

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Enhanced Natural Gas Market Transparency ) Docket No. RM13-1-000

**JOINT COMMENTS OF  
AMERICAN FOREST & PAPER ASSOCIATION, INC., THE AMERICAN GAS  
ASSOCIATION, THE GAS PROCESSORS ASSOCIATION, THE INDEPENDENT  
PETROLEUM ASSOCIATION OF AMERICA, THE INTERSTATE NATURAL GAS  
ASSOCIATION OF AMERICA, THE NATURAL GAS SUPPLY ASSOCIATION, THE  
PROCESS GAS CONSUMERS GROUP, AND THE TEXAS PIPELINE ASSOCIATION**

Pursuant to the Notice of Inquiry (“Notice”) issued November 15, 2012,<sup>1</sup> by the Federal Energy Regulatory Commission (“Commission”) in the above-referenced proceeding, American Forest & Paper Association, Inc.,<sup>2</sup> the American Gas Association,<sup>3</sup> the Gas Processors Association,<sup>4</sup> the Independent Petroleum Association of America,<sup>5</sup> the Interstate Natural Gas

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<sup>1</sup> *Enhanced Natural Gas Market Transparency*, 77 Fed. Reg. 69,781 (Nov. 21, 2012), III FERC Stats. & Reg., Notices ¶ 35,575 (2012).

<sup>2</sup> American Forest & Paper Association, Inc. is the national trade association of the forest products industry, representing pulp, paper, packaging and wood products manufacturers, and forest landowners in the United States. AF&PA members make products essential for everyday life from renewable and recyclable resources that sustain the environment. Members of AF&PA own and operate facilities that consume natural gas that is delivered through the interstate pipeline system.

<sup>3</sup> The American Gas Association, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 71 million residential, commercial and industrial natural gas customers in the U.S., of which 92 percent — more than 65 million customers — receive their gas from AGA members. AGA is an advocate for local natural gas utility companies and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international gas companies and industry associates. For more information, please visit [www.aga.org](http://www.aga.org).

<sup>4</sup> The Gas Processors Association is a non-profit trade organization made up of approximately 130 corporate members, all of whom are engaged in the processing of natural gas into merchantable pipeline gas, or in the manufacture, transportation, or further processing of liquid products from natural gas. GPA’s membership accounts for approximately 92 percent of all natural gas liquids produced by the midstream energy sector in the United States. GPA’s members also produce, gather, transmit, and market natural gas and natural gas liquids, and include a number of Canadian and international companies that produce natural gas liquids on a global scale.

Association of America,<sup>6</sup> the Natural Gas Supply Association,<sup>7</sup> the Process Gas Consumers Group,<sup>8</sup> and the Texas Pipeline Association,<sup>9</sup> (collectively, the “Trade Associations”), respectfully submit these joint comments. The Trade Associations are concerned that given the Commission’s limited jurisdiction over wholesale sales of natural gas, the proposal set forth in the Notice will not improve and may actually harm market transparency, and will place an inconsistent and unfair burden on natural gas market participants. Accordingly, the Trade Associations urge the Commission to reconsider its approach and not move forward with the proposal in the Notice.

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<sup>5</sup> The Independent Petroleum Association of America represents thousands of American independent oil and natural gas producers and associated service companies. Independent producers develop 95 percent of American oil and gas wells, produce 54 percent of American oil, and produce 85 percent of American natural gas. IPAA members produce gas that is transported through the interstate pipeline system.

<sup>6</sup> The Interstate Natural Gas Association of America is comprised of 27 members, representing the vast majority of the interstate natural gas transmission pipeline companies in the United States and comparable companies in Canada. INGAA’s members, which operate approximately 200,000 miles of pipelines, provide an indispensable link between natural gas producers and natural gas consumers in the residential, commercial, industrial and electric power sectors. INGAA members are committed to providing reliable transportation services to their diverse customers, without undue discrimination, and to maintaining a high level of customer service.

<sup>7</sup> Established in 1965, the Natural Gas Supply Association represents integrated and independent companies that produce and market approximately 40 percent of the natural gas consumed in the United States. The Natural Gas Supply Association encourages the use of natural gas within a balanced national energy policy and promotes the benefits of competitive markets to ensure reliable and efficient transportation and delivery of natural gas and to increase the supply of natural gas to U.S. customers.

<sup>8</sup> The Process Gas Consumers Group is a trade association of industrial consumers of natural gas organized to promote the development and adoption of coordinated, rational, and consistent federal and state policies with respect to gas service to industrial gas users. Members of PGC own and operate manufacturing facilities that consume natural gas that they receive through the interstate pipeline system.

<sup>9</sup> The Texas Pipeline Association is an organization of 40 natural gas and liquids intrastate pipeline companies operating in the State of Texas. Many of the TPA’s members operate in other states as well. The TPA’s members gather, process, treat, transport, store and deliver natural gas and liquids for their customers, which include producers, marketers, commercial and industrial end-users, other pipelines, and distribution companies. The TPA member companies engage in the transportation, storage and sale of natural gas, and their intrastate activities are subject to the jurisdiction of the Texas Railroad Commission and other state commissions.

## I. COMMENTS

### A. Background

The Notice in this proceeding seeks comments on whether the Commission should amend its regulations to further facilitate price transparency in the natural gas markets by requiring all market participants engaged in sales of wholesale physical natural gas in interstate commerce to report quarterly every natural gas transaction within the Commission’s jurisdiction.<sup>10</sup> The Notice states that the Wellhead Decontrol Act of 1989 and the Natural Gas Policy Act of 1978 (“NGPA”) removed from the Commission’s jurisdiction “first sales,” and that all sales in the chain from the producer to the ultimate consumer are “first sales” until the gas is purchased by an interstate pipeline, an intrastate pipeline, or a local distribution company (“LDC”).<sup>11</sup> The Notice also states that sales by an interstate pipeline, intrastate pipeline, LDC, or their affiliates are not “first sales” unless the sale is attributable to volumes produced by the pipeline, LDC, or affiliate.<sup>12</sup>

The Notice provides that the Commission is considering requiring market participants to report the following data elements for all jurisdictional transactions that entail physical delivery for the next day or the next month, in a standardized, electronic format and on a quarterly basis: name, address and contact information of the trading company; name and location of its holding company; product traded; trade execution method (*i.e.*, exchange or off-exchange and name of exchange or broker); settlement type (*e.g.*, fixed or index); volume (in MMBtu); location (hub); price; date and time of the transaction; name of counterparty; and the name(s) of the index publisher(s) to which each transaction was reported.<sup>13</sup> The Notice adds that the Commission is

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<sup>10</sup> Notice at P 9.

<sup>11</sup> *Id.* at P 10.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at P 12.

considering releasing the transactional information to the public on a quarterly basis, one month after it is reported to the Commission.<sup>14</sup>

According to the Notice, the Commission believes that regular reporting of such information would facilitate price transparency in the natural gas market by enabling buyers and sellers of natural gas to better understand the trading and prices that contribute to daily and monthly indices.<sup>15</sup> The Commission also believes that obtaining such information would enhance its ability to identify the potential for manipulation in the natural gas markets, examine more efficiently manipulative behavior, and assess the effects of manipulation.<sup>16</sup> The Notice invites comment on the best approaches to enhancing the Commission's surveillance of natural gas markets and transparency.<sup>17</sup>

The Trade Associations are concerned that the Commission's approach as set forth in this Notice will not improve and may actually harm market transparency, will not foster greater confidence in price formation, and will unfairly impose burdens on a limited portion of the natural gas market. The Trade Associations, therefore, respectfully urge the Commission to reconsider its approach and not move forward with the proposal in the Notice.

#### **B. The Commission's Jurisdiction Is Limited.**

In the Notice, the Commission observed that its jurisdiction does not extend to first sales as defined by the NGPA and proposed to require the reporting of wholesale physical natural gas sales only within the Commission's jurisdiction.<sup>18</sup> The Commission believed that such reporting would facilitate price transparency and enhance the Commission's ability to detect market

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<sup>14</sup> *Id.* at P 13.

<sup>15</sup> *Id.* at P 14.

<sup>16</sup> *Id.* at P 15.

<sup>17</sup> *Id.* at P 16.

<sup>18</sup> *Id.* at P 10.

manipulation.<sup>19</sup> The Trade Associations are concerned that the Commission’s proposal to impose a reporting requirement only on transactions within its jurisdiction will not accomplish its stated goal of facilitating transparency because its jurisdiction is limited to only a segment of the natural gas market (and one impossible to fully identify).

According to the NGPA, all first sales of natural gas are exempted from the Commission’s jurisdiction under the Natural Gas Act (“NGA”). The definition of “first sale” does not include sales by interstate pipelines, intrastate pipelines, LDCs, and their affiliates, unless the sale is attributable to the entity’s own production. Requiring the reporting of only transactions within the Commission’s jurisdiction raises two serious issues.

First, the proposed reporting requirement would not capture the entire market. Indeed, it may not even capture a significant portion of the market. As the Notice acknowledged, the Commission interprets the definition of “first sale” under the NGPA as the entire chain of sale transactions from the initial sale at the wellhead to the sale for ultimate consumption unless there is a sale to a pipeline or an LDC. According to the Commission, sales by pipelines, LDCs, or their affiliates “break” the first-sale chain and bring the transaction within the Commission’s jurisdiction. Interstate pipelines have largely exited the merchant business and, in general, only buy or sell gas to support their operations. LDCs, too, primarily make retail sales, and their wholesale sales are generally limited to occasional sales of excess gas. To be sure, some pipelines and LDCs have marketing affiliates that make wholesale sales in interstate commerce. However, the Commission provides no indication in the Notice that sales by marketing affiliates would capture a significant or even representative portion of the entire wholesale natural gas market.

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<sup>19</sup> *Id.* at PP 14-15.

Second, and more importantly, it is not possible to determine the exact scope of the sales still subject to the Commission's jurisdiction. In the Notice, the Commission interprets the NGPA to mean that wholesales sales by pipelines, LDCs, and their affiliates "break" the first-sale chain and bring the transactions within the Commission's jurisdiction.<sup>20</sup> Whether the Commission's interpretation is correct is an open question. The NGPA provides that any sale that "precedes or follows" a first sale is also a first sale.<sup>21</sup>

Even if the Commission's interpretation were correct that the first-sale chain is irrevocably broken by a sale from a pipeline, LDC, or an affiliate, this interpretation creates a host of practical, compliance issues. In many instances it is impossible to determine whether the volumes sold by a subsequent seller can be attributable to the volumes sold by the pipeline, LDC, or affiliate that broke the first-sale chain. Corporate affiliation is not readily apparent in the marketplace. As such, a purchaser in a wholesale natural gas transaction may not know that the seller was a pipeline-affiliate, LDC, or LDC-affiliate that broke the first-sale chain.

Fundamentally, natural gas traders and supply managers do not consider or maintain their systems based on transaction chains. Rather, natural gas sale and purchase transactions are part of a supply portfolio that records counterparties but does not, and cannot, look further upstream or downstream for sources or uses. From a compliance perspective, therefore, natural gas sellers would not have the necessary information to determine whether their purchases were in a chain of transactions that included a non-first sale - nor could they. As a result, every seller of natural gas at wholesale in interstate commerce would not be able to know which of its sales were non-

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<sup>20</sup> Notice at P 12, fn. 25.

<sup>21</sup> 15 U.S.C. § 3301(21)(A)(v) ("The term 'first sale' means any sale of any volume of natural gas . . . which precedes or follows any sale described in clauses (i), (ii), (iii), or (iv) and is defined by the Commission as a first sale in order to prevent circumvention of any maximum lawful price established under this chapter.").

first sales. As noted above, it would be impossible to determine what volumes in any particular supply portfolio are attributable to any particular non-first sale. Admittedly, the jurisdictional status of some transactions can be clearly and definitively established. But, the exact scope of any seller's jurisdictional sales cannot be established with certainty. Neither the seller, nor the Commission, could prove one way or the other whether the "first sale" chain had been broken for any given transaction.

The lack of information regarding the disposition of gas sales presents additional compliance challenges. For example, an LDC or its affiliate could make a sale to an electric generator or to a large industrial customer for use in a manufacturing process. Such a sale would presumably be a sale for end-use consumption, *i.e.*, not a wholesale sale, and thus not subject to the Commission's NGA jurisdiction. However, if the generator or industrial customer did not need a portion of the gas, and subsequently sold the gas to a marketer, the sale from the LDC or affiliate to the generator or industrial may be considered a jurisdictional sale. Yet, the LDC or affiliate would have no way of knowing whether its presumably retail sale was converted to a wholesale sale. Moreover, neither the seller nor the Commission could establish definitely whether the volumes subsequently sold by the generator or industrial were attributable to the sale from the LDC or affiliate.

In the end, the scope of the Commission's jurisdiction over non-first sales is not just difficult to determine; it is *impossible* to determine. Indeed, in Order No. 704-C, the Commission acknowledged that "it is not possible to determine, with any degree of accuracy, what proportion of gas sales are subject to our NGA jurisdiction."<sup>22</sup> The lack of information regarding transaction chains prevents the Commission and market participants from knowing

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<sup>22</sup> *Transparency Provisions of Section 23 of the Natural Gas Act*, Order No. 704-C, 75 Fed. Reg. 36,632 (June 23, 2010), 131 FERC ¶ 61,246 at P 58 (2010).

with certainty whether any particular transaction is a wholesale sale in interstate commerce subsequent to a sale by an interstate pipeline, an intrastate pipeline, an LDC, or any affiliate thereof. This jurisdictional problem is not entirely of the Commission's making. It is an artifact of the manner in which Congress chose to phase out and eventually eliminate wellhead price regulation under the NGPA and remove commodity transactions from the Commission's NGA jurisdiction.

The Commission's jurisdiction is further constrained by *Texas Pipeline Ass'n v. FERC*, 661 F.3d 258 (5<sup>th</sup> Cir. 2011), which held that the Commission's authority to obtain scheduled flow and other information from market participants under NGA § 23 is limited by NGA § 1(b). The NGPA and the Wellhead Decontrol Act exclude first sales from the Commission's NGA jurisdiction. The court's reasoning raises serious questions about the Commission's authority to collect data regarding transactions not otherwise subject to the NGA. The Commission must recognize the legal and practical problems its limited jurisdiction presents and, as more fully described below, not move forward with a proposal that requires the reporting of only sales that are within the Commission's jurisdiction.

**C. Reporting Of Only Jurisdictional Sales May Harm Transparency And Is Unfair.**

In the Notice, the Commission stated the belief that its proposed reporting requirement would facilitate price transparency and enhance the Commission's ability to detect market manipulation.<sup>23</sup> The Trade Associations are concerned that the Commission's proposal may actually harm market transparency and unfairly treat certain corporate affiliate structures.

The Trade Associations believe that given the Commission's limited jurisdiction over natural gas sales, market transparency would not be enhanced by the reporting of only

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<sup>23</sup> *Id.* at PP 14-15.



jurisdictional sales unless it could be shown that the data set of transactions that are reported would be representative of the broader market. As noted above, sales by interstate pipelines and LDCs are likely to be limited to sales of gas to support their operations. Moreover, the sale of excess gas by an LDC may be in the nature of a distress sale, occurring due to warmer than expected weather reducing demand from that which was forecast resulting in excess supply. As such, these sales would not be representative of the broader market. As the Commission notes, non-first sales would include sales by an affiliate of an interstate pipeline, intrastate pipeline, or LDC. However, the Notice contains no information regarding the number of affiliates that make wholesale sales of natural gas in interstate commerce, the number or volume of wholesale transactions these affiliates enter into, the relative portion of the overall market such number or volume represents, or any analysis of whether such number or volume is representative of the broader market. As a result, requiring the reporting of such sales may actually harm market transparency in that the reporting of non-representative sales would provide a false sense of actual supply and demand factors at work in the natural gas marketplace.

Furthermore, the Commission's proposal would discriminate against affiliates of pipelines and LDCs. Requiring the reporting of only jurisdictional sales would impose a burden on pipeline- and LDC-affiliates that is not shared by all market participants and would unfairly penalize the reporting entities. Since the burden would not be imposed on all market participants, reporting entities would be placed at a competitive disadvantage having to report detailed information regarding their transactions, including price and counterparty data, and having to bear the cost of the reporting requirement. Courts have recognized that vertical integration creates certain efficiencies for consumers, and that the Commission cannot impede

vertical integration between a pipeline and its affiliates without adequate justification.<sup>24</sup> Other than a broad desire for greater transparency, the Commission has provided no justification in the Notice for imposing this type of burden on the affiliates of pipelines and LDCs.

In addition, when the Commission removed certain regulations it considered no longer necessary after wellhead price deregulation, including a regulation defining sales by marketing affiliates as “first sales,” it rejected claims that such removal would create a competitive disadvantage for marketing affiliates on the grounds that the Commission’s blanket marketing certificates put all marketers on an equal competitive footing.<sup>25</sup> There, the Commission noted that market participants were apparently more concerned that “regulation under the blanket certificates might change in the future, rather than [with] how this system of light-handed regulation operates at the present time.”<sup>26</sup> The Commission’s proposal in this proceeding would resurrect market participants’ concerns by creating very kind of competitive disadvantage about which market participants were previously concerned and undercut the Commission’s conclusion that all marketers are on an equal competitive footing under the Commission’s regulations.

Further to this point, the Notice states that the reporting of jurisdictional sales would enhance the Commission’s ability to detect market manipulation. However, as the Antitrust Division of the U.S. Department of Justice noted in its February 1, 2013 comments in this proceeding, public disclosure of firm-specific or transaction-specific information may actually

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<sup>24</sup> See *National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 840 (D.C. Cir. 2006)(citing *Tenneco Gas Co. v. FERC*, 969 F.2d 1187 (D.C. Cir. 1992).

<sup>25</sup> *Removal of Outdated Regulations Pertaining to the Sales of Natural Gas Production*, Order No. 567, 58 Fed. Reg. 40240 (Aug. 8, 1994), January 1991 – July 1996 FERC Stats. & Regs. ¶ 30,999 (July 28, 1994), *order on reh’g*, 69 FERC ¶ 61,055 at p. 61,217, *order on reh’g*, 69 FERC ¶ 61,342 (1994).

<sup>26</sup> *Id.*, 69 FERC at p. 61,217.

reduce competition and harm consumers.<sup>27</sup> There is no reason to believe, given the segment of the overall wholesale market that is covered by the Commission’s jurisdiction over wholesale sales, that the information the Commission seeks to require from pipelines, LDCs, and their affiliates will help it to achieve its goal of “enhancing its ability to identify the potential for market manipulation” and “assess the effects of manipulation.”<sup>28</sup> The Notice speaks in general terms of the Commission’s efforts to detect potential market manipulation, but offers no evidence that market manipulation is a problem in wholesale natural gas markets.

In *National Fuel Gas Supply Corp. v. FERC*, the court vacated Order No. 2004, which significantly expanded the Standards of Conduct for interstate natural gas pipelines, because there was no record evidence of a “real problem” with pipelines’ relationships with non-marketing affiliates. Consistent with *National Fuel Gas Supply Corp. v. FERC*, the Commission should not proceed with the reporting obligations proposed in the Notice because there is no record evidence of a real problem – in this case, market manipulation – to support them.

**D. The Commission’s Proposal Would Reveal Commercially Sensitive Information And Potentially Harm Market Participants.**

In the Notice, the Commission proposed to require the quarterly reporting of detailed information regarding each jurisdictional transaction, including the name, address and contact information of the trading company; name and location of its holding company; product traded; trade execution method; settlement type; volume; location; price; date and time of the transaction; name of counterparty; and the name(s) of the index publisher(s) to which each transaction was reported.<sup>29</sup> The Trade Associations are concerned that the public dissemination

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<sup>27</sup> *Enhanced Natural Gas Market Transparency*, FERC Docket No. RM13-1-000, Comment of the U.S. Department of Justice, at p. 4 (Feb. 1, 2013).

<sup>28</sup> Notice at P 15.

<sup>29</sup> Notice at P 12.

of such information would put reporting parties at a competitive disadvantage to the detriment of natural gas consumers.

Public disclosure of volume, location, price and counterparty data for each jurisdictional transaction would enable market participants to determine the sale and purchase strategies of the reporting party and potentially its counterparties. As the reporting burden would fall on pipelines, LDCs, and their affiliates, these entities would be put at a competitive disadvantage in the market having to negotiate with market participants that are aware of their sale and purchase strategies. The Trade Associations contend that the disclosure of commercially sensitive information simply cannot be applied to some market participants and not others without creating the potential for competitive harm.

**E. The Commission Has Not Established A Need For Additional Data.**

As noted above, the Notice stated that the proposed reporting requirement would facilitate price transparency and enhance the Commission's ability to detect market manipulation.<sup>30</sup> However, the Notice contains no evidence that price transparency is lacking, or that the Commission requires further data. The Commission has devoted significant resources to its market monitoring and enforcement functions. When the need arises, the Commission investigates allegations of violations of Commission policy or market manipulation and then gathers additional data from the entities under investigation. The Notice makes no mention of inadequacies in the Commission's current information gathering efforts. This lack of justification is particularly troubling in light of the limited data that the Commission's proposal would produce due to its incomplete jurisdiction, as well as the competitive harm that would be created and the compliance burden that would be imposed on market participants.

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<sup>30</sup> *Id.* at PP 14-15.

Further, it is not clear that the Commission has demonstrated the predicate for proposing such an electronic information system, based on its statutory authority. Footnote 4 of the Notice refers to § 23 of the NGA, added by the Energy Policy Act of 2005.<sup>31</sup> While the footnote sets forth subsections 23(a)(2) and (3), subsection (a)(4) provides as follows:

(4) In carrying out this section, the Commission *shall* consider the degree of price transparency provided by existing price publishers and providers of trade processing services, and shall rely on such publishers and services to the maximum extent possible. The Commission *may* establish an electronic information system *if* it determines that existing price publications are not adequately providing price discovery or market transparency.<sup>32</sup>

The Notice does not provide any determination that existing trade publications are not adequately providing price discovery or market transparency. In the absence of this determination, the NGA does not provide for the Commission proceeding with a new electronic information system.

**F. The Commission Should Not Underestimate The Compliance Burden.**

In the Notice, the Commission recognizes that the additional reporting in its proposal would create a burden for some market participants and sought input on the extent of the burden.<sup>33</sup> In that regard, the Commission noted that companies already gather similar information that is reported on Form No. 552, the Annual Report of Natural Gas Transactions.<sup>34</sup> The Trade Associations believe that the incremental burden of reporting jurisdictional transactions in the manner the Commission has proposed is substantial and raises potentially insurmountable compliance issues.

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<sup>31</sup> Energy Policy Act of 2005 § 316 (codified at 15 U.S.C. § 717t-2).

<sup>32</sup> NGA § 23(a)(4), 15 U.S.C. § 717t-2(a)(4) (emphasis added).

<sup>33</sup> Notice at P 20.

<sup>34</sup> *Id.*

At bottom, it would be impossible to determine the exact scope of any natural gas seller's jurisdictional sales. As noted above, natural gas traders and supply managers do not maintain systems based on transaction chains; rather, their sale and purchase transactions are part of a supply portfolio. From a compliance perspective, therefore, gas sellers would not have the necessary information to determine whether a particular purchase was in a chain of transactions that included a non-first sale - nor could it. While the jurisdictional status of some transactions can be clearly and definitively established, the exact scope of any seller's jurisdictional sales cannot be established with certainty. As a result, requiring the reporting of only jurisdictional sales imposes a tremendous compliance burden in terms of risk.

Further in that vein, the initial reporting burdens (start up time and resources) should not be underestimated. As the Commission should recall, a staggering amount of resources were devoted by the Commission, its staff, and market participants, their counsel, consultants, technical staffs, etc., to determine how to file the initial reports of Form No. 552. Order No. 704 establishing Form No. 552 was revised and clarified three times.<sup>35</sup> Following the notice of proposed rulemaking in the proceeding, Commission staff held no less than four workshops and technical conferences (on July 24, 2007, April 22, 2008, May 19, 2008, and March 25, 2010). The Commission also made available two guidance documents on the electronic filing requirements for Form No. 552 (on March 4, 2009, and August 31, 2010). In addition, Commission staff posted on its website five sets of answers to Frequently Asked Questions

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<sup>35</sup> *Transparency Provisions of Section 23 of the Natural Gas Act*, Order No. 704, 73 Fed. Reg. 1,014 (Jan. 4, 2008), FERC Stats. & Regs., Regs. Preambles ¶ 31,260 (Dec. 26, 2007), *order on reh'g and clarification*, Order No. 704-A, 73 Fed. Reg. 55,726 (Sept. 26, 2008), FERC Stats. & Regs., Regs. Preambles ¶ 31,275 (Sept. 18, 2008), *order on dismissing reh'g, denying reconsideration, and granting and denying clarification*, Order No. 704-B, 125 FERC ¶ 61,302 (Dec. 18, 2008), *order granting clarification*, Order No. 704-C, 75 Fed. Reg. 36,632 (June 23, 2010), 131 FERC ¶ 61,246 (June 17, 2010).

regarding how to complete Form No. 552 (on February 3, 2009, March 6, 2009, March 27, 2009, June 17, 2010, and November 22, 2010). The Trade Associations expect that determining compliance with the Commission's proposal to require detailed reporting of jurisdictional sales transactions would be significantly more complicated, contentious, and time-consuming.

Even assuming that the exact scope of jurisdictional transactions to be reported can be adequately determined by market participants – which the Trade Associations believe cannot be done – the amount of incremental detail sought in the Commission's proposal versus the aggregated data compiled for Form No. 522 is significant. For example, the time data regarding a transaction may not currently be maintained by market participants, or may only be recorded manually. Systems would need to be developed to record and be able to capture such information for reporting.

The Trade Associations contend that requiring the natural gas industry to embark on a process to determine compliance with the Commission's proposal in this proceeding is ill-advised. Resolution of a proper scope of reporting by itself would be nearly impossible to obtain. The myriad questions related to what data is reported under which spreadsheet cell for the types of transactions prevalent in the industry would take months to resolve. Accordingly, the Trade Associations urge the Commission to reconsider its approach in this proceeding and not move forward with its proposal to require the reporting of detailed transaction-specific information regarding only jurisdictional sales.

## **II. CONCLUSION**

Wherefore, for all of the reasons stated above, the above-listed Trade Associations respectfully request that the Commission consider these comments in this proceeding, reconsider

its new approach to natural gas market transparency, and not move forward with the proposal set forth in the Notice in this proceeding.

Respectfully submitted,

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