DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 260, 284 and 385

[Docket No. RM07–10–000; Order No. 704]

Transparency Provisions of Section 23 of the Natural Gas Act

Issued December 26, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule.

SUMMARY: In the final rule, the Commission promulgates regulations that require certain natural gas market participants to report information regarding their reporting of transactions to price index publishers and their blanket sales certificate status, and to report annually certain information regarding their wholesale, physical natural gas transactions for the previous calendar year. Certain market participants engaged in a *de minimis* volume of transactions will not be required to report information regarding their transactions for the calendar year. The reported information will make it possible to estimate the size of the physical U.S. natural gas market, to assess the use of index pricing in that market, and to determine the size of the fixed-priced trading market that produces the information. These regulations facilitate price transparency in markets for the wholesale sale of physical natural gas in interstate commerce.

DATES: *Effective Date:* This rule will become effective February 4, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen J. Harvey (Technical), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6372, *Stephen.Harvey@ferc.gov*.

Christopher J. Peterson (Technical), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8933, *Christopher.Peterson@ferc.gov*.

Eric Ciccoretti (Legal), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8493, *Eric.Ciccoretti@ferc.gov*.

SUPPLEMENTARY INFORMATION: Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

I. Background

1. In this final rule, the Commission promulgates regulations that require certain natural gas market participants to report annually certain information regarding their wholesale, physical natural gas transactions, their reporting of transactions to price index publishers, and their blanket certificate status. This rule arises from a Notice of Proposed Rulemaking (NOPR) issued on April 19, 2007, which set forth two proposals, an annual reporting requirement proposal and a daily pipeline posting proposal.[1] This rule addresses the annual reporting requirement. The Commission addresses the daily pipeline posting proposal concurrently in a Notice of Proposed Rulemaking in a separate docket, Docket No. RM08–2–000.

2. The Commission largely adopts the annual reporting proposal in the NOPR issued in this docket, with a few changes and a few clarifications. The final rule requires that any buyer or seller of more than a *de minimis* volume of natural gas report aggregate volumes of relevant transactions in an annual filing using a new form, Commission Form No. 552. A market participant buying or selling less than a *de minimis* volume that operates under blanket sales certificate authority pursuant to § 284.402 or § 284.284 of the Commission's regulations must also submit a Form No. 552 for identification and certain reporting purposes, but is not required to report aggregate volumes of relevant transactions. A market participant that buys or sells less than a *de minimis* volume but that does not operate under blanket sales certificate authority need not submit a Form No. 552. Filings of the form will be due on May 1 of each year, starting on May 1, 2009 for the calendar year 2008.

3. The significant changes from the proposal in the NOPR fall generally into four categories. The first category of changes focuses the reporting requirement solely on wholesale buyers and sellers by excluding retail transactions. The second category of changes, intended to focus on price formation in the spot markets, narrows the questions on new Form No. 552 to obtain information about the amount of daily or monthly fixed-priced trading that are eligible to be reported to price index publishers as compared to the amount of trading that uses or refers to price indices. The third category of changes expands the number of companies that must state publicly whether or not they report to index price publishers. The last category involves other clarifications of questions raised in comments and changes made to streamline completion of the form.

4. In promulgating the final rule, the Commission exercises its new transparency authority under section 23 of the Natural Gas Act (transparency provisions).[2] Congress added the transparency provisions in enacting the Energy Policy Act of 2005 (EPAct 2005).[3] The transparency provisions direct the Commission ''to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce, having due regard for the public interest, the integrity of those markets, and the protection of consumers,'' [4] and further allow the Commission to ''prescribe such rules as the Commission determines necessary and appropriate to carry out the purposes of [the transparency provisions]''—rules that ''shall provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public.'' [5]

5. The final rule will facilitate transparency of the price formation process in natural gas markets by collecting information to understand in broad terms the size of the natural gas market and the use of fixed prices and of index prices. Currently, because of the way transactions take place in the natural gas industry, there is no way to estimate in even the broadest terms the overall size of the natural gas market or its breakdown by types of contract provision, including pricing and term (*e.g.*, spot or for delivery farther in the future).[6] As noted by the price index developer Platts, the question of what is the total size of the traded market has ''hung over the gas market for years.'' [7] More particularly, there is no way to determine important volumetric relationships between (a) the fixed-

[1] *Transparency Provisions of Section 23 of the Natural Gas Act,* 72 FR 20791 (Apr. 26, 2007), FERC, Stats. and Regs. ¶ 32,614 (2007).

[2] Section 23 of the Natural Gas Act, 15 U.S.C. 717t–2 (2000 & Supp. V 2005).

[3] Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

[4] Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(1) (2000 & Supp. V 2005).

[5] Section 23(a)(2) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(2) (2000 & Supp. V 2005).

[6] In its supplemental comments, Platts provided information regarding its use of physical basis transactions in compiling monthly indices. Supplemental Comments of Platt's, *Transparency Provisions of the Energy Policy Act,* Docket No. AD06–11–000 (filed Feb. 23, 2007).

[7] Comments of Platts at 6, *Transparency Provisions of the Energy Policy Act,* Docket No. AD06–11–000 (filed Nov. 1, 2006).

price, day-ahead or month-ahead transactions that form price indices; and (b) transactions that use price indices. Without the most basic information about these volumetric relationships, the Commission has been hampered in its oversight and its ability to assess the adequacy of price-forming transactions. Market participants are likewise unable to evaluate their use of indexed transactions. Typically, market participants rely on index-priced transactions as a way to reference market prices without taking on the risks of active trading. These market participants rely on index prices, often whether or not those prices are derived from a robust market of fixed-price transactions.

6. Price formation in natural gas markets makes no distinction between transactions that are jurisdictional to the Commission under the Natural Gas Act, absent new section 23 of that statute, and those that are not. While the Commission's traditional jurisdiction under sections 4, 5, and 7 of the Natural Gas Act is limited to ''natural gas compan[ies],'' [8] this limitation is not applicable to the Commission's jurisdiction under the transparency provisions.[9] As a consequence, in order to assess the size and structure of U.S. natural gas markets, information about wholesale natural gas transactions is required from a market participant regardless of whether it is subject to the Commission's traditional jurisdiction.

7. By obtaining information about natural gas transactions, the final rule would further the Commission's efforts to monitor price formation in the wholesale natural gas markets, which support the Commission's market-oriented policies for the wholesale natural gas industries. Those policies in turn require that interested persons have broad confidence that reported market prices accurately reflect the interplay of legitimate market forces. Without confidence in the basic processes of price formation, market participants cannot have faith in the value of their transactions, the public cannot believe that the prices they see are fair, and it is more difficult for the Commission to ensure that jurisdictional prices are ''just and reasonable.'' [10]

8. The performance of Western electric and natural gas markets early in the decade shook confidence in posted market prices for energy. In examining these markets, the Commission's Staff found, *inter alia,* that some companies submitted false information to the publishers of natural gas price indices, so that the resulting reported prices were inaccurate and untrustworthy.[11] As a result, questions arose about the legitimacy of published price indices, remaining even after the immediate crisis passed. Moreover, market participants feared that the indices might have become even more unreliable, since reporting (which has always been voluntary) declined to historically low levels in late 2002.

9. The Commission recognized concerns about price discovery in electric and natural gas markets as early as January 2003, when, prior to passage of EPAct 2005, the Commission made use of its existing authority under the Natural Gas Act and the Federal Power Act to help restore confidence in natural gas and electricity price indices. The Commission expected that, over time, improved price discovery processes would naturally increase confidence in market performance. On July 24, 2003, the Commission issued a *Policy Statement on Electric and Natural Gas Price Indices* (Policy Statement) that explained its expectations of natural gas and electricity price index developers and the companies that report transaction data to them.[12] On November 17, 2003, the Commission adopted behavior rules for certain electric market participants in its *Order Amending Market-Based Rate Tariffs and Authorizations* relying on section 206 of the Federal Power Act to condition market-based rate authorizations,[13] and for certain natural gas market participants in *Amendments to Blanket Sales Certificates*, relying on section 7 of the Natural Gas Act to condition blanket marketing certificates.[14] The behavior rules bar false statements and require certain market participants, if they report transaction data, to report such data in accordance with the Policy Statement. These participants must also notify the Commission whether or not they report prices to price index developers in accordance with the Policy Statement.[15] On November 19, 2004, the Commission issued an order that addressed issues concerning price indices in natural gas and electricity markets and adopted specific standards for the use of price indices in jurisdictional tariffs.[16]

10. In the Policy Statement, among other things, the Commission directed Staff to continue to monitor price formation in wholesale markets, including the level of reporting to index developers and the amount of adherence to the Policy Statement standards by price index developers and by those who provide data to them.[17] In adhering to this directive, Commission Staff documented improvements in the number of companies that reported prices from back offices, that adopted codes of conduct, and that audited their price reporting practices.[18] These efforts resulted in significant progress in the amount and quality of both price reporting and the information provided to market participants by price indices.[19] Further, in conformance with this directive, Commission Staff recently concluded audits of three natural gas market participants with blanket certificate authority that were data providers subject to § 284.403 of the Commission's regulations.[20]

[8] *See* 15 U.S.C. 717b–717i.

[9] Section 23 of the Natural Gas Act, 15 U.S.C. 717t–2 (2000 & Supp. V 2005).

[10] *See* sections 4 and 5 of the Natural Gas Act, 15 U.S.C. 717c, 717d; sections 205 and 206 of the Federal Power Act, 16 U.S.C. 824d, 824e.

[11] *See* ''Initial Report on Company-Specific Separate Proceedings and Generic Reevaluations; Published Natural Gas Price Data; and Enron Trading Strategies—Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices,'' Docket No. PA02–2–000 (Aug. 2003).

[12] 104 FERC ¶ 61,121 (2003). Subsequently, in the same proceeding, the Commission issued an *Order on Clarification of Policy Statement on Natural Gas and Electric Price Indices,* 105 FERC ¶ 61,282 (2003) (Order on Clarification of Policy Statement) and an *Order on Further Clarification of Policy Statement on Natural Gas and Electric Price Indices,* 112 FERC ¶ 61,040 (2005) (Order on Further Clarification of Policy Statement).

[13] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218, at P 1 (2003), *superseded in part by*, *Conditions for Public Utility Market-Based Rate Authorization Holders*, Order No. 674, 71 FR 9695 (Feb. 27, 2006), FERC Stats. and Regs. ¶ 31,208 (2006).

[14] *Amendments to Blanket Sales Certificates*, Order No. 644, 68 FR 66323 (Nov. 26, 2003), FERC Stats. and Regs. ¶ 31,153, at P 1 (2003) (citing 15 U.S.C. 717f), *reh'g denied*, 107 FERC ¶ 61,174 (2004).

[15] Certain portions of the behavior rules were rescinded in *Amendments to Codes of Conduct for Unbundled Sales Service and for Persons Holding Blanket Marketing Certificates*, Order No. 673, 71 FR 9709 (Feb. 27, 2006), FERC Stats. and Regs. ¶ 31,207 (2006). The requirements to report transaction data in accordance with the Policy Statement and to notify the Commission of reporting status were retained in renumbered sections. 18 CFR 284.288(a), 284.403(a).

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

[17] Policy Statement at P 43.

[18] Federal Energy Regulatory Commission, ''Report on Natural Gas and Electricity Price Indices,'' at 2, Docket No. PL03–3–004 (2004).

[19] *See*, *e.g.*, General Accountability Office, ''Natural Gas and Electricity Markets: Federal Government Actions to Improve Private Price Indices and Stakeholder Reaction'' (December 2005).

[20] The audits found general compliance with the price reporting standards. *See* April 5, 2007 letter issued to Anadarko Energy Services Co. in Docket No. PA06–11–000 by Director, Office of Enforcement and attached Audit of Price Index Reporting Compliance; April 5, 2007 letter issued to BG Energy Merchants, LLC in Docket No. PA06–12–000 by Director, Office of Enforcement and attached Audit of Price Index Reporting Compliance; April 5, 2007 letter issued to Marathon

Continued

11. Congress recognized that the Commission might need expanded authority to mandate additional reporting to improve market confidence through greater price transparency and included in EPAct 2005 authority for the Commission to obtain information on wholesale electric and natural gas prices and availability. Under the Federal Power Act [21] and the Natural Gas Act,[22] the Commission has long borne a responsibility to protect wholesale electric and natural gas consumers. EPAct 2005 emphasized the Commission's responsibility for protecting the integrity of the markets themselves as a way of protecting consumers in an active market environment. In particular, Congress directed the Commission to facilitate price transparency ''having due regard for the public interest, the integrity of [interstate energy] markets, [and] fair competition.'' [23] In the new transparency provisions of section 23 of the Natural Gas Act, Congress provided that the Commission may, but is not obligated to, prescribe rules for the collection and dissemination of information regarding the wholesale, interstate markets for natural gas, and authorized the Commission to adopt rules to assure the timely dissemination of information about the availability and prices of natural gas and natural gas transportation in such markets.[24]

II. Overview of Final Rule

12. In this final rule, the Commission largely adopts the proposal in the NOPR, with a few changes and a few clarifications. The final rule requires that any buyer or seller of more than a *de minimis* volume of natural gas report aggregate volumes of relevant transactions in an annual filing using a new form, Commission Form No. 552. A market participant that buys or sells less than a *de minimis* volume and that operates under blanket sales certificate authority under § 284.402 or § 284.284 of the Commission's regulations must also submit a Form No. 552 for identification and certain reporting purposes, but is not required to report aggregate volumes of relevant transactions. A market participant that buys or sells less than a *de minimis* volume but that does not operate under blanket sales certificate authority need not submit a Form No. 552. Filings of the form will be due on May 1 of each year, starting on May 1, 2009 for the calendar year 2008.

13. The significant changes from the proposal in the NOPR fall generally into four categories. The first category of changes focuses the reporting requirement solely on wholesale buyers and sellers by excluding retail transactions. The second category of changes, intended to focus on price formation in the spot markets, narrows the questions on new Form No. 552 to obtain information about the amount of daily or monthly fixed-price trading that are eligible to be reported to price index publishers as compared to the amount of trading that uses or refers to price indices. The third category of changes expands the number of companies that must state publicly whether or not they report to index price publishers. The last category involves other clarifications of questions raised in comments and changes made to streamline completion of the form.

14. On Form No. 552, certain wholesale natural gas buyers and sellers must identify themselves to the Commission and report summary information about their physical natural gas transactions for the previous calendar year including:

a. the total volume of transactions for the previous calendar year;

b. the volume of transactions that were priced at fixed prices for next-day delivery and were reportable to price index publishers;

c. the volume of transactions priced by reference to next-day gas price indices;

d. the volume of transactions that were priced at fixed prices for next-month delivery and were reportable to price index publishers; and,

e. the volume of transactions priced by reference to next-month gas price indices.

15. As defined in Form No. 552, a transaction is ''reportable to price index publishers'' if it is made at a reportable location where a price index publisher collects information for fixed-price transactions with next-day or next-month delivery obligations in order to create a price index. As these locations may change over time, Commission Staff will post each year a list for the coming year of current ''Reportable Locations'' for each price index publisher on the Commission Web site at *http://www.ferc.gov/docs-filing/eforms.asp#552*. This information will allow a market participant to determine whether a transaction should be classified on Form No. 552 as a reportable transaction, i.e., one made at a reportable location.

16. In addition, on the form, a natural gas seller must state whether it operates under blanket certificate authority under § 284.402 of the Commission's regulations, whether it reports transactions to price index publishers, and whether any such reporting complies with the standards provided in § 284.403(a).[25] Similarly, an interstate pipeline must state whether it operates under blanket certificate authority under § 284.284 of the Commission's regulations, whether it reports transactions to price index publishers and whether any such reporting complies with the standards provided in § 284.288(a).[26]

17. The final rule requires these holders of blanket sales certificates and, also, wholesale buyers and sellers of more than a *de minimis* volume in the reporting year to report to the Commission on Form No. 552 whether they report transactions to natural gas price index publishers.[27] Sellers with blanket sales authority must indicate whether such reporting complies with the Commission's standards for such reporting. Prior to this final rule, such sellers were required to notify the Commission only when it changed their practice regarding such reporting. The final rule will make notifications of reporting status more reliable.

18. The final rule is designed to permit an annual estimate of (a) the size of the physical domestic natural gas market, (b) the use of index pricing in that market, (c) the size of the fixed-price trading market that produces price indices from the subset reported to index publishers, and (d) the relative size of major traders. Obtaining such estimates requires information from all significant buyers and sellers of wholesale natural gas in the United States. The final rule creates an annual requirement that buyers and sellers of more than a *de minimis* volume of

Oil Co. in Docket No. PA06–13–000 by Director, Office of Enforcement, and attached Audit of Price Index Reporting Compliance.

[21] 16 U.S.C. 824 *et seq.*

[22] 15 U.S.C. 717 *et seq.*

[23] Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(1) (2000 & Supp. V 2005); *see also* section 220 of the Federal Power Act, 16 U.S.C. 824t (2000 & Supp. V 2005) (identical language).

[24] Section 23(a)(2) & (3) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(2) & (3) (2000 & Supp. V 2005).

[25] In its regulations, the Commission grants automatically blanket certificates of convenience and necessity under section 7 of the Natural Gas Act to interstate natural gas pipelines ''to provide unbundled firm and interruptible sales,'' 18 CFR 284.284 (blanket certificates for unbundled sales services), and to any person who is not an interstate pipeline ''to make sales for resale at negotiated rates,'' 18 CFR 284.402 (blanket market certificate).

[26] The Commission recognizes that few if any interstate natural gas pipelines still make wholesale sales. Nevertheless, if they were to sell gas at wholesale in interstate commerce, they would be subject to the final rule. More relevant, of course, is the fact that all of their affiliates making wholesale sales in interstate commerce would be subject to the final rule.

[27] New 18 CFR 260.401.

natural gas report volumes of relevant transactions to the Commission.

19. Although the natural gas transparency provisions authorize the Commission to require reporting of detailed transaction-by-transaction information from wholesale natural gas buyers and sellers, the Commission will collect a more limited set of aggregate information designed to assess the market.

III. Notice of Proposed Rulemaking

20. In the NOPR, the Commission proposed that buyers and sellers of more than a *de minimis* volume of natural gas be required to report aggregate numbers and volumes of relevant transactions in an annual filing. The Commission proposed a form for this reporting, which was attached to the NOPR as ''Form [X].''

21. Under the proposed reporting requirement, certain natural gas buyers and sellers would have had to identify themselves to the Commission and report summary information about physical natural gas transactions for the previous calendar year including: (a) Their total amount of physical natural gas transactions by number and volume; (b) the breakdown of their transactions by purchases and sales; (c) the number and volume breakdown of their purchases and sales by whether they were conducted in monthly or daily spot markets; and (d) the number and volume breakdown of their purchases and sales by type of pricing, in particular whether that pricing was fixed or indexed.

22. In addition, under the proposal, a natural gas seller would have been required to state whether it operates under blanket certificate authority under § 284.402 of the Commission's regulations, whether it reports transactions to price index publishers and whether any such reporting complies with the standards provided in § 284.403(a). Similarly, an interstate pipeline would have been required to state whether it operates under blanket certificate authority under § 284.284 of the Commission's regulations, and whether it reports transactions to price index publishers and whether any such reporting complies with the standards provided in § 284.288(a).

23. In response to the NOPR, seventy-four entities filed comments. Commission Staff held an informal workshop to discuss implementation and other technical issues associated with the proposals set forth in the NOPR on July 24, 2007. Following the workshop, twenty-nine entities filed reply comments.

IV. Comments on the Notice of Proposed Rulemaking

A. Merits of Annual Reporting Requirement

24. As an initial matter, no commenter asserted that the Commission lacked jurisdiction to implement the annual reporting proposal or lacked jurisdiction over market participants required to report, i.e., ''any buyer or seller that engaged in wholesale physical natural gas transactions the previous calendar year.'' [28]

25. The vast majority of commenters on this issue supported the annual reporting proposal, although many suggested refinements. For instance, MidAmerican Energy Company and PacifiCorp (MidAmerican) supported the reporting proposal and praised FERC's ''sensible approach,'' which would ''help market participants and state and federal regulators better understand the natural gas market and pricing process.'' [29] Similarly, Wisconsin Electric Power Company and Wisconsin Gas Company LLC (the Wisconsin Companies) supported the reporting proposal stating that the ''benefits of such a reporting regime outweigh the expenditures of resources necessary to implement.'' [30] The Wisconsin Companies cautioned, however, that ''[a]ny further frequency or granularity in the reporting requirements * * * would be unduly burdensome.'' [31] The Wisconsin Companies proposed changes to the information reported, suggesting a simple breakdown for transaction information between monthly or daily spot markets would be insufficient and suggesting obtaining information about transactions of longer than a month and intraday transactions.[32] The Wisconsin Companies reasoned that these categories of transactions ''make up a substantial amount of the purchases and sales conducted by the Companies and therefore need to be included in the reporting.'' [33]

26. The Public Service Commission of New York (PSCNY) supported the annual reporting proposal as a way to ''provide critical information to analyze the important volumetric relationships between the fixed-price day-ahead or month-ahead transactions that form price indices.'' [34] The Producer Coalition [35] also supported the annual reporting proposal as a way to create greater market confidence and transparency. The information obtained from the requirement, according to the Producers Coalition, would result in greater understanding of the prices and availability of physical natural gas in interstate commerce and allow for assessment of the ratio of fixed-price transactions to index-priced transactions.[36] AGA supported the annual reporting of transaction data ''because it could provide valuable information regarding the size of the physical natural gas markets.'' [37]

27. In opposition to the annual reporting proposal, Morgan Stanley Capital Group Inc. (MSCG) contended that the Commission did not establish in the NOPR a clear connection between the required annual reporting and the statutory goal to achieve price transparency in the physical gas markets.[38] For its part, MSCG asserted its confidence in the markets and contended it did not need the information that would be provided through the annual reporting requirement proposal.[39] MSCG observed that the price indices are already good and are getting better which renders any annual reporting requirement an unnecessary burden.[40] MSCG described the proposal as an ''additional regulatory intervention to benefit the publishers' commercial enterprise.'' [41] Also in opposition, DCP Midstream LLC (DCP) objected to the annual reporting proposal as unnecessary given that there are other sources available for the information sought in the proposal.[42]

28. Platts, a price index publisher, proposed revisions to the annual reporting proposal. Platts contended that as drafted the annual reporting proposal could provide misleading information regarding the universe of fixed-price transactions and create a misleading comparison of fixed-priced transactions and index-priced transactions.[43] This problem arises, according to Platts, because the proposed definition of fixed-price transactions lumped together two

[28] New 18 CFR 260.401(b).

[29] MidAmerican Comments at 1 & 5; *see also* Statoil Comments at 4–5 (supporting annual reporting requirement).

[30] Wisconsin Companies Comments at 4.

[31] *Id.*

[32] *Id.* at 6.

[33] *Id.*

[34] PSCNY Comments at 2.

[35] The Producer Coalition consists of three independent producers: Forest Oil Corporation; Hydro Gulf of Mexico LLC; and, Newfield Exploration Company.

[36] Producer Coalition at 3.

[37] AGA Comments at 3.

[38] MSCG Comments at 7.

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] DCP Comments at 4–6.

[43] Platts Comments at 4–7.

categories of fixed-price transactions: (a) Fixed-price transactions that are eligible for inclusion in a published price index (''indexable'' as described by Platts); and (b) fixed-price transactions that are not eligible. Without distinguishing these two categories, the information reported could not be used to determine the percentage of fixed-price transactions that are reported to price index publishers.[44] Platts summarized the problem: ''the proposed reporting form would sweep up far more physical fixed-price deals than are eligible for inclusion in Platts's indices. Rather than enabling a comparison of apples to apples, it would compare apples and fruit salad.''[45]

29. To avoid this problem, Platts recommended that the Commission distinguish between ''transactions that are eligible to be included in [published price] indices and those that are not.''[46] In support of this recommendation, American Public Gas Association (APGA) advocated changing the survey form to obtain data to determine ''what proportion of reportable fixed-price transactions are actually being reported'' to index publishers.[47] APGA asserted that, when survey data are collected, FERC should ''be able to determine once and for all whether the indices, on the basis of which hundreds of millions of dollars of natural gas are traded, are grounded in fixed-price transactions representing most of the fixed-price transactions being consummated in the market.''[48]

30. Platts, in its comments, also suggested that all companies—not just blanket certificate holders—notify the Commission annually of their price reporting status.[49] Additionally, Platts suggested that all companies affirm that their price reporting practices comply with the Policy Statement procedures.[50]

31. Calpine Corporation (Calpine) contended that the Commission should avoid collection of information that is available elsewhere. As an example, Calpine suggested that a market participant that submits information on its fossil-fuel purchases to the U.S. Department of Energy's Energy Information Administration (EIA) not be required to file an annual report at the Commission.[51]

B. De Minimis Threshold

32. In the NOPR, the Commission proposed to define a *de minimis* market participant as a market participant that engages in physical natural gas transactions that amount by volume to *less* than 2,200,000 MMBtus annually and to exclude such *de minimis* market participants from reporting transaction information.[52] Several commenters sought to increase the *de minimis* threshold.[53] MSCG supported a higher *de minimis* volume based on 200 standard futures contracts per day as a way to focus only on large sellers.[54] Northwest Industrial Gas Users (Northwest Industrials) argued for increasing the annual volume threshold significantly from the proposed 2,200,000 MMBtus per year to 136,000,000 MMBtu per year.[55] Independent Oil & Gas Association of West Virginia proposed a greater *de minimis* threshold of 10,000,000 MMBtu/year.[56] A greater *de minimis* threshold would reduce the burden, it contended, for some of its small producer-members.[57] The Wisconsin Companies called for a greater *de minimis* threshold because the threshold set forth in the NOPR uses ''physical volumes consumed [and, thus], may ignore the reality of daisy chain sales; that is, many transactions can occur before natural gas ultimately reaches the consumer.''[58]

33. Some commenters supported the Commission's proposed *de minimis* threshold.[59] The Texas Alliance of Energy Producers (Texas Alliance) contended that the *de minimis* threshold for annual transaction reporting is reasonable.[60] IPAA advocated setting the *de minimis* threshold as a function of the market size rather than setting it as a fixed number.[61]

34. The Interstate Natural Gas Association of America (INGAA) sought clarification that a *de minimis* market participant need only file basic identification and whether it reports transactions to index price publishers.[62]

C. Exclusion of Certain Transactions

35. Commenters sought to exclude certain transactions from the reporting requirement. INGAA sought to exclude interstate pipeline transactions associated with cash-out and operations because such information is already reported by some in Form No. 2 and on electronic bulletin board (EBB) postings and because such operational transactions would only distort assessment of the quantity of gas available for trading in the interstate market.[63] The Oklahoma Independent Petroleum Association (Oklahoma IPA) sought to exclude transactions priced pursuant to a ''percentage of proceeds'' contract under which a producer is required to sell any gas produced and receive the percentage of proceeds realized by the buyer.[64] Oklahoma IPA argued that sellers of such contracts have no influence on the price for the sale of gas.[65] Along those lines, Oklahoma IPA argued that the *de minimis* threshold is too low.[66]

36. Shell sought to exclude reporting transactions that are related to operational functions and transactions between affiliates.[67] As transactions related to operational functions, Shell included imbalance make-up, royalty-in-kind payments, gas provided for processing such as plant thermal reduction (shrinkage), and purchases and sales related to the production and gathering function.[68] Such transactions, Shell contended, are not part of the wholesale market and their reporting would not provide a meaningful benefit.[69] As to affiliate transactions, Shell noted that the Commission's Policy Statement excludes transactions between affiliate companies.[70]

37. MSCG supported the exclusion of financially settled transactions from the proposed reports, claiming that the Commission lacks jurisdiction over natural gas futures contracts that are not settled through physical delivery.[71] Further, MSCG asserted that the Commission's memorandum of understanding with the Commodity Futures Trading Commission could facilitate obtaining such information.[72]

---

[44] *Id.* at 5.

[45] *Id.* at 7.

[46] *Id.* at 4.

[47] APGA Reply Comments at 1; *see also* AGA Reply Comments at 7 (supporting ''capture'' of transactions eligible to be reported to a price index publisher).

[48] APGA Reply Comments at 3.

[49] Platts Comments at 8.

[50] *Id.*

[51] Calpine Comments at 4.

[52] NOPR at P 52.

[53] MSCG Comments at 10; Northwest Industrial Gas Users Comments at 7–10; Independent Oil & Gas Association of West Virginia at 3–4.

[54] MSCG Comments at 10; *see also* INGAA Comments at 8 (supporting MSCG's *de minimis* proposal).

[55] Northwest Industrials at 7–10.

[56] West Virginia Independents Comments at 3–4.

[57] *Id.*

[58] Wisconsin Companies Comments at 5.

[59] *See, e.g.*, APGA Comments at 10.

[60] Texas Alliance Comments at 12.

[61] IPAA Comments at 3–4.

[62] INGAA Comments at 8.

[63] *Id.* at 9.

[64] Oklahoma IPA Comments at 3.

[65] *Id.* at 3; *see also* Hess Corporation Comments at 4–6.

[66] Oklahoma IPA Comments at 3.

[67] Shell Comments at 8.

[68] *Id.*

[69] *Id.* at 8–9.

[70] *Id.* at 9 (*citing Price Discovery in Natural Gas and Electric Markets, Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 (2003) (Policy Statement)).

[71] MSCG Comments at 8.

[72] *Id.*

38. The Natural Gas Supply Association (NGSA) sought clarification that a market participant did not need to report the following transactions: (1) liquefied natural gas (LNG) import transactions prior to regasification; (2) natural gas exports from LNG liquefaction facilities; (3) transactions related to export for re-import; (4) transactions among affiliates; (5) sales and purchases in Alaska; and (6) sales to or purchases by an end-user.[73]

39. Several commenters sought to exclude retail transactions involving end-use customers from reporting. In its reply comments, the American Forest & Paper Association contended that end-use customers should not be required to report end-use purchases because end-use purchases do not play a role in setting index prices.[74] NGSA sought clarification that the Commission did not intend to require the reporting of non-wholesale transactions in the annual report.[75] NGSA contended that the Commission must limit reporting to wholesale transactions made in interstate commerce because section 23 of the Natural Gas Act limits the information the Commission may obtain to wholesale transactions in interstate commerce.[76]

40. AGA called for the Commission to exclude reporting of retail sales or volumes transported for others under retail choice programs.[77] The National Energy Marketers Association (NEM) requested that retail transactions be exempt from any reporting requirement.[78]

41. EnCana Marketing seeks clarification that the reporting requirement only applies to transactions in the United States.[79]

D. Mandatory Reporting of Fixed-Price Transactions to Publishers

42. Some commenters advocated for the Commission to use its transparency authority to require mandatory reporting of fixed-price transactions directly to price index publishers or indirectly to them through the Commission. APGA sees the annual reporting proposal set forth in the NOPR ''as an important first step in the journey towards full transparency in the physical market,'' but stated that the Commission should go further and seek mandatory reporting of fixed-price transactions.[80]

43. In contrast, other commenters objected to any mandatory reporting of fixed-price transactions.[81] For instance, concurring with the Commission's reasoning set forth in the NOPR, the NEM opposed mandatory reporting, saying that voluntary reporting with a safe harbor for a good-faith effort is sufficient.[82]

E. Purchases and Sales

44. Several commenters objected to reporting of information regarding purchases. Several parties asserted that double-counting would result from the inclusion of purchases and sales.[83] EnCana Marketing (USA) Inc. (EnCana Marketing) called for reporting on only sales of natural gas and not for purchases.[84] EnCana Marketing asserted there is no value in reporting purchases ''other than to enlarge the universe of market participants obligated to undertake the new reporting requirement.'' [85]

45. MSCG stated that the Commission should require the reporting of only sales, not purchases, contending that requiring buyers to report purchases would be overreaching.[86] The Texas Alliance contended it would be more efficient to require only the purchaser and/or recipient of gas from producers to file a report.[87]

F. Frequency of Reporting

46. Several commenters support reporting no more frequently than annually. EnCana Marketing contended that reporting more frequently than annually would be burdensome while not providing a significant benefit.[88] MSCG contended that any reporting should be annual, unless a clear connection can be established that more frequent reporting results in greater transparency.[89] In contrast, the National Association of Royalty Owners (NARO) favored monthly transaction reporting rather than just annual reporting; it stated that monthly as well as regional reporting would be more useful to royalty owners, including for the monitoring of price index reliability.[90]

G. Codification of Price Index Policy

47. In the NOPR, the Commission sought comment on whether to codify the price index policy standards into the regulations. The regulations describe the price index policy standards by reference to the Policy Statement.[91] NARO supported codification of the price index policy standards because the enforcement power of the Commission is necessary to protect the integrity of the data.[92] MSCG opposed such codification.[93]

H. Aggregation of Data

48. The Wisconsin Companies call for the discretion to submit separate reports because ''[a] requirement for [combination utilities] to submit a single annual report is problematic in that the separation of these business units currently prevents the sharing of market information that would be relevant to the reporting requirements.'' [94]

49. The Electric Power Supply Association (EPSA) called for companies to have the option to file either aggregated data for all its affiliate companies that buy and sell natural gas or individual reports for each entity that buys or sells gas.[95] Similarly, Calpine Corporation called for the Commission to allow companies to aggregate data from subsidiaries in order to reduce the burden on industry and to provide the benefit of eliminating double-counting of intracompany transactions.[96]

50. NGSA wanted clarification that the annual transaction report, with a few exceptions, applies to all nonaffiliated third parties, and one report can be filed on behalf of all entities in a corporate family.[97] NGSA advocated exclusion of sales between affiliates because such information

[73] NGSA Comments at 15.

[74] AF&PA Comments at 5–7; *see also* NGSA Comments at 12–14; Industrial Energy Consumers of America Comments at 3.

[75] NGSA Comments at 14.

[76] NGSA Comments at 12; *see also* Honeywell Reply Comments at 2.

[77] AGA Comments at 3.

[78] NEM Comments at 4–7.

[79] EnCana Marketing Comments at 5.

[80] APGA Comments at 5–8.

[81] Platts also supports FERC's ''continued reliance on voluntary price reporting.'' Platts Comments at 2; *see also* Electric Energy Institute (EEI) and the Alliance of Energy Suppliers Reply Comments at 3; ONEOK Energy Services Co. L.P. Comments at 3.

[82] NEM Comments at 2–3.

[83] *See, e.g.*, Northwest Industrials Reply Comments at 4.

[84] EnCana Marketing at 8–9.

[85] *Id.* at 9.

[86] MSCG Comments at 9.

[87] Texas Alliance Comments at 12.

[88] EnCana Marketing Comments at 10.

[89] MSCG Comments at 9.

[90] NARO Comments at 4; *see also* Mewbourne Oil Company Comments at 5.

[91] Title 18 of the CFR, section 284.403(a) reads, in relevant part:

''To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller shall provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement on Natural Gas and Electric Price Indices,* issued by the Commission in Docket No. PL03–3–000 and any clarifications thereto.''

See also 18 CFR 284.288(a) (identical language).

[92] NARO Comments at 5; *see also* MidAmerican Comments at 10.

[93] MSCG Comments at 12.

[94] Wisconsin Companies Comments at 6.

[95] EPSA Comments at 7–8.

[96] Calpine Comments at 4–5.

[97] NGSA Comments at 15.

would not be meaningful.[98] NGSA contended that such exclusion is consistent with the price index reporting standards set forth in the Policy Statement, which ''prohibit the reporting of sales between affiliates to price index developers.'' [99]

51. On a similar issue, AGA and Duke Energy Ohio, Inc. sought clarification on the reporting obligations of asset managers.[100]

I. Public Filing

52. Several commenters supported maintaining as non-public any aggregated transaction data to be filed.[101] NGSA contended that ''the annual aggregated transactional information could cause competitive harm to the market by potentially revealing corporate proprietary trading strategies of a company particularly [if it has] geographically concentrated trading or supply portfolios.'' [102] Pacific Gas & Electric (PG&E) contended that data filed by market participants should be maintained as non-public for one year following the calendar year for which the data pertain to avoid revealing competitive buying strategies.[103] Enbridge contended that each entity should have the option to file information non-publicly.[104]

53. NGSA advocated that any reporting be non-public. NGSA argued that even ''annual aggregated transactional information could cause competitive harm to the market by potentially revealing corporate proprietary trading strategies of a company, particularly for companies with geographically concentrated trading or supply portfolios.'' [105] NGSA explained that making public ''the percentage of a company's portfolio that is index-based or fixed-price-based and the percentage of natural gas sold in the monthly and daily markets'' would reveal the company's ''procurement strategy and risk profile,'' thus reducing its competitiveness in future deals.[106] To address this concern, NGSA suggested not publicly disclosing the individual company filings or ''redacting the identity of the market participant making the filing.'' [107]

[98] *Id.*

[99] NGSA Reply Comments at 4.

[100] AGA Comments at 3; Duke Energy Ohio, Inc. Comments at 8–9.

[101] Nicor Gas Company Comments at 6; Statoil Natural Gas LLC Comments at 5; PG&E Comments at 6; NGSA Reply Comments at 2.

[102] NGSA Reply Comments at 2.

[103] PG&E Comments at 6.

[104] Enbridge Comments at 26.

[105] NGSA Comments at 2.

[106] *Id.*

[107] *Id.*

J. Filing Date

54. In the NOPR, the Commission proposed an annual filing deadline of February 15 and asked for comment on whether this deadline would be unduly burdensome.[108] MSCG and Statoil called for a deadline of April 30.[109] AGA recommended a filing date of May 1.[110] NGSA recommended a filing date of either May 1 or April 18, which is the filing deadline of FERC Form No. 2.[111]

K. Safe Harbor

55. Several commenters requested that the Commission adopt a safe harbor for good faith compliance with the reporting obligation.[112] The Commission should state, according to AGA, that it will not ''prosecute, penalize or otherwise impose remedies on parties for inadvertent errors in * * * reporting.'' [113]

L. Information Collection Burden

56. NEM and Sequent Energy Management, L.P. (Sequent) stated that the Commission significantly underestimated in the NOPR the cost burden imposed by the annual reporting proposal.[114] NEM stated an estimate that it would take approximately 200 hours annually to comply with the reporting requirement.[115] NEM explained that because market participants' data is not currently stored in a format that could be used to fill out the proposed form, market participants would need to develop ancillary information technology systems to store such data at significant cost.[116] NEM also stated that although the proposal would require annual reporting, data collection would be needed daily, which would be costly.[117] Sequent pointed out that the Commission estimate overlooks the costs of legal and regulatory compliance for each annual report.[118] Sequent also stated that the cost burden estimate ignores asset management arrangements because an annual reporting requirement would trigger renegotiation of those asset management contracts.[119]

[108] NOPR at P 68.

[109] MSCG Comments at 9; Statoil Comments at 6–7.

[110] AGA Comments at 4.

[111] NGSA Comments at 15–16.

[112] AGA Comments at 6–7; NGSA Comments at 16–17; PG&E Comments at 6; Suez Energy North America, Inc. Comments at 10–12.

[113] AGA Comments at 7.

[114] NEM Comments at 7; Sequent Comments at 6–7.

[115] NEM Comments at 8.

[116] NEM Comments at 7.

[117] NEM Comments at 8.

[118] Sequent Comments at 7.

[119] Sequent Comments at 7.

V. Commission Determination

57. On the basis of the comments, the Commission has determined to adopt in large part the proposed annual reporting of certain natural gas transaction information, but to modify its proposal in several ways. Specifically, the Commission adopts rules here to require certain market participants to report annually information about their wholesale, physical natural gas transactions delivered in the previous calendar year in the United States of America on a form, Form No. 552.[120] For purposes of the annual reporting requirement, a market participant is defined as ''any buyer or seller that engaged in wholesale, physical natural gas transactions in the previous calendar year.'' [121] Specifically, on Form No. 552, a market participant must provide the Commission with contact information and answer questions about whether it sells pursuant to a blanket sales certificate and whether it reports to price index publishers. A market participant that sold or purchased more than a specified *de minimis* volume of natural gas during the previous calendar year, regardless of whether it holds a blanket sales certificate, must also provide the following information:

a. The total volume of transactions for the previous calendar year;

b. The volume of transactions that were priced at fixed prices for next-day delivery and were reportable to price index publishers;

c. The volume of transactions priced by reference to next-day gas price indices;

d. The volume of transactions that were priced at fixed prices for next-month delivery and were reportable to price index publishers; and,

e. The volume of transactions priced by reference to next-month gas price indices.

58. The final rule will also require a market participant to report whether it operated under a blanket sales certificate under the Commission's regulations, § 284.402 or § 284.284. This information will allow the Commission to measure overall market activity of the entities subject to its jurisdiction under the Natural Gas Act as well as allow the Commission to maintain records of such entities. The final rule will require a market participant to indicate whether it

[120] As we stated in the NOPR, although the standard contract for the most significant natural gas futures market traded on the New York Mercantile Exchange (NYMEX) requires physical delivery, the vast majority of those transactions do not go to delivery. For the purposes of the reporting requirement, the Commission excludes volumes of futures transactions from reporting.

[121] New 18 CFR 284.401(b).

reports transactions to any price index publishers, and, if so, whether their reporting conforms to the standards set forth in § 248.403 or § 248.288, as applicable. This information will allow the Commission to ensure the accuracy of price indices and to monitor adherence to the Commission's transaction reporting standards.

59. The final rule retains several of the specific proposals presented in the NOPR: the *de minimis* threshold is to remain the same; all filings are to be made public; both purchases and sales are to be reported; and the filing will be annual.

60. The final rule makes several changes to the proposal in the NOPR. They include the following:

a. Reporting will be limited to buyers and sellers only of wholesale natural gas delivered in the United States, i.e., it excludes sales to end-users.

b. All wholesale buyers and sellers of natural gas operating under a blanket sales certificate and all others buying or selling more than the *de minimis* volume must provide contact information, indicate whether they are operating under a blanket sales certificate, and whether they report prices to an index publisher. In the NOPR, the Commission did not propose asking wholesale buyers and sellers that are not operating under a blanket sales certificate whether they report prices to index publishers.

c. A company with multiple affiliates may choose to report separately or in aggregate, as best meets its needs. In the NOPR, we assumed that reporting would be by affiliate or subsidiary.

d. The questions on the form now request data relating to transactions with expected deliveries in the reporting year, rather than transaction dates.

e. The form no longer requests the number of transactions.

f. The definitions of fixed-price transactions in the form have been changed to tie more directly to those volumes that could be reported to index providers. To clarify those terms, the Commission will establish a web site defining reportable locations previous to each reporting year, and providing links to active index publishers and their reporting definitions.

61. The final rule includes further instructions regarding certain specific categories of reportable and non-reportable transactions. The final rule also discusses some general issues raised by commenters including safe harbor provisions, mandatory reporting of fixed-price transactions to price index publishers, and possible effects of the rule on price index publishers.

62. By obtaining the volume of transactions conducted for each significant market participant, the Commission, market participants and others will be able to determine the overall level of activity of market participants in the physical natural gas market. In particular, the information will provide regularly an estimate of (a) the size of the physical U.S. domestic natural gas market, (b) the use of index pricing in that market, (c) the size of the fixed-price trading market that produces price indices, and (d) the relative sizes of major traders.

63. This information will improve the understanding of index pricing by interested entities, including the market participants and state commissions who use them. The volume break-down of transactions by price type, fixed-price or index-price, should permit an overall assessment of the ratio of index-using transactions to price-forming transactions, i.e., fixed-price transactions. At present, we do not know how much fixed-price transactions are a part of the universe of natural gas transactions, although they may be the minority of natural gas transactions.[122] The Commission has taken several steps to restore confidence in natural gas index prices and their formation. By obtaining information regarding the extent that market participants make fixed-price transactions, market participants will be able to evaluate their confidence in the index prices that are formed by those fixed-price transactions.

64. By collecting sales and purchases information, results may also be cross-checked to ensure that information is accurate. In effect, total sales should roughly equal total purchases, with some allowance for *de minimis* buyers and sellers.

A. Definitions

65. Definitions used in this final rule for development of Form No. 552 include the following:

a. *Affiliate*—An affiliate means a person who controls, is controlled by or is under common control with, another person.[123]

b. *Fixed Price*—A ''Physical Natural Gas'' price determined by agreement between buyer and seller and not benchmarked to any other source of information. For example, Physical Basis transactions that refer directly to futures prices, for the purpose of this form, are not ''Fixed Price'' transactions.

c. *Next-Day Delivery*—Delivery of a transaction executed prior to NAESB nomination deadline (11:30 am Central Prevailing Time) on one day for uniform physical delivery over the next pipeline day. Transactions done for Friday are usually for flow on Saturday, Sunday, and Monday inclusive. Trading patterns may vary in the case of holidays or the end of a month that occurs on a weekend. Commission Staff will maintain links to price index publishers' descriptions of their processes for receiving price information and publishing indices on the ferc.gov Web site at *http://www.ferc.gov/docs-filing/eforms.asp#552*.

d. *Next-Month Delivery*—Delivery of a transaction executed during the last five (5) business days of one month for uniform physical delivery over the next month.

e. *Physical Natural Gas*—Natural gas transactions that contain an obligation to deliver natural gas at a specified location and at a specified time, with the exception of physically-delivered futures contracts. It is not necessary that natural gas actually be delivered under the transactions, only that the delivery obligation existed in the agreement when executed. Certain Physical Natural Gas transactions may not remain in existence through the time of delivery because they were traded away or ''booked out.'' For purposes of this form, these transactions should be included whether they went to delivery or not. The only exception, notwithstanding its delivery obligation, is futures contracts traded on the New York Mercantile Exchange which should *not* be reported in this form.

f. *Price Index Publisher*—Companies that report price indices for U.S. wholesale natural gas markets. The list of companies can change over time. Commission Staff will maintain a list of relevant ''Price Index Publishers'' with links to their descriptions of their processes for receiving price information and publishing indices on the ferc.gov Web site at *http://www.ferc.gov/docs-filing/eforms.asp#552*.

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

[123] A market participant has the option of including an affiliate's information in its reporting on Form No. 552. This is a matter of convenience for companies subject to the final rule. Their affiliations are irrelevant to whether they are required to report under the final rule. If they satisfy the criteria of a reporting market participant, they must report. Therefore, the Commission intends to allow market participants to determine whether their relationships permit one company to report on behalf of another company. Accordingly, the definitions of ''affiliate'' used elsewhere in the Commission's regulations, *e.g.*, in Part 358, are not germane.

g. *Prices that Refer to (Daily or Monthly) Price Indices*—Prices for ''Wholesale Natural Gas Purchases'' or ''Sales'' that reference directly a daily or monthly index price published by a ''Price Index Publisher'' rather than a ''Fixed Price'' or a price that refers directly to some other benchmark.

h. *Quantity*—Amount of purchases or sales expressed in units of energy ''British Thermal Units'' (Btu). One million BTUs (MMBtu) are, by definition, the same as one Dekatherm (Dth). A volume of one billion cubic feet (Bcf) of natural gas contains approximately one trillion Btus (TBtu or million MMBtu) of energy depending on the exact energy content of the natural gas. The quantities to be reported in the ''Purchase and Sales Information'' schedule should be measured in TBtus.

i. *Reportable Locations*—Those locations (hubs, pipelines, regions, etc.) where ''Price Index Publishers'' collect ''Fixed Price'' information for transactions with ''Next-Day'' or ''Next-Month Delivery'' obligations, and produce index prices. These locations may change over time. Commission Staff will maintain a list of current ''Reportable Locations'' with links to ''Price Index Publishers'' descriptions of their processes for receiving price information and publishing indices on the ferc.gov Web site at *http://www.ferc.gov/docs-filing/eforms.asp#552*.

j. *Reporting Company*—The person, corporation, licensee, agency, authority, or other legal entity or instrumentality on whose behalf the report is being submitted by the ''Respondent.''

k. *Respondent*—The person, corporation, licensee, agency, authority, or other legal entity or instrumentality that is submitting the report either on its own behalf, or on behalf of itself and/or its affiliates. A Respondent may choose to either report for all its affiliates collectively, or may choose to have each of its affiliates report separately as their own ''Respondent.'' If reporting collectively, the reporting ''Respondent'' must report for each ''Affiliate'' in the ''Schedule of Reporting Companies'' and the ''Price Index Reporting Schedule,'' and collectively for all its affiliates in the ''Purchase and Sales Information'' schedule.

l. *Wholesale Natural Gas Purchases*—The ''Quantity'' of ''Physical Natural Gas'' purchased by the ''Reporting Company'' during the ''Year of Report,'' with the exception of certain futures contracts.

m. *Wholesale Natural Gas Sales*—The ''Quantity'' of ''Physical Natural Gas'' sold by the ''Reporting Company'' during the ''Year of Report'' to customers that do not use all the natural gas they buy themselves under contracts with physical delivery obligations, with the exception of physically-delivered futures contracts.

B. Facilitating Price Transparency

66. The annual reporting requirement will make the price formation process more transparent and aid the Commission's efforts to monitor price indices and the integrity of wholesale natural gas markets. These efforts follow the directive of Congress in the transparency provisions to facilitate price transparency ''having due regard for the public interest, the integrity of [the physical natural gas] markets, [and] fair competition.'' [124] By monitoring and reporting on price indices and their influence over wholesale natural gas pricing in the United States, the Commission ensures that market participants can have confidence in the oversight of published price indices, a basic building block of price formation. We reiterate that, without confidence in the basic processes of price formation, market participants cannot have faith in the value of their transactions, the public cannot believe that the prices they see are fair, and it is more difficult for the Commission to ensure that jurisdictional prices are ''just and reasonable.'' [125]

67. The information gained from the annual reporting requirement will make the price formation process more transparent by providing a better understanding of the size of the physical natural gas market, the use of fixed and indexed prices in that market, and the formation of price indices. The information collected under this requirement is focused specifically on daily and monthly physical spot or ''cash'' market activity and the contracting based on the prices developed in those markets. The requirement will not create additional information concerning other types of wholesale natural gas contracting practices in the United States, such as long-term, fixed-price transactions, swaps and other financially-settled transactions and futures. Better understanding of the role and functioning of wholesale natural gas spot markets can increase confidence that posted market prices of natural gas accurately reflect the interplay of legitimate market forces.

[124] Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(1) (2000 & Supp. V 2005).

[125] *See* sections 4 and 5 of the Natural Gas Act, 15 U.S.C. 717c & 717d.

68. In promulgating these regulations to improve the transparency of the natural gas markets, the Commission exercises its authority under the transparency provisions. Under the Natural Gas Act,[126] the Commission has long borne a responsibility to protect wholesale electric and natural gas customers.[127] The transparency provisions of EPAct 2005 added new authority for protecting the integrity of the markets themselves as a way of protecting customers in an active market environment.[128] As discussed above, Congress's grant of transparency authority followed the Commission's earlier efforts at monitoring the price formation process.[129] Congress recognized that the Commission might need expanded authority to mandate additional reporting to improve market confidence through greater price transparency and included in EPAct 2005 authority for the Commission to obtain information on the availability and prices of sales of wholesale natural gas.

69. Pursuant to this grant of authority, the final rule continues the Commission's efforts to monitor price index formation and to increase transparency of the price formation process, and, thus, protect the integrity of the physical natural gas markets. The final rule increases transparency by allowing, for the first time, the Commission and other market observers to determine an annual estimate of (a) the size of the physical domestic natural gas market, (b) the use of index pricing in that market, (c) the size of the fixed-price trading market that produces price indices from the subset reported to index publishers, and (d) the relative size of major traders.

70. The information to be reported in the annual reporting requirement falls well within the Commission's transparency authority. In section 23 of the Natural Gas Act, Congress provided the Commission a broad grant of authority to obtain and disseminate ''information about the availability and prices of natural gas sold at wholesale and in interstate commerce.'' [130] Information about the volume of wholesale, physical gas transactions and about the type of pricing used for those transactions is ''information about the availability and prices of natural gas

[126] 15 U.S.C. 717 *et seq.*

[127] *See* sections 4 and 5 of the Natural Gas Act, 15 U.S.C. 717c, 717d; sections 205 and 206 of the Federal Power Act, 16 U.S.C. 824d, 824e.

[128] *See* section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(1) (2000 & Supp. V 2005).

[129] *See, supra*, at P 11.

[130] Section 23(a)(1) of the Natural Gas Act; 15 U.S.C. 717t–2(a)(1) (2000 & Supp. V 2005).

sold at wholesale and in interstate commerce.'' [131]

71. The information sought in the final rule is not obtainable elsewhere. Section 23(a)(4) of the Natural Gas Act requires the Commission to ''consider the degree of price transparency provided by existing price publishers and providers of trade processing services * * *.'' [132] As we stated in the NOPR, because of the way transactions currently take place in the natural gas industry, there is no way to estimate in even the grossest terms the overall size of the natural gas market or its breakdown by types of contract provision, including pricing (fixed prices or prices using or referring to price indices) and term (*e.g.*, spot transactions for next-day or next-month delivery or forward transactions for longer-term delivery).[133] Further, currently there is no way to determine important volumetric relationships between the fixed-price, day-ahead or month-ahead transactions that form price indices or to determine the use of price indices themselves.

72. In comments on the NOPR, no commenter pointed to a source for similar information. DCP contended that ''the information that is available through the price index publishers is the same information that is being requested [in the annual reporting proposal] and it is the actual data that makes up the index prices that represent the price of natural gas on any given day at any given location.'' [134] The information to be reported on Form No. 552 is not the same. The information to be reported will include information regarding transactions that could be (i.e., are qualified to be) but are not reported to price index publishers, therefore, such information is not available from price index publishers. The amount of market activity that *could* form price indices as opposed to the amount that actually does form price indices is an important fact that has been missing in the discussion of the Commission's market price policies, leading to confusion and undermining confidence in indices.

73. Further, the Commission's goal is not only to understand the transactions used to formulate price indices; it is to understand how influential price indices are in the overall transacting of natural gas in U.S. wholesale markets. The information to be reported on Form No. 552 will allow market participants to evaluate their use of indexed transactions. Typically, market participants rely on index-priced transactions as a way to reference market prices without taking on the risks of active trading. These market participants rely on index prices, often whether or not those prices are derived from a robust market of fixed-price transactions. Such information is not available elsewhere.

74. Also, the annual reporting requirements will allow the Commission, market participants and the public to estimate the amount of activity of significant wholesale traders relative to the overall market. Information on significant traders' activity allows the Commission and the public to understand the impact of the largest traders on the price formation process, improving natural gas market transparency.

75. The Commission directs Staff to monitor the information received in the filings of Form No. 552, to determine whether the information received meets the goals set forth in this preamble. Although in future years the Commission Staff may change the reportable locations and may change the format of Form No. 552 in order to make the form easier to complete and to make the information submitted easier to analyze, the substance of Form No. 552 will remain the same absent Commission action.

C. Reporting Requirements Retained From the Notice of Proposed Rulemaking

76. The final rule retains several of the features of the annual reporting proposal presented in the NOPR: (1) The *de minimis* threshold remains the same; (2) all filings are to be made publicly; (3) both purchases and sales are to be reported; and (4) the form is to be submitted annually.

1. *De Minimis* Threshold

77. In the final rule, the Commission retains the volumetric *de minimis* threshold proposed in the NOPR and clarifies its application.[135] A market participant is required to report its transactions annually if it engages either in wholesale sales that amount to 2,200,000 MMBtus or more *or* wholesale purchases that amount to 2,200,000 MMBtus or more. Each market participant operating under a blanket certificate under § 284.284 or § 284.402 must file a Form No. 552. However, if a market participant operating under a blanket certificate under § 284.284 or § 284.402 buys or sells less than the *de minimis* volumes in the reporting year, it is not required to provide information about the volumes of its transactions. A market participant that does not operate under a blanket certificate under § 284.284 or § 284.402, and that buys or sells less than the *de minimis* volumes in the reporting year, is not required to file a Form No. 552. The creation here of a *de minimis* threshold is consistent with the transparency provisions. Notwithstanding Congress's broadening of the scope of the Commission's jurisdiction in new section 23 of the Natural Gas Act with respect to transparency, Congress mandated that the Commission exempt ''natural gas producers, processors or users who have a *de minimis* market presence [from compliance] with the reporting requirements of this section.'' [136]

78. In proposing in the NOPR a *de minimis* threshold for reporting which would apply to market participants, the Commission sought to require reporting from a sufficient number of significant market participants to ensure, in the aggregate, an accurate picture of the physical natural gas market as a whole. To this end, the Commission proposed in the NOPR to define such a *de minimis* market participant as a market participant that engages in physical natural gas transactions that amount by volume to less than 2,200,000 MMBtus annually.[137] This figure was based on the simple calculation of one-ten thousandth (1/10,000th) of the annual physical volumes consumed in the United States, which is approximately 22 trillion cubic feet (Tcf) (or roughly 22 billion MMBtus).[138] Looked at another way, a *de minimis* market participant would trade the equivalent of less than one standard NYMEX futures contract per day. Although a market participant that contracts for 1/10,000th of the nation's annual physical volume may appear to have little effect on natural gas prices, that participant may be transacting only at one location and, thus, have a much greater pricing effect there. In the NOPR, we indicated that we do not expect annual physical

[131] *Id.*

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

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

[134] DCP Comments at 5.

[135] New 18 CFR 284.401(a) (defining *de minimis* market participant). The regulations define a market participant as ''any buyer or seller that engaged in physical natural gas transactions for the previous calendar year.'' New 18 CFR 284.401(b).

[136] Section 23(d)(2) of the Natural Gas Act, 15 U.S.C. 717t–2 (2000 & Supp. V 2005).

[137] New 18 CFR 260.401.

[138] U.S. Department of Energy, Energy Information Administration, Natural Gas Summary, Data Series: Total Consumption, 2006, *http://tonto.eia.doe.gov/dnav/ng/ng_sum_lsum_dcu_nus_a.htm.*

volumes consumed in the United States to remain constant, however the figure of 22 Tcf was a useful snapshot of consumption and a useful starting-point for setting the *de minimis* exemption.

79. As requested by INGAA, the Commission clarifies that each market participant that (a) either holds a blanket certificate under § 284.284 or § 284.402, or (b) buys or sells more than the *de minimis* volumes in the reporting year must report: identification information; whether it holds a blanket certificate under § 284.284 or § 284.402; whether it reports transactions to price index publishers, and, if so, whether its reporting conforms to the applicable regulations. A market participant that holds a blanket certificate under § 284.284 or § 284.402 but that buys or sells less than the *de minimis* volumes in the reporting year must complete the form except it need not report its volumes.

80. Several commenters, including MSCG,[139] Northwest Industrial Gas Users,[140] and the Independent Oil & Gas Association of West Virginia,[141] proposed greater *de minimis* thresholds. Other commenters, including the Texas Alliance,[142] supported the proposed threshold. No commenter suggested a lesser threshold. The proposed threshold is small enough to allow the Commission to accurately determine the size of the physical natural gas market, while at the same time, large enough to exclude market participants, who in the aggregate, do not contribute significantly to that market.

81. The spot wholesale natural gas markets that create index prices—those markets that involve fixed-price trading for next-day or next-month delivery at reportable locations and that are actually reported to price index publishers—make up only a tiny part of the overall wholesale natural market in the United States. This is true whether one compares those particular trading volumes to total U.S. consumption or whether, as Wisconsin Companies points out in their comments [143] (in support of a higher *de minimis* threshold) an appropriate total trading volume would also include those transactions that take place between the production and consumption of natural gas. When the spot wholesale natural gas markets that create index prices are then broken down among many varied geographical locations, even very small market participants can be very important in narrow regional contexts. It is conceivable that these small, local wholesale market participants do not actually contribute to price formation in this type of trading, but the Commission and other market observers are in no position to know at this time. If these small, local wholesale market participants do contribute to this type of price formation—which would be a healthy thing for these markets—such contribution would not be detectable if the *de minimis* threshold were set too high.

2. Public Filing

82. A market participant must submit Form No. 552, in a public filing. Some commenters objected to filing the form publicly because, in their view, public filing of the annual report could reveal confidential trading strategies.[144] The Commission finds these commenters' concerns are misplaced and ignore Congress's directive in the transparency provisions. Public access to Form No. 552 data would comport with the transparency provisions which require that any such rules ''provide for the dissemination, on a timely basis, of information * * * to the public.'' [145] The transparency provisions further direct the Commission to ''rely on [existing price publishers and providers of trade processing services] to the maximum extent possible.'' [146] By requiring public filings by market participants, the Commission would provide an opportunity for trade publications and commercial vendors to aggregate the information filed and provide any analysis should a desire for such services arise in the energy information marketplace.

83. Under the transparency provisions, the Commission is required to balance confidentiality concerns with the transparency goal that the information collected be disseminated publicly. The annual filing requirement balances these two statutory requirements. By requiring a company to file its report publicly, the requirement adheres to Congress's directive that ''[t]he rules shall provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas at wholesale and in interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public.'' [147] Because the filing requires aggregated information and does not require reporting of price information or of transaction-specific information, the annual reporting requirement adheres to Congress's other directive ''to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.'' [148] The annual reporting requirement avoids facilitating anti-competitive behavior in several ways: (i) Reported information would not include specific price information; (ii) reported information would be aggregated information over a period of one year and not transaction-specific information; (iii) reported information would be made on an aggregated, national level, and not by point or even region; and (iv) information would not be reported until four months after the end of the reporting year.

84. This approach is consistent with the opinion of the U.S. Department of Justice, which observed that the Commission ''may be able to achieve the benefits of transparency while limiting its potential harm by aggregating, masking, and lagging the release of such information.'' [149] The Commission determines that ''masking'' or permitting filings on a confidential basis is unnecessary to avoid potential harm. The aggregation of the information and lagging of public filing is sufficient to avoid such harm.[150] Any potential harm from the public filing of Form No. 552 would be minimal given the aggregation of data, both aggregation across the nation and aggregation across the calendar year, and given the lagging of the public filing of information until May 1 of the year following the reporting year. In circumstances in which any potential harm is minimal, it

[139] MSCG Comments at 10.

[140] Northwest Industrial Gas Users Comments at 7–10.

[141] Independent Oil & Gas Association of West Virginia Comments at 3–4.

[142] Texas Alliance Comments at 12.

[143] Wisconsin Companies Comments at 5.

[144] *See, e.g.*, PG&E Comments at 6.

[145] Section 23(a)(2) of the Natural Gas Act, 15 U.S.C. 717t–2 (2000 & Supp. V 2005).

[146] Section 23(a)(4) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(4) (2000 & Supp. V 2005).

[147] Section 23(a)(2) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(2) (2000 & Supp. V 2005).

[148] Section 23(b)(2) of the Natural Gas Act, 15 U.S.C. 717t–2(b)(2) (2000 & Supp. V 2005).

[149] Comments of the U.S. Department of Justice, Antitrust Division, *Transparency Provisions of the Energy Policy Act,* Docket No. AD06–11–000 (filed Jan. 25, 2007). The Department of Justice's comments focused on the electricity markets, although it did note that the same general considerations that applied to electricity markets also applied to natural gas markets.

[150] This is consistent with our approach regarding the individual transaction data reported on Electric Quarterly Reports. For that much more detailed reporting of individual transactions, the Commission found that a delay of 30 days for reporting individual transaction data in EQR filings would greatly reduce the usefulness of the data as a tool for collusion. *Revised Public Utility Filing Requirements,* Order No. 2001, 67 FR 31043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002) at P 17.

is not the Commission's practice to permit confidential filings.[151] In addition, smaller market participants whose operations are limited to a smaller region of the country are likely to transact less than the *de minimis* amount required to report their transaction information. Further, without public filings by market participants, market observers would not be able to estimate the relative size of major traders.

3. Purchases and Sales

85. Several commenters, including EnCana Marketing,[152] MSCG,[153] and the Texas Alliance,[154] objected to the inclusion of purchases as well as sales in the reporting requirement. While the Commission appreciates these commenters' concerns, it believes that volume information on purchases as well as sales is necessary for developing a complete and accurate picture of the size of the natural gas spot market. For example, it will permit the Commission Staff to cross-check information. Also, as discussed above, spot prices are formed in only a very tiny fraction of all wholesale U.S. natural gas transactions, which are then broken down among many varied geographical locations. Verifying the amount of such trading becomes far more difficult. At the level of *de minimis* volume set forth herein, this type of cross-verification becomes more important than it would otherwise. In this regard, Staff's experience implementing the Electronic Quarterly Reports suggests that purchase transactions are quite important in developing a comprehensive picture of trading activity.

86. Although the language of the natural gas transparency provisions address sales of natural gas, it does not limit the Commission from seeking information about natural gas purchases as well as sales. They are simply different sides of the same transaction. Congress directed the Commission to ''facilitate price transparency in markets for the sale * * * of physical natural gas in interstate commerce,'' but that language does not limit the Commission to seeking information regarding only sales.[155] Purchases of physical natural gas are also a part of such markets; there is no market for the sale of natural gas that does not include purchases. Nor does the natural gas transparency provision language that provides for the ''dissemination * * * of information about the availability and prices of natural gas *sold* at wholesale and interstate commerce'' restrict the Commission.[156] As a practical matter, information regarding purchases of natural gas is necessary to evaluate the reliability of information regarding sales of natural gas. Both types of information are necessary to obtain a useful gauge of price transparency in natural gas markets.

87. MSCG expressed a further concern about double-counting if purchases and sales are included.[157] Form No. 552 requires that purchases clearly be reported separately from sales. Given the clear identification of sales as opposed to purchases in the form, the Commission remains confident that its Staff and other users of this information will be capable of not mixing these separate sets of numbers in their analyses.

4. Annual Reporting

88. The Commission retains from the NOPR the requirement that Form No. 552 be submitted annually. Commenters provided a variety of perspectives on the frequency of filing, but none supported less frequently than annually. NARO favored monthly, regional reporting.[158] EnCana Marketing and MSCG commented that more frequent reporting would not provide a significant benefit.[159] Annual, national information alone will significantly improve both the Commission's and others' understanding of index pricing. Annual reporting should provide a useful amount of information to assess the volume break-down of transactions by price type, fixed-priced or index-priced, and the ratio of index-using transactions to price-forming transactions, i.e., fixed-priced transactions. A more granular breakdown, which would result from more frequent reporting or from regional reporting, would be more likely to reveal the strategies of particular market participants, raising the concerns Congress in the transparency provisions cautioned the Commission to avoid, that is, ''the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.'' [160]

D. Reporting Requirements Changed From the Notice of Proposed Rulemaking

89. In the final rule, the Commission changes several features of the reporting requirement proposal presented in the NOPR: (1) Retail (end-use) transactions are excluded; (2) basic contact information must be reported; (3) a market participant must indicate whether it reports transactions to price index publishers; (4) a market participant may report in the aggregate for its affiliates; (5) volumes are to be reported based on delivery date, not execution date; (6) a market participant must report volume information but not the number of transactions; (7) volumes of transactions must be broken down by whether they are reportable to price index publishers; and (8) the filing deadline is changed to May 1 of each year.

1. Exclusion of Retail Transactions

90. Several commenters objected to the inclusion of purchases in the form because end-use customers would be required to file annual reports.[161] Although some transactions reported to indices may include purchases by large end-users, the Commission is generally interested in wholesale prices. On balance, restricting reporting only to clearly wholesale transactions should provide a reasonable set of data for assessing wholesale price activity, without burdening retail or end-use customers. Consequently, the Commission does not require end-use customers or retail buyers to report transaction information unless they also make *wholesale* sales or purchases of natural gas greater than the *de minimis* threshold. Likewise, a transaction made to an end-user is not to be included in the volumes reported on the form. Of course, if the end-use customer holds a blanket marketing certificate under § 284.402, it must report on Form No. 552 that it holds such certificate and whether it reports to price index publishers.

---

[151] This is consistent with our approach regarding the individual transaction data reported on Electric Quarterly Reports. For that much more detailed reporting of individual transactions, the Commission found that a delay of 30 days for reporting individual transaction data in EQR filings would greatly reduce the usefulness of the data as a tool for collusion. *Revised Public Utility Filing Requirements*, Order No. 2001, 67 FR 31043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002) at P 17.

[152] EnCana Marketing Comments at 8–9.

[153] MSCG Comments at 9.

[154] Texas Alliance Comments at 12.

[155] Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(1) (2000 & Supp. V 2005).

[156] Section 23(a)(2) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(2) (2000 & Supp. V 2005) (emphasis added).

[157] MSCG Comments at 9.

[158] NARO Comments at 4; *see also* Mewbourne Oil Company Comments at 5.

[159] EnCana Marketing Comments at 10 and MSCG Comments at 9.

[160] Section 23(b)(2) of the Natural Gas Act, 15 U.S.C. 717t–2(b)(2) (2000 & Supp. V 2005).

[161] *See, e.g.*, AF&PA Comments at 5–7; NGSA Comments at 12–14; Industrial Energy Consumers of America Comments at 3.

2. Basic Contact Information and Use of Blanket Sales Certificates

91. Each market participant, including a *de minimis* market participant, must provide contact information and indicate on Form No. 552 whether or not it operates under blanket certificate authority under § 284.402 or § 284.284 of the Commission's regulations. This information from a market participant will provide the Commission with basic information regarding participants in wholesale natural gas markets necessary to monitor their behavior systematically as well as a measure of the number of holders of Natural Gas Act blanket sales certificates and contact information for those blanket sales certificate holders. This combination of information will permit some break down of market information between jurisdictional and non-jurisdictional components, which is in turn useful for effective oversight and monitoring for market manipulation.[162]

3. Status of Reporting to Price Index Publishers

92. Each market participant must state on Form No. 552 whether it reports transactions to price index publishers. If so, it must also state whether its reporting complies with the standards for reporting provided in § 284.403(a) or § 284.288(a), which in turn incorporate the reporting procedures of the *Policy Statement on Natural Gas and Electric Price Indices.*[163] Prior to this final rule, a blanket sales certificate holder did not need to report whether it reports transactions to a price index publisher; it needed only report whether it changes that reporting status.[164] To simplify the reporting, instead of a letter notification only upon a change in company policy, under this final rule, a market participant, including a blanket sales certificate holder, must notify the Commission annually of its price index reporting practices.[165] The Commission amends § 284.288(a) and § 284.403(a) in this final rule accordingly.

93. The Commission also requires a holder of blanket sales certificate to notify the Commission annually about its reporting of transaction information to price index publishers and whether any such reporting conforms to the Policy Statement. After the Policy Statement's notification requirement took effect, we observed that blanket marketing certificate holders may have overlooked this requirement and we provided the opportunity for blanket marketing certificate holders to notify the Commission by August 1, 2005 of their reporting status.[166] Based on Commission Staff's experience monitoring price indices and adherence to the Policy Statement, as discussed in the introduction, the Commission believes that notification on an annual basis would make the information more reliable. As a further benefit, a filing company would have the opportunity to review their practices in coordination with their response to the data collection proposal described above.

94. In the NOPR, the Commission sought comment on whether the procedures set forth in the Policy Statement for reporting to price index publishers should be codified.[167] Of those who commented on this provision, some supported codification; some opposed codification.[168] The Commission will not codify these procedures. The Commission believes that the regulations read in conjunction with the Policy Statement are sufficiently clear to price index publishers and those who report to price index publishers. In this regard, for example, this year, Commission Staff concluded audits of three natural gas market participants with blanket certificate authority that were data providers subject to § 284.403 of the Commission's regulations.[169] Commission Staff found that these three companies generally complied with the standards in the Policy Statement and found the regulations sufficiently clear to perform the audits and ensure compliance with the regulations.

95. In the final rule, in contrast to the proposal in the NOPR, a market participant with sales or purchases greater than or at the *de minimis* level must state whether it reports its transactions to a price index publisher regardless of whether it operates under a blanket sales certificate. Platts, in its comments, suggested that all companies—not just blanket certificate holders—notify the Commission annually of their price reporting status.[170] In fact, the processes used in the formation of wholesale natural gas prices by market participants have no regard for whether or not those participants operate under blanket certificates. In order to clearly assess the effectiveness of the index formation process, the Commission needs to collect the information about reporting to price index publishers from each market participant including market participants that section 1 of the Natural Gas Act[171] excludes from the Commission's certificate authority under section 7 of the Natural Gas Act.[172]

96. However, only a company operating pursuant to a blanket sales certificate must state on Form No. 552 whether its reporting to price index publishers conforms to the Commission's Policy Statement. Platts suggested that all companies affirm that their price reporting practices comply with the Policy Statement procedures.[173] But, the Policy Statement standards apply only to holders of blanket sales certificates. A market participant that does not hold blanket sales certificates is not required to comply with the Policy Statement processes, nor does it receive the safe harbor available in the Policy Statement. Consequently, there is no value to the Commission in collecting and publicizing the compliance of companies with policies that do not apply to them.

4. Aggregated Reporting

97. In reporting transactions on Form No. 552, a market participant may, but is not required to, aggregate information from its affiliates. One commenter,

[162] The Commission has the authority to police against manipulation of natural gas markets in connection with jurisdictional transactions. *Prohibition of Energy Market Manipulation,* Order No. 670, 71 FR 4244 (Jan. 26, 2006), FERC Stats. & Regs. ¶ 31,202 (2006), at P 4, 21–24.

[163] *Policy Statement on Natural Gas and Electric Price Indices,* 104 FERC ¶ 61,121 (2003).

[164] *See* former 18 CFR 284.403(a) (blanket marketing certificate holder); former 18 CFR 284.288(a) (unbundled sales certificate holder). In Order No. 644, the Commission required each holder of a blanket sales certificate to notify the Commission whether it engages in reporting of its transactions to publishers of electricity or natural gas price indices according to the standards set out in the Commission's Policy Statement on Price Indices. *Amendments to Blanket Sales Certificates,* Order No. 644, 68 FR 66323 (Nov. 26, 2003), FERC Stats & Regs. ¶ 31,153 (2003), at P 70–72 (amending 18 CFR 284.403(a) and 18 CFR 284.288(a)), *reh'g denied,* 107 FERC ¶ 61,174 (2004).

[165] However, a seller of electricity under market-based rates will continue to be obligated to notify the Commission of its reporting status upon a change in status. *See* 18 CFR 35.37(c).

[166] Order on Further Clarification of Policy Statement at P 21.

[167] NOPR at P 70.

[168] MidAmerican supported codification as a way to add clarity to the regulations. MidAmerican Comments at 10; see also NARO Comments at 5. MSCG opposed codification. MSCG Comments at 12; see also ONEOK Energy Service Co. Comments at 5.

[169] *See* April 5, 2007 letter issued to Anadarko Energy Services Co. in Docket No. PA06–11–000 by Director, Office of Enforcement and attached Audit of Price Index Reporting Compliance; April 5, 2007 letter issued to BG Energy Merchants, LLC. in Docket No. PA06–12–000 by Director, Office of Enforcement and attached Audit of Price Index Reporting Compliance; April 5, 2007 letter issued to Marathon Oil Co. in Docket No. PA06–13–000 by Director, Office of Enforcement, and attached Audit of Price Index Reporting Compliance.

[170] Platts Comments at 8.

[171] 15 U.S.C. 717.

[172] 15 U.S.C. 717f.

[173] *Id.*

Wisconsin Companies, underscored its difficulties in providing an aggregated report.[174] Others, including EPSA, Calpine and NGSA, sought the ability to file an aggregate report.[175] Given the comments both for and against aggregation and the ease with which Staff can process the information in either form, the Commission provides the option to reporting companies. A company must indicate on Form No. 552 the affiliates for which it is reporting. If an affiliate or subsidiary holds a blanket certificate pursuant to § 284.284 or § 284.402, each affiliate must report separately that it has such a certificate. Similarly, if an affiliate reports transactions to price index publishers, it must report so separately.

98. By contrast, asset managers may not report aggregated information for their customers in Form No. 552. Several commenters sought clarification on the reporting obligations of asset managers.[176] It is unlikely that transactions between asset managers and their clients would be used to create price indices, although such transactions may use price indices. Given the variety and diversity of services available from asset managers, and the interest of the Commission in tracking the amount of wholesale natural gas activity that both creates and relies on spot price indices, information about the use of price indices would be lost if such aggregation were permitted.

5. Reportable Volumes Based on Contracted Delivery

99. Unlike in the NOPR, Form No. 552 now requires reporting based on date of contracted delivery and not date of execution. Although there were no comments on this issue, in Staff's experience, for many market participants, this approach may also simplify collection of data by permitting use of more direct accounting information. The Commission's goal in obtaining data is to evaluate the creation and use of price information in the market, specifically the creation and use of spot price indices. Because wholesale natural gas price indices are based on fixed-priced trading for next-day or next-month delivery, delivery dates for the transactions of particular interest will not differ by more than a month from execution date. Consequently, reporting transactions by delivery date gives a sufficiently accurate picture of the use of price indices and how well price indices reflect fixed-priced transactions. Even though not pointed out in comments, the trade-off of some information lost for what is likely to be much simpler gathering of information by respondents is a reasonable one.

6. Eliminate Reporting Numbers of Transactions

100. In another change from the NOPR, Form No. 552 does not require market participants to report the number of their transactions. Although this part of the proposal did not prompt comments, this change streamlines the form and reduces the burden of reporting without significantly reducing the value of the information. Volume information is more relevant for monitoring the amount of market activity used in creating price indices and using those indices. On reflection, the number of transactions is not needed to obtain greater transparency of the price formation process, consequently Form No. 552 does not include it.

7. Conform Reporting Definitions to Those Used by Price Index Publishers

101. In several other respects, the reported information requested on the final Form No. 552 differs from the information on the form proposed in the NOPR. In response to the comments of Platts[177] as supported by APGA[178] and AGA,[179] Form No. 552 distinguishes more directly those fixed-priced transactions that are reportable to price index publishers from those that are not. Platts' expressed concern that information collected from the proposed form would not effectively show the ratio of market activity that forms index prices to the market activity eligible to form index prices.[180] As proposed in the NOPR, all next-month and next-day fixed price transactions would have been reported, instead of only those transactions that were actually eligible for inclusion in price indices. The changes in the final Form No. 552 should allow the Commission, market participants and the public to assess in a more focused way the amount of fixed price transactions that contribute to the formation of price indices. In effect, the change allows a more precise calculation of the proportion of those transactions that *could* be reported to price publishers to those that *are* reported to them.

102. To implement this change, a market participant must categorize certain volumes by whether the transaction was made at a ''reportable location'' regardless of whether the transaction was actually reported to a price index publisher. As stated on Form No. 552, a ''reportable location'' transaction is ''a location (hubs, pipelines, regions, etc.) where 'Price Index Publishers' collect 'Fixed Price' information for transactions with 'Next-Day' or 'Next-Month Delivery' obligations, and produce index prices.'' As these locations may change over time, Commission Staff will maintain a list of current ''Reportable Locations'' for each price index publisher on the Commission Web site at *http://www.ferc.gov/docs-filing/eforms.asp#552.* This information will allow a market participant to determine whether a transaction should be classified on Form No. 552 as a reportable transaction, i.e., one made at a reportable location. Commission Staff will list the price index publishers and the index price points no later than December 20 of the year previous to the report year. The first annual report will be due in 2009 for transactions delivered in 2008.

103. Although generally supportive of making a distinction based on whether a transaction is reportable, APGA raised the concern that a market participant that does not report transactions to price index publishers will not easily understand which transactions are reportable.[181] To address this concern, Form No. 552 provides more information regarding these distinctions than the form proposed in the NOPR. In particular, Form No. 552 asks for transactions with particular price and term characteristics (i.e., fixed-priced transactions for next-day or next-month delivery) at reportable locations. To provide a common understanding of reportable locations, the Commission Staff will maintain a list of current ''Reportable Locations'' with links to ''Price Index Publishers'' descriptions of their processes for receiving price information and publishing indices on the ferc.gov Web site at *http://www.ferc.gov/docs-filing/eforms.asp#552.*

104. In addition, the Commission believes that appropriately reporting those transactions needed to establish wholesale natural gas market prices represents a significant public good. The Commission believes that a market participant, should consider reporting in a responsible way, and to do so must become aware of which of its transactions are reportable. The burden imposed on market participants to

[174] Wisconsin Companies at 6.

[175] EPSA Comments at 7–8; Calpine Comments at 4–5; NGSA Comments at 15.

[176] AGA Comments at 3; Duke Energy Ohio, Inc. at 8–9.

[177] Platts Comments at 4, 5 & 7.

[178] APGA Reply Comments at 1 & 3.

[179] AGA Reply Comments at 7.

[180] Platts Comments at 4–7.

[181] APGA Reply Comments at 2.

understand and distinguish its reportable from its non-reportable transactions is easily balanced by the benefits of improving public knowledge of how much market activity, though reportable, is not reported. The benefits accrue to the Commission and all market participants, who will be able to evaluate the usefulness of the price indices better.

8. Filing Date

105. Unlike in the NOPR, Form No. 552 will have a filing deadline of May 1 in the year after the reporting year. In this regard, the Commission agrees with the commenters who sought more time for filing than permitted by the February 15 deadline proposed in the NOPR.[182] Because the data used for the form would come from the accounting and other official records of the market participants reporting, the response to Form No. 552 must be coordinated with a variety of other regular annual financial and regulatory reports. May 1 was the latest filing date recommended in comments. Given the aggregate nature of the data, a time lag of four months from the reporting year should keep the information timely while providing market participants the time needed to coordinate a new regulatory filing with other obligations.

E. Clarification of Other Reporting Issues

106. Several commenters requested clarification as to reportable volumes. The Commission will address these in turn, first those that must be reported and then those that do not need to be reported.

1. Reportable Volumes

107. Interstate pipelines must report sale and purchase volumes related to cash-outs, imbalance makeups and operations. INGAA advocated that transactions associated with cash-out and operations be excluded from Form No. 552 because similar information is available from Form No. 2 and from pipeline electronic bulletin boards (EBBs), and the volumes used are not available for trading.[183] Similarly, Shell indicated that imbalance makeup volumes should be excluded.[184] The Commission finds these commenters' views unpersuasive. The partial availability of information on Form No. 2 submissions and through EBBs does not provide a complete view of that information in an assessment of wholesale natural gas market activity. In addition, while it is true that volumes of sales and purchases related to pipeline cash-out and operations are unlikely to be used to create price indices, such sales and purchases do use price indices as a way of transferring value among market participants. Consequently, the information is useful in assessing how spot prices are being used commercially in the nation.

108. Market participants must include on Form No. 552 sale and purchase volumes attributable to royalty-in-kind transactions, gas provided for processing such as plant thermal reduction, and purchases and sales related to the production and gathering function. Shell advocated excluding these transactions from reporting.[185] While these transactions may not affect the formation of price indices in wholesale markets, these transactions often make use of price indices. Again, to the extent that transfers of value take place based on price indices, it is important that the Commission and other market observers be able to understand the extent of that transfer and its dependency on price indices as well.

109. NGSA further sought clarification regarding transactions related to export for re-import.[186] The sale of these volumes, assuming they could be identified, has an effect on overall wholesale markets and could, potentially, either help create or make use of price indices, consequently they should be reported. If such transactions take place among affiliates, they should be excluded (as explained below).

2. Non-Reportable Volumes

110. The instructions to Form No. 552 now explicitly exclude volumes due to transactions among affiliates. Several commenters emphasized the importance of excluding volumes transacted among affiliates.[187] A transaction between affiliates is not part of the price formation process in wholesale natural gas markets.

111. Market participants may not include any type of financially-settled transaction on Form No. 552. However, transactions with physical delivery obligations must be reported—whether those transactions actually continued through delivery or not. When the physical transaction was executed, it may have either contributed to or used spot market price information regardless of its later disposition. In other words, sales or purchase obligations that were ''booked out'' must be included. The Commission intends ''physical natural gas transaction'' to mean a sale or purchase of natural gas with an obligation to deliver or receive physically, even if the natural gas is not physically transferred due to some offsetting or countervailing trade. Thus, even if the transaction does not go to physical delivery, it would still be included as a physical transaction.

112. In response to NGSA,[188] the Commission clarifies that a market participant should not include volumes of imported LNG traded prior to regasification. LNG traded prior to regasification is not wholesale natural gas, though it is a source of natural gas through regasification itself. NGSA further sought clarification regarding natural gas exports from LNG liquefaction facilities.[189] LNG traded after liquefaction is also not wholesale natural gas, consequently a market participant must exclude such volumes.

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

F. Other Issues Raised by Commenters

1. Safe Harbor Policy

114. Many commenters requested a ''safe harbor'' for reporting.[190] The Commission set forth a ''safe harbor policy'' provision in the Policy Statement for voluntary reporting to price index publishers.[191] As requested by commenters, the Commission reiterates that it does not intend to prosecute or penalize parties for inadvertent errors in reporting. The Commission's goal in setting forth the reporting requirement is to obtain information for the evaluation of price indices; it is not to penalize good faith efforts at compliance. However, in contrast to the voluntary reporting to price index publishers, the annual reporting requirement for Form No. 552

[182] MSCG Comments at 9–10; Statoil Comments at 6–7; AGA Comments at 4; NGSA Comments at 15–16.

[183] INGAA Comments at 9.

[184] Shell Comments at 8.

[185] Shell Comments at 8.

[186] *Id.*

[187] *See, e.g.*, Shell Comments at 8; NGSA Comments at 15.

[188] NGSA Comments at 15.

[189] *Id.*

[190] AGA Comments at 6–7; NGSA Comments at 16–17; PG&E Comments at 6; Suez Energy North America, Inc. Comments at 10–12.

[191] Policy Statement at P 37.

is mandatory for certain market participants. The Commission will focus any enforcement efforts on entities that violate good faith standards, including instances of intentional submission of false, incomplete or misleading information to the Commission, of failure to report in the first instance, or of failure to exercise due diligence in compiling and reporting data.

2. Mandatory Reporting of Fixed-Priced Transactions

115. Several commenters called for mandatory reporting of individual, fixed-priced transactions.[192] However, the Commission will not require mandatory reporting of fixed-priced transactions to price index publishers at this time. Mandatory reporting would appear to provide additional benefits in that it could assist in determining whether the price indices are an accurate reflection of underlying fixed-priced trading. Market participants, state commissions, and the Commission could gain a clearer sense of the volume and number of natural gas transactions that form prices by location and duration. In the NOPR, the Commission acknowledged these benefits, but the Commission decided that mandatory reporting is not appropriate at this time, citing three reasons. We review those three reasons here.

116. First, mandatory reporting of certain transactions would create an incentive for wholesale buyers and sellers to consider structuring transactions based on avoiding reporting requirements rather than simply on the economics of the transaction. Even very subtle shifts in the form of transactions could easily make them non-reportable in any pre-defined system. For instance, if the Commission required reporting of fixed-price, day-ahead transactions, market participants could create two-day transactions, achieving substantially the same economic result and avoiding reporting.

117. Second, buyers and sellers might shift away from fixed-priced transactions to indexed-price transactions. Fixed-priced transactions could easily decrease to the point that indices that rely on them would no longer represent reliable indicators of the market. Such indices would likely become more volatile as they moved more in response to fewer transactions.[193]

118. Third, the Commission stated that broad availability of detailed transaction data might prove to be anticompetitive.[194]

119. In its comments, APGA disputed the three reasons asserted by the Commission in the NOPR. It discounts the first reason asserted that mandatory reporting creates an incentive to structure transactions to avoid reporting. APGA contended that the burden of mandatory reporting is not so great as to cause a significant number of market participants ''to change the way they do business.'' [195] APGA did not deny the existence of such an incentive and the Commission does not wish to create such an incentive. This is particularly so given that it would be difficult to detect whether an entity was acting on such an incentive and, thereby, determine what effect this incentive had on reporting of transactions. In discounting the assertion, APGA also contended that the Commission is sufficiently creative to frame its reporting requirement to overcome those that might seek to avoid the reporting requirement. The Commission is not as confident. Commission Staff cannot monitor activity so closely as to be aware of every attempt to evade the Commission's annual reporting requirement. Additionally, because market practices change over time, trying to promulgate rules to account for constantly changing market dynamics would not only place a significant demand on Commission resources, but the level of interaction could easily interfere in the healthy, continuing development of the markets themselves.

120. APGA also disputed that mandatory price reporting would cause entities to switch from fixed-priced transactions to index-priced transactions because there is little burden to such reporting and those that would switch would not have been reporting to price indices anyway. The Commission does not share APGA's confidence that mandating price reporting would not cause such switching. The Commission remains concerned about the liquidity of the fixed-priced, next-day and next-month wholesale natural gas markets, and would prefer to see much more activity in these price-generating markets. Any reluctance to actively trade fixed-priced transactions could affect liquidity in these crucial markets.

121. APGA disputes the assertion in the NOPR that mandatory price reporting could lead to the potential collusion or anticompetitive behavior because mandatory price reporting would make public detailed transaction data. The Commission's concern would be dependent on the exact nature of the mandatory price reporting process, though the Commission acknowledges that simply mandating reporting to price index publishers would not, given historical practice, put competitive information at risk.

122. The annual reporting requirement set forth in this final rule can provide significant insight into the formation and use of price indices and how they reflect underlying fixed-priced trading. Given these benefits, at far lower costs in time and effort, the Commission continues to believe mandatory reporting of fixed-priced transactions is not appropriate at this time.

3. Effects on Trade Publishers

123. In opposing the annual reporting requirement, MSCG contended that the requirement imposes a burden on market participants simply to benefit commercial trade publishers. As discussed above, the transparency benefits justify the burdens imposed by the annual reporting requirement. The Commission acknowledges that the annual reporting requirement could benefit commercial trade publishers, but disagrees that this is a drawback. Indeed, the comment ignores the fact that commercial trade publishers are the most significant source of market price information in U.S. wholesale natural gas markets. The information they develop is used by Commission Staff to monitor market activity, and more significantly, buyers and sellers interested in access to market prices. Acknowledging this, Congress specifically directed the Commission in prescribing transparency rules to ''rely on [existing price] publishers and [trade

[192] *See, e.g.*, APGA at 5–8.

[193] At the October 13, 2006 technical conference in this proceeding, several panelists raised similar concerns and advocated against mandatory price reporting. *See, e.g.*, Tr. at 12–13 (Mr. Christopher Conway on behalf of Conoco-Phillips Gas and Power, the Natural Gas Supply Association, and the Independent Producers Association of America) (asserting that mandatory price reporting could drive market participants away from reportable transactions, thereby, possibly reducing liquidity); Tr. at 35–36, 38–39 (Mr. Alex Strawn on behalf of the Process Gas Consumers Group) (asserting that mandatory reporting of fixed price transactions would drive market participants to use index-price transactions, thereby, reducing liquidity); Comments of Independent Petroleum Association of America, at p. 3, *Transparency Provisions of the Energy Policy Act*, Docket No. AD06–11–000 (filed Nov. 1, 2006) (mandatory reporting would push market participants away from reportable transactions and cause them to do more index-price transactions); Comments of Natural Gas Supply Association, *Transparency Provisions of the Energy Policy Act*, Docket No. AD06–11–000 (filed Nov. 1, 2006) (similar).

[194] NOPR at P 60.

[195] APGA Comments at 6.

processing] services to the maximum extent possible.'' [196]

4. Information Collection Burden

124. NEM argued that market participants' data is not currently stored in a format that could be used to fill out the proposed form, and, as a result, market participants would need to develop ancillary information technology systems to store such data at significant cost.[197] NEM also stated that although the reporting proposal requires annual reporting, data collection would be needed daily, which would be costly. In requiring annual aggregated reporting of a limited set of transactions, the Commission intends that each market participant would have the data necessary to complete Form No. 552 in the course of its business operations, for instance, in the course of preparing year-end aggregations for management, accounting and shareholder reporting purposes. The information needed to complete Form No. 552 is information that can be extracted from the market participant's book of accounts that it would already have developed as part of its normal business operations. If a market participant buys or sells natural gas under complex arrangements, then it is likely to have an accounting system to manage the complexity and sort out the categories of purchases and sales. The Commission bases its estimated cost burden on a market participant adapting existing information to the standard format for Form No. 552 and submitting the form annually. On that basis, the Commission will retain its estimate of the cost burden as set forth in the NOPR. This estimate does not include the regulatory and compliance costs attributable to reporting as those costs are part of the overhead that market participants bear as part of their participation in Commission-regulated markets. Although Sequent asserted that asset managers would have to renegotiate contracts to provide for the annual reporting requirement, the Commission considers it likely that such asset management agreements already require collection of the transactions executed which could be used to complete Form No. 552.

VI. Information Collection Statement

125. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure (collections of information) imposed by an agency.[198] Pursuant to OMB regulations, the Commission will provide notice of its proposed information collections to OMB for review under section 3507(d) of the Paperwork Reduction Act of 1995.[199]

126. The Commission identifies the information provided under Part 260 as contained in FERC Form No. 552. The Commission solicited comments on the need for this information, whether the information would provide useful transparency information, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden. Where commenters raised concerns that information collection requirements would be burdensome to implement, the Commission has addressed those concerns elsewhere in the rule.

127. The Commission estimates the burden for complying with the final rule as follows:

Data collection	Number of respondents	Number of responses per respondent	Estimated annual burden hours per respondent	Total annual hours for all respondents	Estimated start-up burden per respondent
Part 260 FERC–552 Annual Reporting Requirement	1,500	1 per year	4	6,000	40 hours.

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

	Annualized capital/startup costs (10-year amortization)	Annual costs	Annualized costs total
FERC–552 Annual Reporting Requirement	$400	$400	$800

Title: FERC–552.
Action: Proposed Information Filing.
OMB Control No: 1902–0242.
Respondents: Business or other for profit.
Frequency of Responses: Annually.
Necessity of the Information: The annual filing of transaction information by market participants is necessary to provide information regarding the size of the physical natural gas market, the use of the natural gas spot markets and the use of fixed- and indexed-price transactions.

128. *Internal Review:* The Commission has reviewed the requirements pertaining to natural gas market participants and determined they are necessary to provide price and availability information regarding the sale of natural gas in interstate markets.

129. Interested persons may obtain information on the annual reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer], phone: (202) 502–8415, fax: (202) 208–2425, e-mail: *Michael.Miller@ferc.gov*. Comments on the requirements of the final rule also may be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

130. For submitting comments concerning the collections of information and the associated burden estimates, please send your comments to the contact listed above and to the

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

[197] NEM Comments at 6–7.

[198] 5 CFR 1320.11.

[199] 44 U.S.C. 3507(d).

Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503 Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–3122, fax: (202) 395–7285. Due to security concerns, comments should be sent electronically to the following e-mail address: *oira_submission@omb.eop.gov.* Please reference the docket number of this rulemaking in your submission.

VII. Environmental Analysis

131. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[200] The actions taken here fall within categorical exclusions in the Commission's regulations for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[201] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VIII. Regulatory Flexibility Act

132. The Regulatory Flexibility Act of 1980 (RFA) [202] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA requires consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on such entities. The RFA does not, however, mandate any particular outcome in a rulemaking. At a minimum, agencies are to consider the following alternatives: Establishment of different compliance or reporting requirements for small entities or timetables that take into account the resources available to small entities; clarification, consolidation, or simplification of compliance and reporting requirements for small entities; use of performance rather than design standards; and exemption for certain or all small entities from coverage of the rule, in whole or in part.

133. The annual reporting requirement set forth in the final rule will not have a significant economic impact on a substantial number of small entities. The requirement for annual reporting of physical natural gas transactions will have minimal impact on small entities. By incorporating a *de minimis* exemption into the regulations, the Commission has reduced the number of small entities subject to the requirements: *de minimis* entities without blanket sales certificates will not be required to report. This reporting requirement will affect small entities but the burden on them will be minimal. For each entity, small or otherwise, that is required to comply with the annual reporting requirement, the Commission estimates that the compliance would require a one-time cost of approximately $4,000 and an annual cost thereafter of $400. Although some costs would increase for market participants with a greater number of transactions, we expect that the increase would be likely offset because such entities would have already compiled information regarding their transactions in the aggregate. This amount is not a significant burden on small entities. The *de minimis* exemption provides a regulatory alternative that will reduce the economic impact on certain small entities from coverage of the rule. Accordingly, the Commission certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

[200] Order No. 486, *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs, ¶ 30,783 (1987).

[201] 18 CFR 380.4(a)(5) & (a)(27).

[202] 5 U.S.C. 601–612.

IX. Document Availability

134. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m., eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

135. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

136. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

X. Effective Date and Congressional Notification

137. These regulations are effective February 4, 2008. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission will submit the final rule to both houses of Congress and to the General Accountability Office.

List of Subjects

18 CFR Part 260

Natural gas; Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf; Natural gas; Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure; Electric power; Penalties; Pipelines; Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,

Secretary.

■ For the reasons stated in the preamble, the Federal Energy Regulatory Commission, amends 18 CFR Chapter I as follows.

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 2. Section 260.401 is added to read as follows:

§ 260.401 FERC Form No. 552, Annual Report of Natural Gas Transactions.

(a) *Prescription.* The annual reporting report for natural gas market participants, designated as FERC Form No. 552, is prescribed for the calendar year ending December 31, 2008 and each calendar year thereafter.

(b) *Filing requirements*—(1) *Who must file.* Unless otherwise exempted or granted a waiver by Commission rule or order, each natural gas market participant, i.e., any buyer or seller that engaged in wholesale, physical natural gas transactions the previous calendar year, must prepare and file with the Commission a FERC Form No. 552 pursuant to the definitions and general instructions set forth in that form. As a *de minimis* exemption, a natural gas market participant is exempt from this filing requirement if:

(i) It does not hold a blanket sales certificate pursuant to § 284.402 of this chapter or a blanket unbundled sales certificate pursuant to § 284.284 of this chapter; and

(ii) It engages either in wholesale, physical natural gas sales that amount to less than 2,200,000 MMBtus for the previous calendar year *or* wholesale physical natural gas purchases that amount to less than 2,200,000 MMBtus for the previous calendar year.

(2) Form No. 552 must be filed as prescribed in § 385.2011 of this chapter as indicated in the General Instructions set out in the annual reporting form, and must be properly completed and verified. Each market participant must file Form No. 552 by May 1, 2009 for calendar year 2008 and by May 1 of each year thereafter for the previous calendar year. Each report must be prepared in conformance with the Commission's software and guidance posted and available for downloading from the FERC Web site (*http://www.ferc.gov*). One copy of the report must be retained by the respondent in its files.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 3. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

■ 4. In § 284.288, paragraph (a) is revised to read as follows:

§ 284.288 Code of conduct for unbundled sales service.

(a) To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller must provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement on Natural Gas and Electric Price Indices*, issued by the Commission in Docket No. PL03–3–000 and any clarifications thereto. Seller must notify the Commission as part of its FERC Form No. 552 annual reporting requirement in § 260.401 of this chapter whether it reports its transactions to publishers of electricity and natural gas indices. In addition, Seller must adhere to any other standards and requirements for price reporting as the Commission may order.

* * * * *

■ 5. In § 284.403, paragraph (a) is revised to read as follows:

§ 284.403 Code of conduct for persons holding blanket marketing certificates.

(a) To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller must provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement on Natural Gas and Electric Price Indices*, issued by the Commission in Docket No. PL03–3–000 and any clarifications thereto. Seller must notify the Commission as part of its FERC Form No. 552 annual reporting requirement in § 260.401 of this chapter whether it reports its transactions to publishers of electricity and natural gas indices. In addition, must shall adhere to any other standards and requirements for price reporting as the Commission may order.

* * * * *

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 6. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a-825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352, 16441, 16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 7. In § 385.2011, paragraph (a)(11) is added to read as follows:

§ 385.2011 Procedures for filing in electronic media (Rule 2011).

(a) * * *

(11) FERC Form No. 552, Annual Report of Natural Gas Transactions.

Note: The following appendix will not be published in the *Code of Federal Regulations.*

Appendix A to Final Rule

BILLING CODE 6717–01–P

THIS FILING IS
Item 1: □ An Initial (Original) Submission OR □ Resubmission No. ___

Form No. 552
OMB No. 1902-0242
Expires (mm/dd/yyyy)

FERC TRANSACTION REPORT
FERC FORM No. 552: Annual Report of Natural Gas Transactions

These reports are mandatory under the Natural Gas Act, Section 23(a)(2), and 18 CFR Parts 260.401. Failure to report may result in criminal fines, civil penalties, and other sanctions as provided by law. The Federal Energy Regulatory Commission does not consider these reports to be of a confidential nature.

Exact Legal Name of Respondent (Company)	Year of Report End of

FERC FORM No. 552 (New)

INSTRUCTIONS FOR FILING THE FERC FORM NO. 552

GENERAL INFORMATION

I Purpose

FERC Form No. 552 collects transactional information from natural gas market participants. The filing of this information is necessary to provide information regarding the size of the physical gas market, the use of the natural spot markets, and the use of fixed and index price transactions. This form is considered to be a non-confidential public use form.

II. Who Must Submit

Wholesale natural gas buyers and sellers must fill out the form annually if they make use of a blanket sales certificate under § 284.402 or § 284.284 or if their natural gas purchases or sales were greater than 2.2 million (2,200,000) MMBtus in the reporting year.

If a natural gas market participant is required to fill out Form No. 552 because it makes use of a blanket sales certificate under § 284.402 or § 284.284, but its natural gas purchases and sales were each lower than 2.2 million (2,200,000) MMBtus in the reporting year, then it is not required to report the schedule of Form No. 552 that collects volumetric information.

III. What and Where to Submit

(a) Submit FERC Form No. 552 electronically through the submission software at http://www.ferc.gov/docs-filing/eforms.asp#552.

(b) The Corporate Officer Certification must be submitted electronically as part of the FERC Form No. 552 filing.

(c) Users may obtain additional blank copies of FERC Form No. 552 for reference free of charge from: http://www.ferc.gov/docs-filing/eforms.asp# 552. Copies may also be obtained from the Public Reference and Files Maintenance Branch, Federal Energy Regulatory Commission, 888 First Street, NE, Room 2A, Washington, DC 20426 or by calling (202) 502-8371.

IV. When to Submit:

The FERC Form No. 552 must be filed by May 1st of the year following the reporting year (18 C.F.R. § 260.401).

V. Where to Send Comments on Public Reporting Burden.

The public reporting burden for the FERC Form No. 552 collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data-needed, and completing and reviewing the collection of information. This estimate was noted in the Notice of Purposed Rulemaking and in the Final Rule (RM07-10-000) and addressed by commenters.

Filers may send additional comments regarding these burden estimates or any aspect of these collections of information, including suggestions for reducing burden, to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 (Attention: Information Clearance Officer); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission). No person shall be subject to any penalty if any collection of information does not display a valid control number (44 U.S.C. § 3512 (a)).

GENERAL INSTRUCTIONS

I. All respondents (i.e., wholesale natural gas buyers and sellers that make use of a blanket sales certificate under § 284.402 or § 284.284 or that purchase or sell more than 2.2 million (2,200,000) MMBtus in the reporting year) must identify themselves annually by filling-out the first part of Form No. 552.

II. Aggregation across affiliates is permitted, though not required. If a respondent is aggregating volumes across affiliates, the respondent must fill in the "Schedule of Reporting Companies" which lists those affiliates and a separate "Price Index Reporting" schedule for each affiliate.

III. Asset managers may not report aggregated information for their customers in Form No. 552.

IV. Report all gas quantities in Trillion British Thermal Unit (TBtu) unless the schedule specifically requires the reporting in another unit of measurement.

V. For reported volumes, enter whole numbers only, except where otherwise noted.

VI. Report volumes of physical natural gas as explained in the definitions.

VII. Complete each question fully and accurately, even if it has been answered in a previous report. Enter the word "None" where it truly and completely states the fact.

VIII. Enter the month, day, and year for all dates. Use customary abbreviations. **The "Date of Report" included in the header of each page is to be completed only for resubmissions** (see IX. below).

IX. For any resubmissions, submit the electronic filing using the form submission only. Please explain the reason for the resubmission in a footnote to the data field.

X. Footnote and further explain as necessary.

XI. Do not make references to reports of previous periods/years or to other reports in lieu of required entries, except as specifically authorized.

XII. For further assistance in filling out Form No. 552, Commission staff will maintain a list of current Reportable Locations with links to Price Index Publishers' descriptions of their processes for receiving price information and publishing indices on the ferc.gov website at http://www.ferc.gov/docs-filing/eforms.asp#552.

DEFINITIONS

I. Affiliate– An affiliate means a person who controls, is controlled by or is under common control with another person.

II. Blanket Certificate – A blanket certificate means either (i) a blanket marketing certificate granted to a person that is not an interstate pipeline pursuant to 18 CFR § 284.402 or (ii) a blanket certificate for unbundled sales service granted to an interstate pipeline pursuant to 18 CFR § 284.284.

III. Date of Report – The date the report is submitted to the Commission.

IV. Fixed Price – A "Physical Natural Gas" price determined by agreement between buyer and seller and not benchmarked to any other source of information. For example, Physical Basis transactions that directly refer to futures prices, for the purpose of this form, are not "Fixed Price" transactions.

V. Next-Day Delivery – Delivery of a transaction executed prior to NAESB nomination deadline (11:30am Central Prevailing Time) on one day for uniform physical delivery over the next pipeline day. Transactions done for Friday are usually for flow on Saturday, Sunday, and Monday inclusive. Trading patterns may vary in the case of holidays or the end of a month that occurs on a weekend. Commission staff will maintain links to "Price Index Publishers'" descriptions of their processes for receiving price information and publishing indices on the ferc.gov website at http://www.ferc.gov/docs-filing/eforms.asp#552.

VI. Next-Month Delivery – Delivery of a transaction executed during the last five (5) business days of one month for uniform physical delivery over the next month.

VII. Physical Natural Gas – Natural gas transactions that contain an obligation to deliver natural gas at a specified location and at a specified time, with the exception of physically-delivered futures contracts. It is not necessary that natural gas actually be delivered under the transactions, only that the delivery obligation existed in the agreement when executed. Certain Physical Natural Gas transactions may not remain in existence through the time of delivery because they were traded away or "booked out." For purposes of this form, these transactions should be included whether they went to delivery or not. The Final Rule discusses a variety of particular instances. Among these, the following physical natural gas volumes should be *included* in volumetric data submitted in the Form No. 552:

a. cash-out, imbalance makeup and operational volumes reported by pipelines; and

b. volumes attributable to royalty-in-kind transactions, gas provided for processing such as plant thermal reduction, and purchases and sales related to the production and gathering function.

The following physical natural gas volumes should be *excluded* in volumetric data submitted in the Form No. 552:

a. sales to and purchases by end-users,

b. sales or purchases outside the United States of America,

c. transactions take place among affiliates,

d. any type of financially-settled transaction,

e. volumes traded in futures contracts, even those that go to physical delivery, and

f. volumes of imported LNG traded prior to regasification and exported LNG traded after liquefaction.

VIII. Price Index Publisher – Companies that report price indices for U.S. wholesale natural gas markets. The list of companies can change over time. Commission staff will maintain a list of relevant "Price Index Publishers" with links to their descriptions of their processes for receiving price information and publishing indices on the ferc.gov website at http://www.ferc.gov/docs-filing/eforms.asp# 552.

IX. Prices that Refer to (Daily or Monthly) Price Indices – Prices for "Wholesale Natural Gas Purchases" or "Sales" that reference directly a daily or monthly index price published by a "Price Index Publisher" rather than a "Fixed Price" or a price that refers directly to some other benchmark.

X. Quantity – Amount of purchases or sales expressed in units of energy "British Thermal Units" (Btu). One million BTUs (MMBtu) are, by definition, the same as one Dekatherm (Dth). A volume of one billion cubic feet (Bcf) of natural gas contains approximately one trillion Btus (TBtu or million MMBtu) of energy depending on the exact energy content of the natural gas. The quantities to be reported in the "Purchase and Sales Information" schedule should be measured in TBtus.

XI. Reportable Locations – Those locations (hubs, pipelines, regions, etc.) where "Price Index Publishers" collect "Fixed Price" information for transactions with "Next-Day" or "Next-Month Delivery" obligations, and produce index prices. These locations may change over time. Commission staff will maintain a list of current "Reportable Locations" with links to "Price Index Publishers" descriptions of their processes for receiving price information and publishing indices on the ferc.gov website at http://www.ferc.gov/docs-filing/eforms.asp# 552.

XII. Reporting Company – The person, corporation, licensee, agency, authority, or other legal entity or instrumentality on whose behalf the report is being submitted by the "Respondent."

XIII. Respondent – The person, corporation, licensee, agency, authority, or other legal entity or instrumentality that is submitting the report either on its own behalf, or on behalf of itself and/or its affiliates. A Respondent may choose to either report for all its affiliates collectively, or may choose to have each of its affiliates report separately as their own "Respondent." If reporting collectively, the reporting "Respondent" and must report for each "Affiliate" in the "Schedule of Reporting Companies" and the "Price Index Reporting Schedule," and collectively for all its affiliates in the "Purchase and Sales Information" schedule.

XIV. Wholesale Natural Gas Purchases – The "Quantity" of "Physical Natural Gas" purchased by the "Reporting Company" during the "Year of Report," with the exception of certain futures contracts. Purchases by end users should be excluded.

XV. Wholesale Natural Gas Sales – The "Quantity" of "Physical Natural Gas" sold by the "Reporting Company" during the "Year of Report" to customers that do not use all the natural gas they buy themselves under contracts with physical delivery obligations, with the exception of physically-delivered futures contracts. Purchases by end users should be excluded.

XVI. Year of Report – The calendar year for which the report is being submitted.

ANNUAL REPORT OF NATURAL GAS TRANSACTIONS

IDENTIFICATION OF RESPONDENT		
01 Exact Legal Name of Respondent	02 Year of Report End of	
03 Previous Name and Date of Change (If name changed during year)		
04 Address of Principal Office at End of Year (Street, City, State, Zip Code)		
05 Name of Contact Person	06 Title of Contact Person	
07 Address of Contact Person (Street, City, State, Zip Code)		
08 Email Address of Contact Person		
09 Telephone of Contact Person, Including Area Code	10 This Report is: (1) □ An Original (2) □ A Resubmission	11 Date of Report (MM,DD,YYYY)

ANNUAL CORPORATE OFFICER CERTIFICATION	
The undersigned officer certifies that: I have examined this report and to the best of my knowledge, information, and belief all statements of fact contained in this report are accurate and complete statements of the business affairs of the respondent.	
12 Name	13 Title
14 Signature	15 Date Signed
Title 18, U.S.C. 1001, makes it a crime for any person knowingly and willingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.	

FERC FORM NO. 552 (NEW)

Name of Respondent*	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report* (Mo, Da, Yr) / /	Year/Period of Report* End of Year/Qtr

List of Schedules

Enter in column (d) the terms "none," "not applicable," or "NA" as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the responses are "none," "not applicable," or "NA."

Line No.	Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
1	Schedule of Reporting Companies	3		
2	Price Index Reporting	4		
3	Purchases and Sales Information	5		
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				
33				
34				
35				
36				
37				
Total				

Name of Respondent*	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report* (Mo, Da, Yr) / /	Year/Period of Report* End of Year/Qtr

Schedule of Reporting Companies
If the Respondent is reporting collectively for multiple affiliates*, list the exact legal name of those affiliate in this form. Respondent should complete the next schedule, Price Index Reporting, for **each** of these companies separately. Respondent should complete the "Purchase and Sales Information" schedule only once for these companies collectively. * An asterisk means that the previous term is explained in more detail in the definitions.

Line No.	List the Exact Legal Names of all Affiliates* Reported by Respondent* below (a)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

Name of Respondent*	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report* (Mo, Da, Yr) / /	Year/Period of Report* End of <u>Year</u>
Name of Reporting Company*	Reporting Company is: (1) ☐ Same as Respondent (2) ☐ An affiliate of Respondent (other affiliates reported separately)		

Price Index Reporting

Even if the Respondent is reporting collectively for multiple affiliate, the Respondent still must complete this schedule for **each** of its affiliates separately.

When answering yes/ no questions, to select yes enter 1 in the yes column and 0 in the no column of the appropriate row. To select no enter 1 in the no column and 0 in the yes column of the appropriate row.

* An asterisk means that the previous term is explained in more detail in the definitions.

Line No.	Question (a)	Yes (b)	No (c)
1	At any time during the report year, did the Reporting Company* operate under a Blanket Certificate*?		
2	Did the Reporting Company report any transaction information to price index publishers* during the report year*?		
3	If no on either lines 1 or 2, skip the question on line 4 and move to line 5.		
4	If yes on line 2, did the Reporting Company's reporting comply with the regulations governing reporting to price index publishers pursuant to 18 CFR § 284.403?		
5	Were the Reporting Company's* total wholesale natural gas purchases* greater than 2.2 TBtu for the Report Year*?		
6	Were the Reporting Company's* total wholesale natural gas sales* greater than 2.2 TBtu delivered in the Report Year?		
7	If no on <u>both</u> lines 5 and 6, Reporting Company is not required to go to the next schedule and has completed Form No. 552. If yes on <u>either</u> line 5 or 6, Reporting Company is required to complete the next schedule		

Name of Respondent*	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report* (Mo, Da, Yr) / /	Year/Period of Report* End of Year
Name of Reporting Company*	Reporting Company is: (1) ☐ Same as Respondent (2) ☐ An affiliate of Respondent (other affiliates reported separately)		

Purchase and Sales Information

If the Respondent is reporting collectively for multiple affiliates, the Respondent should complete this schedule for all of its affiliate companies collectively.

* An asterisk means that the previous term is explained in more detail in the definitions.

Line No.	Item (a)	Purchases (TBtu) (b)	Sales (TBtu) (c)
1	How much physical natural gas* did the Respondent buy and sell in the prior calendar year?		
2	Of the amounts reported on line 1, what quantities were contracted at fixed prices* for next-day delivery* at locations reportable* to publishers of next-day gas price indices*?		
3	Of the amounts reported on line 1, what quantities were contracted at prices that refer to* published next-day gas price indices?		
4	Of the amounts reported on line 1, what quantities were contracted at fixed prices for next-month delivery* at locations reportable (see definition) to publishers of next-month gas price indices?		
5	Of the amounts reported on line 1, what quantities were contracted at prices that refer to published next-month gas price indices?		
6	Of the amounts reported on line 1, what quantities were not contracted at fixed prices for next-day delivery nor fixed prices for next-month delivery at locations reportable to publishers of gas price indices, nor were they contracted at prices that refer to published next-day or next-month gas price indices?		
7	If there is a difference between Respondent's purchases reported on line 6 and its purchases reported on line 1 less purchases on lines 2, 3, 4 and 5, please explain the difference in the space below.		
8	If there is a difference between Respondent's sales reported on line 6 and its sales reported on line 1 less sales on lines 2, 3, 4 and 5, please explain the difference in the space below.		

[FR Doc. E7–25478 Filed 1–3–08; 8:45 am]

BILLING CODE 6717–01–C