UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

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IN THE MATTER OF: : Docket Number

NATURAL GAS PRICE FORMATION : AD03-7-000

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Hearing Room 2C

Federal Energy Regulatory

Commission

888 First Street, NE

Washington, D.C.

Thursday, April 24, 2003

The above-entitled matter came on for hearing, pursuant to notice, at 8:35 a.m.

PRESIDING:

WILLIAM HEDERMAN, Director, Office of Market Oversight & Investigations

PANEL 1:

Larry Foster, Platts News Service

Ellen Beswick & Mark Curran, Intelligence Press

Andrew Ware, Energy Intelligence Group

Michael Smith, Executive Director, Committee of

Chief Risk Officers

Chuck Vice, Senior Vice President & CEO,

IntercontinentalExchange

Robert Levin, Senior Vice President, NYMEX

PANEL 2:

Craig Pirrong, Bauer College of Business,

University of Houston

Arthur Corbin, President, Coalition for Energy

Market Integrity & Transparency

De'Ana Dow, Director & Chief Counsel, Futures

Market Regulation, NASD

PANEL 3:

Gerald Ballinger, President, Public Energy

Authority of Kentucky

Obie O'Brien, Director of Government & Regulatory

Affairs, Apache Corporation

Al Musur, Director, Energy & Utility Programs for

Abbott Labs

Thomas Skains, Chair of American Gas Association's (AGA) Board Task Force on Gas Price Index Reform

Mike Stice, President, ConocoPhillips Gas & Power

Richard Kruse, Senior Vice President, Duke Energy Gas Transmission Co.

PANEL 4: Laurie Ferber, Managing Director, U.S. Power Trading, Goldman Sachs

Randall Dodd, Derivatives Study Center

Frank Wolak, Professor, Stanford University

On behalf of Southern California Gas Co.:

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P R O C E E D I N G S

(8:35 a.m.)

MR. HEDERMAN: If you would join me in standing and saying the Pledge of Allegiance in the FERC tradition here?

(Pledge of Allegiance recited.)

MR. HEDERMAN: Welcome. I have great hopes for this technical conference. There's no piece of infrastructure more important to competitive markets than price discovery mechanisms.

The price index systems of the last decade are mortally wounded, and I doubt anyone will mourn their passing. I hope this conference will mark the beginning of the next chapter of price index formation for electricity and gas markets.

Since the latter part of last year, the Commission has taken the initiative to build a better foundation for price information. And from our vantage point, we had the advantage of hearing from you all and understanding the gravity of the price reporting situation early.

Then we got busy pushing everyone in this room and a lot of others in the industry to address the problem. I congratulate you all on your efforts. I know you've been working hard on this. We hope you have not tired of hearing from OMOI and checking on your progress.

Today we're interested in results of those efforts. We hope to hear of broad industry consensus around a few creative and realistic alternatives.

The Commission stands read to do what is necessary to help the markets on this. It also stands ready to not do what is not necessary. And we are moving forward already on the Electric Quarterly Report. If you're not familiar with that, you may want to check the Commission website and look at what's going on on that side.

That kind of data will provide useful accuracy checks for price indices in the electric markets.

The Commissioners have made it clear to staff that someone must be providing trustworthy price indices, and we have been working hard to try to move that process forward. We will be joined during the course of the day by our Commissioners and Commissioners and Staff from the CFTC, and I'll turn over the rest of the introduction to Steve Harvey.

MR. HARVEY: Our task in today's staff technical conference is to facilitate a broad discussion of what must be done to reestablish confidence in wholesale natural gas price information.

If we move closer to an acceptable industry-driven solution, we will have succeeded; if not, we will have failed.

The broad interest in and importance of these issues is demonstrated by the attendance at this conference. Not only is our Commission well represented, but we will be having several important visitors as well.

The CFTC has a significant interest in effective natural gas price formation, and Commissioner Brown-Hruska of the CFTC is planning to join our Commissioners today, as well as her Economic Advisor, Greg Cursic.

In addition, Mike Gorham, the CFTC's Director of the Division of Market Oversight, and John Fenton, the Deputy Director of Market Surveillance, have joined the Commission Staff here at the table, and we look forward to their active participation today.

There's a substantial legislative interest in this issue now with activity on the energy bill, and in the audience are staff from the Senate Energy and Natural Resources Committee and from the Senate Governmental Affairs Committee.

Staff from the Energy Information Administration are here with us, as well. And, finally, Commission Staff from the General Counsel's Office, the Office of Markets, Tariffs, and Rates, from the Commissioners' offices, and from the Office of Market Oversight and Investigation are ably represented here at the table.

I'd ask that when you first ask a question, if you would identify yourself, rather than having me do all the introductions right now. That would be best.

In January the Staff reported to the Commission its then-current state of concern about price formation, clarified the Commission's direct and indirect interest in accurate natural gas prices, and indicated broad criteria for acceptable price discovery.

A month ago, Staff, under the leadership of Don Gelinas, who is with us here today, presented its Final Report on Price Manipulation in Western Markets. That report further elaborated on serious price discovery concerns and made numerous recommendations designed to improve price discovery.

The Staff, having made our concerns extremely clear, it's my belief that the most effective source of solutions to this problem is the industry. While we in government are likely to have a role, and certainly our concerns must be addressed, the best result is likely to involve heavy lifting designed and done by the industry itself.

And interestingly enough, as we will see today in this case, the industry in this case includes the trade press, which is with us in the first panel.

For those of you with us today from the industry, this conference is your best chance to lay out your concerns, your interests, and most importantly, your proposals for this problem.

Today we will hear about at least three broad models of natural gas price discovery. These models are not necessarily mutually exclusive, and it seems clear that any successful solution is likely to combine aspects of each of them.

They include, first, fixing the existing system of trade-press-published indices; the second model, making use of information available from energy products and derivatives traded on exchanges; and the third model, listing a third party, either governmental or otherwise, to collect and disseminate price information.

The first two panels include those representing aspects of one or another of all of these models. Our afternoon panels will provide feedback from the industry and from financial interests regarding these ideas.

As each presenter gives us a quick, five-minute summary of her or his position, I would ask you to focus on four questions:

First, what is your proposal to improve price discovery for wholesale natural gas, and how does it establish an effective system?

Second, what does industry need to do to implement your proposal?

Third, what does the Government need to do to implement your proposal?

And, finally, do you believe that your proposal develops information adequate to alleviate the concerns Commission Staff has expressed about the use of this information in regulatory Orders?

As we have indicated, we may need a different, higher standard than is acceptable in your bilateral contractual relationships, and we want you to consider that question as well.

We're interested in active and lively dialogue today. Consequently, I ask a few things of presenters and commenters:

First, panelists are limited in their initial comments to five minutes, and are requested to cover their principal position or thinking on the issue in that time. I will remind you, gently at first, if you're pushing over your time in that process.

Rather than formally introduce you, I've asked that you briefly introduce yourself with a few words at the beginning of your comments.

Second, this conference is being broadcast by the Capitol Connection. Please make sure your microphone is on, otherwise, those of us who are joining from the overflow room or elsewhere will not get your point.

Third, material anyone considers germane to the topic of price discovery in natural gas that we're discussing today, should be filed in this docket by May 15th.

Also, as mentioned in the notice, transcripts of today's discussions can be ordered from the Court Reporter.

I encourage our panelists to remain with us throughout the day in the first three reserved rows, and ask that you make active use of the microphones located at either side of the room to comment, when appropriate, on the discussion of other panels.

And with that, I'd like to begin the first panel. We'll go down the list that's in the material that we have handed out for the agenda, and so with that, we'd like to start with Larry Foster.

MR. FOSTER: Thank you. My name is Larry Foster. I'm Editorial Director for U.S. Natural Gas with Platts. Platts publishes Inside FERC's Gas Market Report and Gas Daily, which the FERC Staff report in March identified as the publications most widely used for gas price reporting.

In fact, that FERC Staff report and the Commission itself found that Gas Daily production area prices were reliable, and used those prices to calculate California electricity refunds.

Since the crisis of confidence in gas price reporting began about a year ago, Platts has taken a number of steps. In the summer of 2002, we began calling for more detailed data submissions, which include transaction-level data, data coming from a back office, rather than a trading desk; certification by a senior official of the completeness and accuracy of the data; and counterparties.

I think the broad consensus that Mr. Hederman referred to in his opening remarks is reflected in comments you'll hear throughout the day, that the industry agrees that those standards are appropriate ones.

Platts followed up with a call to action in February, and last month, set a July 1 deadline for compliance with its new standards to try and push the process forward.

The question today is, is, in fact, substantial progress being made in implementing reforms to existing price reporting? And my answer is an unequivocal yes, it is.

We've seen two significant trends in the last few months: A sharp rebound in the amount of trading reported to Platts and a fundamental improvement in the quality and reliability of the reported data.

For both our monthly and daily gas surveys, the amount of trading reported to Platts bottomed out in

November 2002. The number of transactions in the April monthly survey is up 93 percent, and the volumes are up 64 percent from those November 2002 levels.

In the daily survey, transactions are up 41 percent, and volumes are up slightly. Platts continues to work daily with individual companies to resume their participation in our surveys, once they put safeguards in place. The heavy lifting that you referred to, Steve, indeed is going on, and we're very heartened by the progress that's been made to date.

The FERC Staff paper in January identified three broad areas of concerns: The first is the accuracy of reported prices. Virtually all of the data now being submitted to Platts is transaction-level data, rather than aggregated data.

About 75 percent of data is coming from companies' back offices. By July 1st, we anticipate compliance with our requirements that the accuracy and completeness of submissions are certified.

On the counterparty issue, Platts long has pushed for counterparties, which I think the March Staff report clearly identified. We continue to press for that information.

We will sign and are signing virtually daily, confidentiality agreements to protect that information.

Some companies do continue to resist the idea of reporting counterparties, and I think that's something you'll hear more about today.

As liquidity rebounds, Platts looks forward to being able to rely solely on transactional data. As many of you know, in recent months, we've at some illiquid points, had to use bid-ask offers, differentials to other pricing points, derivatives trading, and other market information to come up with enough information on which to base an assessment.

Let me emphasize, though, in no case have we ever used mere opinion about price levels. As liquidity rebounds, we look forward to being able to rely solely on transactional data.

A second major concern that Staff identified is liquidity and transparency on liquidity. In our daily survey, Platts has long published volumes for each location.

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Effective with our monthly survey for July trading, we intend to publish three tiers of pricing points: The most liquid, where data is sufficient to rely on a straightforward statistical analysis; a middle tier, where liquidity is adequate, to use our traditional index method, but not a deep as the top tier, and a third tier, where markets are relatively illiquid and may need to be assessed using information other than actual transactions.

For each tier, specific thresholds for volume, number of transactions, and number of players will be set and stated publicly.

As we obtain more verifiable and reliable data, including counterparties, Platts hopes to be able to provide even more transparency. The tiering mechanism may end up being a transitional one, if we can get to the point where we can publish volumes for each pricing point.

Finally, on the transparency issue, Platts long has believed in clearly stated and defined methodologies, and we're committed to offering even more detail and specificity than we do now.

The third main concern is verifiability, which goes to the issue of audits. Platts already has in place, a number of internal controls, including a strict code of ethics and a compliance staff that regularly analyzes price editors' compliance with our standards.

To increase confidence, Platts will adopt oversight of its compliance staff by an internal corporate auditor of our parent company, the McGraw Hill Companies. The internal auditor operates independently of Platts, and reports directly to the McGraw Hill Board of Directors.

We also are considering having an outside auditing firm confirm the independence and objectivity of the audits to be conducted by the internal audit group, which would provide a third layer of assurance. We believe this approach would more than satisfy the audit provisions advanced by the CCRO.

On the issue of external audits, Platts, as a publisher, relies on First Amendment protection against liability. Our business model is based on that protection.

Our attorneys feel that external audits could jeopardize that First Amendment protection, and, at this point, we are not advocating an external audit.

To recap, we believe that adherence by market participants to our data quality standards will help restore the credibility of published indexes, and that that compliance is well underway. We will take steps to provide greater transparency on the depth of data and how we calculate prices.

We will adopt oversight of our compliance group by an independent corporate auditor of McGraw Hill, and in the next four to six months, we anticipate major headway in making these surveys more dependable.

With that, I will note that I do have a written statement that has been submitted in the record.

MR. HARVEY: Great. Any initial questions? Or should we continue?

(No response.)

MR. HARVEY: Ellen Beswick?

MS. BESWICK: Good morning, and thank you for inviting me to be here today. I'm Ellen Beswick, Editor and Publisher of the Natural Gas Intelligence Group of Newsletters.

I started the first Natural Gas Market Newsletter in 1981, and we ran our first price table, the first price table for the competitive natural gas market, 20 years ago in 1983. Now we deliver news and prices online.

We're a small company compared to McGraw Hill, but we're very focused on the natural gas market. We have always taken very seriously, the responsibility involved in publishing prices and back that responsibility with the resources necessary to do the job well.

Maintaining confidentiality of the data we receive is also very important, and right now, we're defending that confidentiality with an outside legal team.

Since the revelations over the last year of traders submitting false data in the overheated markets in 2000 and 2001, NGI has been working along with others in the industry to refine our information collection processes.

We are indebted to Platts and to the Committee of Chief Risk Officers for their leadership in this area. We are on the same page with these organizations, doing many of the same things, meeting with he CCRO, and we have only a few caveats to some of the things that you'll hear today, and those are mentioned in our written testimony.

We have just a few reservations about counterparties, and we also, I think, will be able to have an outside audit of our processes.

I'm cutting short, I know, because on that kind of testimony, Larry has detailed it. The CCRO will do so also. I have something else I'd like to talk about, where we think FERC could help with the process.

And where are we today? And Larry is quite right. After hitting a low point last Fall, price survey publications today are getting good, solid price quotes from many companies.

A number of companies that dropped out when scandals surrounding false prices broke, have begun submitting quotes again, and we're progressing towards a more robust recovery. While we have much more confidence in the accuracy of the data we are receiving and the level of data we are receiving has improved, exponentially, our problem in today's market -- and we do have a problem -- is the lack of fixed price baseload transactions available to be surveyed during bid week.

And the reason there is this problem is because too many -- we've been too successful. Too many people are indexing. This is kind of a crusade of ours.

The ranks of the middlemen marketers who did much of the fixed price trading of monthly baseload have been decimated and those remaining are laboring under creditworthy burdens and a constant stream of new accusations and ratings hits.

There are new entrants in the market, but it may take some time for them to expand their trading books. NGI has been urging other major players in the market -- utilities and producers -- to do more fixed price trading, rather than indexing all of the monthly baseload to publications' prices.

For utilities, this creates a problem. They tend to index their monthly baseload purchases, because many state public utility commissions are judging their performance and setting their incentive rate schedules, based on how close they come to the indexes.

Thus, the safest course for a utility that wants to pass through its fuel costs is to contract for a few cents less than the index closest to their receipt point.

Obviously, NGI cannot use indexed deals to set index prices. This has led us to urge market participants to use the published -- our published prices, Platts' published prices, anyone's published prices more sparingly, and use them for guidance, for information, but to do more of their business with fixed-price negotiated contracts.

We think public utility commissions should change their focus in the interest of bolstering the market and also so their utilities can become more than just price-takers.

The utility commissions need to work on market education for their staffs and for utility executives and purchasers, and create incentives for fixed-price trading, or at least lighten the consequences associated when that trading goes wrong.

FERC could initiate the process with a series of workshops or technical conferences for public utility commission staffs, drawing on the talents of some of the best traders and financial market experts to help educate commissions to the problem. I would think it would help if the American Gas Association and the Edison Electric Institute worked on getting the message to their members as well. They need to be full participants in the market.

On the other side producers and their associations, the Natural Gas Supply Association and the Independent Petroleum Association of America, also could encourage producers to work on their negotiating skills and make an effort to do more fixed-price baseload deals.

We've heard that some producers, possibly in this room, had some problems last bid week because there was no price quote for their index point. A more thorough and regimented price collection system won't do any good if everyone is trading gas based on indexes.

All of these measures by the CCRO, Platts, and FERC, can work to restore the market and public confidence in the market. It is imperative that we all contribute to the process.

Anyone in the industry who has been watching the recent storage and production reports knows there are, indeed, stormy seas ahead. In a shortage situation, there will be increasing pressure on natural gas prices in their primary role as allocators to assure that gas goes to its highest uses.

NGI suggests that now is not the time to be changing horses. A lot of the experienced traders are gone, but those that are left, along with increased input from utilities and producers, and the efforts of state and federal regulators, all can help to keep this market on track.

The publications which have long reported on the market, also have something to contribute. I'm going to cut it off there. I do have a market monitoring plan for FERC, if you want to ask me about it later.

(Laughter.)

MR. HARVEY: Thank you very much. Mr. Ware?

MR. WARE: Good morning. My name is Andrew Ware. I have covered natural gas markets for over five years and currently serve as Acting Editor of Natural Gas Week, a publication of

Energy Intelligence.

NGW has published natural gas prices since 1985. The problems with the price reporting sector has recently confronted in the past year are certainly without precedent, and there is a broad industry consensus on the need to improve the reliability of the price indices.

In NGW's experience, this recognition has already lead to dramatically improved risk management and best practices from both submitters of price data and the publishers such as NGW.

It is our view that this market is self-correcting from the excess of the past, and we have seen a recovery, and we urge FERC to monitor this process, but allow it to move forward on its own volition.

Since our inception, NGW's maintained one of the most conservative methodologies in North American gas price reporting services. We've always been leery of short-term market fluctuations and have never tried to set prices in the daily market.

However, prices are volume-weighted, and we take pains to survey a broad group of buyers and sellers -- utilities, producers, industrials, and marketers -- to remove any bias in our indices. This also means we can do nothing when markets fluctuate.

For every producer that may be happy with current high gas prices, there is an end user who subscribes to our publication that is hurting because of high gas prices. We are and have always been completely agnostic on the direction of the market.

We have never incorporated prices from third-party platforms, and, for the record, we did, in the past, receive prices from Enron, but these were never incorporated into our indices.

The loss of confidence in price reporting has posed significant challenges for us. From the Spring of 2002, NGW witnessed a sharp drop in reported deals, as traders refused to quote us pricing information, a down-trend which continued through November of last year.

That sounds like we've all had pretty similar experiences, judging from what Larry and Ellen have said. We are pleased to report that market has stabilized and we have seen a recovery. Volume so far in April has been turning about 40 percent higher since levels in early Winter.

This recovery, in part, reflects some restoration of confidence in the sector, but primarily redoubling of our efforts to address the market's needs. NGW has reached out to numerous gas trade groups and individual companies to forge a dialogue on solutions.

We have also actively participated in CCRO processes to determine best practices, and we endorse the vast majority of its recommendations.

I think, like NGI, we have some reservations about the counterparty thing. Many of our surveyors have indicated that they do not and will not report this information, and we so far have respected their wishes.

We hope one day that this will become a broad and uniformly reported thing, but so far, for the sake of increasing the liquidity of our surveys, we have not required it.

We have encouraged our participants actively to break out individual deals as opposed to weighted averages or WACOG, to transmit information electronically, and to submit data through back-office personnel. This effort has already borne fruit.

At the present time, about two-thirds of our prices are sent in electronically, and three-quarters through companies' back offices, and all of our survey participants break out individual deals so far.

We are in negotiation with other parties, both new and old to our survey, to do the same, and have received commitments from others to join our survey, once certainty is restored at the regulatory level.

NGW has also in this period, invested significantly in its own back office operations, and given our operation, a thorough cleansing to improve our own risk management practices.

For example, for companies that submit electronically, NGW has automated the data sorting process. As all of us can say up here, one of the -- even if you have no intention of manipulating prices, whenever you're inputting prices by hand, problems sometimes occur, you hit the wrong number. By automating this, this virtually eliminates the possibility of this happening.

We are currently building software to recognize counterparties and matched deals to prepare for the day, if or when this information is universally adopted. We are also preparing to submit our methodology to an outside audit, once some stability returns to the industry.

Both the trading and price reporting sectors are clearly in the midst of a recovery that, while slow, is evolving on its own volition. As FERC knows, some industry advocates prefer a more drastic remedy, which I'd like to address.

One of these proposals, in particular, is to bypass the price reporters and establish a neutral, third-party aggregator of natural gas price data. I would like to point out that this really is not a new concept for this industry.

In fact, for the longest time, the EIA has performed this function for us with regard to U.S. gas supply and demand data. If you ask most people in this sector, they would say that they have not done a particularly good job of it.

I have available, several articles that NGW has run, documenting the problems EIA has had in gathering and disseminating natural gas data.

Among these most recent EIA -- pardon me. Among these, most recently EIA was throughout the 1990s, not tracking the deregulation in the merchant power sector. And when they recently rescrubbed their data to account for this, they found they had been underestimating gas demand for close to one Tcf in some years.

Most recently, there are problems with the collection of Gulf of Mexico gas production data by the NMS, which effectively froze this collection process, starting in June 2001. This is not the fault of EIA, but the agency was put in the very difficult position of having to release dummy gas supply numbers for a year and a half. In other words, roughly 25 percent of the official U.S. production data EIA has referenced over this period has effectively been fake.

I do not mention this to poor-mouth the EIA, who, in our experience, does a good job under difficult circumstances, but my purpose is to rebut those who think that the shuffling of the reporting function to a third party will serve as a panacea to the problems we recently have. We believe it will not.

The gas market is an incredibly complex animal and to cover it requires knowledge and experience, all of which we bring to the table, as do our competitors in their own way. If we do a poor job of this, we know that our competitors will step up to the plate and beat us.

This is the invisible hand of the market at work. It is a mantra for the industry and it applies to us as well.

We ask that the FERC affirm the spirit of competition and allow this process to move forward. Thank you.

MR. HARVEY: Thank you. Mr. Smith?

MR. SMITH: I'm very happy to be here representing the over 30 industry Chief Risk Officers that comprise the CCRO. Our membership represents over half of the volumes that are transacted in the wholesale gas and power markets, and we believe robust and reliable price indices are essential for the transparency of power and gas markets.

We have recently published our positions on this issue in our white paper entitled Best Practices for Energy Price Indices, which provides guidance on best practice attributes and processes for data submission by market participants and for index construction by index developers.

The goal of our white paper is to recommend procedures that ultimately improve the transparency, accuracy, reliability, and robustness of energy market price indices, thus enhancing price discovery and competition, which ultimately benefits consumers and all industry participants.

The discussion on the data gathering and submission process includes recommendations on the appropriate data elements to provide, as well as on how companies should provide the data to ensure that it is timely, accurate, complete, and auditible, and to ensure that commercially sensitive information remains confidential.

The data-providing company should submit a complete set of raw data on a transaction-by-transaction basis, without performing any calculations to it, and it should submit all applicable transactions where such submissions are allowed by contractual arrangements, i.e., there shall be no cherrypicking.

The transactional information should be complete, including the counterparty information and buy-sell information. One of the most difficult decisions we made was the decision to recommend providing counterparty and buy-sell information due to the sensitivity of such information and the need to ensure the highest safeguards of confidentiality protections with regards to such data.

Our recommendation here is based on the premise that this information is necessary to ensure robustness and accuracy of the data being submitted. However, its should only be submitted if the provider has adequate contractual permissions and also firm assurances from the receiving party via a confidentiality agreement.

The Committee has created a data submission, usage, and confidentiality agreement or DSUCA, for short, for data providers and index publishers to execute in order to ensure that data submitted for purposes of index creation will be strictly confidential and fully protected from release or misuse.

As a governance best practice for verifying and submitting the data to index developers, data providers should use a department that is independent from the commercial organization to verify the accuracy and completeness of the data, and submit it to index developers.

The Committee has also set forth recommendations on the steps and actions needed to ensure that index developers use a transparent and robust methodology that produces reliable and accurate indices.

These expectations would also be detailed out in the contractual agreement between the data providers and the index developers or other receiving sources.

The index developer should lay out clearly defined index parameters and specifications, including product, delivery location, and commodity type. The index publisher should publish the index methodology, definition of sufficient sample size, and process of index calculation.

It should also identify a clear challenge process and a clear error resolution process. Index developers or other receiving sources should assure parties, through the execution of the DSUCA, that the strictest standards of care are maintained over commercially-sensitive data.

Any information submitted for index construction purposes should be kept confidential from non-index business lines such as journalistic or academic reporting or consulting.

And the personnel with access to sensitive data should sign explicit confidentiality agreements.

It is a cornerstone to our belief that if we provide highly sensitive transaction information, that this information be used for the sole purpose of developing appropriate market indices to provide market transparency, period.

Additionally, all parts of this process should be held up to the scrutiny of independent audit. Independent audits of data providers and index developers should be performed at least annually, to ensure recommended attributes and processes are being adhered to over the course of implementation.

As we have referenced, a robust legal framework, including explicit contractual arrangements between data providers and index developers, and between data providers and their counterparties should be in place.

We are very happy to see these efforts underway on the part of all participants since the release of our recommendations.

The CCRO believes that the recommendations put forward in the white paper will contribute substantially towards creating transparent, robust, accurate, and reliable indices, which will enhance competition and ultimately benefit consumers and all industry participants.

We are very encouraged by the FERC's comments in a recent report that our recommendations met all of their expectations in this area. Thank you.

MR. HARVEY: Our first four panelists really were invited and have spoken particular to sort of the first model we talked to. We want to go ahead and continue with, in effect, the second model, which is to talk about exchanges. Mr. Vice?

MR. VICE: Thank you, Steve. My name is Chuck Vice, and I'm Chief Operating Officer of Intercontinental Exchange. My company operates an electronic trading platform known as ICE, and has a market data subsidiary known as 10X, and the comments that I will provide today are from both perspectives.

Problems with the current index surveys are well documented. The steps that should be taken to address some of these problems are likewise well documented in the form of FERC Staff recommendations and CCRO best practices.

Many changes, such as more reliance on actual trade data, elimination of front office involvement, and mandatory audits are non-controversial and generally embraced by all.

My intent here today is to describe some of the things that my company has done that may be of some help in addressing the more challenging legal, technical, and organizational issues.

For almost two years, ICE has published daily gas indices for all major U.S. hubs. These indices are the volume-weighted average of next-day trades on the ICE platform, executed during the stated timeframe.

Also reported are high, low, and volume traded for each hub. There is no use of assessments or subjective discarding of individual trades, though trades between affiliates are ignored.

All process controls, including adherence to our stated index methodology and accuracy of index arithmetic is independently verified by Ernst and Young in the form of SAS-70 audits.

Based on customer feedback, we estimate that, on average, over 70 percent of all of next-day gas trades are executed on the ICE platform. Though widely distributed and sometimes used as the basis for OTC gas trades, these indices have never been incorporated into Commission Orders or tariffs.

Because the industry naturally prefers to have a single index at any given hub, the publisher of an incumbent index has a natural monopoly, immune to real competition.

The value of outstanding contracts settling on these indices ensures the forced support of the industry. One has to look no further than the overriding desire of the industry to fix these incumbent indices, despite the serious nature of the problems uncovered.

On a separate point, meanwhile, over two years ago, Intercontinental formed a working group of back office personnel to solicit input about a new service called E-Confirm. E-Confirm would offer an efficient, cost-effective alternative to the existing time-consuming and error-prone process of manually confirming trades with counterparties and reconciling trades with brokers.

As part of this effort, we created and industry participant agreed upon a comprehensive standardized format of data definitions and data values for all types of physical and financial gas and power trades.

In April 2002, the E-Confirm system became a reality, and today thousands of trades are submitted each week and 40 of the largest U.S. gas and power marketers are customers. The E-Confirm system is completely independent of the ICE trading platform and is used to confirm trades executed by voice broker, through electronic trading, or directly between counterparties.

Each day, E-Confirm users send their encrypted trade data, including counterparty identity and buy-sell indicator, to a secure central processing hub. To send the data, customers build a real-time interface to the system, upload a text file, enter data directly into the website, or simply view and confirm trade data submitted by an alleging counterparty.

Upon receipt, the trade data is converted into the standard format and run through a matching algorithm in search of the identical record submitted by the counterparty. All trade data is backed up in real time, backed up and permanent retained and available if needed for dispute resolution.

This system is the culmination of a multi-year, multimillion dollar undertaking that includes a custom application and the best available technology. The system is housed in a secure, state-of-the art hosting facility with a second, fully redundant, disaster recovery facility.

Customers receive integration assistance, training, and comprehensive help desk support. The current legal framework for the E-Confirm service is our participant agreement.

This agreement contains, among other things, extensive data confidentiality protection for the customer, while giving us the right to aggregate data and publish indices.

We also maintain the right to divulge confidential data, if necessary to comply with legal or regulatory inquiries and, in practice, notify the affected customer to give them an opportunity to understand the scope of the request.

FERC Staff can attest to our repeated cooperation in this regard, and to the timeliness and quality of our responses.

Internally, we likewise recognize the sensitivity of the data by restricting access to the database to a limited number of authorized personnel, and only then for the purposes expressly contemplated in the agreement.

This legal framework is enhanced by a standard amendment to customers' master agreements, in which parties recognize the legal validity of an electronically confirmed trade.

With E-Confirm now established, we moved index publication activity from ICE to our market data subsidiary, with indices now published under the 10X name. As use of the E-Confirm service grows, we would expect all next-day trades, regardless of execution venue, to reside in this database and be available for inclusion in indices.

Bid week trades can be similarly confirmed and month-ahead indices generated. Our methodology is published on the 10X website, and all underling trade prices and volumes used to compile the indices are available via subscription.

With no journalistic mission, 10X is focused solely on distribution of price data, while leaving news reporting and market commentary to others. As you can see, virtually all of the recommended best practices for creating indices, including some of the most challenging, reside in the E-Confirm service.

Our desire now is to work with the FERC and the industry in determining how best to leverage what's already in place, to avoid massive duplication of effort. While we believe a private industry solution is preferable, we come to this process with an open mind, willing to cooperate with whichever entity's public or private are deemed by the industry to be a necessary part of the ultimate solution.

Some propose a not-for-profit or quasi-governmental data hub of some sort. Though the not-for-profit model implies lower cost, this is rarely the case. All too often, it's just a Trojan Horse for for-profit companies that supply the hub with the necessary development and operational services.

Furthermore, financially motivated employees of the not-for-profit, inevitably expand their scope and cost structure. The California PX is a relevant example in which for-profit vendors to the PX did very well, while PX staff eventually tried to market government-subsidized services to far-flung power markets.

Regardless of the ownership or profit motive of the eventual solution, we do feel very strongly that established index provides whose indices are embedded in tariffs and widely used as the basis of OTC trading, are natural monopolies.

As an electronic broker seeking to deliver increased transparency and competitive clearing services to the industry, we approached each of the OTC incumbent index providers about a licensing arrangement.

While agreement was readily reached with NGI and CGPR for hubs at which they control the index, Platts has refused to license the data to ICE, while partnerning with our competitors in an effort to stifle our progress.

As the FERC and industry stakeholders seek to address liquidity and data integrity problems in this proceeding, it is imperative that the issue of fair and comparable access to indices likewise be addressed, since it is the very recognition and implicit endorsement by FERC in Commission tariffs and Orders that bestows the equivalent of monopoly status on an index at any give hub.

Surely this gives the Commission the right and responsibility of ensuring that that power is not abused, and perhaps could culminate in a requirement by the FERC that indices used in tariffs be -- that it be a condition that for use in tariffs, that there's compliance with this type of requirement. Thank you.

MR. HARVEY: Thank you. Mr. Levin?

MR. LEVIN: Thank you, Steve. And thank you to the Federal Energy Regulatory Commission and CFTC for inviting NYMEX to speak here today.

I'm a Sr. VP with the New York Mercantile Exchange. I want to start off by just emphasizing one thing that we think would be a very negative result of this whole process, which would be a government sanctioned monopoly of anything. We are adamantly opposed to that, and I'll speak to it a little bit further down.

We think that the CCRO model is an excellent base. We really extend gratitude to that group for taking the initiative they have to come up with some excellent ideas.

And they have refined and have taken a lot of effort to refine them to a great degree. We think that that's a good model to build upon because we think that there are some additional things that would benefit this whole process.

NYMEX is offering a paper of model along these lines. I apologize if we did not provide it to you ahead of time. It is prepared and will be submitted maybe during the break, and put in with the rest, and there are copies for distribution that are available from someone that came with me today.

Our model actually builds upon something that takes place in our industry in regard to what we call self-regulatory organization, and this model -- we're taking some leap here, but we believe that what the CCRO has done is, they have said that the people that provide this data, now have a basis for doing it in an organized way and a dependable way.

The question is, will there be public confidence in how this information is ultimately received? We're not sure what's going to come out of this process, but it's very possible that bestowing upon some middle-level entity, the responsibility of receiving this information and reorganizing it, could be that result and that is some parties's suggestion. That's what we're addressing.

We think any such middle-party level should be conducting itself in a manner similar to how NYMEX is regulated and how anyone else that's regulated by the CFTC is.

We have a lot of regulatory responsibilities. We have auditing functions, we have compliance functions. We are subject ultimately to our own regulator, the CFTC.

We think that model would work very well here. The middle recipients of this information would be required to validate and standardize and protect the confidentiality of that information. At the same time, they'd have a responsibility to refine it so that it would be very usable ultimately by all those who want to use it, and make it available to all those that want to use it.

Our view is that that middle entity will and should be along the lines of an SRO or self-regulatory organization. It's not completely clear to us if that model is built upon or followed, whether it would be the FERC that would regulate or the CFTC. We think that's something those two organizations need to sort out. It might be both.

But that would provide the public with the confidence that this information is authentic and is subject to regulatory scrutiny. Additional benefits from that are not only the confidence, but there would be greater participation, we believe, and standardization would also lower the cost for everyone to comply.

We do not think such an organization should be a monopoly. We think that is a horrible model. By doing that -- and I borrow from Chuck here -- I think you could be recreating mistakes that have been made before.

The Cal PX is a good model on those lines, but some of the shortcomings of giving a specific franchise on it are how do you get improvements? What's the role of competition amongst those middle-level organizations, and how do they ultimately decide what they will ask for in addition, and how they will provide information to their users? Competition is the best regulator of that kind of result, and so we highly recommend that the two Commissions, and the FERC, in particular, as you consider this, continue to support competition wherever there's a choice between those.

You asked us to talk about price formation, the industry role, the government role, and where we go from here. I can certainly vouch, as everyone else here has, that there's a lot of price formation that's been based on and goes into these indexes.

We happen to offer for trading and clearing at our Exchange, several dozen products that are cash-settled. In these indices they are very popularly used. We'd like to see a high level of public confidence in those indices as much as anybody. And industry is going to continue to negotiate with each other, perhaps as a beginning process to determine prices.

Anything that can bring that information in a more qualified way, out, such as the CCRO proposal, I think, is a very good one. They have started the industry role. We are suggesting, for the government role, to add this SRO type of entity structure in there to receive this information and validate it, and we think that would be very beneficial, and a good way to go from here. Thank you very much.

MR. HARVEY: Thank you.

MR. HEDERMAN: I have a question. I'll start with Mr. Smith. Mike, in terms of the broad membership and large market share that your members represent, where are you in the process of having members either implement or commit to implement the principles that you developed?

MR. SMITH: I would say that the best people to ask as to how industry adopting the recommendations, would be the people who are receiving the information. But with that said, the CCRO thought long and hard about the recommendations that we're making here, and what we realistically have to do as an industry to restore credibility and confidence in these indices.

It requires a majority vote, actually a super-majority vote of our membership, of our companies, to release our recommendations.

So there was significant support on the part of the membership to release this set of recommendations. We don't police our membership; were a voluntary organization that is trying to work on best practices and standards.

It is a company-by-company decision as to the pace at which they will embrace those recommendations, and, quite honestly, their drive towards being a best-practice participant is up to them.

So I'm hedging a little bit on answering your question directly, but we are a group of principle-ists that are trying to identify what we think is the right thing for the industry to do.

We have the recognition that the industry can either do this voluntarily or alternatives need to be considered. The one thing I do want to clarify about the Committee's recommendations:

We are not anti a third-party hub. In fact, our white paper even references that that may be something we should consider, but with that consideration comes a lot of concern on the appropriate structure for that or even a recognition of is that really necessary, if the industry does voluntarily adopt the practices?

But if it doesn't, maybe it is necessary and we do it, but let's do it right. I think Chuck brought up a lot of concerns that we would have in addition to other concerns of sole purpose expectations.

And really one that he didn't bring up that I'll go ahead and bring up is the question of timeliness. This process, especially with regard to daily indices, is a rather already pressured series of events that happen to produce these daily indices.

If we inject another participant into this role, do daily cash indices remain daily cash indices, et cetera? Where are we with the sophistication of how this process would work?

That's something we would like to see vetted.

MR. HARVEY: Somebody mentioned EIA earlier, and their data processing. On the timeliness point, Chairman Wood had suggested that the EIA would be an appropriate vehicle for some of that. Before he got back from wherever he was making the remarks, I had a call from EIA saying, can you get your Chairman to play off of that idea?

(Laughter.)

MR. HARVEY: There is appreciation of the difference in dealing with the timeliness issue. What drove me to that question was, in listening to the point within the principles about the outside audit, it seems like each of the press are considering that and are open to it, but have not implemented it. Yet we've already, if you will, started to prime the pump and get better volumes already.

I'd appreciate a little more comment from you about how you expect to get from where you are? Do you expect to get to where CCRO wants? If you look at those principles, it's where we're aiming to get in that case. Larry?

MR. FOSTER: I think the process is well underway. CCRO was very helpful in about a month ago, putting out a statement urging its members not to wait until every last little detail is tied up to get this process underway. It held a workshop in Houston last week, which we and other publishers and members of the CCRO attended.

That, again, helped advance the process. It is a very laborious, time-consuming process. The DSUCA document is cumbersome. You're know that we're trying to work with it, but it probably could benefit from some streamlining.

We're signing confidentiality agreements of our own design with some companies. There's a lot of processes that need to be put in place at the company level to satisfy the internal risk officer that their internal processes are sufficient, that he or she can sign off on the accuracy of their data submissions.

A lot of things are happening at once here, and have started to happen really only a couple of months ago in late February when the CCRO put its document out. I feel relatively confident that within maybe as short as four months or certainly six months, there is going to be a lot of headway made.

As I said, we have set a July 1 deadline, again, just to try to kind of prod people. I think that was effective. The day after we put that statement out, we started getting phone calls saying, gee, what have got to do here to get ready for what you want? So, I feel confident that there's a lot of activity going on.

It literally is a day-to-day process. We sit here on April 24th, hopeful that a couple major companies that have confidentiality agreements in front of their attorneys today, can get it done in time, that they can report good prices to us next week, so it's ongoing.

MS. BESWICK: I had put a timeframe for accomplishing a lot of these things, of three months, to get the systems in place the way we'd like to see them.

We won't be signing exactly the same contracts with every person in the market, and, in fact, there are still going to be people who submit prices to us, as they always have, outside of the CCRO rules.

We, however, are requiring a certain set level of things, going-forward, transaction-level data, and timing a number of things, but it may not exactly match all that the CCRO has laid out. On the company side, they are x-ing out parts and adding in things that they want to see.

MR. HARVEY: Thanks. Andrew?

MR. WARE: My comments pretty much echo what Ellen and Larry said. To answer your question about the level of compliance with CCRO's own standards, among the companies, you can sort of put it on a spectrum. Some of the things, such as the submittal of data from the back office personnel, the switch to an electronic format, the breakout of all deals, have been widely embraced.

In our experience, other things, such as buy-sell indicators, is kind of more in the middle, and there is still a great reluctance to report counterparty information, even for many of the members of the CCRO.

Ellen mentioned -- both Ellen and Larry mentioned this is a process that's happening all at once, and you have to cater the DSUC agreements to each party. Each party has a different level or threshold of concern.

For example, natural gas is not a large staff. One of the recommendations of the CCRO is to establish a Chinese Wall. We don't have three floors with 45 guys, and we're not going to go up and create an office; we wouldn't be competitive.

But for many of us, this has never been an issue. For us, this is an issue of confidentiality and it's never been a problem, but, for others, there is a different threshold, and we need to do more for them to ensure that this Chinese Wall won't be breached.

So you have a process. Each potential participant has to be catered to.

Another issue for the audit itself is that we have noticed that this process is also -- the lack of liquidity is shifting how trading is done. Traders are gravitating towards the most liquid markets, because that's where they have the faith which makes utter sense.

As a result, it's kind of a chicken-or-egg thing. Once confidence is restored, it lets other indices that are less liquid, become more robust. Or is this permanent transition?

We're evaluating having to look and see if maybe we need a change or to eliminate some prices, because the market has shifted away from that.

We don't know if this is a permanent change or not in terms of passing an audit or submitting our prices to an audit. We want to make sure our indices themselves are robust enough to handle this.

And right now, it's too early to tell that.

MS. BESWICK: I would agree, just with what he said about we have points that we are considering eliminating, but we are waiting to see how well the market improves. We don't want to eliminate them precipitously and then have to reinstate them.

The market is improving; it's an ongoing process. Formalizing some of these things is going to take a while.

MS. HILLIARD: I have a question. This is Andrea Hilliard with Commissioner Massey. I actually have two questions.

This is sort of a heads-up to other panelists who are sitting out there. This is going to be a recurrent theme for me throughout the day.

I want to know what each one of you regards as the appropriate role for this Commission in the discussion we're having today. I think Mr. Vice got close to answering what I think his view is. That is the role for our Commission to develop criteria that we would use to evaluate contracts and tariff provisions that are pegged to indices. Is that the appropriate role for this Commission? I'd like for the panelists here to answer that question.

And the other question that kind of pervades the discussion on this panel so far is the reluctance to obtain and report counterparty information. It seems to me that counterparty information would be a valuable way to make sure that some of the manipulations that we read about, aren't occurring.

So I'd like to know your perspective on why that is such a difficult issue.

MS. BESWICK: I guess we've debated very much, the counterparty issue. We know there are companies out there that do not want to completely reveal their commercially sensitive information, even to us, even with all the guarantees of confidentiality that we can give.

That is understandable. We believe that the greater liquidity that we have, the more contributors to our surveys, the more accurate our surveys will be. So, yes, we would like to have counterparty information; it's helpful. We will use it for verifying transactions where have a question, but we don't want to exclude anybody from the survey, particularly when the market is in a relatively illiquid state.

We don't want to exclude anyone because they don't contribute counterparties. Yes, it is valuable information, and some people already are providing it.

Much more than that, what they're doing now, that they didn't always do before, almost everyone is providing transaction-level data, and that has been a very great improvement.

I had a suggestion for a role for FERC, and it's a competitive market solution, rather than tariff and ratemaking and CPA. What I would suggest is that FERC encourage multiple price sources, and that they do that by encouraging market certificate holders to negotiate contracts with and contribute natural gas prices to two or three different established publishers, which meet their confidentiality and methodology standards, possibly even more.

Then I would suggest that FERC micromonitor the various publications and the electronic exchanges, be the cop on the beat, watch the transactions that we report. If we're all doing our jobs, they should be similar.

If they're not, FERC could contact the publishers, point out discrepancies, ask for explanations, and it would spur us. I don't check my competitors' prices all the time. I know other people have done studies and we come out fairly similar, but I have no idea of how close on we are.

But if someone monitored that, day to day, and particularly bid weeks, and then raised questions with us when things appeared to be out of line, that's something we could appreciate and go back and say, okay, what went wrong here? In fact, sometimes we do look at their prices and we say, well, now, why did they get that? You know, we've got this, this, and this. I wonder what they have that we didn't have, that they came out with?

Most of the time, it's pretty similar. We'd also suggest FERC might consider establishing one person as a liaison with publications and exchanges, a contact point for us to come to.

And, for your cash-out formulas, use a basket. I mean, when FERC first looked at price surveys publications years ago for the gas inventory charges, in their recommendation, yeah, these look okay, but they recommended using a basket, and you could throw in coal or oil. I mean, you could throw in the consumer price index, for that matter, then nobody could manipulate that price.

Anyway, those are mine.

MR. HEDERMAN: As a consultant, I always recommended a basket to my clients who needed to have a price index. Larry?

MR. FOSTER: I think I'm a little reluctant, Andrea, to try to advise the Commission on what it should or shouldn't do. If the Commission wants to establish criteria for price indexes, as was suggested in the January paper, I think that's a reasonable step.

We certainly would ask that the criteria be well informed and based on a good knowledge and understanding of the press reporting process.

On the topic of market monitoring, I'm not sure I embrace Ellen's idea that the publications themselves would fall under greater FERC scrutiny, in part because I recognize there's an issue that what we publish is aggregated information, and the only repository of transaction-level information right now is the publications.

That has put Platts in a difficult position, as most of you know, and some litigation and indictments and so on. I think I would suggest that the Commission does have a market monitoring or oversight function that might be best served by a quarterly reporting requirement, akin to what's done for electricity now.

Presumably you could use the authority to condition blanket sales certificates, as was suggested in the Western Market Report, to require companies to report quarterly, the transactions that they are reporting to us. That would serve, I think, as a useful check on what the publications are providing, and, again, would provide a second repository of information that the Commission itself, the CFTC, whoever, could access to look at transaction-level information.

MR. HEDERMAN: I'd like to go back and get each of the publishers to comment on the monitoring idea. I expected to hear -- I mean, how do you see that monitoring working within the context of the First Amendment privileges?

MS. BESWICK: I'm not suggesting we would turn over our material to you. I'm suggesting you graph our prices every day.

MR. HEDERMAN: We do.

(Laughter.)

MS. BESWICK: Do you? Comparatively come to us and ask us, or point out to us if there's discrepancy. I'm not suggesting -- this is a competitive approach. We're working with a competitive market. This would be a competitive approach.

But you know, if we're made aware there are problems, and if we go and investigate our numbers and come back to you and say yes, we found a problem: we have someone -- with no names used -- who was giving us data, and we've eliminated that problem. It would have to be an informal process. We have to protect the confidentiality of our sources, or there would be no survey. That's why people give us that information. If we didn't protect it, we'd be out of business.

Anyone who sets up a survey, unless it is mandated that people submit numbers, unless there's a law to make them submit numbers, they are not going to do it unless whoever pledges confidentiality. No one in business is going to give up their private documents, their strategies, their competitive information, on a whim.

MR. HEDERMAN: Do you want to move on to another question?

MR. GELINAS: I'd like to if I could.

You've hit one of my personal issues here: confidentiality versus external audit. I don't see those as the same. When it's time for a survey, who on this panel would, within the confines of confidentiality, support an external audit of this process assuming it's standardized by someone: perhaps this Commission, perhaps the CFTC -- someone other than the family of McGraw-Hill, for example? Who would support that? Mike?

MR. SMITH: We'd come out very strongly in support of an independent audit of all aspects.

MR. GELINAS: That could be external?

MR. SMITH: Independent means a certified auditor doing that. We are not ready to trash certified internal auditors as lacking credibility or being any less sophisticated than the big four external auditors are.

I agree with your principle, a very strong audit of the process. But we would argue independent audit has the flexibility to be either a certified internal auditor or a certified external auditor.

MR. GELINAS: Robert?

MR. LEVIN: Just to clarify, I think our proposal is very consistent with that suggestion, which is that parties be made available to call in independent auditors or liaisons, and there would be multi-parties in that role. In fact, I think we even went beyond just auditing them. We suggested that the model is, establish compliance practices under the CFTC. Those markets are audited and regulated, and self-regulated.

MR. GELINAS: I think you were very clear in your initial comments, yes. Chuck?

MR. VICE: I would agree with that, whether there was FERC audit of that or external audit. As I mentioned, we have a big six, big five -- I guess big four now accounting firm that does these audits.

I think also, just one other note in some of the comments came out. There was this idea then that the index business is a competitive business, even to the point of graphing indices against each other at the same hubs. That's a little ridiculous, we believe. There shouldn't be so much voodoo in what's going on there that people can't look at the same markets and the same activity and come up with different answers.

We're of the point of view that this needs to be very transparent. We would probably agree with Larry's remarks in terms of having different classes, different methodologies, different classes of hubs based on what the liquidity was at that hub. But in those second- and third-tier groups that are potentially not a straight weighted average, it should not be a mystery. It should be very predictable and transparent methodology, whatever it is, above and beyond the volume-weighted average. It shouldn't be left up to reporters and based on who they're talking to on any given day.

I guess I'm just trying to answer the original question there. FERC's role -- we're feeling that a little in terms of the audit. We would suggest, without any real specifics in mind, we would encourage more rather than less of a role by FERC.

I think in terms of the counterparty information, because we are attacking the problem in a little different way, we actually are getting at the data kind of as a by-product of another service that we're providing. We built the E-Confirm service I described as a way of helping companies reduce back office overhead and errors. A by-product of that is a pretty comprehensive data base of all the trades that those companies send in, and it represents the legal comfort. They're both agreeing that it's a legal trade.

Therefore, it doesn't necessarily require, for example, a chief risk officer at a company to personally sign something, personally obligating himself that everything sent in is legitimate. There is an implication, certainly, you can add to the legal framework to support it. But there's an implication there that the degree to which they're legally confirming those trades takes on more legitimacy, anyway. Just as part of providing that service, that counterparty information has to be matched up. That's part of confirming it.

MR. GELINAS: Mike, before I leave you, your slight variation on Mr. Levin here, your external audit, the results of that -- that would be completely reviewable by a Commission if they so wanted or not? I'm just trying to understand what your external audit really is.

MR. SMITH: If that's the role you believe you have to do as regulators of the market, we're not here to tell you otherwise. We're identifying principles, we're not telling you what you're supposed to be doing.

I would like to clarify one point, though. From the discussion about the industry or the CCRO members, and our concerns about the confidentiality of the data that we are providing, counterparty information is necessary from our perspective of a best practice in developing the best indices.

If it's a voluntary, statistical sampling of the market to insure the robustness of that number, you have to have information in order to understand what you're getting in your surveying of the market. The best practice is to have that kind of information to insure you don't have double counting, you don't have -- and I hate to say it, but every stakeholder we met with brought up the issue of wash transactions. I certainly don't expect that that's a prevailing issue in our market, but the lingering doubts about that kind of activity are still there.

Yes, this is difficult for companies to provide. It's incredibly sensitive commercial information. But that's why we feel so strongly about this data submission usage and confidentiality agreement. The bar is being raised here, and the bar is being raised on the data providers and the index developers. And the confidentiality that we're concerned about as data providers is, we're advocating very sensitive commercial information be advanced to restore credibility in these indices, because these indices will be used to define market transparency.

That confidentiality protection that we want, the thrust of that is that this data is only used to develop indices. It's not used for journalistic or academic research. We're not going to write or analyze or commercialize from any aspect, whether it's academic or journalistic, this information.

That's the protection that we want. The argument that we want to protect this data from ever having to go to somebody who needs to dive into the market to better understand it from a regulatory or other standpoint, that is not our issue. Our issue is not one of First Amendment. I think that's more the publishers' issue. Our issue is of the protection of this data from misuse beyond index development.

MR. FOSTER: Let me note that Platt's has an 18-year track record of protecting data, just as Mike was describing. We feel that we very much agree with everything that Mike just said about counterparties and the protection of the sensitivity of that information. We very much agree with the CCRO on the need for counterparties.

I understand the concern which we share that Ellen expressed, that the liquidity of these surveys is at a point where we don't want to diminish it by having people not report to us because we demand counterparties. But at the same time, given what this market has gone through in the last couple of years, we just feel counterparties are a piece of information that we have to have to verify the accuracy of the information.

MR. HEDERMAN: I'd like just quickly to hear from

Ellen and Andrew on that point about the wall between journalistic use of this information and the price index use. Is that the same at your institutions?

MR. WARE: I can say that it's one of the things that came out of the CCRO findings. It just surprised us because it's never been an issue. As a journalist, it's tantamount to burning your source. You would not do that. It was discussed at length at the last meeting in Houston.

For us, it ultimately comes down to the issue of confidentiality. Under that umbrella of confidentiality, we understand the concerns of some members that they're exposing their book to us, and they want to have a greater level of certainty. We respect that, and we're doing what we can to provide it.

But some of the things, I guess, for us this is already guaranteed under our guarantee to our surveyees. The sole purpose of the data we use is strictly for the purpose of indices. This has never been an issue for us. We've never been questioned in that regard, and some of the things that were brought up in terms of how we can establish this Chinese wall, there's a bit of ambiguity there.

One of the things that was mentioned at the meeting was, you need to put the trading desk in another room. I brought up the point that in the Internet age, we could put the trading desk across the country, but if you guys secure Internet lines, you could send that information to somebody. It's a question of intent, and some participants at the CCRO meeting said yes, for some people you need to do two to ratify things. For others, you might need to do four out of five. There's some give there.

But ultimately, it is an issue of confidentiality, and we've always respected that. It's a source of pride.

MS. BESWICK: Yes, you did hit on a sore point. We sort of regard it as an insult that there would be any question that we would use confidential information in a published article. We never have.

I can remember going back when we were trying to sign up sources, and nobody wanted to. They wouldn't begin to talk to us, and I would promise: no, we'll never mention your name. We'll never mention your company's name. I won't even talk in my sleep, you know.

This has been part of -- this is central to what we've done for 20 years. For them to insinuate that all of a sudden we're untrustworthy and can't be trusted with confidential information, we wouldn't be here. Anyway, as I said, you hit a sore point.

MR. SMITH: I don't think we meant to insult, or meant to imply that it's been egregiously violated in the past. But I think what we've been trying to say is, from the expectation of let's set standards and best practices for both data providers and index developers, let's lay it all out on the table. This is the way it should work, and let's have some process and procedure here, and contractual understanding around the sensitivity of this information.

It's more of a, let's be clear with one another and let's be clear about this whole process, as opposed to: gee, I can't trust a single thing you've ever done in the past. That has not been the intent.

MR. GRAMLICH: Mike, you also had some requirements on who you would report the information to, such that if your members were required to report to any new fly-by-night reporter who didn't have such protections, your members would obviously --

MR. SMITH: If you don't see the controls and standards you would expect -- we're not a charity here, standing up every Tom, Dick and Harry who wants to develop an index.

MR. HEDERMAN: Bob, any comments?

MR. LEVIN: I do. It's related. It brings in some points that were made in a different context. We of course -- there's no lack of confidence on our part in the reporting services' ability to maintain confidential information. We have the highest regard for them. We don't have any issues.

On the other hand, the CCRO proposal, which we think is an outstanding one -- I do think people need to sit back and think, well, what is the information that's going to be received? It could be a lot of ways, but there are going to be hundreds, thousands of transactions. These companies do not organize the presentation of this information the same way. We know that because we also have a confirmation business, and we have been doing that.

That's one of the outgrowths of that. Different rows mean different things, flows per time period can be written differently. A company sometimes does something per month and also per day. Some things are less than daily, so it's got to be on an hourly basis -- those types of transactions, the abbreviations of delivery points, things like this, are not synonymous.

The digestion of this information is going to be overwhelming. It may well be -- and I'm not casting any suggestions here -- that no one can digest it. But when they take all that in, if they have not set up some sort of software technology to organize that, they could find it's not even an issue of confidentiality any more.

Like this role of liaison, someone that is organizing it and putting it in formats that the users -- in this case, the reporting services, but other responsible users -- may want to see it, do it as a condition to performing that liaison role. Which brings us back to why we think anyone in that liaison role needs to have the confidence of the public that they are validating that they can, and that they're in concert with the regulators' requirement to perform that function.

We think that's a very necessary role, and you're not going to get away from it. And it's possible -- and now I bring it back to this confidentiality -- that some of the reporting services may find, as they get that information, it's not even an issue of confidentiality any more. Maybe they wanted to have all those line items. I'm not suggesting anyone here does it, but they may find this very useful to get it in refined format. They said, I want it like this. I want to know what's at this hub or this time period, what's performed on these days, and other types of requirements.

Right now data, especially with some of the higher standards of file formatting and data formatting, this is relatively easy to do. I'm sure there's more than one party who can do it. So I think that's very good. I think there's promise here to have competition in that role.

MR. VICE: Two quick points. I can understand why there's reluctance of companies to send counterparty information to the journalistic organizations. I would never question that any of these publishers had violated their confidential responsibility on any specific data.

But it always raises the question: if they're writing commentary about markets, where a market's going -- they went up today, down today -- what story's going to be on page one. There's always going to be a question, I think, in the industry, just a leeriness in the back of people's minds, of they're privy to an enormous amount of data.

The other point I was going to make would just be: in the past year, we've had some interesting circumstances where the indices themselves have become news. So even where you have Chinese walls in these organizations at the management level of these companies, you are put in the position of reporting on events that are not necessarily positive for your company.

Actually, I think generally these guys have done a pretty good, objective job with that. But again, it begs the question. Why go with that type of structure?

MR. FOSTER: I'd like to respond to both Chuck and Bob. First, Bob.

I think while we certainly would welcome greater standardization of how data is submitted -- it would make our life easier -- we're prepared to slog through that process ourselves. In fact, Platt's does have software in place, a proprietary internal system that can accommodate all our data needs. We've devoted a vast amount of technology resources to getting that set up, and it is in place.

Responding to Chuck's suggestion that a news reporter might have access to an enormous amount of price data, that simply is not true at Platt's. The market reporters are separate from the news reporters. A reporter working on a page one story simply does not have access to the prices that a market reporter does.

MS. BESWICK: Generally that's the same with us. We have people who do the editorial function and people who do the pricing function, so it's not that much of a problem. We probably could set up some kind of a formal Chinese wall. I just don't see that it's necessary.

MR. McLAUGHLIN: If I could, I'm sitting here -- maybe I'll steer this back a little bit toward Andrea's question.

I'm sitting here as a regulator. We've allowed and accepted indices to be put into pipeline tariffs for cash out and various other purposes on the gas side. On the electric side, for our market based pricing program, we've taken a different approach. Survey-based indices are not allowed to be used and accepted for affiliate transactions.

I'm starting to wonder -- I'm kind of wondering why I'm going down that path. Should I just basically set up my standard of what is going to be allowed to be put in the pipeline tariff and let the market figure out if they wish to meet that standard, or how they're going to meet that standard?

Ellen, I thought you had suggested earlier that possibly we direct pipelines that hold blanket authorizations or use the indices to report to two or three different trade press organizations. I thought you said that earlier. One of the problems with that is that you yourselves have different standards for how you treat the data, how you use the data, how many transactions you get, how you look at that. Am I not just compounding the problem I already have?

MS. BESWICK: We have different but similar processes for aggregating data. What I suggested was a competitive solution. As you look at all of us and look at the electronic exchanges, if you're going to make a formula, put two or three of them in. So you get the best of all worlds. You get a broad index.

MR. McLAUGHLIN: Would it not be simpler, though, basically just to set up standards by which if an interstate pipeline wishes to include a price index in its tariff for whatever purpose, that index would need to satisfy a certain set of criteria, just like if they wished to change their price for a transportation service, we analyze it under a certain set of criteria. Why should we have a different standard for indices versus other parts of the tariff?

MS. BESWICK: That would be up to you. I don't know what your criteria would be. If you wanted to do it that way, you certainly could.

MR. PERLMAN: My name is Dave Perlman from the general counsel's office. I have two quick questions, the first one for Chuck.

Given the scope of the ICE-enabled transactions and their E-Confirm service, do you have an opinion as to how extensive your data set is compared to the overall market?

MR. VICE: I don't have an account of transactions. And as I said, there's a restricted authorized access to that data base. So I have very little data on it other than just top-line numbers in terms of the trades going in there.

But I do know, I guess, from talking to customers independently, and from the standardized data values that were set up initially with that system -- I am guessing that there are probably more than a hundred different brokers that have probably shown up on transactions in that data base. You probably can better ask the question of some of the companies that are customers of that system and get some idea of that breakdown.

I can tell you with certainty that it's robust, becoming increasingly robust, and it includes transactions far beyond that conducted on the ICE system.

MR. PERLMAN: The other question I have -- I guess, Larry, you talked about this somewhat. I think everybody has an opinion.

You will have, if everyone follows the recommendations of the CCRO and others, accurate reporting. That accuracy doesn't necessarily represent liquidity at every trading point. So you talked about distinguishing the trading points between very liquid, adequately liquid and illiquid trading points.

Is there any thought -- and I guess Mike can start with this -- is there any thought of having some standardization as to how you delineate those liquidity measures, and how you would substitute for some of the pure transactional data for creating prices at maybe illiquid points?

MR. SMITH: I'm not sure I know how to answer your question. For us, the market is what the market is. Indices are reflective of the underlying market activity, and indices, if they are developed and that information is shared in a method that is transparent, we understand how the calculation is being done, and we also understand the underlying transactional activity that is going on in that market.

An index is an index, and if one market doesn't have as many transactions as another market, well, it reflects an index of a market that doesn't have as many transactions as this market does over here. So that's important information to have: how liquid is the underlying market.

One thing we do say in our recommendations is, you know, we believe the robustness and reliability of these numbers is dependent on us understanding what that number is. Is that number a reflection of the weighted average level of transactions that are done out there? If so, we want to know that. If there is some assessment in that, we are saying that's got to be asked or something, because we want to know when a number's clean versus when it's not.

I think you'll hear later on today from some people who say they don't want to see the assessments. A number is a number. If you don't have any transactions, there's no index. We provided a little more flexibility there, to say that if there's no transactions and you want to do an assessment, you'd better put some bells and whistles around the identification that that is an assessment, because there were no underlying transactions.

MR. FOSTER: Certainly our experience is that the market does want assessments of illiquid points. We think we've done so far a reasonably good job of putting the bells and whistles, delineating which points are being assessed. As I said, we want to refine that a little bit more in terms of how you would delineate the measure of liquidity.

One of the problems is that it's a very rapidly moving target. Overall market liquidity right now is probably 20 to 25 percent in terms of volumes traded of what it was in November 2001. You know, is it going to go up from what it is now? We certainly hope so and expect so.

If we set a certain threshold for a tier of 300,000 Mcf a day, perhaps six months from now 500,000 would be a better measure. I don't know. I think later on you'll hear a proposal by EMIT in which the Commission would define thresholds of liquidity.

I guess my only counsel would be, be prepared for the fact that this is not a static number. The market, if there is one thing that those of us who have covered it for 20 years have learned, the gas market is a rapidly-moving, evolving market. So any kinds of thresholds that you set may well have to be modified down the road.

MR. HEDERMAN: Mike, you had a question.

MR. GORHAM: This is actually -- David's second question is exactly the thing I wanted to quote. The futures market is not exactly a great model for what you guys are trying to do. There are 300-plus contracts out there, markets that have some kind of activity. In every one of those, the prices -- or at least every transaction that causes a change in price is reported. If you have a market in which there's only one transaction during the day, that price is used and that transaction is reported as a volume of one.

In your case, Larry, what I want to do is figure out what you're really trying to do when you do the assessments. Are you doing assessments when there are literally -- are there some cases where there are literally no transactions, and therefore you just have to do an assessment because there's no transactions to use? Or are these situations where there are a few transactions but you don't really trust them, and therefore you've got to do an assessment?

MR. FOSTER: Both. There certainly have been cases in recent months where we have done assessments where there were no physical transactions to use. There also have been cases where there might have been, you know, just a couple.

One of the reasons we think the assessment process is valid for illiquid points is because we can take other market factors, other market information into consideration. If you have two or three trades, you know, by two parties, and you do a weighted average and that's your price, we think that's a suspect way of deriving a price. If we have other information that we can pull together to buttress that price, we think we should do it.

MR. HEDERMAN: John?

MR. JENNRICH: Almost everybody here -- in fact, everybody here -- is doing some sort of sample of the market. There are proposals, and we'll hear more about them later, to somehow mandate or require getting 100 percent of the market, gathering all the data.

Aside from jurisdictional and logistical issues, how is it going to be that these data are going to be able to be reported on a timely basis? Will we see the end under any one of these scenarios of, say, daily price reporting? Is that a likely thing to happen?

MR. FOSTER: I certainly don't think so. If the volume of data reported to us increases substantially, we are prepared to deal with that.

I'm not a technology person and I won't pretend to be, but we certainly are talking right now about IT solutions that would enable us to handle much greater volumes of data than we do right now.

MS. BESWICK: We also have IT people who can develop programs, and have in the past developed programs to handle the data, and I'm sure are up to the task of increasing it with a mandate. My problem would be, what are these surveys for, and who wants the information? Who wants 100 percent validity of these price indicators?

The market has been happy enough, other than the excesses of two or three years in the late '90s and 2000-2001, the market has been satisfied if they get the information quickly, and if they get it reasonably on target they use it. Then they have the information and then they can make their trades. For that they don't need an absolutely exact number.

Now if government for some reason, which I guess is to regulate the market, thinks it needs an exact number, then yes, they will have to mandate all of everything. All of us here -- well, maybe not NYMEX -- we are dealing with a sample. And so I think you're going to hear later from people who are looking in a totally different direction for different reasons.

MR. WARE: I think the issue of capturing 100 percent of the market is theoretically wonderful. Practically, you'll never know, because there's a lot of companies who are under no volition to report anything to us, and they're not under volition to report anything to you, to FERC currently, because of jurisdictional issues.

Ultimately, I think this gets to the problem of talking about counterparty information, double counting, what have you. It is a wonderful idea, but unless everybody is on the same page with this, it's practically difficult to do, and you're still going to be skewing the survey.

For example, if you have a dozen companies reporting, ten of whom are complying with this counterparty stuff and two of whom are not, should we exclude those two who don't? Because they're part of the market, and they are doing deals. To exclude them would skew the survey.

However, if we start matching counterparty information, the companies that don't require it, they in a sense will still be double-counted. You're still skewing the survey. Traders are smart. They'll know, for example, who doesn't report counterparty information, and so on deals where prices are turning higher, they'll deal with them. And when prices are turning lower, assuming they have an interest in higher prices, when the markets are turning lower, they will seek out somebody who does report counterparty information, because then they'll only be counted once.

The point is that it's a good idea. But until we can capture everybody who's on the same page and everybody does this, you're still going to be skewing the survey in some manner. And in terms of capturing the whole market, we'll do our best. That's what we're all doing, and that's what we're competing for.

MR. HEDERMAN: I think what we hope to do is give the advantage to the honest, the efficient and the innovative, and not allow the underhanded to get a temporary advantage.

MR. HARVEY: I have a couple of sort of market structural questions that I'd like of like to run through.

The first one is off what I heard as kind of a provocative comment from you, Chuck. You need to correct me if I'm wrong about this. I think I heard you say that you believed in many cases in the next-day market, you had 70 percent of the market.

MR. VICE: It varies by hub. I'm using that as an average, based on what customers tell us.

MR. HARVEY: My question to everyone, then, in response to that is, one: do we collectively believe that's true? We're at a disadvantage. We don't have a 100-percent view of anything out there, so we don't really know the answer completely. And if true, is there a role for indices at points that are heavily traded in the spot market in a transparent exchange? Is there a point to having an index when 70 percent of the spot market is traded in an exchange with information available?

MR. FOSTER: I guess first of all I'd be very interested in knowing how that 70 percent figure is derived.

MR. VICE: It's not derived. I'm telling you honestly, it's my customers telling me. We say, how much do you trade on ICE, and they give us an estimate. Take it with a grain of salt, but --

MR. HARVEY: I'm leveraging off a point you made.

MR. VICE: But just in terms of your question, I'm not sure I understand it. The answer, I guess, would be I don't know the fact that ICE is involved, and there's that much volume or not that much volume. I believe the structure of the market is, it wants a daily index published for longer-term deals, financially settled deals that can sell on that index.

Maybe that's an obvious statement and not in the nature of a question.

MR. HARVEY: I want to hear from everybody. Start at either end. It doesn't matter.

MR. FOSTER: I think one question is, does the industry want to trade on a single platform, and can you look to that single platform as the sole source for price discovery. We certainly hear from sources that we talk to that not everybody wants to trade on ICE.

If you look at ICE's ownership structure and its fee structure, I'm not sure that everybody in the industry wants to trade on a system where, as I understand it, owners get a percentage above the fee for every transaction conducted on that platform. And some of these owners are companies that, quite frankly, other people in the industry feel have created some of these problems in the first place.

MR. VICE: I am naturally inclined to respond to that in some way, shape or form.

(Laughter.)

MR. VICE: Without taking up too much time or everybody's time with what's been pretty widely reported we've gone through, first of all, ICE owners -- and there's well over a hundred of them now, particularly after our acquisition of the IP -- get no additional equity. They don't share in the revenue. They are passive shareholders, with ownership well into the single digits. So to imply that there is some kind of special treatment there, there is not.

And I would support you. Our goal here is not to force all the trading onto ICE. I guess in an ideal world, that would be a nice thing for us to be able to get. We recognize that's not from a factual standpoint something that's going to happen. People want choices. There are a lot of different venues they're going to want to trade.

That's why I haven't spent a lot of time talking about the ICE platform, other than just to acknowledge we do publish some indices currently from that platform. But I spent more of the time talking about the E-Confirm service, which is platform-agnostic. It's certainly true that there are trades in there from any other platform that's operating out there as well as, as I said, tens and probably more than a hundred voice brokers that are operating out there, as well as trades that may have been done without a broker.

So our intent is not to somehow use this proceeding to make ICE the FERC-endorsed next-day market. However, from the E-Confirm standpoint, just like the indices being recognized -- and they are a natural monopoly asset -- it probably makes some sense to recognize that whatever the data collection venue is here, the industry probably needs one of those, not a lot of those. No one wants to pay a lot of money for uplink connection to multiple systems there, and we also recognize that in doing so, there are some responsibilities that the entity or entities that would like to be part of that solution, there is some responsibility they bear in terms of how they have to respond to the Commission and perhaps other bodies in terms of how they operate -- as well as the point I made earlier, fair and comparable access to their output, the indices.

I'm not saying you have to give that away. But it ought to be on some reasonable cost basis. For comparable uses, it ought to be comparable prices.

MR. HARVEY: Robert?

MR. LEVIN: Thanks.

Getting to the question, because it was so specific, but your general intro was on market structure. Keep in mind that the indices we've been talking a lot about are monthly, based on bid week, and they are covering monthly transactions or strips of monthly transactions going out well into the future.

You have a natural tension there. You are never going to, I think, get away from it. That's a point of frustration for all of us.

As confidence in those indices grows, so does the reliance on them for cash settlement purposes, and parties start structuring contracts much more financially based. And this clearly is our opinion based on what's come to our market -- far more activity in the financially-settled contracts than the underlying physical.

We've talked to the parties. We have a good relationship with all the index providers, and asked them what they think liquidity is and things like that -- kind of like what we had to do with our regulator. We realized that financial settlement is just easier. There's a lot of reasons that parties naturally gravitate toward that if they can.

But of course I'm just stating this hypothetically. We may have run into this problem in reality. But in time it gets so popular that there's not enough left, perhaps, or not as much as we'd like left, to do the underlying. I don't see getting away from that, and so I don't see that any particular form for the physical delivery aspect contract as solving the problem. Nor do I see any particular form for the cash settlement one.

It's good if you have access, the regulators, to that information. You can go through your partner there, the CFTC, to get any data from NYMEX. That is where we are today with the structure. And I think that general model, that tension between cash settled and physically delivered, is going to be part of how we're organized.

There may be parties that like next day as the basis for financial settlement. But I just can't see or envision anybody wanting that to solely be that, and I can't envision all the things they will want it to be based on -- some that we haven't even come to a decision.

MR. HARVEY: Is it strange or distressing or unlikely or whatever that in certain places where there is a fair amount of liquidity on something that does have somewhat more visibility, that you would expect a tendency in those places? The natural gas industry is extremely diverse. There's a lot of bases from a lot of different angles involved in it, which means that it will never kind of work solely on an exchange basis environment.

Is it unreasonable to say that in certain places, you might depend more heavily on an exchange set of information and in others on an index?

MR. LEVIN: I think the reality -- and I don't mean this in a self-serving way -- I think the NYMEX Henry Hub price is highly relied on, used by many as a reference, countless from our perspective. But clearly I can't say no to that. We are the best example of it.

Nonetheless, there are some limitations there, I think. And I also don't think -- well, you asked your question I think very innocently, Steve, so I don't want to step beyond into maybe implications you didn't have, and I didn't mean to address any you didn't have. Is that the only place you should go? No. Should we try to make them only be on exchanges? As Chuck said, it sounds wonderful that you're on an exchange, but it's not realistic, and it also becomes stifling. There's a lot of innovation that comes from off of these.

MR. HARVEY: My question was not completely innocent. I didn't mean to require that all the people participate in particular exchanges.

If however there are places which produce fairly transparent liquid information that have -- and I raised it as a question -- 70 percent of the spot market, why isn't that the most reliable place to go for price?

MR. WARE: Can I say something? As long as you have a tiered system of price gathering and price sources, you still have the possibility of those indices -- I don't want to use the word manipulated, but skewed by the actions of traders. It's not rocket science to figure out where the direction of the prices is going. For example, when it's cold, the prices go up; when it's mild, they go down.

If you're a producer in this scenario, you see the new National Weather Service forecast -- big cold front coming in. I go to ICE and start clicking away, and prices go up. When it subsides and a warm front comes in two weeks later, that's when I call my broker and do these low-priced deals with them. You've just established something where that price report can be skewed.

I think Ellen's suggestion that you use a basket of these -- we have no problem with using ICE prices. They're great numbers. But relying on one still has a great potential to skew what you're reporting on.

MS. BESWICK: Yes. They can trade one way on a physical point and another way on NYMEX. There are just so many ways to manipulate -- maybe manipulate isn't the right word. They're optimizing.

(Laughter.)

MS. BESWICK: One is legal and one isn't legal. I don't think the courts have quite defined all that yet. A lot of people have been charged. Nobody's been convicted. So there's all different ways to so-called manipulate the market or optimize your profits, and that's business. That's why you wouldn't use just one.

More and more people are using NYMEX, a base of NYMEX for their trades, for their indexing. Of course, our drive is to get people to index less to any of us.

One thing I was thinking about -- if you had a system that mandated collection of 100 percent of trading, so that you would have totally accurate prices, everyone would index. So where would you get your prices? I don't know.

MR. FOSTER: I just want to make sure it's clear the surveys, ours and the other publications, are intended to capture all prices regardless of how the transaction is conducted, whether it's bilateral, whether it's done on ICE, whether it's done through a broker. So if you're looking at one platform, you're always taking a subset of what we're trying to collect.

MR. HARVEY: My second innocent structural question is really to follow up on the point you just made, Ellen. Again, is there anything from a policy perspective we could or should be doing to encourage the types of traders, the types of activity that result in pricemaking, basically, in terms of negotiating deals as opposed to simply referencing them to index prices?

MS. BESWICK: All I can see is just to offer leadership in that direction, to encourage for instance utilities to participate in the market. And I was thinking: FERC has a liaison relationship with a lot of state public utility commissions -- to maybe set up a dialogue as to how they are evaluating their utilities' purchases, and to look into maybe there are other ways to take some of the pressure off of the utilities so that they don't all just index because they're scared to do anything else.

I don't see anything you can mandate. I think it would be more leadership. Now somebody else may have a better idea. I don't know.

MR. HARVEY: Do others on the panel have an opinion about that? Is this a common concern?

MR. FOSTER: I would certainly agree with Ellen that there are a very small of fixed price deals being done is a problem, and that the industry does need to be doing more deals to make sure that they are more robust. As far as a FERC role, I would tend to agree kind of a bully pulpit may be about all you can do here.

MR. HARVEY: To do a small bit of advertisement, our natural gas market assessment certainly led with concerns about liquidity and activity in that segment of the market.

I'm sorry, Bob.

MR. LEVIN: I don't mean to sidestep it, but maybe a couple of steps before that, I guess you could mandate it. I shudder to think what the result of that would be, so I don't suggest that. I adamantly say, don't do that.

(Laughter.)

MR. LEVIN: I think the CCRO proposal, if adopted, if endorsed, may be strongly endorsed and put in and implemented by the FERC. That's going to put some extremely important information out there in the market. It's absent. Everybody thinks they know, and I'm not suggesting they'll have 70 percent of the market next day or at certain points. I don't know how much that is. It sounds like a lot. It may be one deal or two deals every few days because that's the nature of that point, and it could be 30 deals a day.

That's not so much the issue. You don't know. It's all anecdotal. We all struggle through that. We all think we know, and you get to some months and you don't see a price listed somewhere in a publication. Maybe the anecdote seems to become manifest. But you still don't even know what's behind that, and why they didn't publish. They may have had information but they had questions about it, you know, as indicated by some of the panelists.

So there's even more behind that. You get the raw information out there, including quantities, prices.

You let parties apply their technology, whether it's all the way at the price reporting service end or as an intermediary, making it available to all the price reporting services, or the ability to sort out and evaluate these transactions.

Now everybody at least understands, oh my goodness, I've been basing my transactions on this little amount. That's something people can digest. That's why I say, maybe there's a couple of parts. People can't digest that. They think they know, and I'm not sure how far into the office and up the corporate ladder it is known within companies, and how they would react. And then regulators can start to react to that.

I mean, there's a jawboning aspect. Gee, we're uncomfortable with this. Do you want us to figure out how to solve this? That may increase the rate there. But right now, what are you solving? It's all anecdotal. We just don't know.

MR. HARVEY: I have a last question. I'll defer it to the next panel, but I'd like Bob to hang around during the next panel to talk more about the SRO model, because I think that's one we want to understand in the context. You all are one, and we have one on the next panel in the SEC model. I think it would be interesting to follow up on that.

MR. HEDERMAN: That was where my question was headed. If you could comment, remember that the natural gas and electricity industries are not as familiar with the self-regulated organization model. If you could speak a little bit to how you think that can help here, because NYMEX has a lot of experience and explain how you think that can be a solution in the context of where we are today. The crisis of confidence affects those who would then be self-regulating.

MR. LEVIN: Sure. If FERC implemented the spirit and maybe all the suggestions from the CCRO proposal, we would now have a lot of raw transaction information available. Companies would make it available. That was part of what CCRO said. They understand too is it consistent, did we fat finger something? These are some things Chuck taught. They have a service. We have a service where you try to correct that, because the service Chuck referred to can save their customers, our customers, a lot of money.

When somebody put in ten thousand million Btus a day and the meant maybe a million Btus a day, a decimal point in a price, these things, if they didn't have confirmation, could take days and quite a bit of time to sort out.

To have as an intermediate party someone whose responsibilities, subject to regulator oversight, are to validate the quality of that information, to make sure that it is legitimate, to look for duplicate trades, maybe wash trades, to look for incomplete information, and then to standardize it so that everybody at least has the fundamental transaction information at that level playing field. Others may want to refine it more. Others may want to refine it differently, and that's fine.

I think the entity that does that, if they simply do it, I mean, we could do it under the CCRO models if they sent it to us and will offer the service, we can do it on a voluntary basis, and there may be public confidence there because of what NYMEX does and its neutrality and all that, and that's fine. But if it were done formally because the Commissions in this case worked out that that function reported to them that it's so important that we have to make sure that they are meeting the criteria, the best criteria we can come up with, the validation is accurate, and they have a regulatory responsibility to do that, that's what we're proposing.

Understand, we've taken the lead to get there, but we're not at all -- we think it's going to end up there anyway. We just think the momentum is moving towards some type of regulatory direct oversight to validate this information. If we're wrong, we're wrong, but we understand the pressures that we're all under, and we're trying to discern the pressures people here are under. That's why we're saying, why don't we just go there to start with and at least start thinking about that as a model. Is that a clearer exposition?

MR. HEDERMAN: Yes, that's helpful.

MR. SMITH: If I could just add one more comment to that. We have that recognition as well that that's where we may go, and our paper references that. And one of the points we would make there is if that is the direction that we choose to go, the principles that we had put out there still apply, and the expectations around the security and confidentiality of that information that is going to that third party and the sole purpose of that to be used to match and then send on for index development in a timely manner, in a controlled manner, in a manner where there's confidential information, has the adequate assurances of high standards of protection around it -- those would all have to be there for that to be a successful model, in our opinion.

MR. HEDERMAN: Thank you very much. I thank the panel and do ask you, encourage you to be around for a lot of continued conversations this afternoon. We'll restart promptly at eleven.

(Recess.)

MR. HEDERMAN: Can we take our seats and get ready for the next panel, please.

(Pause.)

We'd like to get started, please. In this panel, we'll follow up on the sets of alternatives and move into hearing about some third-party model ideas. Steve, did you have any questions that you wanted to pose to this question?

MR. HARVEY: No. I think it's really sort of the same set of questions as Bill pointed out, this panel is sort of designed to speak more to that sort of third generic model. We have asked Bob to hang around for us because we will definitely be getting into some of the SRO kind of regulatory models, and we'd like to talk to those a little bit in this process as well.

But given that, why don't we go ahead and get started. Craig?

MR. PIRRONG: Thank you. I'm Craig Pirrong, Energy Markets Director of the Global Energy Management

Institute at the University of Houston, and I'm also a professor of finance at the Bauer College of Business at the University of Houston.

There's widespread agreement in the energy industry on the need to improve the accuracy and credibility of price reporting in the energy markets, and the price indices should be based on a comprehensive, verifiable and auditable set of transaction prices and volumes.

There's also widespread appeal for the concept of having an independent private third party collect and disseminate this transaction price data. Indeed, the idea of a truly independent organization responsible for energy price reporting has been endorsed by FERC and CCRO.

I'm here today representing the Global Energy Management Institute, acronym GEMI, of the Bauer College of Business of the University of Houston. For the past seven months, we at Bauer, GEMI, UH have been developing a proposal to create a price reporting organization that will address the problems with the current reporting methods and which move a long way towards improving transparency in the energy markets and thereby help to restore credibility to the reporting process.

During this development stage, we've developed a basic design of the technological infrastructure and the organizational and governance mechanisms. Indeed, we're currently in extensive discussions with major IT and data companies regarding the implementation of this proposal. This is not pie in the sky but a real initiative that can be implemented in a timely fashion.

The proposal rests on several principles. Specifically, there should be a single data hub to which market participants contribute transaction data. There are clear economies of scale and scope in the collection and dissemination of market price data, so the use of a single data hub reduces implementation and transition costs, including both IT and legal costs.

I should also note that there's complementarity between this sort of data hub and other kinds of services that were discussed this morning, such as confirmation services, which could be a portal to which data was reported to the data hub.

We are also of the opinion that the data hub should be a private rather than a government entity. To be a viable source of reliable data, the hub must attain a critical mass of data providers in the financial markets, the securities markets, the bond markets and so on.

The requirement that firms report data have been used to generate this critical mass, but the hub could generate viable data if widespread industry efforts resulted of widespread reporting of transaction prices. We also believe that the data hub should be a truly independent, self-regulatory organization with no interest in energy trading. The data hub should have a governance structure that's responsive to stakeholder concerns and needs while at the same time it ensures the data hub maintains the true independence essential for credibility.

The data hub should be operated on a not-for-profit basis and provide services at cost. A nonprofit organization is often the most efficient way to ensure quality of a product where it is difficult for the ultimate consumers to verify the quality themselves. We believe that that is the case when you're talking about energy price data.

All confidential trade information must be secure. The hub would only report price and volume information and not sensitive counterparty or buy/sell details. We're currently working with major IT firms to develop an efficient, highly secure infrastructure. The hub should price and volume information for reported transactions to qualify parties on an open access basis.

Open access to basic price and volume information encourages competition among information providers to create innovative database products. Moreover, the availability of price information will facilitate the development of superior risk management, the measurement analytics needed in the energy industry. Crucially, the dissemination of trade data in this fashion will permit indexed publishers whose indices are currently used to determine cashflows in existing contracts to continue to produce these indices, thereby addressing the legacy contract issue.

Statutory authority permitting, the data and the data hub should be accessible to and auditable by proper regulatory authorities to ensure the reliability of the data collection and dissemination process and to allow regulators to have a better understanding of what is really going on in the marketplace.

This approach offers numerous benefits to the industry. Most importantly, the GEMI Bauer UH model meets all of the objectives related to data reporting standards established by CCRO, FERC, EMIT and others. Moreover, it does so in an efficient way, economizing on implementation and transition costs. Most importantly, the independence of the data collection and dissemination organization is essential to assure that the price and volume information it collects and disseminates is highly accurate and trustworthy.

This approach may seem novel, but it's not. Indeed, throughout the process of development, we've drawn upon models and precedents that have worked in other industries, most notably the financial markets. It's fair to say that in every financial market, including equities, municipal bonds and corporate bonds, have already implemented something quite similar to what we propose. Each of these markets relies on a central hub to collect and disseminate price information. Each of these financial market data hubs is a not-for-profit utility that provides data and cost on an open access basis.

Furthermore, in these markets, mandates either by the government or SROs, the relevant SROs mandate that market participants contribute their data in a timely fashion. The main distinction between what we propose and what has been implemented in the financial markets is that we contemplate housing the data hub within a public university. This is in response to a necessity and has special virtues as well.

The necessity results from the fact that in creating their data hubs, financial markets could rely on existing self-regulatory organizations for this purpose. Alas, in the energy industry, there are no preexisting self-regulatory entities that can be tapped to create a data collection and dissemination mechanism. GEMI Bauer UH can fill the existing void and we can do so quickly.

Moreover, a university-based solution offers appreciate advantages over some traditional SRO-based solutions employed in the financial markets. In particular, a university-based SRO can offer true independence. It should be also noted that universities routinely provide valuable services to industry and government in important areas in which independence and innovative thought and security are paramount.

Thus, just as we base the specifics of our proposal on well established precedents from the financial markets, we're also following numerous precedents of university/industry/government collaboration.

I would also submit that among universities, GEMI Bauer UH is uniquely placed to be the independent energy price and volume data hub. As I noted earlier, we've already made considerable progress towards creating a system that will meet the industry's pressing needs in a timely fashion.

Moreover, our location in the energy capital of the world and our extensive human capital network both within the university and within industry means that we have ready access to the people, skills and knowledge required to make this proposal a reality in a timeframe and at a cost that meets the industry's needs.

In sum, the energy industry needs improved transparency with better indices based on reliable, verifiable, auditable transactions data. The GEMI Bauer UH data hub initiative can address this need. It can meet the objectives set up by CCRO, FERC and others. It can offer unique independence. Moreover, it's well on the way to becoming a reality.

We're continuing to work with our technology and industry partners to implement this concept quickly and cost effectively. We also look forward to hearing the comments of the participants here today and anyone in industry, government or elsewhere that has suggestions or contributions to make so that we can make our proposal better and more responsive to the needs of the marketplace.

Thank you.

MR. HARVEY: Thank you. Mr. Corbin?

MR. CORBIN: Thank you. My name is Arthur Corbin. I'm here representing the Coalition for Energy Market Integrity and Transparency, which is a broad cross-section of the natural gas and electricity industries. And I would characterize it as a coalition that really represents from the wellhead to the burner tip.

I'm also the president of the Municipal Gas Authority of Georgia, which is a joint action agency that supplies municipal utilities in the Southeast.

What I'd liked to do, EMIT has submitted a proposal. That proposal is available to you all. I'm happy to answer very specific questions about the proposal, but it does endorse a third-party solution, if you will, and a FERC oversight of that activity or the process.

What I'd like to do is just kind of in my brief remarks hit some high points of where I see us as an industry right now. It's interesting. At the October 25th conference that was somewhat similar to this, although it had some other subject matters, the crisis that we were headed towards was really not being discussed as far as the price index. I participated in that conference kind of as an other category and tried to raise the awareness. And I'm really pleased to see all the talk of the need to restore confidence, all the talk of we've got to have transparency. And we've had some very good dialogue, so I'm real encouraged by it.

But I would like to point out kind of where we evolved, because we really started at the point of trying to salvage -- "we" the coalition that I represent, a cross-section of the industry -- was trying to salvage the system that we had, you know. We had these surveys. We had good, capable entities bringing that information in. Is there a way for us to come up with a solution that we salvage that and correct the wrongs that we were seeing occur and where the confidence was being degraded?

Frankly, what I would say to you is, supported by what we heard first thing this morning, and that is we're seeing better information now than we've probably ever seen, I think that's what the index developers were saying, and that is getting transaction-specific data. They weren't getting that before. They're getting some counterparty. We got pretty much consensus on need for counterparty.

I would tell you that what we really need to focus on is the reason we got to this point of improvement is because there is the bright line being shone on the process right now. So I would say that the biggest place we fell down as an industry was in market surveillance and being able to pick up on something -- activity that you wouldn't want to occur in a free, open, transparent market.

We've got to be able to pick up on that stuff and pick up on it timely. To find out about something a year after the fact doesn't help the marketplace to react quickly, in my opinion. So that got us to the need for an independent third party. The reason it got us there was (a) we believe very strongly that you've got to have counterparty data.

Right now we think there's a lot of wrestling and a lot of legal wrestling of, although it can be held in confidence by the current index developers, we just see there's a lot of question on are they going to really submit the kind of data we need, and I think it's still a struggle right now for us, and we need to get beyond that struggle and just say we've got to do it, and we think the independent third party gets there.

More importantly, from a surveillance standpoint, and, I believe, what is a FERC oversight, not only the third party can help you in market surveillance, but the FERC itself can be involved in market surveillance.

Is the turning over of this data to FERC -- I think one of the things we heard this morning is, there isn't that. There isn't that sharing of information, and that's where we got to.

When we abandoned the existing index developers and came to our independent third party solution, it was because you just didn't have that. The second thing is, on this voluntary versus mandatory, we really believe that you need to have people reporting. I think you can get beyond some of these issues of, well, do my agreements allow for me to disclose this information that's being required or not?

I think, if FERC could step forward with good input from the industry -- I don't think FERC operates independent of the industry; I think it takes that input and it works with it. So, we're not talking about FERC telling people how to do their business. We are not talking about FERC telling people how to do their gas supply transactions.

We are saying we do have to have a process endorsed by FERC and with FERC's oversight that would require -- from a practical standpoint, we are not suggesting 100 percent reporting, because we realize there are some very small consumers on one end of the pipe, and there are some very small producers on the other end of the pipe; that, one, it's not going to make a significant difference in the overall quality of the information.

Also, there may be a great tendency of the smaller transactions to be index-based anyway. That's kind of how we got to where we got to, and I would just encourage us, as we come up with a solution, that we have something on an ongoing basis where we've solved this surveillance issue, so that when we find out something, we find out about it quickly, the market knows about it quickly, and the market can react to it quickly and not have to wait a year or two years or three years for some of this stuff to come to light.

I thank you for the opportunity to be here, and welcome the questions.

MR. HARVEY: Thank you. Ms. Dow?

MS. DOW: Good morning. My name is De'Ana Dow. I'm Director and Chief Counsel of Futures for the NASD, also a self-regulatory organization.

I'd like to tell you, in fact, a little bit about our company. Many of you may not be familiar with the NASD, so I want to tell you a little bit about who we are, what we do, relative to the needs of this industry and then I'll give you an overview of our proposal.

We're a private sector provider of regulatory solutions to promote market integrity and investor protection. We're represented here not as a subject matter expert, but as an independent nonprofit company that has the capabilities and existing infrastructure to collect, process, and report natural gas price data.

We're a self-regulatory services organization, organized under the SEC and providing service to the U.S. securities industry. Our self-regulatory services are provided to member firms.

Virtually all U.S. securities firms that transact business in the public must be a member of the NASD. We provide services, including registration, rulemaking, surveillance, compliance examinations, disciplinary functions, education, among other things.

Currently, the membership base stands at 5500 members; member firms, 91,000; branch offices of member firms, 678,000 registered representatives or brokers. The average member firm consists of six to ten representatives. Others are much larger, with hundreds of reps, while still others are much smaller.

There are various filing and reporting requirements for all members. We're flexible in our approach, in order to accommodate the varied business sizes.

For example, some of the firms use automated filings because they are large and fully automated, with many, many options for technology, and they have dedicated lines. Others file using e-mail, phone, or fax.

We process enormous amounts of data daily through various automated systems. These particular services, as I stated earlier, are overseen by the SEC.

Secondly, we also provide market regulatory services directly to markets, separate from our membership base that we provide services to. Our current client base includes the NASDAQ stock market, the NASDAQ life futures market, the International Securities Exchange, the Pacific Exchange, the Chicago Climate Exchange, which is organizing as an exempt market to trade CO2 emissions, the American Stock Exchange, the Philadelphia Stock Exchange, and the World Bank Group.

Our organization is a 2,000-plus person organization with 15 offices across the U.S. From a technology perspective, we have a number of services that are available. We own and operate a suite of advanced technology systems, including the world's largest and most sophisticated web-based registration and reporting system, a system to facilitate examinations of NASD members, sales, practices, trades, underwriting, financial operations, and internal controls, a system that uses artificial intelligence to identify aberrant trading activity such as wash trading.

We also have a system for collecting and reporting data, such as orders and quotes from member firms, which includes features for strict validation of the data at several points in the process and exception report, data anomalies. Currently, the way it's done, firms are permitted to correct the data within the specified timeframe.

It is feasible that this particular system could be adopted to collect natural gas price data from reporting companies. NASD's market regulation technology processes seven million trades, 30 million quotes and 100 million orders daily.

Our proposal -- this is a big picture overview of a proposal. We haven't drilled down to the details. We would rely obviously on the industry to further develop something that is useful and meets the needs of the industry.

Simply put, FERC would retain all authority over reporting companies. NASD would facilitate the collection, verification, and reporting of the data, subject to FERC's oversight.

We propose to leverage our existing technology and infrastructure to facilitate the collection of data, processing of data on a trade, date, or T+1 basis, which would include a validation function and reporting of that data daily or as required.

Collection: Data collected would include, for example, transaction date, time, location, price, delivery period, volumes, counterparty information, and transaction platform.

We recommend that the data reported be in a standardized format. We could, in fact, develop a standardized form for data submission. All data received by NASD would be kept strictly confidential.

Validation: NASD has automated data verification capabilities through analysis of counterparty information and other available data sources. Additionally, given our 15 offices and experienced auditors throughout the country, we can also offer an onsite auditing function to verify the data before it goes into the system through routine or random reviews.

Publication: Daily and monthly price indexes would be derived from protocols developed by FERC, based upon data submitted by the reporting entities. The methodology for computing the index price and the backup data to support the prices would be readily available.

The data could be published in the format prescribed by FERC. Published data could include, for example, the average index price for each reported hub, the volume, the number of transactions used to calculate the index, the number of different companies reporting, the highest and lowest reported price.

In conclusion, like I said earlier, we would develop details later in conjunction with the industry. Mainly, we wanted to emphasize today that our systems are readily adaptable and are state of the art.

NASD spends upwards of $50 million in technology annually. Modifications to our systems to accommodate the industry's needs can be made in a timely manner.

We're proposing to facilitate price reporting, not regulation, in this industry. Thank you.

MR. HARVEY: Thank you. Before we follow up on the specifics of proposals, I'd like to kind of follow up a couple of steps through this definition of a self-regulatory organization, in part because, from my energy industry background, the notion of a private company providing regulatory services is kind of a strange sounding thing.

So I'd like to kind of get some clarity around that. I guess the first question would be to describe -- NASD, you did a very good job of describing NASD. The self-regulating, the SRO elements of that, that is actually built into the legislation around the SEC; is that correct?

MS. DOW: That's correct. We have statutory authority under the '34 Act to provide self-regulatory services to the securities industry.

MR. HARVEY: In effect, if someone wants to trade securities, they join your organization, and they're assessed fees for joining your organization, and that funds a variety of regulatory activities, including gathering this kind of information, market monitoring activities, enforcement activities, a variety of things?

MS. DOW: That's correct.

MR. HARVEY: The enforcement activities are around, basically, the membership agreement that they sign when they join you at that point?

MS. DOW: Right. And we have specific enforcement authority over our members, that's correct.

MR. HARVEY: The SEC, in effect, regulates both your members and regulates you directly?

MS. DOW: That's correct.

MR. HARVEY: I'd like to talk to Bob a little bit and ask sort of similar questions. There are some similarities -- in fact, they may be exactly the same; I don't know, in the SRO structure through the CFTC.

Obviously, I'd invite John or Mike to comment, too.

MR. LEVIN: I will certainly defer to Mike and

John as well. I think one difference is, only because we're the exchange, we, I think, have comparable organizations like the National Futures Association. They're self-regulatory and help develop practices for the brokerages and things of that nature.

But in our industry, we run a marketplace, and we run a marketplace -- we've been given not really a license, but the equivalent. It's now, I think, called a derivatives clearing organization. Not too long ago, it was known as a designated contract market.

We had to meet certain criteria to be approved to list these contracts. Our natural gas futures contracts had to go through that approval process. I cite that only because that's become extremely important to the industry we regulate, and it pops up around here once in awhile.

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I'm sure that in the course of getting permission to list their contractor trading, we also have to have rules that govern how trading was conducted in our exchange, what makes it competitive, how do we ensure that competition, what are the legal, non-competitive trading mechanisms.

We also have to evaluate if someone is performing in terms of their position holdings in our market. If they're not bona fide hedge positions, there are certain oversights to that and sometimes strict limitations, sometimes watchfulness.

This is all conducted in concert with our regulator and in accordance -- under approval, we have price recording responsibilities. We have a natural commercial interest in reporting our prices, but nonetheless, we have to get those prices out. They have to be accurate.

We talked about timeliness today. We get prices out within a minute of the transaction, and the accuracy, if I misstated it, it's not deliberate here, but it's better than 99 percent.

The reason I mention that, in our electronic trading system, it should be 100 percent accurate, unless a trade for some reason is later disallowed. But when you're talking about a very active trading pit, an arena, if you will, where there are many bids and offers simultaneously going on, the registration of that trade takes a few minutes, ten or 15.

The public can't wait for those prices, so we pay price recorders to listen, and that's when it's better than 99 percent accurate, what comes out of there, so that the public at large -- and it's reported at many different reporting services, electronically and otherwise, so that the world at large is aware of what the price of natural gas is, the price of oil.

All of that is -- we conduct -- I don't want to say a partnership, because we're the junior partner, there's no question about it, to the CFTC, but they have to approve how we set up our systems to support all of that.

It's all regulated, but we conduct that regulation. They, too, will have people that are watching our markets, so there's overlap, and they watch us, they make sure, they audit us periodically and go through and make sure that we're conducting things in accordance with their rules and regulations. It's a very active dialogue we have with them.

MR. HARVEY: That's a very helpful context. I guess I would then follow up on that with a question to Craig, and, Arthur, you may have some views. I'm sorry --

MR. GORHAM: One of the points I want to make about the whole SRO idea is that when we think of this, it's sort of a regulatory outsourcing, and what we're doing is, we're outsourcing some of our regulatory responsibilities to entities that we think can really better fulfil them than we can.

They're on the spot all the time, so there are very specific things. When they create a new contract, they have to certify that these things are not subject to manipulation.

If they give us a contract that's designed in such a way -- they don't give it to us, but if the list a contract that's designed in a way that we feel is subject to manipulation, then we have a dialogue.

We've had these before where they have changed the design, and oftentimes they'll speculate a position in order to make it less subject to manipulation. They regulate all their members to make sure that nobody on the floor does things like trade ahead of the customer, et cetera.

Now, we delegate that responsibility, but at the same time, as Bob said, it's our job to make sure that they are fulfilling their responsibility to comply with their own rules to make sure all the members are complying with the rules.

It's a system that's really worked pretty well.

MR. HEDERMAN: How do you evaluate their performance, and is that done periodically, or is it just ad hoc?

MR. GORHAM: In a number of different ways. But one of the major things we do, we have a group that does what we call reinforcement reviews. They go into each one of the exchanges, and look at the records. They look at the recordkeeping, they look to see how the exchanges have watched the trading floor to make sure that whenever they've done investigations of trading ahead of customers or trading against customers or any of these kinds of things, that they've done it in a proper way, that they have probed deeply enough.

One of the things that, in fact, the exchanges are not crazy about is that we make these enforcement reviews public. So you can go on our website and read about how well Bob has done.

One of the nice things is I think that makes Bob do a little better than he would have otherwise. The reinforcement review is something we do periodically with every exchange in some form every year. There are a bunch of different areas.

The other part of it is, just continuing and ongoing in terms of the new products coming in, for example, NYMEX recently went to a new electronic trading system called Clear Port. That was something we had to look at, make sure that we felt that it was fair, equitable, designed in a way that couldn't result in any sort of manipulation or inappropriate trade, et cetera. So there's a number of ways in which you can do that on a continuous basis.

MR. HARVEY: Mike, one question on clarity on that. From your perspective, and this is just so we can kind of understand it from the energy side, in that sense, NYMEX, that has those capabilities as a futures exchange, looks different in some ways to you than say ICE, which is an over-the-counter exchange?

MR. GORHAM: Great point. We have several layers -- we really have several flavors of markets. NYMEX is the traditional futures exchange, the most heavily regulated. ICE is actually not regulated. They're not even allowed to say that they're regulated. They fall in this group called an exempt commission market, where you only have two types of authority over them, and that's manipulation and fraud. And quite frankly, it's more of an after-the-fact.

With the case of NYMEX, John Fenton, head of surveillance, is watching on a daily basis all of the large traders. We get a large trader report every day from NYMEX for something like ICE, and there are about seven other of these exempt commercial markets. It's a very low level of regulation. It exists because these are big boys, these are commercials trading with one another, that the Congress felt did not need the same kind of customer protection that the retail business needed. Anybody in this room can go trade on NYMEX. Very few people in this room can go trade on ICE. You have to meet a certain definition of being an exempt commercial entity.

MR. HEDERMAN: But then the protection for the customer from the big boys is not a concern of your jurisdiction?

MR. GORHAM: From the point of view of fraud and manipulation, those are the only two authorities that are retained for these markets, but we don't do it. John Fenton's job is to prevent manipulation from occurring on NYMEX. Bob's job is also to prevent manipulation, or more of his colleagues' job is to prevent manipulation from occurring on NYMEX.

But in the case of the exempt commercial markets, we don't really have the tools to do that, to watch things as they unfold, and we can only -- I think it was Arthur that said it doesn't do much good to find out something a year later with the exempt commercial markets, quite frankly. Those are the kinds of things that if something happened, most likely we would only find out about it sometime later because of a tip or because of a complaint or something else like that.

MR. GRAMLICH: Mike, could I ask one more question? There was a discussion by earlier panelists about the potential problems of anointing some monopoly entity to do this function under your SRO framework. Under the CEA, you can authorize a number of SROs. Is that correct? And they can compete and maybe become sort of dominant in some cases, but there's no explicit barrier to entry or monopoly status granted.

MR. GORHAM: That's correct. The way that we have it, right now we have eight monopolies, if you want to put it that way, that are operating. Actually, there are 16 exchanges, 16 what we call designated contract markets, which is the full fledged kind of exchange. Only half of those, about eight of them, are active right now. For every one of those, we have full authority over those.

Each one of those futures markets tend to be natural monopolies. All the energy futures really are traded on ICE. All of the Treasury stuff is traded at the Board of Trade. All livestock is traded at the Merc. That's just the nature of the market. Everyone wants to go to what the liquidity is. Each one of these entities has responsibilities for the price reporting from their own entity.

This is different from what Craig and De'Ana are saying in terms of having a single entity in the energy industry that would take all the transactions prices and put them together. Does that answer your question?

MR. HARVEY: De'Ana, did you have a follow-up point?

MS. DOW: I did. When you're talking about the SRO role that we play in terms of the securities industry, it's a little different from what we're doing new on a contractual basis for the various markets, including one of the new-fangled exempt commercial markets. This particular market that we have a contractual relationship with has asked us to perform a regulatory service for them, despite the fact that the Commodity Exchange Act doesn't require it. But there are ways of structuring this service without it being -- for example, a membership organization through statutory provisions to allow us to operate.

What we would prefer as opposed to a membership organization is some sort of delegation of service of functions from FERC with FERC remaining in complete control without us becoming a membership organization, strictly as a facilitator for receiving and processing that information.

MR. HEDERMAN: What kind of timeframe would you expect would be necessary to move from today until you could have something in place?

MS. DOW: My technology people tell me four to six months.

MR. HARVEY: Craig, I know you've thought about the analogy to SROs. Can you follow up on De'Ana's point in terms of the distinction or the similarities to that structure?

MR. PIRRONG: I think the key thing is describing the scope of the SRO. As Mr. Levin was pointing out and Mr. Gorham, essentially you can have SROs that are very broad in scope. I think it's interesting to note that really the exchange has for the most part predated the idea of self-regulatory organizations. It was that Congress said, hey, we have these organizations out here. Let's essentially delegate some of the regulatory responsibility to them.

You could conceive of a narrowly defined SRO with relatively specific responsibilities for, for example, price reporting. There might be some activities that are complementary to that. So, for example, you could imagine the price reporting party having essentially procedures and algorithms in place to essentially evaluate trade data streams, flagging anomalous transactions, and then say make FERC aware of that for their subsequent review and perhaps investigation.

Basically the idea is, the SRO is a scalable concept, and it really should be targeted to the particular need at hand.

MR. HARVEY: The one question I would have is I think the traditional SRO structure to me has sort of a clear funding capability. Dan was speaking to this a little bit. The Commission isn't built on the same kind of model. Have you all thought about what's appropriate or what the funding approach would be?

MR. PIRRONG: That's obviously an important consideration, and we're considering a couple of possible alternatives. One is that we think that a substantial if not entire support of the data hub could come from subscriber fees for the data from index providers or index producers and others, and as well, we've looked at alternative funding mechanisms. Perhaps you could form a self-regulatory organization that would have, you know, an assessment of some sort levied on the industry in order to provide that.

We think there are a lot of different ways to address the funding issue.

MR. LEVIN: One thing. You mentioned this earlier today and it may be equally noteworthy, but it is in writing and it's in your system now.

We think that this information should be forwarded. This intermediary or liaison would perform the standardizing -- I'm just quoting now, but any other industry service providers, according to the wishes of the contributor, okay, the people that provided the information -- at no cost. The basis for us making that suggestion is, well, it's twofold. I don't want to ignore the public service role. If this improves the integrity of the market, that's a big positive, and we have a big stake in that. That should not be ignored.

But in addition to that, we anticipate that there are some specialty statistical needs or interests of some of our clients, some niche markets. It's not so much index construction I think, and I don't know about anything in particular, but reporting of information or what deals have been done at this time or that time or related to other prices, things going on at NYMEX, there might be some commercial value there. I honestly do not know if this is a money maker or not. I don't think it will be a money loser.

But that's why we've suggested that. If there is competition, though, there may be value whether the Commission adopts that or not, whether NYMEX adopts that as our pricing policy. Someone else might have a different one. The nice thing about competition of course is that the competitors can determine amongst themselves and in competition with each other the quality of their service, the nature of their service and what they charge for it. We think there's a lot to be said for that.

MR. GELINAS: I'd like to try to pull together some points that I've been listing from the two panels and questions that Andrea posed earlier about what this Commission can do. Rob raised an interesting point on authorizing SROs. Steve's talking about a way to get the money for the SROs. That's interesting. And Mike of course raised a very critical topic for us which is how important these indices have become in our tariffs, our rate schedules, both electric and gas, let alone price formation, investment decisions for resource allocation and for infrastructure.

What I hear from this panel, personally I hear so many things that I like. The first one is, FERC is not doing the indices. I like that a lot. I hear validation, standardization, actual transactions, and most importantly, themes which Robert made this morning about this Commission having some sort of oversight and certainly access to the data at the very least on these published indices.

Now when I listened to all this, I also remind myself, I'm not a lawyer, but the SEC has SROs written into their statute, and we don't. And you made me think of that, Rob, when you asked Mike about authorizing SROs. I'm not sure whether we can authorize something like SROs, but I could certainly, after listening to everyone, see -- pick up Mike's point that this Commission would have only indices where certain attributes could be used for its regulatory purposes, many hopefully of the attributes I hear this morning.

From Andrea's point of view, I can see the Commission requiring people that sell under our market-based rates or gas certificates to provide the type of information that I hear that you folks need to do the job that you think you need to do, then let the market work as to which organizations develop and flourish.

I'd like some comments. I'm not quite sure that this Commission could actually authorize SROs, but I see another way of getting there, and I can see the Commission through its conditioning authority for the people that sell at wholesale gas and electric requiring certain data to be provided to entities that meet certain criteria for publishing indices. Robert?

MR. LEVIN: I can think of a couple of things, including -- that's a good example, what you just said. Those that you do regulate are required to submit information through this process. It doesn't, though, get that imprimatur, that regulatory imprimatur, that parties that are taking information are using in this third-party or intermediary role.

They may do a great job. The industry may support that. That's certainly a perspective we can appreciate, and usually in this room, we have. We have not usually been in here endorsing increased regulation. But it doesn't get to the root issue right now, which is a lack of confidence. How do we know that intermediaries are doing it right? It's not that the regulators couldn't mess up, but where is the accountability? Where do you answer?

An additional possibility is if you work something out with the CFTC that they do have authority, maybe they can work it. And I'm not trying to put an additional responsibility on them. I'm just saying that obviously, you have been talking, I don't think it's a mere coincidence that two representatives are on that side of this table with you.

It's also possible, and I too am not a lawyer -- good and bad to that, I suppose, especially for where I'm about to walk -- but there has certainly been imagination and innovation used I think within this Commission previously or a broad interpretation at times of what it can regulate. I'm simply reminding you of that, since I don't know where I sit on advocating it.

But it seems to me, then, if you have facilities that have a role in price determination somehow at times that what some others might have thought, including the ones that thought of themselves as an exchange, it turned out the feeling was that they could be regulated, I don't know if it was electricity or natural gas, but perhaps under that type of interpretation, it could make intermediaries as well directly regulated by the FERC, and you could create the equivalent of this SRO functioning here. Maybe that's a possibility too.

MR. GRAMLICH: I would maybe just add -- Don asked about statutory issues and our authority, and I'm pretty stunned personally by the amount of interest in this particular model at this time. I don't know much about it, and I'm not an attorney. I hesitate to say too much, but given the issues on the table now, are there legislative -- and Ms. Dow, I think you are an attorney and work within NASD on these issues. Are there issues that are in both the SEC and the CFTC authorizing legislation that are critical here? To the extent this is an interesting model, are there features, are there things like limited liability and other sorts of features that SROs require and the ability to get mandatory participation, for example?

MS. DOW: I think they're good models, and I think there are things in the legislation that we could turn to in terms of ensuring that we get the coverage and the reliability that we're looking for. But I don't think that's the only approach. I don't think there has to be a statutory approach to this.

I don't think that the NASD, although we are an SRO for purposes of the securities industry, we don't have to function in that same capacity for purposes of this service.

Of recent, we have done a number of different types of service areas -- of providing service in a number of different areas through contractual relationships. What we would prefer is that the regulatory overlay go to the industry itself. Yes, NASD would be responsible to FERC.

FERC would obviously have the ability to come in and review our systems, review our analytical structure, and to ensure the integrity of our process.

Through a contractual relationship, we would perform on that in accordance with what FERC's wishes are. But the regulatory overlay, I would see it going out to the industry as opposed to being over the NASD.

MR. CORBIN: I would just add that we don't have a specific answer, either, to the question, the legal question, other than I would just say that at this point in time, if it is determined by this Commission, when you look at what you can and can't do, and if you do sit down at the table and talk with CFTC of what can and can't be done, I think there's a real need here -- there is a lot of movement in Congress right now on this transparency issue, on correcting some of the things that are going on in the energy business.

Now would be a very good time, if we determined that there is something that makes sense -- again, I know people are very sensitive of adding layers and regulations, and, again, I think what we're talking about here is not adding regulation to how the commodity is traded, but rather how the activity is reported and how we get to transparency, how we get that market surveillance in place, so that if people are not doing it appropriately, that can be found out very quickly, and the market will know about it.

MR. PIRRONG: I'd just like to address a couple of points, one raised by Mr. Levin: How do you monitor the monitors, or how do you monitor the quality of the data intermediary that we're talking about here? I think there are a couple of layers here.

One is, we talked about auditability. We think that's very important to do an essentially truly independent audit of both the process and the output.

A second important part of it is the government structure in which essentially of the institution of the organization in terms of ownership, structure, who has a stake in the process, and the owernship form that all those things can contribute to a high quality data provision service.

I'd also like to address one point in terms of setting out a criteria for the data collecting organization to adhere to and then sort of letting a thousand flowers bloom. I think there is something of a tension here, and it's something that we have to think about up front, lest we confront a difficulty in the future.

I think there are clear advantages in terms of economies of scale and scope to consolidate and delay the data collection and dissemination in order to ensure that we have data that are broadly representative of the market, and so give us the best indication of true values in the marketplace, which allow the identification and elimination of duplicate reporting, which would not necessarily be possible if we had multiple collectors and disseminators of data.

This also would have the ability to more accurately detect anomalous things going on in the marketplace.

One the one hand, I think that there are, as Mr. Vice noted earlier, some natural monopoly characteristics to the data hub. So that creates a delicate issue as to what regulatory framework that potentially natural monopoly is going to operate in.

And if you just basically say anybody who meets these criteria can participate and that's all that you do, well, you could have a couple of potentially disadvantageous outcomes.

One would be that we end up with a fragmented data provision industry that's excessively costly and not providing the higher quality of data. On the other hand, if we do have tipping to one supplier, but there's no other safegaurds around that, then we could be in the position of essentially having a data monopoly that would be essentially able to exploit monopoly power to the disadvantage of folks in the industry.

So, I think that these are delicate issues, but it's probably better to grapple with them now, rather than later.

MR. LEVIN: I just wanted to clarify that I'm not saying that there's been any -- there may have been no misunderstanding, because I think we just had a good point to distinguish.

When we say that there should be competition as to the liaison role, we have fully envisioned that the liaisons are all receiving the same stream of base information. They're not making individual contracts with some contributors, some producers, some marketers. That would be self-defeating.

I'm not sure what is the difference between that and where we are now anyway. Maybe people aren't doing that, but what's the difference? They could; there's nothing to prevent that in the marketplace.

We're envisioning adopting -- FERC adopting and endorsing something along the CCRO proposal that's going to enforce or make entities provide this. It should be available to everybody, including the end users. I think it's a great idea.

We have to work out the confidentiality, and I think that's an important issue, but once it's worked out, that's a fair one. Let's assume it does get worked out and everybody gets it; then there can be competition in that liaison role.

So, all of a sudden, the reporting services may say, I don't want it; that's fine. We heard one of them say this morning that they felt they could do that, and I respect that, and I don't have an issue with that, so you've got multidimensional- or potential for multidimensional-level competition.

If it turns out -- because Mike was mentioning earlier that some of those eight entities are still operative, that were designated contract markets, I think they are everything now, but there were a lot of acronyms.

The derivative clearing organizations, well, if someone establishes what seems to be a commercial predominance there, you may need to address it, but there is also a regulator in that market. That's what Mike was saying.

There does seem to be commercial dominance by some parties. I think you misstated the one that was the energy one, but that's okay.

But, nonetheless, we're regulated. I think that's why you want that regulator. That's why you want this self-regulatory organization type of model, so that there is someone over that in case there is that dominance.

Even there, it's debatable on whether there isn't competition, and whether there's commercial dominance, because the company you did mention isn't regulated, but they compete with us in product. There's OTC and other alternatives, and anyone else can offer any product they want to compete with us, even another DSM or DCO.

The barriers to entry are certainly regulatorily minimal, and once you're established, I'd even say financially minimal. It's just a matter -- that's a form of competition that keeps honest, too, knowing that the second they do something wrong, somebody jumps in and takes the market.

Even if you get that dominance, I'm not sure that's a monopoly, so what's -- there's room to debate what a natural monopoly is here. Nonetheless, if you're overseeing it regulatorily, I think that's a very beneficial protection.

MR. PEARLMAN: Can I ask one question to you all? Mr. Smith earlier was talking about providing the data, but he was concerned the data would only be used for the publication of indices and not used for journalistic, academic, or other proprietary purposes; do you all support that approach, if you were to be having your models adopted?

MR. PIRRONG: A couple of things: First, as a point of clarification, certainly we would not envision anything having to do with counterparty information, if it was reported, or buy-sell indication, if it were reported as being available to anybody.

Essentially what we're proposing is essentially dissemination of the equivalent of what you see in the bottom of your CNBC screen while the market is open, the prices and the volumes.

From what I heard earlier, that's essentially the kind of thing ICE is making available now, and the data underlying their indices was available on a subscription basis.

We would just like to argue this would be -- availability of this sort of information would be beneficial, both to firms in the industry and to regulators. With respect to the firms in the industry, I think there's a real need to improve analytics, improve understanding of marketplace dynamics, and good quality transaction data is the air on which that kind of analysis lives.

I think that would be beneficial for the industry from the perspective of developing better risk management and risk metric tools. From the perspective of regulators, also to the extent that they have the ability to base decisions on actual transaction data, as opposed to something less reliable than that, I think they're going to make better decisions and I think that actually is to the benefit of the industry, as well.

That would reduce both Type I and Type II errors, as a statistician would say. And then maybe someone could -- I would also say that it would be a benefit to academic understanding of the market, as well, to have better price information available.

MR. CORBIN: I would just add that, really, agreeing largely with Craig, the way I see it is this independent third party data collector and one that would disseminate it, you've got this very transaction-specific data coming in with a counterparty, within that data hub, as Craig has called it.

You match up the transactions, so one end, it comes in as two transactions, and on the other, it comes out as a single transaction, so you don't see the very detail. You don't get any of the counterparty data.

I don't have a problem with that. In fact, that's what I think would be information made available to all the industry publications. If they want to go in and take certain cross sections of that, look at location differentials, analyze it, write articles about it, and add to the industry's understanding as to what's going, as Craig has mentioned, I think they would be a providers, I think, other entities like purchasing, consulting firms or what have you.

I don't think there's a problem with that. Very importantly, on the other side of it, though, you do have for all market participants, the availability of what's happening at the major pricing points and the information as far as activity -- highs, lows, number of players, that sort of thing.

MR. JENNRICH: I'd like to ask a question about the requirement for participation. Mr. Corbin, you always said you believe in less than 100 percent, and your proposal is to have some sort of minimum threshold. Presumably, some of your smaller members would go under that threshold and wouldn't be involved in this.

I don't know whether Mr. Pirrong says that there is a requirement that all firms be provided, but the question is, how do you propose to have that requirement? Is this an act of Congress, that every producer all over the country and every consumer, every buyer, trader, participates to supply these data to you?

If so, if it's an act of a federal entity, how do you propose to get to intrastate markets as well? What does it take to do that?

MR. PIRRONG: First, as a matter of principle, basically the quality of the price data is going to be better, the more participation that there is. We understand that there are statutory issues involved, interstate/intrastate distinction being one, and also issues of jurisdiction.

Essentially we think that we take a pragmatic approach. Even a system which relied upon, for example, FERC's existing authority, but which did not incorporate every transaction, but still incorporated a large fraction of the transactions undertaken in the marketplace, would be a substantial improvement upon the existing system.

Then it basically comes down to a sort of judgment to be made by FERC and Congress as to whether the benefit of extending statutory authority would justify the cost. But I think that if you had the major players contributing their transactions, and presumably these are folks who are primarily already under your jurisdiction in one way or another, that that would be sufficient to dramatically improve the situation.

MR. HEDERMAN: Mike, you had a question?

MR. GORHAM: John just asked it.

MR. HEDERMAN: Marsha?

MS. GRANSEE: I was just going to ask Mr. Corbin, in the EMIT paper, you talk about a singular, independent, third-party provider as sort of along the lines of what we've been discussing here.

Is that EMIT's position that there should be only one provider?

MR. CORBIN: Yes, only one. I think that's as a result of efficiencies, and also having a single dissemination of market price, aggregate market prices, and then again, if individual trade publications or whatnot take that data and do some things with it, you still will have an independent single third-party data hub as Craig has characterized it.

MR. HEDERMAN: Okay.

MR. LEVIN: I think our position is probably already known, but a question that comes to my mind in that -- I don't see any harm, if the middle parties are getting the same basic information.

I see no downside and only an upside from allowing competition there. One example is, let's just talk about one pricing point, Chicago City Gate, on a particular day in a particular month. Let's say there are two service providers and they did come up with different prices. Is that a bad thing or is that a good thing?

We have several possibilities here: It's possible that they both are wrong and they both messed up, and it's possible that one is right and one is wrong, and it some peculiar way, maybe they're both right, but I'm not quite sure how.

I will just leave that as a possibility.

(Laughter.)

MR. LEVIN: But if we don't get that, we won't even raise the question and that's a problem. Regulation, given the SRO, the rigorous aspects of that, doesn't guarantee you you're going to dot every I, cross every T, and do every calculation accurately.

I think we want competition in this role, and if we get multiple prices, it was a good thing we did it, and if we get identical prices, I'm not sure of the harm of that, either. Then at least you've got double validation and it rests on each entity's own interest in continuing to do that, because nobody's going to be forced to do this anyway.

My goodness, I don't even want to envision the process, if it were a FERC-granted monopoly. I don't think this will happen in this decade with the controversy around that. Have you granted such? I just can't even imagine.

MR. GRAMLICH: Thankfully, that's one issue we do understand, that's competition and natural monopolies.

(Laughter.)

MR. CORBIN: I would like to respond to that, just real quick. I could be wrong, but I don't think there are multiple NYMEX-settled prices. That works real well to have just one settled price.

MR. LEVIN: There's not multiple NYMEX because NYMEX runs its market and does that, but there are definitely multiple prices for all those things. ICE duplicates a lot of the things, and, if I can say it, Enron Online, when it was operative, they gave prices, and so did a lot of other price services.

The reporting services give prices electronically, and in a publication, and you can get a Henry Hub price anytime of day from a lot of different places and that's the nice thing. It's not all NYMEX. We're just one. It's not a thousand flowers, but at least a dozen, a dozen roses.

(Laughter.)

MR. HEDERMAN: Since ICE was mentioned and we asked the first panel to stay around, does Mr. Vice have anything? I can't see him right now.

MR. VICE: I guess I would agree with Arthur, that having multiple prices at the same hub, I don't think the industry wants that. I think it would be chaotic. There's a difference between providing information and publishing indices.

Yes, the more information the better on what's going on at any given hub, even if that's in the form of unofficial indices or indices that people aren't necessarily settling on, but in terms of having billions of dollars of contracts and pipeline tariffs and so forth, settling on an index.

I'll let the industry speak or itself. My personal opinion is, I don't think, and, certainly, historically, you don't have that case today, as the operator of a platform. We haven't had customers come to us. We list thousands of products for people to trade.

Some physically settle, some financially settle. Not one time has any customer ever come to us and said we wold like to trade a basis swap settling on so an so's hub. There is one and only one hub at each index, whichever is the prevailing, the controlling index on the ICE system, we put items up on that platform based on what the customers tell us they are trading already in the over-the-counter and the brokered market, just based on that empirical evidence.

Again, from a true index standpoint, not just the idea of providing information, I think the industry wants to see an index in any given hub, and as I said earlier, I think there's a natural monopolistic characteristic to that.

MR. HEDERMAN: Thank you. I think we're ready to wrap up. Does anybody have a comment or question?

COMMISSIONER BROWN-HRUSKA: Sharon Brown-Hruska, Commissioner on the Commodity Futures Trading Commission. I've also been ruminating over some of the comments that have been made today.

I should also let you know that as a researcher and an economist, I've done some work on the market flow information. I think the key message I'd like to deliver is, information has value. It's important to recognize the contributors to that value start at the counterparty level and the brokerage level and that the traders who are being asked to submit this information also contribute to the value of information, and I think that the previous model of information collection and dissemination that existed in the energy markets was fundamentally flawed. It was broken. There was an economic disconnect between the data providers and index publishers that sort of created the situation where the data providers had no natural incentives to provide data, accurate data, to the publishes.

So rather than -- we've obviously at the CFTC been thinking about this a lot, why was price misreporting so widespread in this industry? It just really dawned on me recently that part of it has to do with a flawed business model. Basically the cost in this model, the costs had been borne by the data providers, by the brokerage community. They were called numerous times by various entities that were in the business of profiting from the information that they were receiving, but there was really no backflow to the data providers. They really didn't share in the revenue. They're simply just a delivery mechanism. But they did bear some of the costs of providing this information.

I think that assessment that I have looking at it, it's important to keep in mind when we look at what is the solution here, how do we find a model, I think a key facet of the model, and I haven't quite heard a proposal for the exact model that would solve all the problems, is that you really need to have industry participation and involvement.

The stakeholders here have to share in both the costs and the benefits of the information and the revenue stream that arises from the information in the sense that, you know, should a regulator mandate that information be provided, all information, if there's no apparent benefit.

In the exchange model, such as at NYMEX, I think what has worked well about that is he mentioned regulatory and audit capabilities that come with that data collection information. They shared that information with us. We used that information in our surveillance and our enforcement proceedings, and even the exempt markets such as Intercontinental Exchange have been magnificent in sharing that information with the CFTC and with FERC to facilitate our investigations. There is a benefit that's associated with that. There is a benefit to the market participants. It restores credibility and brings integrity to the marketplace to have that regulation. And anybody who knows me knows I'm a very strong, free market competitive advocate, but I think there is a value to regulation.

What we see in the model in the futures markets is that the exchanges, as the disseminator and provider of information, also collect a significant revenue stream from that market data that they sell. They actually used that revenue stream to sort of subsidize the regulation component of their business model, and they use that to help essentially lower transaction costs for all their members and all the market participants. Anyone who does a trade on that marketplace knows that they're getting a liquid, honest trade done.

I think that that's an important feature. So again, it comes from the fact that the participants in the market benefit. So I'm hoping the industry can come up with a solution that sort of respects those facts or pays homage to it in a way that will really solve the problem.

Thank you.

MR. HEDERMAN: Thank you very much. We'll take a lunch break and begin promptly at 1:30.

(Whereupon, at 12:15 p.m. on Thursday, April 24, 2003, the FERC Staff Technical Conference recessed, to reconvene at 1:30 p.m. the same day.)

AFTERNOON SESSION

(1:35 p.m.)

MR. HEDERMAN: Can we start taking seats so we can get going with the new panel?

(Pause.)

If I could have your attention. I'm sure we've all shared a lot of reactions with one another from this morning in the hallways and elsewhere. Now we can begin to formally put some of those responses before the Commission staff here and welcome the next panel. Steve, we'll turn it over to you.

MR. HARVEY: I think we had some good discussion this morning about a variety of approaches to the question of price discovery and natural gas. We want this afternoon to start talking a bit to those people who are suppliers into the process of price discovery and consumers of the results of that price discovery and get your views and opinions as well. I do see several people from the morning panel still around. I think it's helpful. It may be possible in this process that you want to respond to something in this process. We want to encourage that back and forth.

Given that quick background, let's get started. Mr. Ballinger?

MR. BALLINGER: Good afternoon. Thank you very much. I'm here this afternoon representing the American Public Gas Association, or APGA. I'm employed by the Public Energy Authority of Kentucky, which is a municipal joint action agency representing public gas systems in Kentucky.

With APGA, I work on the Market Integrity Task Force that was established by APGA a couple of years ago as various issues in the industry evolved. It's through the MITF that the board has adopted or directed certain policy matters or items of importance to APGA. And the purpose of my participation this afternoon, it's also important to note, that APGA is an active member of EMIT. Also from the public perspective, we look at the appendix that's filed to the comments of EMIT. The parties that are there represent over 80 million consumers, which I think indicates that this is a very important issue for public energy consumers.

A comment this morning that was made that the lack of market confidence is the real problem we're trying to address, that has certainly been APGA's perspective for quite some time. Consistent with I think all of the participants this morning, APGA certainly is in agreement and supports the best practices submitted by CCRO. I think the information that they required, the process that establishes the best policy is certainly a step in the right direction and one that EPGA supports.

But as stated by I believe what CCR said, it is a best practice. It appears from our perspective that the next step is to develop specific policy issues that are relative in importance to move those best practices forward. I think from APGA's perspective that we'd like to raise the point that although what you heard this morning, I didn't hear anybody this morning suggest that counterparty information was not a necessary element for formulating prices in an index. I can say that in a recent discussion within APGA, one of its members polled seven of its gas suppliers. Six of those gas suppliers suggested that their ability to provide counterparty information, they still weren't certain that that was something they could do at this point in time.

So although we've heard a lot of comments suggesting that that is definitely needed, and I can draw implications from some of those comments that it's going to occur, I guess we're not convinced at this point that the availability of counterparty information voluntarily is truly going to occur as we continue to develop these issues regarding indexes.

The EMIT proposal specifically regarding policy matters. To us it seems as though within EPGA, it seems that the real issues are whether this process is voluntary or whether it's mandatory. Then most specifically, what the role of FERC is. In regard to just looking back at the counterparty information that we think is essential, it seems to us that the mandatory approach and the requirement of specific data that's set out in the EMIT proposal, specifically counterparty information, is the best method to ensure that that information is readily available from all parties.

The role of FERC. We sense that the EMIT proposal that APGA supports is that there be an independent third party that is responsible for developing the price index, and there's a protocol that's very well established under that document. Our sense is that FERC has an important role as the price index issue continues to evolve.

I think it's important to note that APGA over the last six months or so as this issue has developed has really evolved from the position of a voluntary industry approach to a two-step approach that says it's voluntary, but if that doesn't work, then FERC needs to step in and do something. But at the end of the day, we got to a mandatory process.

I thought one of the comments that I heard at the close of the first panel pretty well summed up where we had gotten to. I think it was in the context of the SRO, but that that was the ultimate answer, and that why sidestep that? Let's just move into establishing the elements that are necessary to put credibility back into gas pricing indexes. I think that's really the process that APGA went through, that at the end of the day, it says this is an important issue. There needs to be settlement on this issue now, and getting to that independent third party was what we felt like was the appropriate answer.

The concept of SROs is not something we've discussed within APGA specifically. The most I had heard of this was frankly this morning in review of the presentations before the meeting. But it's certainly something we'd like to see further explored. There seems to be some merit in that concept, but our position at the moment as an independent third party with oversight from the FERC is where we are today, but certainly some elements of the SRO that look appropriate. That concept, what I thought I was hearing at the end of some of the discussion this morning was the idea of multiple SROs. I may have completely missed that point.

I can say from our perspective, multiple pricing points, I am not sure that I see the overall advantages. A single accurate validated price for a specific point is what we'd like to see from our perspective as buyers of gas. The more complicated that it gets, the more confusing and the more problems we sense that it may cause. So the idea of one entity, a single pricing point that information disseminated to all parties to us seems to be the appropriate direction to go.

Given how this process has evolved over the last several months and what at least it seems from the discussion this morning and discussions with other parties, that there are a lot of items that a number of the players in the industry didn't agree on several months ago that they have moved closer together, that there does seem to be more consensus today than there once was, we feel that a follow-up workshop that would involve persons that were here, other industries that have been through similar transitions. The idea being the lady that made the closing comments this morning from the CFTC about finding a consensus that works for all parties.

It didn't appear we're there yet, but that we're making significant progress moving in that direction. A workshop sponsored by FERC would be the appropriate way to go from here.

With that, I'll close my comments and look forward to the follow-up discussion.

MR. HARVEY: Thank you. Mr. O'Brien?

MR. O'BRIEN: Thank you very much for the opportunity to come and address this Commission again in another technical conference. I wanted to just make a few quick comments, hopefully quick.

First of all, we are a member of EMIT. I'm also here not only representing Apache Corporation but the Texas

Independent Producers and Royalty Owners, the Louisiana Independent Oil and Gas Association, and the Texas Alliance of Energy Producers, and I believe letters have been faxed to the Commission from those associations in support of our position.

We do support the EMIT proposal. We've been involved with EMIT for now 14 months. We believe it's the right way to go. So I won't reiterate a lot of what Arthur had to say, but I want to make a couple of quick points. One, in our opinion, as a producer, and obviously it's from a particular perspective, the crisis of confidence in the index prices is deep and it is broad.

Frankly, the solution in our minds shouldn't be focused on satisfying folks in New York or Atlanta or even in Washington, D.C. that the system works. I think if we want to get people, independent producers back out drilling for natural gas in the United States, we need to be concerned that people have confidence in the index prices that most people who live in Houmeau, Louisiana, Farmington, New Mexico and Aida, Oklahoma, Wichita Falls, Texas, those are the people who don't believe the index prices make any sense. Those are the people who don't have the confidence in the current prices. That's where the rubber meets the road. Without those people, we don't have the natural gas to put into the pipeline system to start with.

The second point is one of the things that we really need to look at the fundamental issues that we're looking at in whatever system this agency finally decides to adopt is whoever collects the information needs to be trustworthy and really have no stake in the game. Frankly, at Apache, we are a little skeptical that after the March meltdown in which several large pricing points, there were no prices for several large points, in which Apache had to wait almost two weeks to find out what we were going to be paid for our gas on the Center Point system, and there are small independents in Northern Louisiana who still don't know what price they're going to get for the gas they produced and put into that pipeline in March, and I can assure Ms. Beswick, who mentioned or alluded to it this morning that it was a very real meltdown and a very significant meltdown for the people who suffered it last March.

But it's going to have to be reliable. We found that we're a little bit skeptical that now all of a sudden the index publishers, maybe in anticipation of this hearing, maybe after seeing the Markey-Bardon Amendment pass the House of Representatives, all of a sudden, fine, that reporting has picked up and the crisis has passed, now everything is fine, so don't worry, be happy.

We don't believe it. We think there's still a problem, and we think one of the principal things that has to be done in any system is that the collector has to be trustworthy.

Secondly, there has to be accountability and responsibility. I have a lot of respect for Mike Smith and the folks at the CCRO and what they're doing. I think, though, in a couple of instances, and I mentioned this to Mike at lunch, that I was going to read this, we have a real problem in the information that they submitted to this agency. It appears on page 24 of their best practices of energy price indices. It's a suggestion for disclaimer language to be included in any contract between a data provider and a data collector.

It reads in part: While the company believes the information to be accurate and that the data collection verification and submission process as described in the data submission usage and confidentiality agreement will follow, it does not guarantee, warrant or make any representations as to the accuracy or completeness of the data or the degree to which this information reflects market prices or activity in general.

The company expressly disclaims any liability that might arise from any use of, publication of, or reliance on this information. So if we're going to sign contracts with a big out clause like that, I don't know what the point is. I really don't.

The fourth and final point I wanted to make was that I agree with Gerald. There really does need to be one collector. I know for sure I didn't understand a lot of what Mr. Levin had to say today, but the problem that I saw, one of the things he advocated was that people report to a number of different data gatherers, and that a number of different data gatherers would then publish their own prices for all or some of the index publishing points. That would be so complicated and so onerous that I think it would kill any trust in that kind of system.

My first thought was, okay, we have four prices for a particular point by FERC-authorized data gatherers. If we decide to pay our royalty owners on one price and their attorney takes us to court because he thinks we should have used another price or MMS decides they want to use one price and we want to use another, we think there needs to be one data set and one price from which then we can all work out from.

Lastly, I want to say I really appreciate everything this Commission has done. It has come a long way. The report the staff issued a few weeks ago I think was a tremendous piece of work. It frankly surprised us at Apache. We thought we knew where all the bad guys were, and you guys found a bunch more. I think it continues today with the CFTC, SEC investigation of Entergy for round trip trades. So it's still out there. The process, the market is not fixed. The market hasn't taken care of itself.

What little market correction has taken place has been the result of the efforts of this Commission and the Justice Department and the press, and we hope for a good result as we move forward.

Thank you.

MR. HARVEY: Thank you. Mr. Musur?

MR. MUSUR: Good afternoon. My name is Al Musur, Director of Energy and Utility Programs for Abbott Laboratories and Chairman of the Industrial Energy Consumers of America, the IECA.

I am participating in today's conference representing the IECA. On their behalf, I'd like to thank you for this opportunity to address the Commission. This is a very important issue for us, natural gas price formation.

We would also like to compliment the FERC on its efforts to date, and we support your efforts to develop and implement a solution. The IECA is a nonprofit organization created to promote the interests of manufacturing companies for which the availability, use and cost of natural gas play a significant role in their ability to compete in domestic and world markets.

IECA membership represents a diverse set of industries, including plastics, cement, paper, food processing, chemicals, fertilizers, insulation, steel, industrial gases, pharmaceuticals and brewing.

IECA board members are all senior energy and energy procurement managers. The industrial sectors consume roughly 37 percent of the U.S. demand for natural gas. Natural gas is used by us as both a fuel and a feedstock. As a fuel, the cost of natural gas can represent as much as 60 percent of the total product cost. As a feedstock, it can represent as much as 80 percent of the total product cost.

Affordability of natural gas is critical to competitiveness, especially for those of us who must compete either in international markets or against foreign competitors in domestic markets. It is for this reason it is vitally important that the natural gas markets work efficiently, if the gas pricing mechanism is completely transparent and not subject to manipulation, and the price truly and accurately reflects the law of supply and demand.

It is the IECA's position that the FERC should ensure that markets are transparent, and price supply, storage demand, and other relevant data are disclosed in a timely, auditible manner, to all market participants, to prevent market abuse.

We believe the FERC's role should be one to ensure that energy trading entities are not manipulating the market, self-dealing, or reserving abusive market power; two, to establish specific reporting procedures; and, three, to punish those who don't play by the rules.

Further, we believe the FERC has the authority to act. IECA's position is that though re-regulation is not necessary, the current system is badly in need of timely repair.

The system needs reform to fix the parts that are not working well, to establish integrity, to restore capital markets and customers' faith in this industry, and to help ensure affordable prices for customers. IECA supports the proposal offered by the Coalition for Energy Market Integrity and Transparency, EMIT, which would require the FERC to adopt standards for the design and participation in natural gas price indices.

To assure accurate reporting, the FERC must mandate that all market participants who trade above a certain minimum volume, daily report all transactional data on a confidential basis. A point of departure from EMIT, at least the proposal that we saw, is that IECA believes that the FERC or its designated qualifying third party should collect this data.

Further, the IECA recommends that the EIA be the qualifying third party, that they should include transaction date, time, location, price, delivery period, volumes, transaction type, and, most importantly, counterparty information.

The FERC itself or its designee, should verify the accuracy and integrity of the data, remove all sensitive proprietary trade information, and publish the aggregated data from all sources for use by the industry.

If a designee collects the data, it should submit a daily report of trading activity and any irregularities for FERC's review, and, if necessary, audit and/or do further investigation. The need to hold counterparty data as confidential is another reason that we recommend that the FERC or its designated qualifying third party be the collector of the data.

In the event that an intentional attempt to falsify or misreport transactions is discovered, FERC should impose significant civil penalties and refer any such findings to the Department of Justice for criminal prosecution.

Again, we'd like to thank the FERC for this chance to sit here and talk to you and participate in this particular conference. We look forward to working with you in the future. Thank you.

MR. HARVEY: Thank you. Mr. Skains?

MR. SKAINS: Thank you, Steve, and good afternoon. I'm Tom Skains, President and CEO of Piedmont Natural Gas and Chair of the American Gas Association's Board Task Force on Price Index Reform.

I'm pleased to appear before you today to offer the recommendations of AGA on price index reform. We're gratified to see so many interested parties represented at this conference.

Our hopes are that today's discussions will jump-start the industry for further action on meaningful reform for natural gas price reporting.

Needless to say, it is a priority for the 191 local distribution company members of AGA and our millions of customers, that confidence be restored in reported natural gas price indices.

The AGA Board has resolved to strongly support the principles of integrity, accuracy, and full transparency of all natural gas price indices. AGA therefore supports, indeed, urges refinements to the price index system by urging these changes. However, we are not suggesting that prior indices did not generally reflect the market price, only that the process itself can and should be improved.

AGA is encouraging its members to actively participate in the price reporting and indexing process. We are hopeful that through voluntary efforts, the natural gas industry will achieve transparent and accurate price indices without the need for governmental mandates.

Accordingly, AGA has, through a task force comprised of member company presidents, chief risk officers, and commercial operations officers, reviewed the price index reporting process. Because it was the first and most comprehensive proposal, we used as the starting point, the recommendations of the Committee of Chief Risk Officers, which we generally endorse.

We do have a few points we would like to stress, and a few enhancements to offer. First, we would stress the following recommendations as critical:

Index participants should report specific information, rather than aggregated data. Counterparty data should be required of data submitters, after appropriate confidentiality agreements are put in place.

Index participants should report all transactions at all points. Data submission should be provided from the mid- or back office and not by trading personnel.

Trades conducted among affiliated companies should not be included in reports to index publishers. The prices reported should be based upon an objective publicly known methodology, not editorial assessments.

Product definitions should be clear, and index developers should agree to subject their process and index methodology to a periodic external audit.

As refinements or enhancements, we offer the following points, about which I will provide a little bit more detail: Liquidity at pricing points should be reported. To achieve this, indexes published should include not only the aggregate volume, but also the number of trades at each reported point, as well as the number of individual counterparties but not necessarily their identities.

In this way, index users, not just index publishers, will be able to assess coverage at a given point for insight into how much trading is occurring, and whether contracting parties desire to reference that subject point as a pricing point.

Second, index publishers should periodically provide a list of participants, and the periodic publication of a list of participants is total and not at each index point will provide users of the indices another means to verify that industry participation is robust and that data from many buyers and sellers is being collected and reported.

It also allows us to put industry peer pressure on non-participants. Industry participants should certify the process used to report the data. AGA is concerned that requiring data reports to be certified by an officer of the company on a daily basis, as some have suggested, would be time-consuming and burdensome.

As an alternative, we recommend a requirement that the company certify that they have the processes in place to assure the integrity of the information being reported to an index developer.

Finally, I'd like to address the concept of the independent third party, which many are referring to today as SROs, providing the data collection function. This is a fresh idea that AGA is open to explore with the natural gas community.

At the very least and perhaps as an interim step, AGA supports the development of a process to establish or qualify an index developer, so long as the recommendations of the industry for reforming the process are incorporated into the process.

AGA views today as only the beginning of achieving reform for natural gas price reporting. There are many organizations that have offered their own proposals for consideration.

Our members will be analyzing these proposals further with great interest, and are committed to this effort. We look forward to implementing solutions that will positively impact the efficiency and price transparency of the natural gas industry.

Finally, we would also welcome a FERC-sponsored followup workshop to pursue these proposals in more detail. Thank you very much.

MR. HARVEY: Thank you. Mr. Stice?

MR. STICE: Thank you and good afternoon. My name is Mike Stice, the President of both Conoco-Phillips Gas and Power. I'm going to abandon any kind of planned remarks, because I think it's starting to sound like what he said.

(Laughter.)

MR. STICE: You've heard, I think, today, a number of different conversations, so I'm going to focus on that, but let me first talk about who I'm representing here today. I have the great privilege of representing Natural Gas Supply Association, of which I am the Chairman of the Issues Committee, much like Tom is, dealing with this price reporting issue.

I have been working this issue for six months, and we've been into the intimate details of the many solutions that have been proposed here today. In addition, I represent the Independent Producers Association of

America, which is hundreds of independent producers across the country, living in the very towns that Mr. O'Brien referred to.

I also represent the Process Gas Consumers Organization, which is 15 large industrial end users. I'm excited to be able to come and share with you that we've reached a consensus on many of the principles across this diverse group of market participants, so we do represent, as EMIT represented, from the wellhead to the burner tip. So, from that standpoint, I'm not going to read in my comments. They sound very, very similar to a lot of the validation that you heard here today around the movement we made.

What I want to do is share with you a kind of high level tracking process we've been using at NGSA. We've been watching the really good work being done by EMIT and CCRO and Platt's and others who put formalized proposals forward to you today.

It's interesting to see the process evolve over the last six months. We actually track it with various X's in the various positions you heard about. There is some controversy I'm going to talk about, but it's fascinating to me to see how the X's have started to fill in. So the industry is working toward a consensus solution.

This process, I think as Tom indicated, is part of the process you all have initiated in highlighting this important issue, so I think the industry is working toward a consensus solution, and I think it's evident by the consensus that's being made.

With that said, the devil is in the details. I want to point to a couple of issues that I think are critical to our conversation here today. Eighty percent of our member companies in NGSA actually participate in reporting prices. I think it's critical for us to acknowledge that the service organizations, the price service indices reporting organizations that reported here today, they too are intimately familiar with the details and complexities of putting together an index.

We from our evidence cannot see that there is this mass broken process that might be a bit controversial, based on some of the other conversations, but we do acknowledge that the confidence has been lost and that market confidence loss is critical to us. So we recognize that there needs to be reform and there needs to be action taken in order to repair that lack of confidence.

As participants in that market, it's important for everyone here to know that we do not see necessarily the direct connection and evidence that the wire fraud cases have showed up in bad data being reported by the pricing agencies. In general, we are supportive of those pricing agencies and that survey approach that has taken place so far. But when you look at the details, there are flaws in the process, and we recommend addressing many of those flaws.

I won't repeat the ones you've heard about around having a trustworthy collection person, someone who shares with us transparently how that data was calculated. The validation and verification of what that information is. We share all those high level principles.

I will talk about the issue around counterparty information, which is I think easy at the outset to say that may be a very good piece of information to get early warnings of concerns that might be in the marketplace.

However, when you get into the details, that is incredibly secretive, sensitive information to all the market participants, and I think it will be a struggle to get all that information. So our membership is not necessarily supportive of providing counterparty information.

Now with that said, we are intrigued by the self-regulatory organization concept. We think, like Tom said, we ought to continue to explore that to see if we can't create a vehicle where the confidentiality can be maintained and where we have some confidence in how that secretive or confidential information will be handled. I think that's an important point that differentiates our collective group from what you heard here today.

I also think it's important to acknowledge that mandatory reporting versus voluntary, if you were to create such an SRO as has been talked about here today, it's important to us that membership in that SRO be voluntary. But once a member of the SRO, that the credentials or the requirements of membership are mandatory reporting. We recognize and acknowledge that more data will give you better price information.

That is something that we would see as important. In every Wall Street Journal, when you pick it up in the morning, on page C11 you'll see all kinds of cash prices reported. If you just go and ask yourself how much of that information is done through mandatory SROs, you'll quickly realize that some of the key ones that we find very, very safe and sacred -- gold, oil, coal, sugar -- these are all managed by voluntary organizations. So I think it's a little bit presumptive of us to leap to the conclusion that the only thing that can take place here is some type of mandated process.

I think a voluntary process, a self-regulated organization could work, and it's important that we continue to walk down this path. I also think it's important to recognize we have seen tremendous movement on the new service bureau agencies that have been providing this service reliably for 18 years. It's possible they too may come up with a solution. So I think it's important that we run these processes in parallel, but we should not give up on our principles.

Our principles are that we transparently know and understand how those market prices indices have been created. We can independently verify that information, and the market can have some certainty that those numbers were truly reflective of the market price.

Andrea, you asked a question earlier today that I thought was very appropriate, and that was what is the role of FERC in this process. I just can't say enough that I think FErC is doing exactly what they should be doing. This movement that I described earlier is an example that you're getting results. When you talk about step one collectively as an industry what we should be doing, we should eliminate the rhetoric. We are not having balanced conversations.

There are all kinds of words leaking into our reports. Widespread. Epidemic. Conversations around participants routinely lying. For those of you, I take that as an insult, because I'm in this market and participate every day, and I assure you, I don't lie. The real issue for us is we need to have balanced views of all this information that's getting into this report, because it's sending the wrong message to the general public, so I would argue that's step one. Let's make sure we're having balanced conversations.

Step two, we need to thoroughly evaluate these alternatives that have come up. This has been excellent progress. There's the SRO alternative. There is continuing with the survey price alternative to get independent verification of that process to get to transparency, how those numbers are created.

Step three is FERC has to continue to provide the pressure and the oversight to get this solution in place.

Step four, we think there's some expectation that needs to be established by FERC that they will always be active participants in this oversight mechanism, but they don't -- and this is important -- necessarily involve themselves directly in the price reporting process. Quite frankly, we don't think you'd be very good at it. That's really where we land, and I hear that as a common theme throughout today as well.

Thank you very much for those kind of off-the-cuff remarks.

MR. HARVEY: Thank you. Mr. Kruse?

MR. KRUSE: Good afternoon. My name is Richard Kruse, Senior Vice President with Duke Energy Gas Transmission. My comments today are on behalf of INGAA, the trade association representing the interstate pipelines.

I am almost at the point of echoing Mike's comments, which for a pipeliner is very difficult to do.

(Laughter.)

MR. KRUSE: But that's almost where we are. Price indices today provide, as we all know, an important market signal to producers, marketers, consumers and pipelines. Even though pipelines are not in the merchant business, INGAA supports the effort of the private sector with the encouragement of this agency and other agencies within the government to restore the confidence of the market in the accuracy of our price indices.

As has been noted, as pipelines, we utilize and reference in our tariffs price indices to establish cashout prices, to resolve transportation imbalances. On some pipelines, our price indices are incorporated into the mechanism for setting penalty levels. And for some pipelines, they are used as part of the negotiated rate transactions to set the rate for the transportation. From a longer term perspective, price indices send a very important market signal to the entire natural gas segment as to when, how and where to invest capital.

It has been noted today that if producers don't have confidence in what the price signals are, they won't make the investment. If they don't make the investment, the pipelines won't make the investment, if shippers don't know where to buy gas, they do not know where to contract to get the pipeline capacity.

So it sends a long-term ripple effect throughout the industry, that we don't have confidence in the indices.

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As INGAA, our primary goal in this conference is really to support and to acknowledge the efforts of the participants in the market that have the primary role of setting these indices to come up with a methodology that restores the confidence of the market players, and as pipelines, we also recognize it needs to have the confidence of the regulators.

One comment -- and this is soley from a pipeline perspective -- the importance of the indices in our tariffs for transportation imbalance prior to going to the current methodology, which is, I would say, common throughout most pipelines, of cashing out imbalances. Pipeline were involved in a very tedious and time-consuming physical imbalance makeup process. That could take years.

The cash-out process has provided a very timely, efficient way of resolving these imbalances. To the extent that the Commission loses confidence in the indices and says we cannot charge it, that's creating a second-tier problem.

We have to figure out some way of handling imbalances. I would say, from my own personal perspective, the physical imbalance makeup process is not very practical in today's marketplace.

With that, we welcome the progress that's been made today. We thank and commend the Commission for calling this conference, and we urge the participants to work together.

Our primary preference would be for the parties to work this out through some private process with the encouragement of the agencies, with a self-regulating organization, if that's acceptable to the market players. It's certainly acceptable to us.

But this is an issue that needs to be worked on and done as quickly as possible. Thank you.

MR. HEDERMAN: Thanks. I guess I'm encouraged by the extent to which there is commonality in points made. It sounds to me like one of the big speed bumps between here and reaching a conclusion, is the counterparties issues. I'd like to have a discussion about that.

Mike, if you could start, what's the big problem with the counterparty information?

MR. STICE: It's like any type of detail; you need to understand exactly what is the request, before you can really understand whether you're afraid of it or not.

Absent the details, there's an ample amount of fear. I think the real issue for us is that we have a number of companies that are direct competitors, that competitor information is very important to those companies in the form of the end users that are in our coalition.

The concern would be their competitor would then know about the volumes, the way they secure their fuel, and have a lot more information on their energy efficiency, et cetera, than is published today.

On the producers' side, there's a general view that that information is something that they tend to negotiate private contracts. They're worried about if they give it to FERC and it can be exposed to the Freedom of Information Act, or if it ends up in some database that can be mined and ultimately create problems for them down the road.

I actually think -- and I'm encouraged by the dialogue, quite frankly, around the self-regulatory organization, because I think you can frame it in such a way that you can get many companies comfortable with it.

But I don't want to be so bold to say that, because the situation in our meeting is -- and we've had numerous meetings on this subject -- I have to tell you that when a number of member companies are very concerned about providing the sensitive information, a lot of it is around the administration, the administration of changing a lot of contracts, going back and reviewing and getting the right to do this, causes them concerns, so there is a burden with doing it as well.

So there's a combination around this sensitive information that they'd rather not see in the newspaper the next day, as well as the burden associated with doing it.

MR. HEDERMAN: Mr. O'Brien?

MR. O'BRIEN: I agree with Mike. The counterparty information, confidential counterparty information is a very sensitive subject. We have all along said that that kind of information needs to be kept confidential.

Whatever information is released by the data gatherer, needs to be released in such a form that no individual company's information is released, that it's not released in a form that anybody can go back in and work their way back to somebody's deal.

That being said, I don't know why people have a problem. It's beyond me, why people have a problem delivering this information to FERC when in Oklahoma, for example, everybody who produces gas in Oklahoma has their first purchaser deliver all of this information to the

Oklahoma Tax Commission on every sale of every molecule of gas out of the State of Oklahoma.

We don't have a say in it. We don't get to pick and choose what information is reported or not, but our first purchaser, in our case, Cinergy, reports to the State of Oklahoma for purposes of severance tax calculation and royalty calculation, how much gas we produced, from what wells it was produced, how much the transportation charge was, how much we paid for it, what the Btu value of it was, whether or not we had to separate it and sell it as liquids. All of that goes into the OTC database.

I would suggest, much as I love the State of Oklahoma, that they're probably a little less sophisticated in keeping secrets than the Federal Energy Regulatory Commission.

It hasn't been a big problem in Oklahoma, but for some reason, it's going to be a problem now.

I, for one, don't understand it. I understand the sensitivities. We are four-square in support of keeping that information secret.

What we find -- we frankly find it to be a little bit of a red herring that it's become a speed bump in this issue, especially given the extent of information that has to be reported.

I guess that from the perspective of a producer, as producers, we have to report everything we do to somebody, so reporting doesn't scare us. We have to report where our wells are, how deep they are, the kind of pipe we put into them, how many drill bits we use, how much we produce, what kind of mud we use, what kind of cement we use.

When we leave a well, we have to report that we've plugged and abandoned it. According to state regulation, every molecule of gas and every drop or crude oil gets reported for severance and royalty tax purposes.

So, from a producer's perspective, reporting doesn't scare us. If reporting is what's required to get the natural gas industry back on its feet and put producers back to work, then we think it's a small price to pay.

MR. HEDERMAN: Tom?

MR. SKAINS: There are obviously pros and cons with the issue. On behalf of AGA, we think the pros of reporting counterparty identities outweigh the cons, just in terms of providing another way to verify the price reporting process and make sure the data has integrity and is honest, but also to eliminate double-counting of transactions to make sure the market prices reflect pure market prices, not prices that are expanded by double-counting the numbers.

MR. MUSUR: From the standpoint of consumers, we don't like giving up sensitive competitive information at all but I think for anybody to have true confidence in how these indices are being developed and how all this gas is being treated, it's going to have to happen. Having said that, we believe that the FERC will be more successful in keeping that data confidential than some third party reporting organization can. Because those confidentiality agreements are going to stand up very well on judge's order of discovery in the first suit against that reporting service for whatever reason I think the federal government might be a safer bet for us than some non-government reporting agency.

MS. HILLIARD: Let me ask a question, I just wanted to be sure that I pin Mike down exactly on this. I gather from what you said that this counter-party issue has been discussed thoroughly with your industry groups and you're uncomfortable with reporting counter-party information this time. Do you think that is a lock-in position or do you think it's something that there is room for flux within your organizations over time as the organizations become more comfortable with the direction that whatever emerges from this conference ultimately takes.

MR. STICE: Thank you for that opportunity to respond. I think this whole process would not be for anybody to be locked in. I think the issue is some of the comments that Al made, we can have a broad industry responsibility here to look for the solution. That's what we're committed to. I think the real issue for us is we have to first determine if providing that information is indeed necessary, we might find a creative way of getting exactly what we need without it we will find by learning and testing and checking out other markets which we've been actively doing. It isn't provided in every other market and some of them have got reliable responsible markets. I think that it's very possible that if we get to the point where Al and Tom are that they found that that's the only, then our Association will be responsible as any other association and try to find a way to get that done, a way that would maintain that confidentiality and not lose it so we are very cautious. You're hitting close to our heart, okay so we're not willing to just come in here and say, oh sure, we'll provide counter-party information because we think it's necessary. We have to be convinced it's necessary, we have to be convinced how that information is going to be handled and what solution is it actually enabling.

MR. MUSUR: We don't have a crisis in gold or pork bellies or some other things that I can find on page C-11 of the Wall Street Journal. We have a crisis in natural gas. I'm paying $6.00 for 10 decatherm of gas. A couple of years ago I was paying $2.00. $6.00 gas does no more work for me than $2.00 gas did and if the $4.00 in the difference was going into discovering or pipeline renovation or something that said sometime in my future I'm going to see better prices, I wouldn't feel bad about that but I'm not seeing that. There is a problem and the problem is now. We need to fix this.

MR. HEDERMAN: I have a follow-up question for you on your point about using EIA. Has your organization spoken with them at all about that idea?

MR. MUSUR: Let me consult with my partner -- not yet. They're in a position to collect data. They do it now, whether they like doing that or not is another story at least we have something that's already in place without creating something new.

MR. PERLMAN: I have a question on a different topic but it was discussed this morning. I see you all as in some ways consumers of the indices because you do transactions that are related to the indices or are embedded. The indices are embedded into your transactions and some of the index publishes indicated this morning that there were some concern about liquidity because particular LDCs I heard them say were using contract purchases that were index-based as opposed to having the price embedded in them so that it was sort of a circular thing. I wonder if you could comment on that? Secondly, so I get all the questions out and you guys can answer them, I am real surprised, this may be just my lack of familiarity with how producers do business, that producers when they are into long-term arrangements of a month or more that would be paid out at an index price. Is that what you were saying earlier that there are significant amounts of producer contracts in the marketplace, wherefore let's say, six months from now the producer will be paid at the prevailing index price at that point. I'll leave that to you all to answer.

MR. O'BRIEN: Do you want me to answer the second one first?

MR. PERLMAN: However you like.

MR. O'BRIEN: I guess I should back up. I don't know if this is going to take anybody by surprise or not. Everybody I think should know that Apache for one has always supported the concept and the theory of index prices. What we don't support is the way it's currently being operated and handled index prices to us especially when you have a number of different delivery points are really an elegant solution to pricing natural gas that's produced in all parts of the lower 48 United States and North America. If we didn't have an index price, what we'd have to do is, we'd have to go to the trouble of using the NYMEX price and then negotiating our transportation to and from. How much less is natural gas produced in Western Oklahoma because it's further away from Henry Hub than say, in Southwestern Louisiana. Small producers, even producers as large as Apache are typical always price-takers. It's an elegant way of being able to know what your price is because most producers don't produce enough gas to move into the marketplace and negotiate from any kind of position and strength. So we're always pretty much told what we're going to get for our gas, whether we like it or not. The index prices are embedded in tens of thousands of natural gas contracts, just like they're embedded in FERC documents, PUC documents, it's frankly been as it developed over the years, it became a took, the path of lease resistance to get your natural gas contract done, to get your gas paid because small producers and other producers, medium size producers don't have the wherewithal to go out and try to market their gas themselves, so they sell it to a middle man.

MR. PERLMAN: Are you saying those are in effect forward sales at revealing spot prices at the time of delivery?

MR. O'BRIEN: What's usually done as I understand it and you have to remember I'm Director of Governmental and Regulatory Affairs so I try to stay as far away from substance as possible.

LAUGHTER

MR. O'BRIEN: The fact is that a lot of our contracts for the same of natural gas are based on index prices and as I understand it, for example, in the month of April, we would get paid for the gas we delivered in April based on the index price that is published in April, as I understand it, so you don't get paid on April's price six months from now, you get paid for the gas in April based on the index price.

MR. PERLMAN: For a transaction that might have been in November, I'm going to deliver it in April and I'll take the revealing spot price in April.

MR. O'BRIEN: At that point yes.

MR. SKAINS: David can I answer your first question second. We had a particular interest in that question because as a gas distribution company our portfolio of gas supply contracts is largely based upon index market prices. What we're advocating as part of the improvement of the price reporting index reporting process is that liquidity levels be included with information that's provided so we can make the assessment as to how thinly traded or thickly traded a hub is and whether or not we want to reference that point in our contracts rather than having the index developers make that assessment for us. We like the information so the contracting parties can make their own independent judgments as to where the contract for index gas or where to convert our purchase practices into more fixed price flowing supplies. That's an assessment we'd like to make based upon publicly provided information. If it's discovered as a result of this process that there is a 2% fixed price transaction tail-wagging in 98% index price dog at a pooling point, there may be many of us who will not want a contract at that point and index any longer and would want to convert our purchasing practices to fixed prices. We need information to make that determination, not based upon speculation or just innuendo. I might also say that even though many gas distribution companies buy gas largely on the basis of index prices, again it reflects the market price month-to-month. We also have hedging programs where we take that floating position and convert it to fixed, in our case we would hedge anywhere from 30 to 60% of our flowing supply during a seasonal period. We accomplish that conversion today through financial products through exchanged-based options puts and calls because of the lesser risk involved in the counter-party and credit issues associated with that but if it's in our best interest to convert our fixed priced strategy into flowing fixed price gas rather than financial products because of some liquidity issues, we'll take that step if it's in our best interest and provides the right purchasing results.

MR. JENNRICH: Mr. Skains I wonder if I could follow-up that with a question. I wonder if you could instruct me a little bit on how much are you going to know -- how will you know how thinly it's traded unless you know the total volume of spot gas that happens to be going through at the same time. You may know the volume, the actual volume, that's reported by whatever service, but how do you know whether it's a robust figure or thinly traded figure.

MR. SKAINS: That's a very good question and it's a difficult assessment to make. We had that discussion earlier this morning on 70%. What is the denominator with that the 70% is calculated from. Is it a denominator all of the flowing gas at that point? Is it the amount of fixed price gas over total volume flowing or is it the amount of fixed price gas that is actually reported and there is other fixed price gas that's not reported. Those are difficult issues to assess. Many of us buy gas at trading hubs where we basically now the pipeline capacity at those points. We know how much gas is flowing, certainly we can make some independent assessment of the price that's quoted and the liquidity that it is given. What percentage of the total gas at that point is fixed? That's something that would be difficult do. It would take some work but we'd like to take a crack at it.

MR. HEDERMAN: I wanted to clarify what I thought

I heard. So you want to know the volumes on fixed price contract, not just simply if there are reports on contracts that are indexed and that's a separable number.

MR. SKAINS: The index volumes are not reported to the trade press. The fixed price transactions that are reported that form the basis for the indices that are relied upon the index price contracts. The reporting is basically just the fixed price transactions. Whether it be day ahead gas or first of the month gas.

MR. HEDERMAN: I just wanted to clarify.

MR. PERLMAN: My question is if you've hedged a certain percentage of your monthly needs, and you match that up with your physical supplies that are indexed, you've effectively fixed the price.

MR. SKAINS: We have.

MR. PERLMAN: Maybe there is some way to utilize that fixed price and get that into the mix because that is the economic outcome that you see and if that's not being recognized then you don't have the whole picture.

MR. SKAINS: In that particular case, we hedge based upon the NYMEX product, which is at Henry to convert that to a fixed price at a hub and of course involves the basic issues and we'd have to negotiate the price at that hub point, which would include the value of the gas plus the basis differential.

MR. STICE: I think it's important to say you just got into one of the details I think that adds the wrinkle to where do you stop the information flow. John, your question I think was really valid. We really probably just need the additional information to make the assessment that you point out is necessary. I'm not convinced that we need the total picture as much as we need to know how many data points created the price indices that we're looking at. If we have that information, I think that can be adequate for us as market participants to choose. This is a good number and I think it's important to recognize it's not just a volume, it's the number of parties -- counter-parties that ultimately created that. That information itself will tell us how robust the number is, range and index. Then for whatever reason we're in somewhat a liquid point, then we can choose to either change the index for transportation cost, go to a more liquid point or possible to a fixed price transaction that's negotiated on a bilateral basis. The key is, get the information to market participants so we can choose. I want to make one other comment about liquidity because I think we probably have given the industry a little bit of a short change here. I can't remember the numbers but I would say that about 10 of the top 20 marketers of natural gas are no longer here today. I'd have to go back and verify what number that is. That is a huge economic shock to any particular commodity market. When you think about that, you should expect, as we have, a bit of a crisis on liquidity at various differing points. I think the market has faced that and is coming out of it already today, recognizing that it's to our benefit to put more fixed price monthly contracts in order to get the additional transparency and additional market intelligence. So we shouldn't react to what just happened because we just had an economic shock. The market is working its way out of it.

MR. MUSUR: Spoken like a true market participant.

(Laughter.)

MR. MUSUR: From the standpoint of a customer, indices are on indications of anything. The index is the price, that's the number, that's what we pay. There is no choosing between things. If I have to buy gas tomorrow, I can pick up the phone today at 7:00 o'clock in the morning and call 20 marketers and see what the price is for tomorrow or I can make a deal and say I'll give you -- deliver the Houston Ship Channel, plus or minus something for the gas that winds up being delivered. That's going to be the average price for whatever period you pick, say it's this week, say the price on finding for the average for the week and I did pay the high and I didn't pay the low, I paid the index. That number is my price. It doesn't change much.

It would be very helpful to me to now how liquid that is, how representative of the market is the number that I'm looking at because that plus or minus for how I negotiate this is going to be affected by that. Those are extremely important things to us. We're talking about the public utilities. Not all public gas utilities are buying index gas so that down that road there are a lot of them that -- the State of Illinois, in Illinois, the utilities buy gas throughout the course of the year. They try to spread their purchases out so you're getting basically the average price through the year. If they do any hedging at all, it's on the storage site so they have some storage capacity. So they pick when they're going to put what into storage and when they're going to pull out of storage. So you see this winter, when everybody was screaming, oh my god, look what's happening to storage numbers, all these public utilities who got their heads kicked in last year for the price of gas are saying okay, what am I going to do? I got gas in storage at three bucks, I've got in the pipeline at ten. Which gas am I going to use? It doesn't take a brain surgeon to figure that out. That's why gas came out of storage. It was the cheaper gas, not because demand was so high. So, they hedge all that stuff as best they can. Some utilities are under a little bit stricter scrutiny when they say how close to whatever the average price was or whatever the index price was and then are held to that magnifying glass but it's not all of them. The bigger problem for us is that we who value what that commodity does for us, you know, as a fuel, it's worth this month, as a feed stock it's worth that much or in a market that's twice as large, again as ours, with people who don't car what that price is because for them it's a pass-through under any circumstances. So that puts another slant on the market because they don't care what the price is, it's whatever the index is. Nobody has to work in getting the price down or finding mechanisms, so they're going to make this work a little better because they're hurt by the price.

MR. STICE: I have to respond to that Al. I'm sorry but I do care very much what that is. I'm a market participant. That is what we net back to our company, obviously and I do believe the market has choice. You do have a choice as to how you want a contract, even at the point of a liquid market, you can have contract terms that provides you the necessary out to negotiate an alternative means or alternative price for that gas. I think it's a little bit unfair to the participants of the market that everybody who is in it is captive. I think you create the contractual situation where you're captive, that's an unfortunate situation. You have to work your way out of that as a market participant and gain some sophistication so you cannot be in that position.

MR. MUSUR: I think this discussion is somewhat myopic. The major purchasers of gas here are also multi-national companies. You will see when the price of gas gets above say, three bucks a decatherm that plastic starts going offshore, fertilizers go offshore because the energy containing products are cheaper to buy here than they are to make here. If we're only looking at within our borders and we're playing around with this game, all we do with these systems is drive manufacturers out of here because you can't afford to live here.

MR. SKAINS: Let me just say for the record, the gas utilities in this country care what they pay for gas in this country. It's important for us, our shareholders, our utilities, gas prices we lose margin, our shareholder suffer, our customers suffer. We do take very seriously our gas-buying responsibilities.

MR. FLANDERS: Bob Flanders. I had a question to Mike Stice. Everybody here is talking about buying gas or selling gas at index. What do the majors do. Are you buying at index? I'm trying to wonder who it is who is actually setting the index if nobody is actually obeying it.

(Laughter.)

MR. STICE: I think one of the good questions is, who here reports prices. That's always an encouraging question. Obviously 80% of our members do report prices. The answer is, yes we buy at index, we sell at index. In my particular company, I lead the gas and power groups so I do have some intimate knowledge about how that works. What I would say to you is we have a portfolio approach. We make sure we have the market intelligence at all the points where our equity gas is exposed so that we now what fixed price is trading for each day, we know what monthly prices trading for at the month our gas will be flowing. Furthermore, we do have some of that gas contract and as you indicated six months in advance at market based prices so we are taking the index as our settlement price but we do not commit to that one-legged part of our stool. We create a portfolio approach just like you would in any of your own personal portfolios.

MR. FLANDERS: You are doing some fixed price deals?

MR. STICE: You bet.

MR. FLANDERS: What about AGA, LDCs?

MR. SKAINS: Just speaking on behalf of Piedmont Natural Gas, our supply portfolio, our contract portfolio has largely been based upon index pricing but we convert the floating index prices to fixed prices through our hedging program, through financial products. We sell in the day market from time to time at fixed prices. We have not historically purchased large quantities of first of the month gas at fixed prices. What would help us become more active in that market perhaps is seeing liquidity associated with the index pricing points that we're basing our purchasing practices on. If we're getting information that shows that liquidity is low, then perhaps we would choose a different strategy but we would like to see the information.

MR. BALLINGER: From public gases perspective is the same concept. A majority of the gas is purchased at index with hedging policies to take position on NYMEX to fix the price but for the same reasons Tom has indicated we'd like to see that same kind of information to see how liquid points are. I agree we aren't quite as extreme as Tom was saying. Two percent of the market was setting the other 98% of the price but we're not sure that isn't what's going on out there. We'd really like to know what is establishing the index prices so we can make better decisions about buying our gas supply.

MR. SKAINS: Let me just say that was an example and I hope an extreme exaggeration.

MR. STICE: I do to.

(Laughter.)

MR. FLANDERS: It looks like we gotten in the situation that the marketers were basically doing the fixed price by sales on the edge and everybody else was following along. Now you have a smaller set of marketers and I'm not sure who is stepping up to the plate to do the fixed price deals now.

MR. STICE: I think you raise an important point. The understanding most of us would have from reading the newspaper would be the absence of what you're calling the marketers, the energy merchants, hasn't been a good thing. The bad guys are gone is the way you would read it in the newspaper. I think the reality of it is, that when you lose liquidity, it basically creates an exaggerated problem, like Tom just described. The one thing marketers did provide are narrow bid-ask spread. There is always a buyer, a seller and a set price and they are there for you and so you had a fairly narrow range. So you had a fairly narrow understanding of what the prices are. The markets evolve into where each and every one of us who may have gotten accustomed to selling and buying gas at index now needs to abandon that strategy and have some gas bought and sold at spot, at all the various trading points so that we can have somebody replaced of every data and information that we need for price transparency. I think you're seeing the market do that today and it's evolving.

O'BRIEN: I would just finish up that comment saying that there are people moving into to replace the marketers and I think one of the point of this exercise is to make sure that they don't get to the point that the last group of marketers did, where it became easy for them to provide false information and to manipulate the market. We just don't want to have that. The great tragedy of this would be to have somebody come in and recreate the new Enron on the ashes of the old and put us right back in the same situation we are today.

MR. HARVEY: You've all come in and ably represented the organizations that you do represent today and I think what we've heard is a lot of agreement that there is a problem. Some disagreement in terms of where to go with the problem. I guess what I'd like to do is ask a question based not on the various organizations you represent but the companies in which you are to some degree or another decision makers. Despite Mr. O'Brien's self-professed lack of substance of authority and kind of ask the reverse of Andrea's earlier very, very good question. I guess my question is, as you head back to your offices, as you go back to the organizations that you run, we need to work through this, you need to work through this as an industry. What can, should, will you guys be doing when you get back to help take the next steps in the process of resolving this issue? Anyone can start.

(Laughter.)

MR. BALLINGER: I think what we'll do is take the information, particularly new information that we've heard today to go back and evaluate, particularly SROs. Any other comments that were made today to re-look at our position and see if it is in an appropriate. As I said earlier, my personal position when this started, I was definitely on the side that this should be -- the industry should take care of this but as I continued to evaluate the information that was out there and began to better understand the process of establishing indexes, I have moved completely to the opposite end of the spectrum. The proposal that a mandatory third party process is the best place to go to preserve the index, the collection of price information for the long term, I think personally as well as an association -- as an association we flipped a very open-mind in this process and looked at new information. We won't treat that any differently today than we have previously. We'll work and then cover every rock again to look and see if our position is still as sound today as it was or if there are other alternatives that look more appropriate, I think we'll continue to do the same things we've been doing all along.

O'BRIEN: I can speak for Apache. I know we will keep doing what we've been doing. We've been talking to a lot of people, trying to get some input from what we consider to be our constituency, that's independent producers, we'll be talking to them, be working with EMIT, be trying to frankly get the word out. I guess what's the saying, the first step toward fixing your problem is admitting you have one and I guess just about everybody today has admitted with a couple of exceptions that this industry has a problem and it needs to be fixed. I think the crunch that we're going to run into here pretty quickly is, again I go back to, if we don't put independent producers back to work putting gas into the front end of the pipeline, all the wonderful and expensive infrastructure all the way downstream from our well-boards to the burner tips end up to be so much rusting metal and wire, we've got to put small independent producers back to work. We've got to restore that confidence and we'll be willing to work with anybody in the industry at this point to do it but we do have a problem. Your report -- your 400-page report indicated the depth of that problem. We hope that the industry will come together and we can find a consensus but if we don't, somebody is going to have to find a consensus for us frankly.

MR. MUSUR: I don't understand the question.

(Laughter.)

MR. MUSUR: I'm not sure I understand who the industry is and I think by anybody's definition of it, I'm not in it. I'm just a customer. What we're going to do when we go back is continue to do what we have been doing.

There are so many things wrong with the natural gas business from one end to the other. This is only one little small piece of it. It's our belief that anybody who has anything at all to do with this to making it different than it is today has an obligation to look at this and try to get natural gas from the producer to the consumer in the most economically efficient manner possible. That's the goal for anybody. That runs this way. Across there is an industry, it provides some benefit to this process because it adds some additional trading volume and provides liquidity and provides transparency etcetera, but it becomes the industry to the exclusion of that peace of getting gas delivery at a price everybody can afford. Then we do ourselves a disservice. We have to remember all of this goes back down to what's that commodity worth? When it's ultimately consumed, we get back to more supply and demand fundamentals than we have today with the market structures we have. We're going to continue to work on those ideas in any form that we can get our hands.

MR. SKAINS: We will continue to work through the AGA's task force with all the other participants at this conference on effective and viable solutions. I think we've heard proposals this week, some of which were fresh and new, that require and deserve examination. We haven't given up hope that the industry can come up with solutions on its own and present those solutions to you and other elected officials and government bodies as to the best course of action to pursue. We believe we can find effective solutions to improving the indexing process. I would encourage the FERC to keep the pressure on, stay involved, the idea of follow-up workshops, status reports. You're doing a very effective job already and can forge some common ground. I heard some things today that did not exist a month ago. I bet you if you keep the pressure on and the industry works together, we can find effective solutions.

MR. STICE: The first thing I'm going to do is sell Al some fixed price gas.

(Laughter.)

MR. STICE: After I do that deal --

(Laughter.)

MR. STICE: I'm going to go back to our organization much like Tom said. There is an enrollment exercise, enrollment around this concept of SRO, which is refreshing and neat. There is a lot of details. I want to unravel those details and make them a little more transparent to our leadership and as the Issues Committee of the NGSA kind of explore further, what does that mean with regard to some of the questions that come up around the details of reporting counter-party information, etcetera, with an SRO in mind. I'm like Tom, I'm really encouraged by the progress that's been made in gaining some sort of alignment around as Obie says, there is a confidence problem, we need to solve it. I'm real encouraged about what could happen here. I, too, believe and have hope that the industry can solve this for you and bring you a solution but as Tom said, keep the pressure on.

MR. KRUSE: As INGAA, I guess I'm echoing AGA and NGSA now. We think conferences like this help spark ideas and allow us to communicate with each other. When we don't have conferences, when we don't meet, we communicate with you and that does not necessarily mean that we're listening to each other as much as is sometimes hoped. So I would hope that all the people in these conferences as that happen in the last couple of weeks, been getting ready for this one, we'll be meeting, talking, trying to resolve this, recognizing that they have to meet your concerns as regulators as well as the market participants.

MR. HEDERMAN: I had a quick details question for Mike than if any of the earlier speakers felt they had a point to make related to this, you might head over to a mike but in your principles for government involvement, the federal government has an overview role, I was wondering where overview was on the oversight -- overlook continuum.

(Laughter.)

MR. HEDERMAN: It sounds like a compromise word there.

MR. STICE: I'm not sure we were that careful in choice of word.

(Laughter.)

MR. STICE: I actually think it's important when you think about the confidence we've lost here of late. I think you would argue that we were probably too close to the overlook end of the continuum. I think if you look at the role that FERC has been playing in the last six to nine months, maybe a year in making sure that wrongdoers are found, that ultimate the U.S. Attorney General's office is pursuing those wrongdoers with the full intent of law. Everything FERC has been doing as far as the reports and the transparency they created when they go and they dig into the details and provide it to the marketplace, now you're into the overview side of the word. Oversight means different things to different people but I actually believe that FERC's role where you are right now in ensuring that you keep the pressure on and you get to an industry consensus solutions is exactly where you need to be. I don't believe, indeed it would be crossing over I believe if you became the index reporting process, which I don't hear any intent to do that. I also think that you can become much too involved in the real time aspects and details so I think that is not a role for FERC to play.

MR. HEDERMAN: Okay. Don?

MR. GELINAS: Mike I can't resist. You know, in the area of oversight and keeping the pressure on, we've talked about counter-parties and the sensitivity to it. I hear quite a few of you have at least come to the conclusion counter-parties are necessary but leaving all that aside for a minute, I'm more and more coming to the notion that restoring confidence, and I think that's what's epidemic here, a lack of confidence and that lack of confidence stems from a lack of people knowing what was in the black box. I've heard a lot of suggestions today. In your view, and Tom as well, this oversight, overlook, does it include an ability or is there a necessity for this Commission to have some sort of audit responsibility over the numbers that are coming out, not necessarily doing them, not compiling them, not being in the business of them. I think Al mentioned audited by FERC. Is that part of the mix of restoring confidence in your mind or not?

MR. STICE: I actually think there is a role there I'd like to elaborate on. The first part of your question has an implication which I think Al stepped on earlier. We can't define the industry as them. It isn't someone else. This industry isn't simply the middle man. What we're talking about here is the industry that begins, I'm in it as a producer. Consumers are in it as consumers and all the functions necessary to make that economically efficient delivery, we're all in it together. We've got to start there. The original premise is we're in this market together to make it work. The second premise then, getting on to your question is, to do that I think is better administered by an industry solution. That industry solution could be a greater tweak to the problems we've identified in today's meeting to the existing new service approach or it could be that a matter of a comprehensive SRO approach, it could be the inclusion of counter-party data. In these requests, I wouldn't presume to know exactly what the answer is but everyone of us have to be in that conversation, not point fingers that I think it's that other guy. That really did it to me because it's the victim mentality that I think is unfortunately prevalent in what gets created as the rhetoric. I agree with your point Don. The real epidemic here is the crisis of confidence.

MR. MUSUR: If I'm part of the industry, then I fear that end-use consumers are woefully underrepresented by just my presence here in the process.

MR. GELINAS: Tom?

MR. SKAINS: In terms of external audits, over the index reporting and disclosure process we support that. We believe it's necessary whether this Commission has an appetite to engage in that or whether you want one of the big horde (phonetic) I don't know.

MR. GELINAS: But you're open to that.

MR. SKAINS: We're open and do believe there is a need for external audits of the process.

MR. GELINAS: That's helpful. I'm just trying to figure out. Andrea this is back to your question, what can we do and what can we not do.

MR. BALLINGER: For our perspective, we strongly support the audit function, that you're there looking over the back. We wouldn't want to see another California situation but if we did, we wouldn't want to see it take two years to get to that.

MR. GELINAS: I can't take 13 more months like that.

(Laughter.)

MR. GELINAS: For that alone, we're not going to do that.

(Laughter.)

MR. HEDERMAN: I appreciate your work on this panel. Thank you very much. We'll take a break and come back at 2:45.

(Recess.)

MR. HEDERMAN: Please take your seats. On this last panel, we'll be getting comments from a variety of other perspectives. I was going to ask for comments from the audience. I don't know if we'll have time for that. We're happy to see we're provoking useful discussion. Let's move on though. Steve do you want to get the panel rolling.

MR. HARVEY: Sure. If you guys worked something out, that was a good use of the extra time. This is our last panel and we'll get sort of a variety of views, in particular one of the things that I think we're all recognizing more and more over time, is the interconnectedness of a lot of markets. We wanted some representations from some financial houses, financial trading efforts. Also some insights and some perspectives on the structure and activities of these markets as well. Given that, as Bill had said, I'm not sure everyone heard, we're hoping to save a little bit of time at the end and get any comments from the floor. Remembering microphones in either side. You might want to start working your way there as we wind down in this case but let's go ahead and get started. Ms. Ferber. First of all I'm pleased to have the opportunity today to present comments on behalf of Goldman Sachs. Since I'm on the Financial Houses' panel, let me explain for the people here who are not familiar with our role in the market. For those of you who are familiar with Goldman from the trading side, we are an active trader in oil, natural gas and power as well as other non-energy commodities. We entered the oil market in 1986 and spent most of our early years concentrating on physical trading, physical delivery. We're also helping develop the energy derivatives market. We began trading actual upper natural gas in 1994. We are one of the most active participants in this market taking into account both the physical and the financial transactions. We're also active contributors to the physical gas indexes at major locations. We've been in the power trading business since 1997, first through what was essentially a joint venture with Constellation and since late 2001, trading power as J. Aron. We're coming into the market at a critical time to begin adding liquidity. We also developed the Goldman Sachs Commodity Index back in 1991 which is a world production rated index which includes 25 commodities and which there is currently over $10 billion invested and which is the subject of a liquid futures contract trade on the CME. The point being that we are well versed in building and maintaining daily complex indexes. Frankly I feel a little lonely up here. I maybe the only person presenting views on behalf of a company who actually reports trades to the reporting services. As one of the remaining active traders who have the credit worthiness to maintain trading organizations. I do believe however if any of my colleagues from the other investment banks and trading houses who have stepped in to provide critical liquidity to the market were up here with me, I think my views would be generally representative of theirs. Against that background, let me say although we are not members of the Community of Chief Risk Officers, we are generally very supportive of the best practices that have been laid out for energy price indices. We appreciate how far they have taken the industry in building consensus around the importance of rigorous important protocols. We also appreciate the CCRO recognized that we provide an important liquidity to the market and therefore treated us as stakeholders for the purpose of commenting as they were developing their best practices. Our major focus was on transparency, tradability, which we haven't heard very much about today, as well as verification and audit. For example, we felt very strongly that disclosure of counter-party names and whether a transaction was a buy or sell were critical to index calculation. I couldn't believe how difficult a sale this was to people. We think it's very important that CCRO ultimately adopted this view and although I listen very carefully, for example, to the last panel, I cannot comprehend any legitimate arguments by any companies for not disclosing counter-party information, provided of course, the appropriate confidentiality agreements are in place. Let me highlight certain points. Let me go a bit further than the CCRO and the index publishers have gone so far. CCRO best practices would require that index providers disclose their methodology. I believe that index methodology should be an ongoing handshake between the index publishers and the industry. Only in this way will the indexes a market relies upon remain living, breathing indices which can be adopted to changing market conditions. Only in this way will the major liquidity providers and remaining active trading companies feel comfortable contributing their data. So for example, we work very closely with major index providers to clarify their methodology, focusing primarily on the issue of when assessments occur. We believe that whenever a pre-determined threshold of transactions by volume transaction count and diversity of counter-party is met, there is no room for generalistic assessment of the market, only actual transactions and all transactions should go into the index calculation. We recognize that certain more thinly traded hubs, there may not be enough actual data submitted to meet the threshold. This Platt's approach has described today is a good approach but at in at least the first and second tiers, there shouldn't be an assessment unless the threshold is actually flunked. We actually encourage Platt's to make its assessment methodology public. We believe that the assessment methodology must provide an appropriate weight to actual transactions and bona fide verifiable bids and offers and only include market reviews where this other information is not sufficient because of the well recognized stable relationship between locations which may appear to have been disrupted in the data that's submitted. Finally, this will require index providers to sometimes say n/a, the do not have enough information to produce a reliable assessment. We think they need to be commended when they do that. I know index publishers get a lot of heat when occasionally they can't come up with an assessment. It's greatly preferable to an assessment that's based on inadequate information. Why do we feel so strongly about minimizing the need for assessments? The answer is simple. First we are active liquidity providers for the market. We trade not only the physical gas but provide constant bids and offers to our customers and to the market for financially saleable swaps based on the physical indexes. The less transparent and predictable based on market activity the index is, the less we can manage the risks associated with making these prices and frankly the less we trade. The fact that we're in the market everyday at major locations and still sometimes find it hard for the indexes to come out, sometimes by as much as a nickel highlights the problem. We believe better disclosure of index methodology, including clear threshold, designed to limit or avoid the need for assessments, to get over the increased reporting of transactions by the industry will take most of the guesswork out. Frankly, it's improved already, at least at the major hubs. As the number is an assessment regardless of whether it's asterisked in the publication of not. That probably means that we didn't have a chance to trade on that number and therefore couldn't manage the risk of the physical against providing it in the financial sale of swaps and providing important hedges to the industry. We've also expressed to Platt's and other index publishers the need to change the methodology and the time of the publication for bid week. Information should be published daily on where the index is so far, including whether sufficient trades have taken place to avoid the need to assess the market rather than set up a large volume of transactions depended on that monthly index based on an assessment if Platt's matrix made this information available each day, then the trader can see if there is sufficient reportable transactions occurring during bid week. If not, make sure they that they are showing bona fide bids and offers which will result in a portable transaction. If that information is out there on a daily basis, shame on us if we ever let a market have to flunk the threshold and have it settled by an assessment. Market transparency will be greatly enhanced and traders would feel confident in continuing to provide liquidity to the market. We understand that moving to daily reporting during bid week would require some companies to step up the time of their reporting. We believe this can effectively be accomplished especially for a realistic deadline for starting this kind of reporting and would also provide for a much more transparent indexes and would all suffer less surprises on transparences and tradability. Let me also stress how important it is for plants and other data providers to make their data open and available to all markets. We believe the more the indexes themselves are transparently traded on existing open platforms, the better data quality we'll get on the physical side as people manage the risks between the physical and the swaps and the entire market will see the price discovery process, including all the deregulators. On auditing, let me just say, I commend the strides Platt's and other index publishers have made and I believe all data providers and index publishers should be able to satisfy the CCROs standard for auditability. Also strongly recommend that the index publishers need to respect the same distinction between back office and front office processes. That is data collection is essentially a back office quantity calculation function, only when the data provided flunks the minimum threshold for index calculations should a journalistic assessment function occur. Only then should out data be sure with the index developers or upfront office journalists which need to be considered in light of other market information. Maintaining the separation should give companies increased confidence to report transactions in conjunction of course with robust confidentiality agreements. Let me make a few last comments for consideration. I believe the industry has established a framework for reporting that will work and restore confidence in the index process. I think we're well along where all of us who continue to talk about all of the problems of the last couple of years, frankly do a disservice because we've come a very long way. I know CCRO and others have been sensitive to concerns of regulators. Clearly Goldman believes that index development is best kept at competitive commercial function without data dissemination for either academic, journalistic or commercial purposes. Frankly, we don't maintain a complex trade organization with a thorough and expensive processes that we do to hand our data over for unrelated academic or commercial uses, including the development of competing analytical tools, for example. Yet, we recognize that robust indexes are critical to the natural gas industry and we actively contribute our data and willingly share it with any regulator. I do believe that FERC has a role to play in encouraging companies to report transactions and comply with the voluntary protocols. If necessary, I believe FERC should make it clear that we reassess the quality of index reporting after, for example, 180 days and determine that a voluntary scheme for reporting has provided sufficient liquidity and transparency to the market failing which I believe it has the additional authority it needs to require companies to report. Finally, I believe the industry should consider including in their confidentiality agreement with index developers, an agreement upfront at transaction level data provided to the index publishers can be shared with government agencies in response to appropriate investigative subpoenas. Frankly, we at Goldman don't believe it's necessary and there is no appropriate basis for any company to refuse such a request. However, to avoid any doubt on this disclosure issue, to give advance comfort to those who worry about the First Amendment and to give additional comfort to regulators that they won't go through the long court battles that they are suffering today, this provision should be included in our agreements up front. As you can see, I have not really addressed the issues of SROs, which is the major subject today but I'm happy to take questions on that and I'm sure I'm going to get them.

MR. HARVEY: Thank you.

MR. DODD: I'm Randall Dodd with the Derivative Study Center. The Derivative Study Center is a project of Financial Policy Forum which is a non-profit research institute that receives so far, entirely grant money so that it's independent of people from the financial sector as well as the energy sector, so our research is designed to be done in the public's interest. I really appreciate you inviting me here today to help make this conference one in the public interest. Natural gas, both of you look at it from just any reasonable economic evaluation or as stated in the regulatory statute, has a national public interest so it's important I think that we have these public discussions to include those concerns and not allow ourselves to dissolve into the Executive Committee of the energy industry. Having said that, I'm also at the end of the session today and a lot has already been said. I think most of us have absorbed a whole lot. I know I have learned a tremendous amount and my systems are on full absorption and about ready to be wrung out so let me try to provide a little bit of value-added. I think we heard already a lot about some of the concerns about the limitations of the private sector's ability to provide price indices. Sure, they are liked by some people but they also have some limitations as we've heard throughout the day. One is concerns about confidentiality, about the integrity of the information if given. What wasn't mentioned was the consistency of providing the same indices over a long period of time. The fair dissemination of those indices to all market participants, and also sometimes, they are a natural monopoly, and that's just a short list. Let me, in the wake of that, talk a little bit about what the role of the government might be a public entity, whether it's the government per se, like the FERC or the Energy and Information Agency or whether it's a government regulated SRO which has its own authority and mandates by the statutory language. When I think about this problem, to me it doesn't seem entirely new. Many times you feel you're rediscovering a wheel. You need to look both ways before you cross the road because you're going to get run over and if you look at how people go about creating indices, just look at the record. The U.S. Government has the world's best economic data. Everyone looks to us as the standard. We're really very good at it frankly. In particular, if you look in this particular instance of collecting data for the use of pricing financial contracts, there is already a track record. They trade futures at the fed funds rate, calculated by the fed funds rate which is a price and volume-weighted indices. You've got, also in the private sector, you've got futures traded on live cattle, which is done with their own market survey. You've also got treasury securities based on the labor department price indices, you've got several instances where these problems have been solved. They resulted in some extremely liquid markets. I suggest that you follow up on today's conference by looking at some of these and learning from what's worked and what hasn't worked. For example, the milk exchange didn't work very well with fair price indices so you could factor that in as we continue to develop. What apparently the Government has done, has to develop in many instances, indices that work and one of the reason I think that they have been able to be successful is that there are certain advantages of being the Government the private sector doesn't have. Those have been brought out today implicitly by talking about the problems in the private sector. One is the Government has a lot of experience already in protecting confidentiality. They survey individuals, industries, even individuals and consumer finance that's all kept confidential. Once they maintain and kept that confidentiality of that information, they tend to share it both fairly by letting everyone have the data at the same time. Those morning announcements of the GDP inflation or whatnot that are so critical for the market, it's very important that it's released every week at the same time, so that everyone knows how to react to it. The Government does that every week. They do it very well. Thirdly, they give the information out for free so independent scholars and students can study the market. It helps come up with better ideas. I'm sorry they compete with some of the existing research that's been done on Wall Street but that's a good thing. It allows watchdog organizations like me to come up with information and keep an eye on things. It allows academics to come up with better options pricing formulas or whatnot. That data will help us all in the long run. It needs to be available to us all. And Government does that already. Another thing is that Government's methods are very scientific and they're very transparent. The Government goes out and they do a census of the market so when they do a sample type of approach, they know that's scientifically valid sample. You know what your margin of errors are. I don't think Platt's has got a census of the market and knows the scientific nature of its sample. I don't mean to pick on Platt's. They're the most famous so I'm just going to give you an example. The Government does that in a way that's transparent and in a way that's scientific and I think we all agree that's a good thing. Moving on, another advantage that the Government has that the private sector doesn't have is a consistency over time. If you're going to trade 2, 5, 10 year derivative contracts, we all know how important it is ultimately to have long-dated derivative contracts for risk management in the energy sector. You have fixed physical assets that depreciate over 20 years. Why is it you're using 90-day hedging instruments to manage your risk. Ideally you want people to go to longer-term contracts. If you're going to price longer-term contracts over index, let's all hope the index is around throughout the life of the contract and the Government has the advantage in that, they are going to be here. If the Government isn't here, you've got bigger problems than your swaps time, okay.

(Laughter.)

MR. DODD: That's something the Government has done in the past. Our economic data they've maintained the consistency. The Government is going to be here. That's a problem that can be solved by an entity that has that dependability. Another thing that one of the Commissioners from the CFTC said is incentives. What do you do with the problem from the private sector point of view if the people you're trying to collect data from don't have any real incentive to give it to you? Everyone wants to horde information. You'd want to horde our research, you want to horde our own knowledge of what the market price is. This is natural. It's to your individual advantage. The market as a whole, the economy and society as a whole needs to have price discovery. So how do you reconcile those? Well, it's hard to get out enough cookies to bribe people to give out the information. The alternative to that carrot is the stock. You say I'm sorry, but we're going to require you to disclose honestly the information. I hate to require you to be honest, but you really should be honest anyway. The consequence of that would be, that we'd all be better off because we'd all have better priced discovery process and the incentive would be, you're otherwise criminally liable for your conduct. That's a unique thing the Government can do that the private sector can't because as one gentleman pointed out, if you make them sign this master agreement waiver, what I'm telling you is, I know it's the truth but if it's not the truth, don't come to me to complain about it. It undermines the integrity of the index because you just waived away any liability for telling a non-truth. The last point I want to make is that the Government can also produce a single index. If these indices are natural monopolies and there is a good reason to think they are, why not have one best provider of the index, whether it's government or SRO.

A single index has a lot of advantages. Multiple indices create, in some sense, noise. People have to spend a lot more time evaluating different indices. If they don't provide a lot of resources into it, then they're providing less resources to each index and it gets diluted. In the end, you get less analysis of each index at a higher cost, which is not a good thing.

Secondly, if you just look at the principle of derivatives pricing, you know that you get a better derivative, if you have a single delivery point on the contract. The biggest fight with CFTC in the last 10 years, I suspect, has been on the single point delivery on their corn and soy bean futures contracts.

Why have multiple indices? It seems like letting a thousand flowers bloom may work for some political movements in some countries; but for pricing derivatives contracts, maybe a single pricing point is the most efficient way to go.

The government is one way of resolving the fact that it's an actual monopoly. Therefore, the government or SRO would then share that monopoly right at zero or low cost to everyone. You wouldn't have that monopoly, then, refusing to allow other exchanges or entities to trade contracts based on their privately-owned index. In that sense, it would not retard innovation. The government program would actually encourage innovation, because it wouldn't have its monopoly threatened by fearing that.

These are just a list of things that I felt weren't mentioned enough throughout today's talk, that we should keep in mind when we're trying to develop what's really best for our national economy to get this energy market going again. Thank you.

MR. HARVEY: Thank you. I can see our plans for a quiet last panel have been blown, at this point.

(Laughter.)

MR. HARVEY: Let's go ahead and finish up with our final panelist before we get into it.

MR. WOLAK: It will only get worse. I have two points that I'd like to talk about. The first concerns one of the questions that Steven raised earlier first thing this morning. The second point concerns the role of formal balancing markets in electricity versus natural gas and the integration of electricity and natural gas market monitoring.

Let me first just sort of restate what I think was the last question that you asked this morning, which was what standard should the Commission require of price indices that it uses in regulatory proceedings. I guess the way I see it is that providing information to market participants on conditions in the market, including current market prices in the industry press, is much different from setting prices in a regulatory process.

Similarly, clearing a forward contract against one of these published indices, I think, is, also, very different, simply because parties to this forward contract accept the risks associated with using this price index. I guess here, we can at least understand the argument for voluntary reporting, to construct price indices for these two purposes, but for the case of setting a regulated rate, based on a price index. I think allowing this voluntary provision can subject this index to more stress than I think it can bear, in many cases.

I think this relates to the point that Ellen Beswick made earlier today about utilities buying index contracts to avoid prudency review from their state commission is an excellent example of this. The other, I think, comes from California. The runup in electricity prices in California during the winter of 2001 was really enabled by the fact that electricity -- allowable electricity prices were based on published gas price indices, the so-called soft cap, which really enabled generators to bid significantly higher than quote cost justified.

So, I think given this history of problems with using the price indices, you want to think about what should be the standards, in a sense. I think Michael McLaughlin hit on, I guess, actually the right point, which is what standards should the Federal Energy Regulatory Commission mandate for a price index, in order for it to be used in a regulatory proceeding.

This follows just simply from what I think is the major lesson from the past few years since running electricity oversight and market oversight, that more information is needed to monitor and regulate a wholesale market, than is necessary to monitor a politically integrated monopoly. And I think the standard features of a price index should be largely to see what's contained in the CCRO proposal with the following sort of additions. In particular, I think there should be reporting, I think, as part of the market based rate authority for gas trading.

FERC should require mandatory reporting, in order to get the buy side of the transaction. I think they can, also, coordinate with state PUCs to get their investor-owned utilities to report the buy sides of their transactions. So, that is going to give you a lot of coverage.

The other is, I think, that there should be, also, along with the issues of counter-party identifier, the buy-sell identifier. There should be information on the level of volumes, the number of market participants, and other things, to assess the depth of the market.

Finally, I think it's very important that the caveat that is in the disclaimer and the CCRO proposal not be there. It should be subject to independent validation by FERC and, therefore, FERC should be able to ask for justification on any transaction.

Why do I believe these features are essential? First, without transaction level data, as many people mentioned today, it's going to be virtually impossible to even have a chance of getting anything like wash trades. The other is without counter party and buy-sell identities, it's going to be even more difficult to detect wash trades, as well as inflated trade volumes. All I do is simply write down more transactions, if I want to inflate my trading volume, and how do you know who I transacted with.

Effectively, getting transaction level data without counter parties, I really don't see what that gets you, because you don't really have a way to cross check. The other, is I think the minimum volume level and number of market participants on a sort of say monthly or weekly basis, I think that's sort of information is useful, to avoid the index of indexing problem that was talked about earlier.

In particular, you can set minimum standards, if there isn't this many participants in the market over this horizon -- this number of transactions over this horizon.

Then, the index can't be computed off of this. That will help to really solve a lot with the thinness of market problem, as well as solve the soft price cap problem in California, a similar sort of thing where there was certainly a small number of trades driving a huge runup, particularly the runup in December of 2000.

The other is the issue of no independent validation. It think once again here, the answer is quite simple. If there's no cause for me to be truthful and it's very profitable for me not to be truthful, you've got a serious problem, as we once again also learned in California. So, I think it has to be backed up by the ability of FERC to validate, or else you're not going to get people complying.

Finally, I think the issue of releasing the data to FERC, to verify and validate, just goes along with that, as well. Certainly, a controversial statement, I'm sure, on this, but I think something that is a great way to get free research and free analysis is releasing, at least to this data, with a six-month lag, say, somehow aggregated. I find it very difficult to see how this is harmful to market participants or harms their confidentiality.

This was a similar problem we ran into in the electricity market, in that several of the market participants said that releasing the data would reveal their confidential bidding strategies. It certainly hasn't seem to be borne out by the release of the data.

My second point concerns the differences, which I find very striking, between the Commission's approach to electricity versus natural gas oversight. The standard market design envisions, in electricity, a FERC-mandated open access regional balancing market, using locational marginal pricing. These regional balancing markets come at considerable cost. That's not to say that I don't think they are very useful, whereas natural gas, there is no FERC-mandated regional balancing markets.

In some sense, it's hard to see. I don't know how much you move the gas model to the electricity model, but there certainly is a large literature in economics that argues in favor of significant consumer benefits to formal bid-based markets versus bilateral trading mechanisms. I think the figure quoted by Charles Vice earlier today, on the next day market run by ICE seems to indicate that market participants find significant benefits from these markets.

I guess one of the things I would just throw out is to say, I think the Commission may at least want to think about the issue of essentially regional balancing markets, similar to RTOs for natural gas, where essentially these are places where entities can essentially bid in and sell their unused capacity or whatever they want on the day of basis.

Essentially, this would set an imbalanced price.

I think on a cost benefit basis, in terms of the benefit of transparency, the additional cost may be worth it. In this regard, I think it's important to just think about the issue of the PX. Although it was much maligned earlier today, one thing that it did to was provided a price of electricity in California that the market trusted. Moreover, many contracts in California, clearly not enough, were written and cleared against this price.

You know, I think here, that an open access balancing market can essentially both serve two roles and, in some sense, kill two birds with one stone. It can provide the data collection sort of SRO function that people have been talking about earlier today, as well as provide this sort of short-term balancing and transparent market.

It seems to me, you can't avoid some sort of entity, because if you're going to require some entity to enforce the more stringent standardized data reporting mechanism, you're going to need someone to collect this information and it's just a question of how large this entity is. I think this sort of model is a nice way to get the information collected by an independent neutral non-profit party. On the other hand, this party can provide the sort of balancing function or similar sort of thing.

Finally, if that model is not a model that you think passes the cost benefit test, in terms of the benefits of this transparent bid-ask market to the consuming public and producing public at large, it exceeds the cost of keeping it in place. I think there's a way to provide, if you like, a significant strength in the S market monitoring and, in place, transparency, as well as reduce regulatory redundancy that is under the standard market design.

All RTOs are required to have independent market monitors. These are independent electricity market monitors and one of the functions they can, also, serve as this independent entity is as the collector of the gas price data, as the disseminator of this information. Moreover, I think that both the electricity and the natural gas market monitoring functions would considerably benefit, because, certainly, one of the lessons that I think has been learned from all the markets is that the object of the game is to hide the money. And if you can't hide the money in gas and if you can't hide the money in electricity, it becomes a lot harder to hide the money, so to speak.

I think, in that sense, there are very large potential benefits out there, in terms of market monitoring, and given that there are the SMT envisions this, this would be an excellent way to leverage.

MR. HARVEY: Thanks. I'd like to start by offering Ms. Ferber a chance to make a comment or two.

MS. FERBER: One is this concept of government collection of data. This really obviously goes to the SRO concept, too. I don't think FERC is particularly well situated right now to be the data collector and to be the data publisher of indexes that need to be published on basically a daily basis. I think FERC, with its own experience with EQRs and everything, it begins to show the difficulty with that, and then besides all these examples of the government collection of data. It's something I happen to know a lot about.

I wear two hats at Goldman Sachs. One is being the director of the power business and the other is launching a new business called Economic Derivatives, where, for the first time, we're running auctions on government statistics and non-government statistics. So, for the first time, for example, you can take a position directly on a non-farm payroll release. First of all, that's done monthly. It takes the government a very long time to collect the data and every month when they release it, they release the front-line number and the huge collections, the one-month old number and the two-month old number. It may be scientific, but it's slow. It's not what people need for daily indexes or even for the critical last five days for the monthly index.

MR. DODD: There's daily data, as well. There's quarterly data and there's monthly data. There's weekly data and there's daily data.

MS. FERBER: There's daily data. If you look at where it comes from, the kind of institution and the state of it and how ready they are to report, it's hugely different. People, also, criticize the disclaimer. We've heard that here about criticizing the disclaimer the CCRO would make about the waiver of liability.

First of all, I don't think that's permission to tell a non-truth. And this goes, also, to how long it would take to establish an SRO or some independent third-party in this business. But, a lot of it goes to the state of the data that's sitting in trading companies. Goldman probably has the most real-time systems of any trading company, so that my back office gets the fee almost as soon as I DG in a trade. Most firms and a lot of people, who are not active traders, if they even know their trades by the end of the day or the next morning, that's great.

The reason for the disclaimer is, I'm going to report the best information I have. But, if someone says, if I haven't gone out and listened to a tape, to make sure every trade was entered, or I don't wait until I get my confirmations, if I'm lucky enough to get confirmations from counter parties, I'm not absolutely certain of that information. That's all that disclaimer of liability is for. It's, I'll give you the best I have. But if that information turns out not to be true, because I subsequently have to collect my trades, how many times do I think I sold to somebody and that person thought they sold to me, and when the confirms get matched, I find to have an out trade, that's what's meant to go. So, I think a lot of those comments are wonderful concepts for the future, but they don't go to the state of information today.

What I'm looking for is how do we get confidence restored today. We can talk about a lot of concepts that would cost millions and millions of dollars to build and that can take at least two years to put in place. I don't know if you expected me to respond to any of the other comments.

(Laughter.)

MR. HARVEY: That's great. I have one question and it's really not a question you would necessarily expect. But, again, to you, Ms. Ferber and Goldman, you all traded natural gas starting in 1994. So, through the period studied in the western market study and other periods, as well, I think we all agree. I don't think there's been any disagreement that the information that's come out of the western market study that's come out through the press and other places has critically undermine confidence in the price index system. But, you, also, don't go beyond that.

You built positions, eliminated positions against those prices throughout that relevant period. How concerned are you that you suffered real damages in that process?

MS. FERBER: That's a tough one. I actually did anticipate that question, as did some people, and actually called the head of our natural gas trading desk today, to ask that question. He said, look, I don't know what it did to the bottom line. Frankly, on any day, because, again, there's a lot of slippage in these indexes anyway, I can tell you what it did on any day. There's a point in time that I can go back to critically, December 2001, I know some of this.

But what's so much more important is the loss of credibility, which has been crushing to the trade and the hedging discussed. It's been far more serious than any single event or any day's index that got manipulated. That's what's cost millions of dollars in trading and billions of dollars in losses for shareholders. That's really the focus. There is, again, so much slippage in these indexes. That's what we're paid to do, we're paid to manage that basis risk. We just want a fair chance at it.

So, again, it's why we believe in getting as much trading as possible in transparence trading platforms. You can see during the day how it's developing. If an index gets published that doesn't fit what you saw out there as the trade volume, folks are not going to give you anymore signals than that, to make sure that the market monitoring group springs into action. Nothing could be clearer. That's why we're such a fan of transparent and tradable markets.

MR. HARVEY: I'll ask another question. Structurally, the natural gas market, as it is today, has a lot of basis to it. There's a lot of location. There's a lot of uncommon descriptions of products. Even if we were to develop -- well, we will develop more confident in the reporting around all of those markets, but the illiquid markets won't go away. All of you are qualified to talk about this from different perspectives. How do we deal with illiquid markets? How do we deal with information transactions going on there, to the extent that we, the Commission, need to be looking at it or in terms of building confidence in an effective marketplace?

MR. WOLAK: I guess one thing that I think, is particularly puzzling to me is I would expect a more competitive natural gas market storage capacity would be far more in much larger demand. That's why I think the interesting thing that is different from electricity is the fact that storage is a potential source of supply, that you can manage a lot of the finesse in the market through storage facilities. In electricity, that's just not possible. I guess that's something that I guess I think is a bright prospect for natural gas, is the fact that those sorts of actions can occur.

The other side is just the issue of -- I think the other issue with the thinness of market is more unfortunately something that FERC doesn't have a lot of control over, which is the retail side of the market. A lot of the large buyers aren't exactly motivated to keep costs down of index problems. That's something where I think it's just a bully pulpit again of saying, look, state commissioners, you're leaving lots of money on the table with these index contracts; that, if you could provide better incentives for procurement for your utilities, it might do a little bit better and we might solve a lot of this thin market problem. Those are sort of the two issues.

MR. DODD: I always thought it was due to two things primarily, one was credit problems. I know that's being addressed by discussions over clearing, to try to use a clearinghouse or a better clearing provisions to improve the credit rating of all the counter parties, so that one can more reasonably rely on the contract being performed on. The other is the integrity of the price issue facing the marketplace. That's what we're talking about today.

Again, if you look at markets where there is liquidity, such as the futures exchange, that's what we see, top credit rating. They're all pretty much AAA-rated clearinghouses and you've got prices in markets that have got market surveillance to detect and deter manipulation. And even the ones where they have these sort of indexing problems, they've worked out some solutions to them. I mentioned the Fed Fund features as one. LIBOR is actually an index settled cashed out derivatives contract. Live cattle, I believe, is another one. I think there's a list of these.

Those markets are very liquid, so it's perfectly feasible to take a market where you have disbursed delivery points, such as cattle, and create a workable price index that will enable an extremely liquid market to provide a lot of these management services to industry.

MS. FERBER: A few comments. I think first off, if FERC were to use its considerable relationships to jump on the industry into increasing its reporting and, if not, use its actual jurisdiction to require more reporting, I think we'd have more trades, more liquid points to begin with. I think it's very important that any of the what's called natural monopolists here have to fully license their indexes, so that, therefore, if there were more swaps traded on transparent platforms on the other locations, then, naturally, one would have more people, who are managing the risks between the swap and the physical end, who are making sure that they are quoting prices and recording prices for those additional physical locations.

Finally, as someone said earlier today, you've got some of the utilities locked into these benchmarks and scared away from hedging. They've effectively been scared away by the shareholders, because of all the turmoil in the market and they've moved away from trading, because they jut buy at a benchmark and pass it on to their customers. Frankly, only when consumers start to say, why was my gas bill twice as high this year as last year, and there's the political pressure on politicians to allow hedging, if we just increase hedging, say, 20 percent, we'd have a tremendous amount more trading, including at many of the hubs that we worry about now.

MR. HARVEY: I guess my question may be related. I'd like to kind of ask it again in a slightly different way, maybe. Do we see any other industries, where there are so many index points, where there are so many places that the same thing is being traded a little bit differently, to the point where it gets cut down to where, at some places, there may not be a lot of trading going on fundamentally? If so, are there lessons -- that in order not to reinvent everything, are there lessons there, in terms of the structure and in terms of some of the issues? Or has been speculated, to the extent that distribution companies, say, are pursuing their interest, vis-a-vis their regulation, by making sure they don't get too far from the published index, is that actually creating indices, where indices shouldn't necessarily be?

MS. FERBER: I'm certainly not an expert on this, but just thinking back across a lot of commodities, there are certainly other commodities that are delivered at as many points, but there aren't indexes for that point. People trade platinum basis, Zurich platinum basis, London platinum basis, New York. There's a commercial deal between people, as to what it is, if I want it in different location. That's a negotiated transaction.

So, the industry doesn't rely on the indexes. They rely on the liquid future prices or the liquid cash prices. We can all open a newspaper and read for those commodities.

MR. PERLMAN: Can I ask a question along those lines? It seems to me, we may be there now with NYMEX and NYMEX basis. What we heard this morning was that people are hedging with futures. There's clearly liquidity in the futures market. Is it the success of the futures market that may be impacting the liquidity at these locations?

MS. FERBER: Good question. Although, I seem to remember, it sounds like a basis trade.

MR. CHOO: As a follow-up to what Dave is suggesting, is it possible that this could be a natural evolution of the marketplace, where the market may begin with many index points and, eventually, the market participants realize that not only the most active points are the ones they can rely and they gravitate to that and then they would have to negotiate transportation and basis privately for delivery to these less liquid points?

MR. DODD: If you look at the ag market, that is exactly what we see in grain, particularly right, because Chicago price.

MR. WOLAK: This just says deja vu all over again. The statement you just made sounds like the argument made for pricing of electricity. They said, well, gee, there are only certain points that people are going to trade electricity. But what happens is, they've got to get the electricity delivered to every single point in the network.

The real problem with gas is the same thing. That's the problem in electricity. It's congestion. If the gas pipeline is not congested, the price differential is pretty minimal. It's only when there's congestion in the network that we really do have to worry about it. It's the endemic part of the fact that you have to deliver the product through a physical network that is subject to congestion, that you're going to have thin markets at certain locations in the network.

As I said in response to Steve's first point, the good news for gas is storage facilities. Local can bring it in during the time when there's not congestion to store it; whereas in electricity, you can't do that. When it's congested into the area, it's congested and that's what you've got to live with. In that sense, I think that's the ultimate solution and then more prudent buyers on the buy side, in terms of the state commissions deciding there is worth in having a storage facility here. If we could buy every time the price was low at our delivery point to fill our storage facility and then push it back out when it's not, that adds significant value to us, as a storage facility. And I think that's not something that most of the state commissions, certainly my state commission, is not getting on board with.

MR. GORHAM: Can I clarify something real quickly? NYMEX is incredibly liquid at Henry Hub, but they've had a ton of basis contracts out there, many of them for which there's zero trading and lot of which the only trading is being booked in through these things that are called EFPs. NYMEX really is illiquid on the basis contracts.

MR. WOLAK: To follow on your point, NYMEX, it's almost, I don't know, since the market in California started, has been trying to run a delivery point at Cobb and at Palo Verde, and zero open interest for exactly the thin markets reasons. I'd argue in the sense, they cannot predict the congestion of the locations in the western grid, to such an extent that anybody wants to sit out there and write the other side of that contract to guarantee delivery that far in advance, and that's the same problem that you see with the sort of non-Henry Hub gas contracts, as well.

MR. HEDERMAN: I'd like to address the disclaimer point a little further. It sounds like there's at least a perception problem, if not a reality problem. I'd like to hear whether this disclaimer language is similar to other language and whether, Mr. Dodd, as you've mentioned it, as a problem, do you see a way to fix the language, or do you think there needs to be no disclaimer? I'd like a sense of where do we go from here, on that point.

MR. DODD: I had approached this more as an economist, because that's where my training has occurred. What little I know about the law is from working at the CFTC and from Congress trying to write laws or interpret them. So, I couldn't give you really good advice there. I just know that economically, it seems to me that, as the CFTC commissioner pointed out, it will be very important to provide incentives to the data providers to provide the data and provide it honestly. I'm not sure that disclaimer wouldn't undermine that process. It certainly wouldn't provide any positive incentives to do so.

MR. WOLAK: If that's what my doctor handed me before I went into his office and he treated me, I would turn around and leave.

(Laughter.)

MR. HEDERMAN: It's probably under your health insurance policy.

(Laughter.)

MR. WOLAK: The point is that while I agree, I guess what I would say is that it strikes me as standard good industry practice, that if you are consistent with good industry practice, however, the lawyers are good at defining these things, but that's sort of what is in most or all contracts that I've seen. When you make a mistake with how you entered your data, it's something that doesn't happen very often. You've made an error, that's life and you've had standards that were consistent with good industry practice and that just slipped by. I can understand. Even doctors leave instruments inside people. They're doing their best.

But, the idea is that that didn't read like good industry practice. That read more like, if I leave something inside of you, it's okay.

MR. HEDERMAN: I think we're going to send that to the medical abuse hotline.

(Laughter.)

MR. HEDERMAN: Laurie?

MS. FERBER: I really feel for the CCRO. It's a consensus of 30 companies trying to agree to a document. That's really hard. What we at Goldman Sachs care about is, we do certify daily that I report all of my trades, because we don't want people to selectively report and they report all of their trades and the best that they know them and their systems at the time. That's the best that people can do. If they discover discrepancies, they promptly report those discrepancies. That's the standard we have to hold people to, otherwise, your people will be scared to death of reporting and you're not going to get compliance moving into the middle office and things like that. But, again, I've got to go to the trader and make sure every trade they did, again, a reasonable cutoff time, reasonable expectations that you can only report the trades you know and you'll correct the information promptly otherwise.

So, I think it's a marketing problem. We've blown this issue of a disclaimer up. That's all we're talking about, is reporting the trades as you know them.

MR. HEDERMAN: And you would say that it is close to what you see as a best practice in other markets you're familiar with?

MS. FERBER: There aren't too many analogies for this kind of reporting, frankly. That's the problem you've got. You have a lot of government initiatives, where we have been involved. One of the reasons we didn't do the CCRO group is we're frankly more regulated and things like the Zurich study group and things like this in financial markets are aiming at higher standards at all. But even in those markets, you reported on a monthly basis.

There's very little which is that kind of daily reporting. The futures market is one of the only places. But, again, that's like an hour-and-fifteen minutes to get your trades in, but it's for a very, very different purpose, and it is highly regulated trading and mostly electronic, where you can do that. I don't think there are good analogies really.

I know the commodities markets, we do that, frankly, monthly reporting with USDA. Now, it strikes me that any well-managed firm knows the prices they transacted at for the day and I'm sure they're being stored electronically.

MR. DODD: You don't know the price you paid that day, when you agree to buy or sell?

MS. FERBER: What time of day do I know the price I paid that day?

MR. DODD: I suppose when you're negotiating the price, if you're really good -- you're agreeing to a price or to a price --

MS. FERBER: How many trades did you do that day?

MR. DODD: You should know that, too.

MS. FERBER: You're talking about collecting electronically a lot of information. I'm talking about firms. Again, we can do it.

MR. DODD: I worked off the trading desk at Citibank's bonds trading floor. They do a lot of transactions. They collected the data and entered it electronically. This was back in the mid-1980s. I assume if you could do it back then with a lot of transactions, you can do it today.

MR. HARVEY: I believe you have an answer from the audience to put onto the record here.

MR. ANDEK: Chris Andek, one of the CCRO's lawyers. I'm not sure I have the global answer to all these questions, but they are very interesting. But, I have a copy of the disclaimer. I was one of the authors of it, among others. I'll tell you, you asked a specific question, so what does it say. The company says, it believes the information to be accurate. Well, what do you get for free? You get that. It doesn't guarantee and it doesn't want to take on any liability for anything that happens.

Why would it want to do that? Two reasons. First, as a lawyer, I think very clearly stated, the company may not be in a position to, at that moment, warrant that it's captured all the trades from the blotter, and then you don't have your confirmation orders, that's the first thing.

The second thing, you hear some of the people in the back, the companies logistically may not be in a position to guarantee, even if they have captured everything, that it's all accurate. This is a process with a lot of human interaction. Mistakes can enter into this. They don't want to sign into -- walk into some liability here. They want to participate in this process. That's essentially what's said.

The third thing is, if the company has used the DSCUCA, the centrally confidentiality and other things agreement, this disclaimer says the information is being provided pursuant to that agreement. That agreement is really an all encompassing agreement that talks about it's the mid or back office that provides is, that it's pursuant to an audit. It's pursuant to an agreement as to exactly what types of data are provided. You get all the protections essentially of the CCRO's best practices, what they recommend, that are lapped into this disclaimer.

The one thing you're not going to get for somebody, who is essentially handing away the data for no money, is no company is going to pick up a lot of liability. This is just a disclaimer. A lot of lawyers might disagree with me, but everybody has a sense, when they go bungy cord jumping and they sign a disclaimer that says, if anything happens to people that are bungy cord jumping, are not responsible. That's not worth the paper it's written on. All that it means is, we, the company that are doing this. And this disclaimer here is, want to be held to a standard of reasonableness; we're providing advanced notice that we don't wish to pick up anything on that. That's the intent of the disclaimer and I think it's very reasonable.

MR. HARVEY: Thank you. Would the panel like to respond?

MR. DODD: I think there's no substitute for giving them incentives to provide the information. It can be either in two forms: use carrots and sticks. The carrot could be that people, who provide the most information, that offsets any contributions that it would make to the cost of running the SRO. It can give them sort of bonus points for contributing information.

The other is the stick. If you lie to us, you're criminally liable. I don't know why it's so hard to get people to tell the truth.

MR. HARVEY: Okay. Well, I guess I said, in all other industries, there's liability if you don't give what is accurate information. I mean, I'd get thrown in jail, if I lie on my taxes.

MS. FERBER: As a lawyer, you get thrown in jail. In this industry, if you lie, too. We're only talking about who you're lying to.

MR. WOLAK: You still have tax liability, even if you made a mistake before filling out your taxes, as well.

MR. ANDEK: If I could just point out, this doesn't effect the laws of the United States. There are criminal laws that don't allow fraud. All that is still there. This is a statement that's made by a party that provides notice. It's really a civil issue.

As to the criminal liability, there's nothing in here where a party says it's not going to tell the truth. The party actually writes here, they believe this information to be accurate. I think some of the stuff we're hearing is a red herring. I just wanted to correct the record.

MR. WOLAK: I don't think it is. I, when I sign my tax form, I say, I'm telling the truth to the best I know if. But, if they come and audit me and they find that there's stuff that they don't like, they don't say, oh, you told the truth to the best of your knowledge; you don't owe us anymore taxes.

MS. FERBER: There's a huge difference between filing your taxes on April 15th or getting an extension, if you're not sure your information is perfect by then, and reporting by 4:00 all the trades you did by noon that day. It's different.

MR. WOLAK: I'm sure you can put in exceptions to that, as well, in the sense, if you cannot collect your trades in time. I think that's a perfectly reasonable response.

MR. DODD: Maybe a better lesson could be Mr. Gorham could remind us of what the reporting requirements are for the large trader reporting data, as an example of how to get that information promptly and accurately.

MR. GORHAM: Actually, we had this reporting requirement. John Fenton is not here anymore, but I have no idea what happens if somebody makes a mistake in this report. We've never gone after anybody, I don't think, for making an honest mistake and misreporting a position.

MS. FERBER: That market is so electronic; it's highly electronic. Orders need to be reported within 30 seconds and things like that. You're just talking about a grossly different market, in the state of OTC trading. In the gas market, these are great goals. I aspire for every company to have their trades promptly entered as we are, but that's just not where the industry is today. We're trying to build solutions for where we are today and we have to be more realistic.

MR. PERLMAN: Address this question in a

different way. Does anyone on this panel believe that parties, who make errors reporting this data in good faith, should be held to material civil liability?

(No response.)

MR. PERLMAN: I think just as an observation, we're talking about semantics and not something material.

MR. HARVEY: I believe Don has a question.

MR. GELINAS: Just to stop this, actually, before I do, I just have to say, at random, no matter what side of the issue I'm on, I've been here a long time and you're the only person that's ever stood up for the federal government.

(Laughter.)

MR. GELINAS: God bless you.

MS. FERBER: Not all of us would agree with that.

(Laughter.)

MR. GELINAS: Actually, my question goes to a few points you've made. You, basically, added a few things to the CCRO. You were talking about counter party information, buy-sell volumes, FERC validation. We've had a lot of discussion today. In fact, you brought up congestion again, the fact that you know there's your problem, you have prices at different places, different nodes. We had discussions on liquidity. Then, we had discussions on making up numbers where you didn't have enough.

You mentioned something in your proposal on minimum volumes, minimum number of transactions, minimum number of participants at locations. Were you advocating that trading locations that didn't meet these thresholds just aren't reported or that these were attributes that needed to be reported actually and factually at each location, so people could make their own judgments as to how they wanted to use or rely on that figure?

MR. WOLAK: Thanks. I guess the way I'd like to make the distinction is that I'm a big fan of if there are people, who would like to collect data and voluntarily provide it, they should be able to do it however they want, and let's have the market test for the price.

I was really focusing on Steve's question, which was if FERC is going to set prices for regulated services or a soft cap or whatever it wants to do, this is the minimum standard. I guess what I would recommend, in those instances, is use sort of what you guys already suggested, use Henry Hub, plus some regulated transportation. Don't use the thinly traded price that you don't believe.

In other words, I guess what I would say is, you can't escape regulation. There's no easy way around it. The good news is, where there is this deep market that you think has sufficient volume, that you don't think can be manipulated, that's something that you can use to regulate. But the second that you believe that this is something that we don't trust, my view is not to say what the heck, let's just go for it; my view would be, no, we've got to do a work around.

MR. GELINAS: So, you're talking in the context of either the California proceeding or tariffs and rate schedules, as Mike teed up earlier?

MR. WOLAK: Exactly.

MR. HARVEY: I'd like to follow up on that. One of the points made earlier by the INGAA panelists was the importance of the value of the information around basis, in terms of their investment decisions going forward, as well. I guess my question there is, in the absence of useful locational basis information through those markets, do we begin to drift? Do we create our own regulatory basis between the way we perceive the value of those kind of transportational links versus that?

MR. WOLAK: While there may be a danger of that occurring, I'm quite skeptical that it would. The way I view it is, you're the dog, in the following sense: to the extent that you say these are the standards that you want, in terms that we will use, in terms of indices to set prices, I think that would certainly put the sort of forces in motion to get those sorts of standards for as many points as possible. So, I guess -- but do I know that for a fact? No.

I certainly think that history bears this out on that. In this sense, I don't think we'd be having as many RTOs as we had, had FERC had not issued the standard market design. And I don't think that it would be at least moving forward. Even, again, the environment that we're in right now, as fast as it is, without the standard market design, without a thoroughly coherent strategy that is proposed, that I think people can understand why it's necessary.

MR. HARVEY: I agree. It just does strike me that these basis markets have become important for a variety of things, including capital formation, which really has got to be reflected by congestion and, in fact, being reflected in the value differentials there. It concerns me to take that aspect out of the market. On the other hand, if the point is illiquid, I get that information anyway.

MR. WOLAK: It's an uncomfortable position, I grant you than; but, I guess where I would see it is that I'm located at the end of that thin market and I see my load growing. Hopefully, I see the only way to do that is build storage or expand capacity, both of which I see as going to eliminate thinness. In some sense, I guess, hopefully, that's what we've got to be hoping for. But, I agree, that's the fundamental challenge.

I think in electricity and natural gas, it's the local market problems, because of the fact that it's got to be delivered through this transmission facility that can be congested.

MR. MCLAUGHLIN: Mike McLaughlin, I have a question. You talk about, and the other panels, most of them agreed that the CCRO principles or standards should be abided by. The question I have is, would it be, in your mind, is it enough that we basically -- let's say, we hypothetically adopted those and said, if you're going to use indices for purposes of FERC jurisdictional utilities, they have to abide by these standards. Do you think the currently publications of people that report indices would adopt to that or do you think we have to take the next step and basically, as some have discussed, do our own indices or designate someone to do that for us?

MR. WOLAK: To me, I view it as FERC just sets the standard for what it would use. I think those other indices can still survive, in part, because of some of the things Bob Levin said. Even though for a thinly-traded hub, someone may want a price. It will be a price that involves considerable judgment; but, it's certainly not a price FERC is going to use in a regulatory hearing, because of the fact that it can be so easily moved. You know that and they know that.

So, for me, I guess, the bigger issue is -- I think maybe what your question is getting to is, okay, we don't have complete coverage. We have coverage to just FERC jurisdictional entities. The way I think of it is, if I can get the cooperation of the state PUCs to get the buy side of what their utilities are doing on the buy side on the transactions and they can get all the FERC jurisdictional sellers showing me their transactions, I think I've got a pretty good price. Even though I'm not catching everybody, I'm catching enough and I'm catching enough of those interested in keeping prices low and enough of those interested in keeping prices high, that I think I've got a reasonable degree of transparency. Where I think you get into problems is when all you're getting is price data from people interested in keeping prices high and not those interested in keeping prices low.

MS. GRANSEE: Dr. Wolak, how do we get information from munis, coops, public power entities, and large industrials?

MR. WOLAK: You ask nicely.

(Laughter.)

MR. WOLAK: I agree. But, I mean, the good news is, if you think about most places, large amounts is luckily used by a private investor or utilities that are regulated. You sought of -- I guess the only thing I can say in response is, to try to get them in, is that if you do establish this sort of liquid index, this liquid market, then maybe the munis will start to adopt it. I live in a muni jurisdiction and I guarantee you, I would advocate my muni adopt it, because, currently, I'm paying $10 per million Btu for my gas, because they bought at the peak.

MR. HARVEY: Do we have any other questions?

(No response.)

MR. HARVEY: We'd like to spend a minute or two inviting two or three people from the audience, who might wish to make a question and make a statement. I do remind you that the docket is available from this. Any quick comments or statements? They must be quick, though, I will say.

MR. HOLLIGAN: Jeff Holligan with BP. The question about reporting, the accuracy of reporting would somewhat be depended upon the time allowed to make the report. If you want people to have to be able to report same-day transactions, 100 percent accurate, it's going to be a huge cost to those people. But, if you want me to report that transaction next week, I can be 100 percent accurate. But, if I have to report in two hours, I probably won't do that transaction that way. So, you can actually reduce the liquidity of markets by mandating too expensive and too onerous legal problems to report too quickly. So, that's something that really is the truth.

MR. HARVEY: Thank you.

MS. TIZACK: Christine Tizack, Schwab Capital Markets. Where are my EQRs? The advice I would give you from someone looking at this from an investment perspective, while you all are sitting here at your table thinking about the little SRO you're going to build in the four to six months the NASD would need after you've taken three years to decide what they're going to put into the software, what is the investment community supposed to be doing, when they look at companies that are trading on the indices that are out there now? What are they supposed to do about the investments in companies that are signing contracts today, tomorrow, for the next 18 months, while you all think about this? Because, I think that one of the things where the industry has really stepped up to the ball and said, we're really going to improve what we've got, is the recognition of the fact that we're doing transactions all the time.

While it would be nice to have intellectual perfection, think about the impact you're going to have on capital availability, if you decide you're going to call, full stop, and reinvent the wheel. Thank you.

MR. HARVEY: Thank you. Yes, sir?

MR. FEENEY: Doug Feeney from Reuters Index Publications. I think there's a distinction that we need to make here. I haven't really heard it throughout the whole day. The Reuters' position is there's two processes here that go on: first is the data collection process; second is index publication process.

It's our view that the first process is a natural monopoly and there could be one entity that takes in data, including buy and sell indications and counter party indications. It doesn't manipulate it, but it matches the trades. When you send out CLINs data, it doesn't have that information in it, which publishers, like Reuters, would then purchase. The other side, the index publication really isn't.

We've had several comments made today about the various different indices in the market are a good thing. We agree with that, as well. So, Reuters would be willing to purchase data from a third party provider, promoted by the University of Houston or EMIT, any of those providers, assuming the price is right and we would use that information to publish our own index, with a methodology that's very similar to what the CCRO is promoting, especially as Laurie mentioned earlier. That's worked in conjunction with the industry, which we feel is very important. Thank you.

MR. WOLAK: I just had a follow on for the first point that was made, which I think was very good. To give an example, in the New Zealand market, which is an electricity market, which runs modal prices, but doesn't do multi settlement, what they do is simply issue day ahead prospective prices. Now, those prices, you know of probability, right or wrong. But, there are indicative prices, which will hopefully give generally some idea of what they're going to be paid throughout the next day. What then happens is the system gets run in a few days. I don't know exactly how many days later, a few days later, the prices are set and things are settled. Those are the official spot prices.

That suggests two things, in terms of the business model. First, that the index, you can learn a week later what you've cleared today's contract against. That is certainly fine and you can do the financial clearing against that. Then the other privately-owned index providers, for someone, who wants, say, more up-to-date information, can get this industry intelligence from someone, who is from the press, who is computing these sort of where the market is. So, there can be these two simultaneously existing sources, and you give the necessary time lag, to get the level of quality that you need, to be able to settle against that sort of number. That works very of well.

MR. HARVEY: Thank you. I'd like to thank everybody. You've given us a lot to think about. I would sort of underscore, actually, Ms. Tizack's point a moment ago, which is, there's an enormous amount of urgency of getting this resolved, because there are deals being done all the time. So, it remains incumbent, I think, on everyone to take this responsibility and to carry it forward. We'll continue to do our part. Thank you.

(Whereupon, at 4:35 p.m., the hearing was adjourned.)