

153 FERC ¶ 61,009
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 2, 2015

In Reply Refer to:
Canadian Enerdata Ltd.
Docket No. PL03-3-009

Canadian Enerdata Ltd.
86 Ringwood Dr., Suite 201
Stouffville, ON L4A 1C3
Canada

Attn: Richard Zarzeczny
President

Reference: Canadian Enerdata Ltd.'s *Canadian Gas Price Reporter*

Dear Mr. Zarzeczny:

1. On June 9, 2014, as supplemented on September 15, 2014, Canadian Enerdata Ltd. (Enerdata), publisher of *Canadian Gas Price Reporter Monthly* (CGPR Monthly) and *Canadian Gas Price Reporter Daily* (CGPR Daily), submitted a statement of standards regarding the methodology and code of conduct it uses to create natural gas price indices in its CGPR Monthly and CGPR Daily publications. Enerdata seeks a determination by the Commission that its North American natural gas methodology and code of conduct (1) meet all or substantially all of the standards set forth in the *Policy Statement on Natural Gas and Electric Price Indices*¹ and (2) establish minimum criteria for liquidity for particular index points for the indices to qualify for use in Commission-jurisdictional tariffs.² As discussed below, the Commission finds that Enerdata's North American natural gas methodology and code of conduct are substantially consistent with the applicable standards under Commission policy. This finding is similar to findings made with respect to other indices in the Commission's November 19, 2004 order regarding the

¹ *Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121, at P 33 (2003) (Policy Statement).

² Transmittal at 2.

use of price indices in jurisdictional tariffs (Price Indices Order)³ and more recently in *Insight Research, Inc. (Insight)*⁴ and *Argus Media, Inc. (Argus)*.⁵ Ultimately, however, the determination as to whether a specific Enerdata day-ahead or month-ahead natural gas price index point is suitable for use in a specific jurisdictional tariff will be made by the Commission at the time that a request is made to use a specific index point in a jurisdictional tariff. This determination will depend on the additional factors discussed in the Price Indices Order.⁶

2. Enerdata states that it meets all or substantially all of the standards set forth in the Policy Statement, and that it has adopted elements of the Policy Statement to improve and strengthen its code of conduct, internal controls, methodology, transparency, and verifiability. Therefore, Enerdata requests that the Commission find that the CGPR Monthly and CGPR Daily publications comply with all or substantially all of the standards set forth in the Price Indices Order such that they could be used in jurisdictional tariffs.

3. In the Price Indices Order, the Commission reviewed the standards for price index developers set forth in the Policy Statement. The Commission found that in order for a price index to be used in a jurisdictional tariff, the index must be published by an index developer that has met all or substantially all of the five standards discussed in the Policy Statement, and it must also provide the volume and number of transactions upon which the index value is based, or indicate when no such data is available.⁷ Additionally, for a particular price index location to be used in a jurisdictional tariff, it must meet or exceed one or more of the minimum average criteria for liquidity.⁸ The Commission also

³ *Price Discovery in Natural Gas and Electric Markets*, 109 FERC ¶ 61,184, at P 39 (2004).

⁴ *Insight Research, Inc.*, 122 FERC ¶ 61,085 (2008).

⁵ *Argus Media, Inc.*, 128 FERC ¶ 61,194 (2009). The Commission previously found that Argus met all of the standards applicable to price index developers. Price Indices Order, 109 FERC ¶ 61,184 at Ordering Para. (B).

⁶ *Id.* PP 48-49, 53-54, 62-69, 73 (discussing such additional factors as whether the selected index location provides the volume and number of transactions upon which the index value is based, whether it meets or exceeds one or more of the minimum average criteria for liquidity, and whether the publisher continues to provide the Commission access to data in the event of an investigation).

⁷ *Id.* at Ordering Para. (C) (citing Policy Statement, 104 FERC ¶ 61,121 at P 33).

⁸ *Id.* at Ordering Para. (D).

concluded in the Price Indices Order that 10 price index developers had demonstrated that they met all or substantially all of the standards in the Policy Statement.⁹ The Commission subsequently found that an additional price index developer, *Insight Research Inc.*, also demonstrated that the methodology it uses to create price indices for bulk electric markets was substantially consistent with those standards.¹⁰ More recently, the Commission found that *Argus Media, Inc.* had demonstrated that its North American natural gas methodology and code of conduct with respect to new day-ahead and month-ahead price indices to be published in the Enerdata North American Gas Report were substantially consistent with the applicable standards.¹¹

4. In order to determine whether Enerdata's CGPR Monthly and CGPR Daily may be used in a jurisdictional tariff, the Commission will examine Enerdata's methodology and code of conduct in light of the five minimum standards set forth in the Price Indices Order. The Commission also will address additional criteria for the use of specific index locations in jurisdictional tariffs (i.e., volume and number of transactions, Commission access to data, and adequate liquidity), as contemplated in the Price Indices Order.

I. Conformance of Price Indices to Policy Statement Standards

5. The Policy Statement sets forth minimum standards for a price index publisher in five areas: (1) codes of conduct and confidentiality; (2) completeness; (3) data verification, error correction, and monitoring; (4) verifiability; and (5) accessibility.¹² The Commission subsequently adopted these standards in the Price Indices Order. As discussed below, the Commission finds that Enerdata has substantially met all of these standards.

A. Codes of Conduct and Confidentiality

6. The Policy Statement calls for price index publishers to adopt and make public a written code of conduct that discloses how the developer will obtain, treat, and maintain price data, and how it will develop price information. The Policy Statement also calls on price index developers to treat trade data as confidential and to enter into uniform confidentiality agreements with market participants that specify that commercially

⁹ *Id.* at Ordering Para. (B).

¹⁰ *Insight*, 122 FERC ¶ 61,085.

¹¹ *Argus*, 128 FERC ¶ 61,194.

¹² Policy Statement, 104 FERC ¶ 61,121 at P 33.

sensitive information will be held in confidence except to the extent necessary to verify the index or to allow the Commission to perform its statutory duties.

7. Enerdata meets substantially all aspects of this standard because it has adopted a methodology and code of conduct which is posted online and includes, among other things, its methods for collecting and maintaining data as well as an explanation as to how an index will be calculated. Enerdata states that it reports price index data in two distinct ways, depending on the source of the data. First, Enerdata states that it has a license with Natural Gas Exchange Inc. (NGX) to publish the NGX indices and associated proprietary data, which are exclusively for Canadian trading locations, in CGPR Monthly and CGPR Daily and on its website.¹³ Enerdata asserts that the NGX trade data consist of verified, completed transactions only and that the indices are calculated with no double counting (i.e., buys are matched with sells and a single buy/sell price and volume are used to calculate the index). Enerdata notes that it independently verifies all daily trade data provided by NGX. Enerdata states that it also receives North American natural gas trade and price data for prices indices other than the NGX indices from data voluntarily and confidentially submitted by data providers.¹⁴ Enerdata represents that this data is sent electronically, according to an agreed upon format, and is subject to data reporting standards and parameters.¹⁵

8. The Policy Statement calls on data providers to report transactions in the physical (cash) market at all trading locations.¹⁶ The Policy Statement further indicates that physical market reporting shall not include financial hedges, financial transactions, or swaps or exchanges of gas or electricity.¹⁷ In its September 15, 2014 supplemental filing, Enerdata clarifies that all price indices for Canadian natural gas trading locations would rely on transactions on the NGX trading platform, while price indices for United States natural gas trading locations may use a combination of NGX trade data and transactions reported directly to Enerdata by other companies.¹⁸

¹³ Transmittal at 3-4.

¹⁴ *Id.* at 4.

¹⁵ *See id.* at Exhibit B, Section 3.

¹⁶ Policy Statement, 104 FERC ¶ 61,121 at P 34.

¹⁷ *Id.*

¹⁸ Supplemental Filing at 1.

9. Due to the fact that Enerdata's natural gas indices for U.S. trading locations may include trade data reported by NGX, it is important to note that NGX refers to its listed U.S. physical fixed price NGX-cleared natural gas contracts as "physically settled futures."¹⁹ Despite this naming convention, the Commission views these contracts as cash forward contracts, not futures, as they are commercial transactions in a physical commodity²⁰ which are primarily settled by physical delivery.²¹ Moreover, Enerdata's Data Reporting Standards also indicate that Data Reporters must submit data for only physical fixed price deals and that prices reported must exclude financial transactions.²² Therefore, Enerdata's inclusion of what NGX refers to as "physically settled futures" would be consistent with the Policy Statement's standard that data providers not include financial products in their reporting.²³ For these reasons, the Commission finds that Enerdata's methodology meets this aspect of the Policy Statement, as the methodology relies solely on physical market reporting.

10. Enerdata states that it follows the Commission's minimum threshold criteria for calculating day-ahead indices (25,000 MMBtu, five or more transactions, or five or more counterparties) and monthly indices (25,000 MMBtu, an average of 10 or more transactions, or an average of 10 or more counterparties).²⁴ Enerdata explains that if less than the specified minimum threshold is received for a pricing point, it provides a "price assessment" that is not based exclusively on actual transactions, but is derived using market information such as bids and offers, settlement prices, basis prices, transport prices, prices at comparable locations, and information from informed market participants. While Enerdata asserts that these price assessments are clearly noted, we

¹⁹ Natural Gas Exchange, Product Guide (Excel Format), <http://www.ngx.com/download/Schedule%20D%20v171%20%20with%20no%20highlights.xlsx>

²⁰ *Characteristics Distinguishing Cash and Forward Contracts and "Trade" Options*, 50 Fed. Reg. 39656, 39657 (Sept. 30, 1985).

²¹ See *Andersons, Inc. v. Horton Farms, Inc.*, 116 F.3d 308, 317 (6th Cir. 1998) (holding that "in determining whether a particular commodities contract falls within the cash forward exception, courts must focus on whether there is a legitimate expectation that physical delivery of the actual commodity by the seller to the original contracting buyer will occur in the future.").

²² Transmittal Appendix B at 3.

²³ Policy Statement, 104 FERC ¶ 61,121 at P 34.

²⁴ Transmittal at 5.

also advise Enerdata that every such assessment for a pricing point that does not meet the Commission's minimum thresholds must be clearly designated by an asterisk in the price tables and briefly explained.²⁵

11. Furthermore, a review of Enerdata's methodology and code of conduct reflects that Enerdata has taken appropriate steps to ensure that all data submitted will be treated confidentially.²⁶ Enerdata also states that its data confidentiality agreement, use, and submission standards are based on the Committee of Chief Risk Officers' *Data Submission, Usage and Confidentiality Agreement*.²⁷ Enerdata states that it also has policies regarding the archiving of data provider email communications, maintenance and archiving of notes, and archiving of spreadsheets and trade data used to formulate and assess price indices. Accordingly, based on a review of Enerdata's filing and supporting documents, and for the reasons stated above, the Commission finds that Enerdata meets substantially all of the aspects of the "code of conduct" standard, consistent with the Commission's previous review of price indices.

12. The Commission encourages data providers to maintain continuous public posting of the indices' methodology and code of conduct. Indices for which code of conduct documentation is not publically available may not be eligible for use in a jurisdictional tariff.

B. Completeness

13. The Policy Statement calls on price index publishers to "maximize the amount of useful and appropriate information they collect and disseminate."²⁸ Specifically, the Policy Statement states that an index developer should provide, for each pricing location for the day-ahead or month-ahead market: (1) the total volume; (2) the number of transactions; (3) the number of transaction entities; (4) the range of prices (high/low); and (5) the volume-weighted average price.

14. Enerdata's code of conduct and reporting standards require that data providers submit transaction data in its entirety, including price, volume, buy/sell indicator, delivery/receipt location, transaction date/time, term, and counterparty.²⁹ Enerdata states

²⁵ *Id.* at 5, 6-7.

²⁶ *See* Transmittal Appendix B.

²⁷ *Id.* at 7.

²⁸ Policy Statement, 104 FERC ¶ 61,121 at P 33.

²⁹ Transmittal at 8 and Exhibit B at 3.

that NGX provides the same types of information, except for counterparty and buy/sell information. Enerdata asserts that counterparty and buy/sell information is not required as all trades used in NGX calculations are reported as a single settled transaction verified by internal NGX exchange system controls and reporting standards.

15. In the Price Indices Order, the Commission found that although it encouraged the reporting of full transaction information to price index publishers, including counterparty identity, it would not require price indices to report this piece of information.³⁰ The Commission continues to urge market participants to provide price index publishers with full transaction information, including counterparty identity, and to amend confidentiality agreements where necessary to allow such reporting. However, consistent with the Commission's decision in *Argus, Insight*, and the Price Indices Order, the reporting of such information will not be required here. Accordingly, based on a review of Enerdata's filing and supporting documents, the Commission finds that Enerdata meets substantially all of the aspects of the "completeness" standard consistent with the Commission's previous reviews of price indices.

C. Data Verification, Error Correction, and Monitoring

16. The Policy Statement calls for price index publishers to verify price data, to adopt an error resolution process to correct mistakes, and to publish a correction notice when significant errors are made.³¹ It also calls on publishers to have sufficient monitoring and surveillance systems in place to detect attempted price manipulations and to notify the Commission in the event anomalous data is not able to be resolved.³²

17. Enerdata states that there is no concern with double counting with respect to the NGX trade data because the NGX indices published by Enerdata are based on trades completed on an electronic trading exchange and the transactions on which the indices are based are already matched as a single trade.³³ Enerdata explains that while it encourages data providers to provide counterparty information, some providers may still determine that they are prevented from doing so by the terms of their confidentiality agreements and contracts with trading partners. Accordingly, Enerdata states, indices may include both sides of the same transaction. However, Enerdata asserts that this double counting should not significantly skew the index, provided there is sufficient

³⁰ Price Indices Order, 109 FERC ¶ 61,184 at P 38.

³¹ Policy Statement, 104 FERC ¶ 61,121 at P 33.

³² *Id.*

³³ Transmittal at 10.

liquidity at a given location. Where it is able to obtain counterparty information from data providers, Enerdata explains that its system matches and verifies buys and sells and contacts data providers to address any discrepancies.

18. Enerdata also indicates that it flags trades that deviate significantly from the average point at a given location for manual analysis by a price editor, and that it reserves the right to exclude such trades from the index if it deems them not representative of market conditions at the time of the trade or if there is any doubt as to their accuracy. Enerdata explains that if it learns of an error, the data manager will assess the impact of the error and will issue a correction if a significant error has distorted the index price. Enerdata represents that it will issue correction notices in all cases where the revised index differs from the published index to four decimal places. Enerdata states that it will contact data provider representatives to clarify and validate any significant corrections or discuss any anomalous data provided, and will notify the Commission of price data anomalies that are significant and/or consistently made by a data provider for which the data provider fails to provide a reasonable explanation.

19. The Commission finds that the processes set forth by Enerdata with respect to this standard should enable Enerdata to ensure the integrity of the information upon which its price indices are based. Accordingly, the Commission finds that Enerdata substantially meets this standard.

D. Verifiability

20. The Policy Statement calls for an independent audit or verification at least once annually, the results of which should be made public.³⁴ The audit should review data systems, quality control measures, and data to confirm that the index is developed in accordance with the published methodology and code of conduct.

21. Enerdata states that it will undertake an independent internal annual audit and that the results of the audit will be made available on the company's website.³⁵ According to Enerdata, the audit will examine whether: (1) the data is properly collected and stored in compliance with its code of conduct; (2) the procedures set forth in its published methodology are the same procedures used to calculate and publish the CGPR Monthly and CGPR Daily; and (3) such procedures produce accurate, objective, and reliable results. Such commitments are consistent with the requirements set forth in the Policy Statement, and accordingly the Commission finds that Enerdata meets this standard.

³⁴ Policy Statement, 104 FERC ¶ 61,121 at P 33.

³⁵ Transmittal at 11.

E. Accessibility

22. The Policy Statement calls for price index publishers to make their publications available to customers on a timely basis.³⁶ It also calls on publishers to make relevant data available to the Commission in situations where the Commission is investigating suspected bad faith price reporting or manipulation and in situations where the Commission needs the data to carry out its statutory duties.³⁷

23. Enerdata states that its natural gas price indices are available by subscription (via email, website access, and data transfer) at reasonable rates, and that Enerdata also has agreements with third-party data providers to redistribute the price data. Enerdata explains that it has a duty to protect the anonymity and privacy of its data sources and commits to consult with data sources prior to releasing their proprietary data to a third party. Under its code of conduct, Enerdata must notify a data provider prior to making any legally required disclosure of such data provider's confidential information.³⁸ If the data provider does not obtain a protective order or other remedy against disclosure, Enerdata agrees only to furnish that portion of the confidential data that it is required to furnish.

24. The Commission has consistently expressed an interest in obtaining confidential data in the context of a targeted investigation of possible false price reporting or market manipulation or other inquiry within the scope of the Commission's statutory responsibilities.³⁹ The Commission's intent is to seek relevant data limited in time and scope to fit the needs of a specific investigation or inquiry. In such circumstances, the Commission expects that, upon proper request, index developers will provide access to the requested data.

25. Enerdata has represented that it will cooperate with the above-mentioned information requests from the Commission. Accordingly, the Commission finds that Enerdata's daily and monthly natural gas price indices meet the standards set forth in the Policy Statement and may be eligible for use in jurisdictional tariffs assuming the indices

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 11-12.

³⁹ In the Policy Statement, the Commission said that it seeks access to data "where necessary (a) to conduct an investigation of suspected bad faith price reporting or potential market manipulation or (b) to otherwise carry out its statutory duties." *Id.*

meet the other requirements (discussed below). Similar to the Commission's disposition in the Price Indices Order, the Commission reserves the right to withdraw this approval in the event an appropriate request for confidential data is refused.⁴⁰ If that should happen, the Commission may prospectively bar indices published by Enerdata from use in jurisdictional tariffs.⁴¹

II. Use of Price Indices in Jurisdictional Tariffs

26. The Price Indices Order states that, in order to qualify for use in jurisdictional tariffs, a price index must provide the number of transactions at the specific location, and the price index developer should agree to provide access to data in the event of an investigation.⁴² As discussed above, Enerdata states that it will provide the total volume and number of transactions. Enerdata further states that it agrees to provide the Commission with access to information in the event of an investigation.

27. Enerdata indicates in its supplemental filing that all price indices for Canadian natural gas trading locations would rely on transactions on the NGX trading platform.⁴³ Enerdata also indicates that for U.S. natural gas trading locations, it will calculate and report price indices based on transactional data received directly from companies reporting their transactions to it and from NGX.⁴⁴

28. Finally, the use of a particular index point in the U.S. or Canada⁴⁵ in a jurisdictional tariff must meet the average minimum criteria for liquidity discussed in the Price Indices Order.⁴⁶ These criteria, which must be reviewed over a reasonable past period, are average minimum standards designed to assure an adequate level of activity at a particular trading location.⁴⁷ Enerdata has included minimum criteria for liquidity

⁴⁰ Price Indices Order, 109 FERC ¶ 61,184 at P 54.

⁴¹ *Id.*

⁴² *Id.* PP 48-49, 53.

⁴³ Supplemental Filing at 1.

⁴⁴ The NGX trading platform is also used by commercial market participants to sell and purchase natural gas at many U.S. trading locations.

⁴⁵ The Dawn Ontario price index is used in three jurisdictional pipeline tariffs.

⁴⁶ Price Indices Order, 109 FERC ¶ 61,184 at PP 62-69.

⁴⁷ *Id.*

consistent with those required in the Price Indices Order. However, the Commission declines at this time to find that the particular index points used by Enerdata in its indices will meet such criteria. The inquiry into whether a particular index point meets such average minimum criteria for liquidity is properly reserved for a time when a specific request is made to use the point in a jurisdictional tariff.⁴⁸

29. Thus, consistent with the Commission's disposition in the Price Indices Order, *Insight*, and *Argus*, the Commission finds that Enerdata's daily and monthly natural gas price indices are suitable for use in jurisdictional tariffs, as discussed in this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴⁸ *Id.* P 68. See also *Argus*, 128 FERC ¶ 61,194 at P 22; *Insight*, 122 FERC ¶ 61,085 at P 15.