UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Transparency Provisions of Section 23 of the Natural Gas Act; Transparency Provisions of the Energy Policy Act	)))	Docket Nos. RM07-10-000 and AD04-11-000

COMMENTS OF THE
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA

Pursuant to the Commission's Notice of Proposed Rulemaking ("NOPR") issued in these dockets on April 19, 2007, 72 Fed. Reg. 20791 (April 26, 2007), the Interstate Natural Gas Association of America ("INGAA") submits the following comments on the Commission's proposals to implement section 23 of the Natural Gas Act ("NGA"), 15 U.S.C. § 717t-2, added by section 316 of the Energy Policy Act of 2005 ("EPAct 2005").

SUMMARY

In exercising its new legal authority to require greater transparency in natural gas markets, the Commission proposes to revise its regulations to require that intrastate pipelines post daily the natural gas volumes flowing through their major receipt and delivery points and mainline segments. The Commission also proposes to require that buyers and sellers of more than a *de minimis* volume of natural gas report annual numbers and volumes of relevant transactions to the Commission. The Commission states that the proposed revisions are designed to "facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce." *Id.*

INGAA is a non-profit trade association that represents the interstate natural gas pipeline industry, which, since the Commission's Order No. 636, is engaged principally in providing

natural gas transportation rather than sales service. While the NOPR is directed principally at intrastate pipelines, and at buyers and sellers of the commodity in interstate commerce, the NOPR nevertheless has some implications of concern to interstate pipeline transporters. Specifically:

A. Actual Flow Data for Interstate pipelines. INGAA opposes the suggestion that interstate pipelines be required to report actual flow gas volume data. The gas scheduling information that interstate pipelines currently post to their websites more accurately reflects the volume of flowing gas that is being marketed in interstate commercial transactions on their systems. Including actual flow information on interstate pipelines in the calculation of the volume of gas available "in the markets for the sale or transportation of physical natural gas in interstate commerce" (NGA § 23 (a)(1)) would be misleading and counterproductive because, on any given day, that figure would include volumes used purely for pipeline operations – volumes that do not have an impact in the commercial markets. With respect to no-notice service in particular, the fact that no-notice volumes may not show up in scheduled volumes on interstate pipelines is of no significance here. No-notice service consists principally of storage withdrawals, which represent *past* commercial transactions that were scheduled (and thus posted) when the gas was injected into storage.

B. Annual Reporting of Natural Gas Transactions.

1. Consistent with the discussion in the NOPR, the Commission should amend the regulatory text of proposed § 260.284 so that *de minimis* market participants are required to report annually only limited information regarding their index reporting practices.

2. As Morgan Stanley Capital Group recommends, the Commission should raise its proposed *de minimis* level to the equivalent of 200 NYMEX natural gas contracts to avoid

capturing market participants that have no effect on natural gas market prices, even in specific geographic markets.

3. The Commission should clarify that "cash outs" and other purchases and sales related to the operation of an interstate pipelines are not covered by the rule. Including the volume of such operational transactions would distort the quantity of gas available for trading in the interstate market.

COMMISSION PROPOSALS AND INGAA COMMENTS

A. Requiring Interstate Pipelines to File Actual Flow Data. In seeking to facilitate market transparency in natural gas markets pursuant to its new authority under NGA section 23, the Commission proposes to revise its regulations to require daily posting of natural gas flow information by intrastate pipelines. *See* proposed 18 CFR § 284.14 ("An intrastate pipeline must provide on a daily basis . . . access to information on flowing volumes and capacities at each major receipt point, mainline segment, and delivery point on its pipeline."). The proposal is designed to track daily flows of natural gas nationwide. Under current Commission regulations, however, interstate pipelines are not required to publish on their websites actual flow data, but instead must publish the following capacity information:

> the availability of capacity at receipt points, on the mainline, at delivery points, and in storage fields, whether the capacity is available directly from the pipeline or through capacity release, the total design capacity of each point or segment on the system, the amount scheduled at each point or segment whenever capacity is scheduled, and all planned and actual service outages or reductions in service capacity.18 CFR § 284.13(d)(1).

The Commission asks whether interstate pipelines also should be required to post actual flow data, and whether posting that data would "provide useful information regarding actual capacity use, for instance, by providing information regarding no-notice service?" NOPR at P 43.

INGAA opposes the suggestion to require interstate pipelines to post actual flow information. First, the capacity information that pipelines currently post on a daily basis is adequate for the Commission's transparency purposes. Scheduled volumes closely reflect the supply actually being purchased and sold. Those volumes reflect the interaction of available pipeline capacity with the market supply and demand applicable for that day, the market transportation transactions, and the resulting market prices. As the Commission pointed out, interested market participants and commercial vendors retrieve the capacity scheduling data published by interstate pipelines "to estimate a variety of supply and demand conditions including geographic and industrial sector consumption, storage injections and withdrawals and regional production in almost real-time." NOPR at P 26. Market participants rely on the information to price transactions, and Commission staff relies on it in performing oversight and enforcement functions. *Id.* As the Commission pointed out, "observers believe that this information posting has contributed to market transparency by revealing the underlying volumetric (or availability) drivers behind price movements." *Id.*

Second, because of the different regulatory and business contexts in which intrastate and interstate pipelines operate, the Commission should not require uniformity. As the Commission points out, the actual flow of gas on interstates is reflected in the scheduled volumes. *See* NOPR at P 32.

Third, unlike scheduled volume data, actual flow data on interstate pipelines would include pipeline operational data that is not relevant and potentially counterproductive to the Commission's purpose of measuring the total physical natural gas involved in natural gas trading. For example, daily reporting of actual flows would capture gas flowing: (1) in routine maintenance activities; (2) in storage operations needed to meet injection/withdrawal schedules; (3) to manage line pack to, e.g., accommodate the need for pressure adjustments between upstream and downstream systems; (4) to meet obligations to other pipelines or customers under operational balancing agreements at pipeline interconnects; and (5) from various on-system sources in a blending operation to meet quality specifications. Including such operational flow data would distort the actual volume involved in gas commodity market activity. This would be particularly true on reticulated pipelines where a relatively large portion of flows can reflect simply pipeline operations rather than commercial gas transactions. In addition, there would be practical difficulties because systems for measuring real time actual flows often do not have a direct interface with the transactional postings and actual flows may not be totally consistent with scheduled flows due to normal hourly variations in receipts and deliveries of natural gas.

Finally, while it is true that interstate pipeline postings do not necessarily reflect flows for "no-notice" service (NOPR at P 43), no-notice activity generally does not reflect the current gas trading activity that the Commission is attempting to make more transparent through the NOPR. Rather, as the Commission has recognized elsewhere, the volume of no-notice gas typically reflects storage withdrawals. *See Enhanced Reporting of Natural Gas Storage Inventory Information*, Notice issued August 2, 2004, Docket No. AD04-10. Since the trading activity associated with the no-notice withdrawals already has occurred when the gas was purchased and injected into storage, counting those previously-scheduled volumes again on withdrawal would distort information as to what is actually taking place in the gas commodity market. .

B. Annual Reporting of Natural Gas Transactions. The Commission proposes to require annual filings by buyers and sellers of natural gas that transact annual purchases and sales in domestic wholesale markets. Because the Commission seeks only to require reporting from "market participants whose transactions could have an effect on the price for the sale of physical natural gas in interstate commerce," and to comply with the Congressional requirement to exempt participants with a *de minimis* market presence, the NOPR proposes to define a *de minimis* market participant as one that “engaged in physical natural gas transactions that by volume amounted to less than 2,200,000 MMBtus for the previous calendar year.” *See* proposed § 284.401 (definitions), NOPR at p. 64. The proposal is “designed to permit the 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[.]” NOPR at P 3.

“As part of this proposal,” the Commission also proposes to require each holder of a blanket marketing certificate under § 284.402 (i.e., pipeline marketing affiliates) or a blanket unbundled sales service certificate under § 284.284 (i.e., pipelines making unbundled wholesales) to notify the Commission whether it reports its transactions to publishers of electricity or natural gas price indices and whether any such reporting complies with certain standards. *Id.* Although the Commission does not propose to make reporting mandatory, *see* NOPR at PP 56-59, the notification proposal would depart from the Commission's current practice under which blanket certificate holders are required only to notify the Commission by letter if they change their practice regarding such reporting (i.e., start or stop reporting trades to an index). The Commission proposes to accomplish these latter changes by requiring even *de minimis* market participants that sell under blanket certificates to report to the Commission on their index reporting status annually, as part of the same new Form X that the Commission proposes to use for reporting actual purchases and sales:

> Consequently, if a market participant makes use of its blanket certificate authority, even if its sales are *de minimis*, it would still be required to report, *but only its identification information, whether it reports transaction information to price index publishers, and whether any such reporting complies with the regulations governing reporting to price index publishers.*

NOPR at P 53 (emphasis added).

To codify these proposed changes, the Commission proposes a new annual reporting form as follows:

> § 260.401 FERC Form [X], Annual Reporting of Natural Gas Transactions and Blanket Certificate Authorities.
>
> Unless otherwise exempted or granted a waiver by Commission rule or order, each natural gas market participant that is not a *de minimis* market participant as defined in § 284.401 and each *de minimis* market participant that holds a blanket marketing certificate under § 284.402 or a blanket unbundled sales service certificate under § 284.284 must file with the Commission by February 15 [. . .] a report, FERC Form No. [X], for the prior calendar year [. . . .]

Proposed FERC Form "X" asks how much physical gas the filer transacted in the last year, with a break down into next-day, next-month, and longer delivery periods, and further breakdown in terms of fixed-price and index-priced transactions. *See* NOPR at Appendix A (proposed Form X). The Commission proposes to amend the existing code of conduct regulations for unbundled sales service (§ 284.288(a)) and blanket marketing certificates (§ 284.403(a)) to reflect the proposed annual reporting of index reporting practices. *See* NOPR at pp. 64-65.

INGAA requests that the Commission clarify and amend its reporting proposals in several respects as follows.

1. Limited *De Minimis* Blanket Certificate Filings. First, as described above, it appears to be the Commission's intent that *de minimis* market participants with blanket marketing or unbundled sales service certificates need only file an annual report regarding their identity and status as an index reporter, and would not have to report all the information required in proposed Form X that is required of market participants that do not qualify for the *de minimis* exclusion. The literal language of proposed § 260.403, however, makes no such distinction. To conform the proposed regulation with the Commission's stated intent, the Commission should clarify that *de minimis* blanket certificate filers need file only “basic identification information and whether it reports transaction information to price index publishers, and whether any such reporting complies with the regulations governing reporting to price index publishers,” NOPR at P 53, and amend the proposed regulatory text and proposed Form X to make that distinction explicit.

2. *De Minimis* Level. The Commission observes that its proposed definition of *de minimis* market participation -- i.e., less that 2,200,000 MMBtus annually -- equates to less than one standard NYMEX futures contract per day, or 1/10,000th of the Nation’s annual physical volume. In support of a level that on its face would “appear to have little effect on natural gas prices” (NOPR at P 52), however, the Commission states that a market participant may be transacting only at one location and thus “have a much greater effect there.” *Id.*

INGAA agrees with Morgan Stanley’s comments (at 10-11) that the 0.01-percent-of-the nationwide-market level proposed by the Commission is far removed from any legitimate concern about the exercise of market power, even in a specific geographic market. As a result, it would capture too many market participants that can have little if any effect on the market price of physical trades of natural gas. In INGAA’s view, Morgan Stanley has made a reasonable case for increasing the *de minimis* threshold to the equivalent of 200 natural gas futures contracts per day, based on the “large position” reporting levels employed by the Commodities Futures Trading Commission to identify trading activity that has reached a volume level that may warrant further oversight. *See* Morgan Stanley Comments at 10 & n.29.

3. Clarification of Blanket Certificate Holder Reporting Requirements. In the NOPR (at P 46 n.70), the Commission acknowledges that (after Order No. 636), few if any interstate natural gas pipelines still make wholesale sales. Nevertheless, if they do, they would be required to file the Form X report under proposed § 260.401. Moreover, since the Commission has conferred blanket unbundled sales service on all interstate pipelines pursuant to § 284.284, it appears that even a *de minimis* pipeline market participant must make the annual filing that at least requires an update of its identity and index reporting practices. See proposed § 260.401 ("each de minimis market participant that holds a . . . blanket unbundled sales service certificate under § 284.284 must file with the Commission . . . .").[1]

Aside from the clarification and amendment requested in paragraph 1 above concerning what a *de minimis* blanket certificate market participant must file, INGAA also seeks clarification as to what transactions are covered. As part of their day-to-day operations, interstate pipelines make periodic "cash outs" and other purchase and sale transactions that are related to operating an interstate natural gas pipeline – purchases and sales that clearly do not seem to fit the category of transactions that go into the commercial national physical natural gas market that the Commission is attempting to measure. These operationally–related purchase and sale transactions are already reported on FERC Form 2 and, for at least some pipelines, on their EBBs and in annual reports filed regarding such cash out purchases and sales. Including the volume of such operational transactions would distort the quantity of gas available for trading in the interstate market. INGAA requests that the Commission clarify that such operational purchases and sales are not intended to be covered by its transparency regulations.

4. FERC Form X Filing Due Date. Under the Commission's proposal, Form X would be due on February 15. INGAA agrees with the American Gas Association and Morgan Stanley that a later date of April 30 would be appropriate. That would permit filers sufficient time to review and reconcile transaction data from the prior year.

[1] As the Commission points out, pipeline marketing affiliates making wholesale sales in interstate commerce would of course be subject to the rules. NOPR at P 46 n.70.

CONCLUSION

INGAA requests that the Commission clarify and amend its proposed transparency rule as discussed above.

Respectfully submitted,

Joan Dreskin
General Counsel
Timm Abendroth
Attorney
Interstate Natural Gas Association
of America
10 G Street, N.W., Suite 700
Washington, DC 20002
Phone: (202) 216-5928
jdreskin@ingaa.org
tabendroth@ingaa.org

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