

112 FERC ¶ 61,040
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Price Discovery in Natural Gas and Electric Markets

Docket No. PL03-3-006

Natural Gas Price Formation

Docket No. AD03-7-006

ORDER FURTHER CLARIFYING POLICY STATEMENT ON
NATURAL GAS AND ELECTRIC PRICE INDICES

(Issued July 6, 2005)

1. In this order we grant two requests for clarification of our *Policy Statement on Natural Gas and Electric Price Indices*.¹ The Policy Statement identified minimum standards for both price index developers and data providers (market participants that report transaction data to price index developers). In the latter case the Policy Statement spelled out the steps data providers should take to assure that the prices they report accurately reflect market activity. The Policy Statement also provided an important “safe harbor” for data providers. For data providers that adopt and follow the Commission-established standards for trade data reporting, we will presume they are reporting transaction data accurately and in good faith, and we will not penalize such parties for inadvertent errors in reporting.

2. We grant the requested clarifications to emphasize the broad nature of these safe harbor provisions and to encourage companies both to adopt the appropriate procedures to take advantage of the safe harbor assurances and to contribute their transaction information to the price formation process. We also remind companies of their obligation to notify the Commission when there is a change in their reporting practices.

¹ 104 FERC ¶ 61,121 (2003).

Background

3. The Policy Statement is one of many steps we have taken to encourage better transparency of price formation in wholesale energy markets. In November 2003, we issued orders adopting Market Behavior Rules for wholesale market participants.² These orders included a behavior rule requiring that, to the extent market participants report transactions to entities that develop and publish price indices, they must report such transactions in accordance with standards of the Policy Statement. In December 2003, we issued a clarification of certain aspects of price reporting under the Policy Statement.³ In May 2004, we received a full staff report on the status of price indices and wholesale price formation, including the results of two large-scale industry surveys, along with recommendations on the use of price indices in jurisdictional tariffs.⁴ Finally, in November 2004 we issued an order in which we applied minimum criteria to price indices used in jurisdictional tariffs and indicated our intent to continue active monitoring of developments concerning price formation in wholesale markets.⁵

4. We have received two requests for clarification of matters addressed in our prior orders. The Committee for Chief Risk Officers (CCRO) submitted a request April 25, 2005, asking for a clarification that the safe harbor provisions of the Policy Statement extend to an energy data hub and its participants. Also, National Fuel Gas Distribution Corporation (National Fuel) submitted a request February 18, 2005, asking that the safe harbor provisions be extended to data providers that, while not specifically subject to the Market Behavior Rules, nonetheless wish to provide transaction data to price index developers. On June 10, 2005, Platts filed comments in which Platts asserts that the Commission should deny the CCRO request for clarification as premature. Platts takes no position on National Fuel's request. On June 14, 2005, InterContinentalExchange

² *Order Amending Market-Based Rate Tariffs and Authorizations*, 105 FERC ¶ 61,218 (2003), *reh'g denied*, 107 FERC ¶ 61,175 (2004); Order No. 644, *Amendment to Blanket Sales Certificates*, FERC Stats. & Regs. ¶ 31,153 (2003), *reh'g denied*, 107 FERC ¶ 61,174 (2004).

³ *Order on Clarification of Policy Statement on Natural Gas and Electric Price Indices*, 105 FERC ¶ 61,282 (2003).

⁴ *Report on Natural Gas and Electricity Price Indices*, Docket Nos. PL03-3-004 and AD03-7-004, May 5, 2004.

⁵ *Order Regarding Future Monitoring of Voluntary Price Formation, Use of Price Indices in Jurisdictional Tariffs, and Closing Certain Tariff Dockets*, 109 FERC ¶ 61,184 (2004).

(ICE) filed comments stating that, if the requested clarifications are granted, they should apply to any entity that collects and distributes transaction data. Also on June 14 Intelligence Press, Inc. (NGI) filed a letter endorsing Platts' comments and showing the growth in the volume and number of trades reported in its indices over the past two years. Additional comments have been filed by Amerex Group and Logical Machines, Inc., in support of the CCRO request and by the American Public Gas Association, which supports innovation in price discovery. Platts also filed reply comments further describing its index production process.

The Policy Statement and the Safe Harbor

5. The Policy Statement was issued to encourage market participants to improve the accuracy, reliability, and transparency of wholesale price formation. While the Policy Statement focused on existing industry practice and the use of commercially published price indices for price discovery in energy markets, we also said the Policy statement "is not intended to interfere with improvements in current price indices or any future evolution of the price discovery process that will bring more accurate, reliable, and transparent price information to energy markets."⁶

6. Indeed, the Policy Statement recognized the interest of some parties in developing independent "data hubs" to encourage better price transparency and confidence in wholesale market price discovery. Various ideas were proposed, but the essential concept was that an independent entity could receive transaction data from market participants; match, verify, and scrub the data; and provide aggregate data to others for use in publishing indices, research, and the like. We noted at the time that "some of these proposals may have long-term potential" and we "encourage[d] energy industry participants to consider whether some form of a data hub or hubs may improve price discovery in the energy industry in the longer term."⁷

7. Given the existing structure of voluntary price reporting to price index developers, however, the Policy Statement set out standards for market participants who report prices to price index developers and, in the Market Behavior Rules issued in November 2003, we required that these standards be followed by any sellers holding market-based rate authority for electricity sales or making jurisdictional natural gas sales for resale under

⁶ 104 FERC ¶ 61,104 at P 39.

⁷ *Id.* at P 24.

blanket certificate authority.⁸ If data providers do so, we will presume that transaction data submitted to index developers is accurate, timely, and submitted in good faith. We will not prosecute and/or penalize parties for inadvertent errors in reporting, nor refer such instances to other agencies having jurisdiction. Data providers adhering to these guidelines, we noted, should be able to report all relevant trade data with confidence.⁹

Committee of Chief Risk Officers

8. The CCRO has been active in efforts to improve price discovery. As we noted in the Policy Statement, the CCRO white paper on *Best Practices for Energy Price Indices*, filed with the Commission in Docket No. AD07-3, addressed many of the points set out in the Policy Statement and was part of the industry consensus upon which the Policy Statement built.¹⁰ The CCRO states that it has continued its involvement by working with a coalition of about 30 companies to develop a prototype Energy Data Hub. In its request for clarification, the CCRO states that the Energy Data Hub “is an independently operated repository for transaction data coming from all types of energy market participants.” The Energy Data Hub, CCRO represents, “will engage in data authentication and an error discovery and notice process, render the data anonymous, aggregate it, eliminate double-counting to the extent possible, and input the data into a centralized database.” Request for Clarification at 1. The resulting aggregate data, CCRO states, “will be readily accessible to all market participants, including prospective energy purchasers, sellers, intermediaries, and market observers such as regulators, rating agencies, analysts, accounting firms, and index publishers.” *Id.*

9. The CCRO states that the Energy Data Hub is in a demonstration phase and that the CCRO is encouraging more companies to participate in the project. The CCRO is concerned, however, that potential participants may be deterred because of uncertainty over whether the safe harbor assurance of the Policy Statement applies to the Energy Data Hub. The CCRO requests four clarifications:

⁸ Market Behavior Rule 4, 105 FERC ¶ 61,218 at P 116; *see also* 18 CFR §§ 284.288(b) and 284.403(b),

⁹ At the same time, we warned market participants that we will prosecute or refer to other agencies having jurisdiction instances in which companies do not act in good faith. The safe harbor will not protect those who manipulate, misinform, or mislead price index developers or other market participants. 104 FERC ¶ 61,121 at P 38.

¹⁰ Docket No. AD03-7, filed April 21, 2003. *See* 104 FERC ¶ 61,121 at PP 16-21.

- that the safe harbor applies to data providers supplying transaction information to the Energy Data Hub, so long as they follow the Policy Statement standards for price reporting;¹¹
- that the safe harbor applies to the Energy Data Hub itself when it provides data to price index developers and others, so long as the Energy Data Hub follows the Policy Statement standards applicable to price index developers;¹²
- that the safe harbor applies to data providers during the demonstration phase of the Energy Data Hub project; and
- that the Commission will not use the Energy Data Hub as a target for investigations into transaction data of participating companies.

10. We grant the first three requested clarifications. While the Policy Statement concentrated as a practical matter on the existing voluntary system of price reporting to price index developers, we also made clear that other innovations that bring price transparency and better confidence in the accuracy and reliability of wholesale prices are welcome. We set out the conditions under which data providers would get “safe harbor protection for good faith reporting of transactions data to entities that develop price indices.”¹³ We did not intend the Policy Statement to be narrowly construed to discourage or prevent the evolution of new structures; to the contrary, as noted, we encouraged industry participants to see “whether some form of a data hub or hubs may improve price discovery” in the future.¹⁴

11. We emphasize here, however, that we are not endorsing any particular entity or approach, but continue to encourage industry participants to find optimal solutions and approaches to better wholesale price formation. Therefore, we clarify that the safe harbor provisions of the Policy Statement apply to any entity that follows the standards in the Policy Statement and reports energy transaction data to another entity, whether it be a price index developer or a data hub of some sort, or another structure not yet proposed.

¹¹ *Id.* at P 34. The five standards cover code of conduct; source of data; data information reported; error resolution; and data retention and review.

¹² *Id.* at P 33. The five standards cover code of conduct and confidentiality; completeness; data verification, error correction and monitoring; verifiability; and accessibility.

¹³ 104 FERC ¶ 61,121 at P 5.

¹⁴ *Id.* at P 24.

Second, we extend a safe harbor assurance to a data hub or other innovative entity that is acting as a data provider when it provides aggregate data to others, if it adopts the applicable Policy Statement standards. Third, we also clarify that the safe harbor protection applies to data providers during any testing or demonstration phase of a new industry structure for gathering and disseminating wholesale price data, again assuming the data provider follows the Policy Statement standards.

12. These clarifications are in the context of the industry's current voluntary approach to price formation. As we noted in the Policy Statement, if the industry response to our initiatives on wholesale price formation does not sufficiently increase confidence in wholesale price formation, we are prepared to consider some form of mandatory price reporting.¹⁵ We found in our November 2004 order that there has been notable progress, and we encouraged all interested parties to conform fully to the standards of the Policy Statement.¹⁶ We are continuing to monitor the wholesale price formation process, and encourage industry to find innovative ways to improve the accuracy, reliability, and transparency of wholesale prices on a voluntary basis.

13. CCRO's fourth requested clarification is that it "not be used as a target for investigations by the Commission into transactions data by the participating companies." Request for Clarification at 3. We do not intend to use the Energy Data Hub or any other data hub or new industry structure as a "target," but any such entity may receive investigatory requests from the Commission. In our November 2004 order we discussed at length our expectation that entities in possession of energy transaction data would be responsive to appropriate requests for access to such data.¹⁷ We made clear that such requests would be "in the context of a targeted investigation of possible false price reporting or market manipulation or other inquiry within the scope of our statutory responsibilities."¹⁸ Any data hub or other new industry structure that collects confidential trade data will be treated in the same manner as existing price index developers, and is subject to our expectation of cooperation in the event of an appropriate demand for access to particular data. This puts an energy data hub or any new structure on an equal footing with existing price index developers in this respect, consistent with our intent not to favor one industry structure over another.

¹⁵ *Id.* at PP 42-47.

¹⁶ 109 FERC ¶ 61,184 at PP 19-22.

¹⁷ *Id.* at PP 50-54.

¹⁸ *Id.* at P 53; *see also* Policy Statement, 104 FERC ¶ 61,121 at P 33.

14. Platts, supported by NGI, argues that the CCRO data hub has not progressed to the point where it is equivalent to a price index developer and, therefore, that we should deny CCRO's request as premature. The CCRO acknowledges that it is in a development and testing phase, and seeks the requested clarifications to encourage more participation in the experiment. The basic clarification provided here is that data providers—market participants who contribute data on their wholesale transactions—receive the safe harbor assurance if they contribute the data to an energy data hub or other new industry structure, so long as they are following the five Policy Statement standards for price reporting. As to the energy data hub or other structure itself, if it progresses to the point where it has fully adopted the Policy Statement standards for handling transaction and price data, and is acting as a data provider by providing authenticated aggregate data to others, a safe harbor assurance will be extended to it.¹⁹

15. Platts also states that it and other price index developers have received Commission recognition that they have met the Policy Statement standards for price index developers, and that it would be unfair “to accord the same treatment to the data hub experiment” which, Platts asserts, has not met all of the Policy Statement standards. Platts Comments at 1. Platts, ICE, and NGI have submitted information in this docket demonstrating that they are in substantial compliance with the Policy Statement standards and, as a result, we have indicated that their indices may be used in jurisdictional tariffs.²⁰ We offer no such designation to the CCRO here. When the CCRO data hub moves from the current experimental and testing phase to actual operations, however, the hub may request review by the Commission of the consistency of its practices with the Policy Statement standards. We also note that if the CCRO data hub were to produce a data product that a pipeline or utility wants to use in a jurisdictional tariff, the filing company would have to show that the CCRO data hub meets the Policy Statement standards.²¹

16. ICE does not take a position on whether the requested clarifications should be granted, but urges the Commission not to confer a “unique and preferential standing to an individual commercial initiative.” Instead, ICE states that, if granted, the provisions

¹⁹ In this context safe harbor means that if the energy data hub or other structure is reporting authenticated aggregate data to price index developers or other users, we will not take action against the hub or other structure for inadvertent errors if it has in place the protocols and protections of the Policy Statement standards necessary to prevent the dissemination of incorrect, incomplete, or misleading price information.

²⁰ 109 FERC ¶ 61,184 PP 24, 28, 39.

²¹ *Id.* PP 68-69, 73.

should “apply equally to any entity that collects transaction data for distribution while complying with the requirements for index publishers in the Policy Statement.” ICE comments at 1. As we have stated, the clarifications granted here apply to any data hub or other innovative entity that has adopted the applicable Policy Statement standards. This is consistent with our intent not to favor one industry structure or entity over another.

National Fuel Gas Distribution Corporation

17. National Fuel states that in January 2003 it notified the Commission pursuant to Order No. 644 that it was a blanket marketing certificate holder and was reporting transactions to price index developers in accordance with the standards of the Policy Statement. National Fuel now says that it has ceased off-system sales in order to maintain non-Energy Affiliate status under the Order No. 2004 Standards of Conduct.²² While this change reduced National Fuel’s number of reportable transactions, National Fuel states that it wishes to continue to report trade data to price index developers. However, uncertainty over whether the safe harbor applies to a data provider that is not subject to the Market Behavior Rules caused National Fuel to suspend reporting its transactions. National Fuel requests clarification that the safe harbor provisions apply even if National Fuel is not specifically subject to the requirements of Order No. 644.

18. We grant the requested clarification. The purpose of the safe harbor is to encourage market participants to report without fear of enforcement action for inadvertent errors. Indeed, the safe harbor originated with industry requests for regulatory certainty and Commission assurance that good faith reporting will not subject a company to the risk of sanctions.²³ So long as a data provider has adopted and is following the standards of the Policy Statement for reporting entities, we will apply the safe harbor policy, even if the company is not specifically subject to the Market Behavior Rules.

²² *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh’g*, Order No. 2004-A, III FERC Stats. & Regs. ¶ 31,161 (2004), 107 FERC ¶ 61,032 (2004), *order on reh’g*, Order No. 2004-B, III FERC Stats. & Regs. ¶ 31,166 (2004), 108 FERC ¶ 61,118 (2004), *order on reh’g*, Order No. 2004-C, 109 FERC ¶ 61,325 (2004), *order on reh’g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005).

²³ 104 FERC ¶ 61,121 at PP 30-31.

Requirement to Notify the Commission of Changes in Price Reporting Status

19. In Behavior Rule 4 and its counterpart in Order No. 644, we required that all sellers subject to the rule notify the Commission within 15 days of the effective date of the rule whether the seller reports its transactions in accordance with the Policy Statement. Additionally, we required that sellers update their notifications within 15 days of any change in their reporting status.²⁴ We directed market-based rate sellers to file their notifications in Docket No. EL01-118 and the docket in which they received market-based rate authority; we directed blanket certificate holders to file their notifications in Docket No. RM03-10.²⁵

20. We received initial notifications by or on behalf of 756 market participants in December 2003 and January 2004. Since then, we have received only 26 notifications in Docket No. EL01-118 of subsequent changes in reporting status from market-based rate sellers and 24 notifications in Docket No. RM03-10 from blanket certificate holders. In several cases a company filed the same notification in both dockets; in other cases the same company filed more than one notification in a docket. During this period, however, price index developers have reported increases in both the number of transactions being reported and in the number of market participants reporting trade data to them.²⁶ It is possible that some market participants have overlooked the requirement to notify the Commission of changes in their reporting status.

21. Accordingly, we hereby remind all market-based rate sellers subject to the Market Behavior Rules, and all blanket certificate holders subject to Order No. 644, of their obligation to file notifications of changes in reporting status within 15 days of the date of such changes. We also waive the 15 day requirement for any market participants that have changed their reporting status but failed to notify us of that fact. Such market participants may file notifications of any changes since their initial notification no later than August 1, 2005.

²⁴ 105 FERC ¶ 61,218 at P 116; *see also* 18 CFR §§ 284.288(b) and 284.403(b).

²⁵ *Order Clarifying Prior Notice*, 105 FERC ¶ 61,277 at P 11 (2003).

²⁶ NGI comments at 2. NGI notes that the volume of natural gas bidweek trades reported to it has increased from 7.9 Bcf to 21.2 Bcf in June 2005, and that the number of trades as increased from 1,357 to 3,069. *Id.* at 2. *See also* 109 FERC ¶ 61,184 at PP 5-7; *Comments of Platts*, Docket Nos. PL03-3, *et al.*, June 14, 2004.

The Commission orders:

(A) The *Policy Statement on Natural Gas and Electric Price Indices* is clarified as discussed in the body of this order.

(B) The requirement to file notifications of changes in reporting status within 15 days of the date of the change is waived until August 1, 2005, for any market-based rate sellers or blanket certificate holders who file notifications for any changes in status that have occurred since their initial notification.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.