancing, and in-kind volumes are reportable on specific lines of Form No. 552 depending upon the substance of the underlying transaction. For example, cash-out transactions that utilize a Next-Day Delivery gas price index would be reportable on lines 1 and 3 of page 4 (Purchase and Sales Information).<sup>33</sup> If a cash-out transaction utilizes a Next-Month Delivery price index, then the volumes associated with the cash-out would be reportable on page 4 (Purchase and Sales Information), lines 1 and 5.

### **Subject Final Rule on Rehearing (Docket No. RM07-10-002) Order No. 704-C**

The Commission issued a Final Rule on Rehearing on June 17, 2010 affirming its determinations made in Order Nos. 704, 704-A and 704-B (see above). In this Order granting clarification, the Commission addresses requests to clarify Form No. 552, under which natural gas market participants must annually report information regarding physical natural gas transactions that use an index or that contribute to or may contribute to the formation of a gas

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<sup>10</sup> INGAA Comments at 2 (citing Order No. 704-A at P 59).

<sup>11</sup> *Id.*

index. Order No. 704-C revises Form No. 552 so as to (1) exempt from reporting any unexercised options to take gas under a take-or-release contract; (2) clarifies the definition of exempt unprocessed natural gas transactions as those involving gas that is both not yet processed (to separate and recover natural gas liquids), and still upstream of a processing facility; (3) exempts from reporting cash-out and imbalance transactions, since they were burdensome to report and provided little market information; (4) strikes the form's references to the blanket sales certificates issued under § 284.402 or § 284.284, since they were burdensome to report and provided little market information, so as to also exempt small entities who were obligated to report solely by virtue of possessing a blanket sales certificate; and (5) makes several non-substantive modifications to Form No. 552 in an effort to make it more user-friendly.

**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 EAct 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.<sup>12</sup> 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.

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<sup>12</sup> 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).

In 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.<sup>13</sup>

In 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.<sup>14</sup>

In 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).<sup>15</sup>

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13 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, 16 U.S.C. 824t.

14 15 U.S.C. 717t-2(a).

15 15 U.S.C. 717t-2(a)(3).

Finally, 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....”<sup>16</sup> 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.

Order No. 704, as clarified and modified by Order Nos. 704-A<sup>17</sup> and 704-B,<sup>18</sup> requires market participants with reportable physical natural gas purchases or sales equal to or greater than 2.2 trillion British Thermal Units<sup>19</sup> to report the following information on Form No. 552:

- (1) total volume of the respondent’s reportable physical sales and purchases during the year,
- (2) quantities contracted at fixed prices for next day delivery,
- (3) quantities contracted at prices that refer to published daily gas price indices,
- (4) quantities contracted at fixed prices for next month delivery,
- (5) quantities contracted at prices that refer to published monthly gas price indices,
- (6) quantities contracted under trigger agreements, such as NYMEX Plus contracts, and

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16 Section 23(d)(2) of the Natural Gas Act, 15 U.S.C. 717t-2(d)(2).

17 *Transparency Provisions of Section 23 of the Natural Gas Act*, Order No. 704-A, FERC Stats. & Regs. ¶ 31,275, 73 Fed. Reg. 55,726 (2008) (Order No. 704-A).

18 *Transparency Provisions of Section 23 of the Natural Gas Act*, Order No. 704-B, 125 FERC ¶ 61,302 (2008) (Order No. 704-B).

19 2.2 TBtus, or roughly 2.2 million dekatherms.

(7) quantities contracted as physical basis transactions.<sup>20</sup>

## **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.<sup>21</sup> 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.<sup>22</sup> 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.

In this order, the Commission addresses pending requests to clarify Form No. 552, resolve issues discussed in comments in this docket and at the March 25, 2010 Technical Conference, and provide additional guidance for respondents. Further, the Commission, in light of its experience administering the first year of Form No. 552, is clarifying the exclusion of transactions involving volumes of unprocessed natural gas.

The basic purpose of these reports is to provide greater transparency concerning the use of indices to price natural gas and how well index prices reflect market forces. Many market participants rely on indices as a way to reference market prices without taking on the risks of active trading. However, the Commission found that there was insufficient information available to the Commission and market participants to assess whether the gas indices are derived from a robust market of fixed-price transactions and thus accurately reflect market forces. For example, there was no way to determine the volumetric relationships between (a) the fixed-price, next day and next month delivery transactions that form gas price indices; and (b) transactions that use indices.

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<sup>20</sup> Respondents must also explain any difference between the total volumes of their reportable purchases and sales reported in response to item (1) above and the sum of the corresponding quantities reported in response to items (2) through (7).

<sup>21</sup> Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t-2(a)(1).

<sup>22</sup> Section 23(a)(2) of the Natural Gas Act, 15 U.S.C. 717t-2(a)(2).

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 indexed- price transactions. The revisions contained in this Order on Rehearing will reduce the filing burden to respondents

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. With respect to Form No. 552, respondents may file Form No. 552 electronically with the Commission.

In response to informal questions raised by respondents and in an effort to make the Form No. 552 more user friendly, the Commission in Order 704-C, is approving a number of other non-substantive modifications to Form No. 552. These modifications do not affect the data to be collected by respondents and provided on the form. However, the modifications more clearly identify the data to be provided and more understandable direction to respondents. A copy of revised Form No. 552 is attached to this order.<sup>23</sup> (For further discussion, see item no. 8 of this submission.)

**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**

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

<sup>23</sup> The copy of the Form No. 552 in this submission is not to be eFiled with the Commission with the issuance of this Order. Staff will make available a fillable PDF Form No. 552 at a later date and upon OMB approval.

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....”<sup>24</sup> As the Commission stated in the NOPR to Order No. 704, 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).<sup>25</sup> 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 this 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.

**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**

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<sup>24</sup>Section 23(a)(4) of the Natural Gas Act; 15 U.S.C. 717t-2(a)(4) (2000 & Supp. V 2005).

<sup>25</sup>NOPR 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)).

These 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.

The Commission has engaged in substantial outreach efforts related to Form No. 552. These efforts have been intended to inform market participants of the obligation to file Form No. 552, to answer questions regarding the form, and to identify ways to improve it. Commission staff has provided informal guidance to dozens of individual respondents as well as to various natural gas industry associations representing respondents. This outreach includes one-on-one telephone conferences with potential respondents, conference calls with a number of industry participants, presentations to groups of market participants, and the creation and updating of a Frequently Asked Questions (FAQ) list available on the Commission's website.<sup>26</sup> Commission Staff has also discussed Form No. 552 compliance with major trade organizations through conference calls and direct presentations. In addition, the Commission has addressed specific questions regarding Form No. 552 compliance through our Enforcement Hotline, Compliance Help Desk, direct calls to Staff members, and e-mails addressed to our dedicated Form No. 552 mailbox ([form552@ferc.gov](mailto:form552@ferc.gov)).

The American Gas Association (AGA) and Pacific Gas and Electric Company (PG&E) submitted requests for clarification of Order No. 704 on October 9, 2009 and November 3, 2009, respectively. These requests are discussed below. In addition, Commission Staff held a Technical Conference to discuss:

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<sup>26</sup> The FAQ is available at <http://www.ferc.gov/docs-filing/forms/form-552/form-552-faq.pdf>. Along with the FAQ, copies of relevant Commission orders and general filing guidance are provided. The Commission will update the FAQ as necessary and encourages potential Respondents to review the FAQ prior to filing Form No. 552.

- 1) inconsistencies in reporting upstream transactions in the natural gas supply chain on Form No. 552, and whether these transactions contribute to wholesale price formation;
- 2) whether transactions involving balancing, cash-out, operational, and in-kind transactions should be reported on Form No. 552; and
- 3) whether the units of measurement (TBtu) currently used for reporting volumes in the form are appropriate.<sup>27</sup>

## **Clarifications**

### **Use of indices**

Form No. 552, at page 4 line 3, requires respondents to report “what quantities were contracted at prices that refer to published Next-Day Delivery gas price indices.” Similarly, respondents are required to report, at line 5, “what quantities were contracted at prices that refer to published Next-Month Delivery gas price indices.” AGA requested that the Commission modify Form No. 552 to state clearly that the transactions reportable on these lines “are transactions that are contracted at prices that refer to daily or monthly gas price indices regardless of whether such transactions are themselves for next-day delivery or for next-month delivery.”<sup>28</sup> AGA claims that this clarification is necessary to resolve ambiguity in the form that has led some respondents to submit inaccurate calendar year 2009 information.

In particular, AGA argued that Order No. 704 was unclear as to whether the index-priced transactions required to be reported in lines 3 or 5 must themselves be next-day or next-month transactions or whether all transactions that refer to daily or monthly gas price indices should be reported even if they do not require gas to be delivered the next day or month.

AGA stated that Order No. 704-A appeared to clarify that only index-priced transactions that were for next-day or next-month delivery were required to be reported in lines 3 and 5, respectively. Among other things, AGA points out that Order No. 704-A revised the instructions to Form No. 552 by specifically excluding from the reporting requirements “Fixed Price transaction volumes that are not Next-Day Delivery or Next-Month Delivery.”<sup>29</sup> Thus, AGA argued, the fact only next-day and next-month fixed price transactions were required to be

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<sup>27</sup> Notice of Form No. 552 Technical Conference (February 22, 2010).

<sup>28</sup> AGA Request for Clarification at p. 1.

<sup>29</sup> Instruction VII(h).

reported suggested that, similarly, only index priced transactions that were themselves next-day or next-month transactions were required to be reported on lines 3 or 5. AGA also pointed out that Order No. 704-A revised lines 3 and 5 of the Form No. 552 to specify that the transactions reportable on line 3 were volumes “contracted at prices that refer to published Next-Day Delivery gas price indices,” and that the transactions reportable on line 5 were volumes “contracted at prices that refer to published Next-Month Delivery gas price indices.” AGA stated that the addition of the phrases “Next-Day Delivery” and “Next-Month Delivery” created uncertainty as to whether those phrases applied to the transactions to be reported or only modified the referenced gas price indices.

Against this background, AGA argued that as market participants began to prepare to file Form No. 552 to report their 2008 calendar year transactions there was continued uncertainty as to the reporting of index-priced transactions. In some cases, AGA states, filers included in line 3 or line 5 only those index-based transactions where the day of gas flow matched up with the index being used, and did not include, for example, transactions that were priced based on an average of gas price indices or transactions for future gas delivery based on historic gas price indices.

Thus, AGA recommended that the Commission modify lines 3 and 5 of the Form No. 552 to ask for “quantities that were contracted at prices that refer to daily price indices and “quantities that were contracted at prices that refer to monthly price indices,” and remove the references to Next-Day and Next-Month delivery.

NiSource,<sup>30</sup> in its comments in response to the Technical Conference, also drew the Commission’s attention to lines 3 and 5 on page 5 of Form No. 552.<sup>31</sup> NiSource recommends revising them both so that each line begins “Of the amounts reported on line 1, *regardless of the date the transaction was executed, ...*”<sup>32</sup> NiSource argued that this revision is in keeping with

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30 In this docket, NiSource refers to the following affiliated distribution companies: Bay State Gas Company; Columbia Gas of Kentucky, Inc.; Columbia Gas of Maryland, Inc.; Columbia Gas of Ohio, Inc.; Columbia Gas of Pennsylvania, Inc.; Columbia Gas of Virginia, Inc.; Kokomo Gas and Fuel Company; Northern Indiana Public Service Company; and Northern Indiana Fuel and Light Company, Inc.

31 These lines ask Respondents, respectively, “Of the amounts reported on line 1, what quantities were contracted at prices that refer to published Next-Day Delivery gas price indices?” and “Of the amounts reported on line 1, what quantities were contracted at prices that refer to published Next-Month Delivery gas price indices?”

32 NiSource Comments at 6.

Order No. 704-B, which stated, “[i]ndex-based transactions are reportable even if they are not for Next-Day Delivery or Next-Month Delivery.”<sup>33</sup>

### **FERC Response**

The Commission has granted AGA’s request. In granting AGA’s request, the Commission provides clarification that also addresses the root of NiSource’s comments. The Commission’s guiding principle is that all transactions that utilize a daily or monthly gas price index, contribute to index price formation, or could contribute to index price formation must be reported on Form No. 552. As Order No. 704-A stated:

[T]he focus of Form No. 552’s data collection is transactions that utilize an index price, contribute to index price formation, or could contribute to index price formation. Specifically, the Commission finds that volumes reportable on Form No. 552 should include volumes that utilize next-day or next-month price indices, volumes that are reported to any price index publisher, and any volumes that could be reported to an index publisher even if the respondent has chosen not to report to a publisher. By ‘could be reported to an index publisher,’ we mean bilateral, arms-length, fixed price, physical natural gas transactions between non-affiliated companies at all trading locations.<sup>34</sup>

In Order No. 704-B, in response to a request for clarification regarding retail end-use transactions, the Commission reiterated that “Form No. 552 requires reporting of volumes associated with transactions that utilize, contribute to, or could contribute to a price index.”<sup>35</sup>

Transactions that utilize daily or monthly indices are reported on lines 3 and 5, respectively, of Form No. 552. Transactions that contribute to, or could contribute to a gas index are reported on lines 2, 4, 6 and 7 of Form No. 552. Consistent with the purpose of Order No. 704 of providing greater transparency concerning the use of indices to determine natural gas prices and how well index prices reflect market forces, the Commission seeks information concerning all transactions that use indices, regardless of any other aspect of the transaction. Thus, the Commission intended that all transactions using indices be reported on lines 3 and 5 no matter when they were transacted.<sup>36</sup> Such information is necessary to determine, for example, the volumetric relationship between (a) transactions that use indices to determine natural gas prices,

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33 Order No. 704-B at P 15.

34 Order No. 704-A at P 13.

35 Order No. 704-B at P 13.

(b) the fixed-price next day or next month delivery transactions, NYMEX trigger agreements, including NYMEX plus contracts, and physical basis transactions that form gas indices.

Accordingly, the Commission has modified Form No. 552 to provide greater clarity. In particular, as requested by AGA, the Commission is eliminating the references to “Next-Day Delivery” and “Next-Month Delivery” in page 4, lines 3 and 5 of Form No. 552 and revising the question on page 4, line 3 to ask for “quantities that were contracted at Prices that Refer to published Daily Indices\*”. The question on page 4, line 5 is similarly revised to ask for “quantities that were contracted at Prices that Refer to published Monthly Indices\*”.<sup>37</sup>

In addition, the Commission is modifying the definitions in the Form No. 552 to provide additional guidance to respondents concerning what transactions should be treated as reportable transactions that refer to daily or monthly indices. In the revised definitions, the Commission clarifies that transactions that refer to “weekly,” “yearly,” or other gas price indices may, in fact, be based on daily gas price indices and are reportable on page 4, line 3 of Form No. 552. For example, a transaction that references a “weekly” index that is formed by averaging multiple daily indices is reportable as referencing a daily index. Similarly, a transaction that refers to a yearly index that is formed by averaging twelve monthly indices would be reported as referencing a monthly index.

The Commission is also clarifying that the referenced index need not be solely a gas index. Thus, a transaction that relies on a basket of indices which includes a gas index and other daily or monthly indices such as coal, petroleum, LNG, inflation, etc. would also be reportable on Lines 3 and 5 of the Form No. 552. The Commission will ask Respondents that use a basket of daily or monthly indices that includes gas and other indices to identify the names of the indices used on page 4 in lines 8 or 9. The Commission is reminding respondents that the NYMEX Natural Gas Futures price outside of bidweek is not considered an index for purposes of Form No. 552 and is not to be reported.<sup>38</sup>

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36 Multi-year physical natural gas transactions that refer to an index would report only those volumes that flowed during a given reporting year in the Form No. 552.

37 In particular, the revised Form No. 552, on page 4, line 3, asks for “quantities that were contracted at prices that refer to published daily gas price indices” and on page 4, line 5 asks for “quantities that were contracted at prices that refer to published monthly gas price indices.”

38 See Order No. 704 at P 113 (“Unlike in the NOPR, Form No. 552 no longer requests information on NYMEX contracts that go to physical delivery because the purpose of the form is to focus on fixed-priced spot transactions and how they are used. Further, information attributable to such contracts is available from NYMEX. Consequently, to reduce the burden on market participants, this instruction has been removed and a market participant may not include

Finally, while all transactions referring to daily or monthly indices must be reported without regard to whether they are for next day or next month delivery, the fixed price transactions to be reported on Lines 2, 4, 6 and 7 of the Form No. 552 are limited to transactions which are for next-day or next-month delivery. The transactions to be reported on those lines are transactions that contribute to gas index price formation, or could contribute to gas index price formation. The only fixed price transactions that can contribute to a daily price index are fixed price contracts for next day delivery. Similarly, the only fixed price contracts that can contribute to a monthly gas price index are contracts for next month delivery reported on lines 4, 6 and 7. The Commission is modifying and adding definitions in the Form No. 552 to make clear that the terms “Next-Day Delivery or Next-Month Delivery” only pertain to Fixed Price transactions which are reportable on lines 2 and 4, respectively<sup>39</sup> and to clarify what transactions on the form do or may contribute to daily and monthly gas price indices.

### **Cash-out, Imbalance, and Operation-Related Transactions**

In Order No. 704, the Commission required market participants to report sale and purchase volumes related to cash-outs, imbalance make-ups, and operations.<sup>40</sup> These transactions include transactions to resolve shippers’ transportation imbalances on pipelines and LDCs. Such imbalances are often cashed out pursuant to provisions in the pipeline or LDC tariffs based on specified price indices. The cash-out prices may be set at a premium to the relevant price index in order to penalize shippers which incur significant imbalances. These transactions also include operational purchases and sales by pipelines and LDCs and production-related balancing activities, such as those between producers and working interest owners.

In Order No. 704, the Commission stated that, while some volumes related to such transactions are not utilized to create price indices, many volumes do refer to or utilize such indices, and therefore these transactions should be included in the Form No. 552 reports.<sup>41</sup> In Order No. 704-A, the Commission reiterated, “It has been our experience that a significant number of balancing, cash-out, and similar transactions include references to price indices. Understanding the magnitude of this reliance on price indices is therefore a legitimate policy goal.”<sup>42</sup>

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volume information related to physically-settled future contracts.”)

39 Lines 3 and 5 of the schedule appearing on page 4 of Form No. 552 have also been slightly modified to remove references to “Next-Day Delivery” and “Next-Month Delivery.”

40 Order No. 704 at P 107.

41 Order No. 704 at P 108.

42 Order No. 704-A at P 61.

After respondents filed their Form No. 552s for 2008, FERC staff reviewed the filings and made preliminary findings that the volumes of natural gas identified as cash-outs are relatively low in relation to the total reportable physical natural gas reported on Form No. 552. Therefore, FERC staff sought through the Technical Conference and comment process to better understand the burden and benefits of reporting these volumes.<sup>43</sup>

Almost every party that filed comments in response to the Technical Conference commented on cash-out and related transactions, including seven trade associations and six companies.<sup>44</sup> All of these Commenters urged the Commission to exclude cash-out and imbalance transactions in Form No. 552, and generally provide the same arguments for exclusion. Moreover, since cash-out and imbalance transactions are fairly unpredictable and spread out over a wide range of contracts, the process of reviewing them will not become significantly more efficient over time. In terms of volume, however, cash-out and imbalance transactions are relatively minor: between 0 and 3 percent of most Respondents' reportable volumes.<sup>45</sup> Volumes are low because cash-out and imbalance transactions are netting transactions. Finally, commenters argued that cash-out transactions take place after the fact as a method of settling imbalances, and thus cannot contribute to market price index formation.

AGA agreed with the other commenters that cash-out and imbalance transactions should be excluded from reporting on Form No. 552. AGA argues, however, that it may be appropriate to continue reporting operational volumes unrelated to the resolution of imbalances. For example, LDCs may purchase or sell wholesale volumes in advance to address balancing concerns on their distribution systems. Such advance purchases should continue to be reported, AGA argued, because the volumes are acquired through the typical procurement channels as their end-use volumes, and would require disproportionate effort to exclude from reports.

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43 Notice of Form No. 552 Technical Conference.

44 The trade associations are AGA, Electric Power Supply Association (EPSA), Interstate Natural Gas Association of America (INGAA), IPAA, NGSA, Northwest Industrial Gas Users (NWIUGU), and Process Gas Consumers Group (PGC). The companies are Carolina Gas Transmission Corporation (CGT), DCP, Devon, NiSource, Shell Producers, and Summit Energy Services (Summit).

45 As a percentage of total reportable volumes, Commenters stated that they or their members reported the following cash-out and imbalance volumes. AGA: under 3 percent; DCP: 1 percent; Devon: under 1 percent; IPAA: under 1 percent (data for one representative member); NGSA: 0.5 percent; PGC: 1 percent; Shell Producers: zero.

### **FERC Response**

Upon review of the comments in RM07-10-000, as well as FERC staff's review of initial year Form No. 552 submissions for 2008, the Commission has reconsidered its position with regard to cash-out and imbalance transactions. As several Commenters note, cash-out and imbalance transactions represent an insignificant portion of the total reportable volumes because the transactions, while frequent, do not accumulate to significant volumes for any one Respondent. The Commission's interest is in aggregated totals, so eliminating cash-out and imbalance transactions has little effect on our mission to monitor aggregate reliance on indices. Further, given the after-the-fact nature of accounting for these sorts of operational transactions, the Commission finds that it may be unduly burdensome for some respondents to report these volumes as compared to any benefit achieved by such reports. Accordingly, respondents are no longer required to report cash-out, and imbalance transactions that refer to or use indices or that may contribute to gas indices. However, as AGA requested, respondents should continue to report transactions related to operational volumes unrelated to the resolution of imbalances. These operational volumes are commonly used to maintain system pressure and provide line pack for pipelines and other gas distributions systems.

### **Blanket Certificates**

In Order No. 704, the Commission required that each market participant, including a *de minimis* market participant, state in the Form No. 552 whether it operates under a blanket sales certificate issued under § 284.402 or § 284.284 of the Commission's regulations.<sup>46</sup> Section 284.402 grants to any entity which is not an interstate pipeline a blanket marketing certificate, authorizing it to make sales for resale at negotiated rates in interstate commerce of any category of gas that is subject to the Commission's NGA jurisdiction. Section 284.284 grants open access interstate pipelines a blanket certificate to make unbundled sales.

Order No. 704 stated that the requirement for market participants to state whether they operate under a blanket sales certificate would give the Commission a measure of the number of holders of such certificates. The Commission also stated that it would permit some breakdown of market information between jurisdictional and non-jurisdictional components, which is useful for effective oversight and monitoring for market manipulation.<sup>47</sup>

In its comments after the technical conference, Natural Gas Supply Association (NGSA) seeks clarification of when a market participant should be considered to be operating under a blanket marketing certificate. It points out that § 284.402(a) automatically grants the blanket marketing certificate to all market participants who are not interstate pipelines, without the need

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<sup>46</sup> The current Form No. 552 implements this requirement by asking, "At any time during the report year, did the Reporting Company operate under a Blanket certificate?"

<sup>47</sup> Order No. 704 at P 91.

to file an application for the certificate or for any Commission action. It also notes that § 284.402(d) authorizes abandonment under NGA section 7(b) of any sales service performed under the certificate upon the expiration of the contractual term of that service or upon termination of each individual sales arrangement. NGA asserts that these provisions create confusion as to whether a respondent has operated under the blanket certificate in certain scenarios. NGA explained:

It is not clear if a company that used a blanket marketing certificate in year one for certain transactions, but didn't use the certificate in subsequent years, continues to hold the certificate in perpetuity (unless the certificate is rescinded by the Commission); or whether a new certificate is allowed in a subsequent year if the company needs to enter into a transaction that requires a blanket certificate. If the future transaction is several years later, should the company be required to report in interim year Form 552's that it holds a blanket marketing certificate or is it acceptable for the company to assume the original certificate was abandoned when the original transactions ended; and a new certificate commences with the subsequent transaction?<sup>48</sup>

NGSA recommended that the Commission clarify that the reporting requirement only applies if the respondent actually used the blanket marketing certificate during the reporting year. It requests clarification that this reporting requirement be limited to market participants using a blanket marketing certificate above the *de minimis* volume.

### **FERC Response**

The Commission has determined to remove from Form No. 552 the requirement that market participants state whether they operate under a blanket sales certificate issued under either § 284.402 or § 284.284 of the Commission's regulations.<sup>49</sup> The Commission staff's experience reviewing completed reports for the year 2008 indicates that this requirement does not provide sufficiently useful and reliable information to justify its continuation.

The responses to the Form No. 552 blanket certificate question have not provided useful information to the Commission. The Commission had hoped that those responses would permit some breakdown of market information between jurisdictional and non-jurisdictional components. However, given the widespread confusion as to whether particular sales are

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<sup>48</sup> NGA Comments at 8.

<sup>49</sup> The current Form No. 552 implements this requirement by asking, "At any time during the report year, did the Reporting Company operate under a Blanket certificate?"

jurisdictional, the market participants' statements in the Form No. 552 as to whether they operated under the blanket marketing certificate do not appear reliable. Moreover, a simple statement of whether the market participant made sales pursuant to the blanket marketing certificate does not reveal whether those sales constituted most, or only a very few, of the market participant's sales. Without that information, it is not possible to determine, with any degree of accuracy, what proportion of gas sales are subject to the Commission's NGA jurisdiction.<sup>50</sup> In any event, information about whether sales are jurisdictional is not relevant to the fundamental purpose of the Form No. 552, which is to obtain information concerning the relative volumes of fixed price transactions that contribute or may contribute to a gas index versus the volume of transactions that refer to indices. For all these reasons, the Commission eliminates the requirement that market participants report whether they make sales under a blanket certificate. Accordingly, the Commission will modify section 260.401 of its regulations to strike 18 C.F.R. § 260.401(b)(1)(i), which prevented blanket certificate holders from benefitting from the *de minimis* exemption to the annual filing requirement. The instructions on Form No. 552 will be modified to reflect this holding.

### **Other Substantive Requested Clarifications**

Several commenters, in responding to the issues raised at the Technical Conference, took the opportunity to raise other issues related to Form No. 552. Some of these comments concerned the timing and enforcement of the revised reporting requirements, mainly in the form of the requests for extension of time. In addition, DCP stated that it "does not support significant changes ... that would require another burdensome process." Similarly, Independent Petroleum Association of America (IPAA) requested an extension of the safe harbor for any inadvertent errors, while NorthWest Industrial Gas Users (NWIGU) and NGSAs requested an extension of the safe harbor period in the event that the Commission makes any substantive changes to Form No. 552 in this or future orders.

### **FERC Response**

In response to DCP Midstream LLC's comments, the Commission clarifies that the present order does not require Respondents who have under-reported or mis-reported their 2008 Form No. 552 to correct their filings based on the Commission's guidance in Order No.704-C.

The Commission will not institute any additional safe-harbor period. However, the Commission will focus any enforcement efforts on instances of intentional submission of false,

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<sup>50</sup> Interstate pipelines filing the Form No. 552 reported insignificant volumes of sales pursuant to the § 284.284 blanket certificate authorizing pipelines to make unbundled sales. Few, if any, pipelines use that certificate, because almost all pipeline exited the merchant business after Order No. 636.

incomplete, or misleading information to the Commission, of failure to report in the first instance, or of failure to exercise due diligence in compiling and reporting data.<sup>51</sup>

NGSA also raised the issue of whether a Sarbanes-Oxley<sup>52</sup> signoff standard applies to Form No. 552's signature requirement. NGSA argues that it does not, and urged the Commission to clarify that the entity signoff can be from any official that is able to bind the company.

### **FERC Response**

The Commission does require Annual Corporate Officer Certification and Sarbanes-Oxley signoff for some forms: e.g., Form Nos. 1, 2, 2-A, 6, 60, 3-Q, and 6-Q. These forms are financial reports that include balance sheets, income statements, and similar financial data. However, the Commission does not interpret the Sarbanes-Oxley Act to compel the Commission to require such a standard for Form No. 552. At this time, the Commission believes that it is sufficient that the person signing Form No. 552 be one whose signature legally binds the company with respect to the accuracy and completeness of the submission. The instructions on Form No. 552 as well as the form shall be modified slightly to clarify this holding.

NiSource requested that the Commission exempt from reporting any "transactions that occur under a local distribution company's state-approved retail tariff that refer to next-day or next-month price indices."<sup>53</sup> NiSource stated that gathering such information is administratively burdensome for it because NiSource has several state-approved tariffs among several affiliates and currently lacks "one consistent IT system that can be used to pull this data."<sup>54</sup> NiSource also stated that some of these tariffs only rely upon index prices when certain conditions are met, and that NiSource's IT systems only record the actual price and fail to record the reason why the price was charged. NiSource stated that, among its nine LDC affiliates, it has identified 26 state-approved tariff provisions that refer to gas price indices, providing for different variations of cash-outs and a number of imbalance situations.

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51 Order No. 704 at P 114.

52 Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745. In certain situations, the Sarbanes-Oxley Act requires chief corporate officers to personally vouch for the veracity, timeliness, and fairness of their companies' public disclosures.

53 NiSource Comments at 1.

54 NiSource Comments at 4.

**FERC Response**

The Commission is rejecting the requested exemption for state-approved retail tariffs. All of the examples of reportable transactions that NiSource gave in its comments involve cash-out or imbalance provisions. Accordingly, the exemption granted above in this order for cash-out and imbalance transactions that reference a price index appears to sufficiently address NiSource's concerns.

**Non-Substantive Modifications**

In response to informal questions by respondents and in an effort to make the Form No. 552 more user friendly, the Commission is approving a number of non-substantive modifications to Form No. 552. These modifications do not affect the data to be collected by Respondents and provided on the form. However, the modifications more clearly identify the data to be provided and more understandable direction to respondents.

For example, the instructions to Form No. 552 have been modified to allow potential respondents to more easily determine whether they must submit the form, the types of transactions that are reportable, and the procedure to eFile the form. The instructions also explain that typing the name of the company officer constitutes an electronic signature of a company officer is acceptable under the Commission's regulations.<sup>55</sup> Additionally, the schedule on page three of Form No. 552 is modified to explain that each Respondent Reporting Company and Affiliate should be listed and required to answer the questions on the schedule.

The Commission believes that the modifications to Form No. 552 will provide regulatory certainty and reduce erroneous filings by respondents. The Commission encourages potential respondents to utilize other Commission resources should they have questions regarding the filing of Form No. 552. In addition to consulting the Form No. 552 FAQ at <http://www.ferc.gov/docs-filing/forms/form-552/form-552-faq.pdf> and other filing guidance at <http://www.ferc.gov/docs-filing/forms/form-552/fil-instr.asp>, Respondents may request informal assistance through our Compliance Help Desk or by submitting questions via e-mail to [form552@ferc.gov](mailto:form552@ferc.gov).

**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**

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<sup>55</sup> See 18 C.F.R. § 385.2005(c).

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.

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.<sup>56</sup> 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.<sup>57</sup> 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**

In Order No. 704, the Commission estimated the burden for complying with the final rule as follows:

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<sup>56</sup> Order No. 704 at PP 82-84.

<sup>57</sup> *Id.* P 83.

Data Collection Part 260 FERC Form No. 552	No. Of Respondents	No. of Responses per Respondent	Estimated Annual Burden Hours per Respondent	Total Annual Hours For All Respondents	Estimated Start-Up Burden Per Respondent
Annual Reporting Requirement	1,500	1 per year	4 hours	6,000	40 hours

The Commission further estimated average annualized cost for each respondent to be the following:

FERC Form No. 552	Annualized Capital/Startup Costs (10 year amortization)	Annual Costs	Annualized Costs Total
Annual Reporting Requirement	\$400	\$400	\$800

The Commission did not change its burden estimate upon release of Order Nos. 704-A or 704-B.

Several factors influenced the Commission to revise its numbers. If the Commission were making no changes to Order No. 704-B, then it would be revising the estimates upward. Many Respondents reported unexpectedly high start-up burdens, primarily due to the difficulty of gathering information on cash-out and imbalance transactions. However, virtually every clarification or revision provided above in this order should act to reduce the burden on Respondents. In addition, the experience in filing the initial Form No. 552 reports should drastically reduce the start-up burden in responding to the revised Form No. 552.

Based on data collected for calendar year 2008, the number of respondents was 1,109, not 1,500 as estimated. The elimination of the requirement for parties to file information about their use of certain blanket certificates should reduce the number of respondents even further, as 369 respondents filed solely to meet the blanket certificate reporting requirement. As a result, the Commission estimates the burden for complying with the final rule as follows:

Data Collection Part 260 FERC Form No. 552	No. Of Respondents	No. of Responses per Respondent	Estimated Annual Burden Hours per Respondent	Total Annual Hours For All Respondents	Estimated Start-Up Burden Per Respondent
Annual Reporting Requirement	740	1 per year	4 hours	2,960	5 hours

### 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. 704C will be as follows :

Information Collection Costs: The average annualized cost for each respondent is projected to be the following:

FERC Form No. 552	Annualized Capital/Startup Costs (10 year amortization)	Annual Costs	Annualized Costs Total
Annual Reporting Requirement	\$50	\$400	\$450

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**).

### 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 Requirement Number	Analysis of Data (FTEs) <sup>59</sup>	Estimated Salary <sup>58</sup> Per Year	FERC Forms Clearance (FY '10)	Total Cost One Year's Operation <sup>60</sup>
FERC-552	.5	\$137,874	\$ 1,528	68,937 + \$49,324*
Total	.5	\$137,874	1,528	\$68,937 \$70,465(\$119,789)

\*(a) creating the form electronically (one time), and (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 stated 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 (EPAAct 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 will reduce the reporting burden estimates by reducing the number of entities who will have to file FERC Form No. 552 and reducing the information that must be filed.

**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. This order's revision to section 260.401 exempting blanket certificate holders with *de minimis* transaction volumes will be effective September 30, 2010. In

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58?/ "Salary" represents the allocated cost per gas program employee at the Commission based on its appropriated budget for fiscal year 2010. The \$137,874 "salary" consists of \$110,299 in salaries and \$27,575 in benefits. (rounded off)

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

order to allow these entities to be exempt from the 2009 filing requirement, and also to allow other respondents to review and revise their data in light of the clarifications provided in this order, respondents are granted an extension of time until October 1, 2010 to file calendar year 2009 data.

**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.