UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

COMMENTS OF THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA

The Interstate Natural Gas Association of America (INGAA)[1] submits these comments pursuant to the Notice of Inquiry (Notice) the Commission issued in this docket on November 15, 2012,[2] as modified by the Notice of Extension of Time the Commission issued in this docket on January 18, 2013.

EXECUTIVE SUMMARY

These comments build upon comments that are being filed in this docket by an extraordinarily broad coalition of groups representing the natural gas community from wellhead to burner tip.[3] The members of this coalition, including INGAA, urge the Commission not to move forward with increasing the frequency or granularity of natural gas transaction reporting.

Compared to its specificity on the proposed timing and content of natural gas transaction reports, the Notice is silent in its failure to explicitly recognize two Commission-approved reporting exclusions in place today: the exemption for cash-outs, balancing and in-kind

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1 INGAA is comprised of 25 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.

2 *Enhanced Natural Gas Market Transparency*, 77 Fed. Reg. 69,781 (Nov. 21, 2012), 141 FERC ¶ 61,124.

3 "Joint Comments of the American Forest and Paper Association, 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," Docket No. RM13-1-000 (filed Feb. 12, 2013)("Joint Comments").

transactions, and the *de minimis* reporting threshold. INGAA respectfully urges the Commission to acknowledge both of these exclusions and to affirm that, if this inquiry goes forward, both exclusions will remain in place in their current form.

Finally, if the Commission moves forward with this inquiry, despite the points and arguments in the Joint Comments, INGAA objects to the level of reporting detail suggested in the Notice. Under the Notice, reports would include transaction details that INGAA members do not collect now, that they do not need to collect to make natural gas purchases and sales, and that would be costly and burdensome to acquire.

COMMENTS

I. INGAA supports the Joint Comments in urging the Commission not to move forward with the proposal contained in the Notice.

The Joint Comments detail the futility of trying to increase transparency in the natural gas market by requiring more frequent and more detailed reporting of the natural gas sales and purchase transactions within the Commission's jurisdiction. The Commission's jurisdiction is constrained to a narrow set of natural gas sales, as the Fifth Circuit affirmed in *Texas Pipeline Ass'n v. FERC*[4] and the Commission acknowledged in the Notice itself.[5] The Joint Comments show that these sales frequently are impossible to identify,[6] and even when they can be identified they likely are not representative of today's highly competitive, post-unbundling, natural gas market.[7]

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[4] 661 F.3d 258 (5th Cir. 2011).

[5] *See generally,* Joint Comments 4-6 (citing Notice, PP 10, 14-15).

[6] Joint Comments, 6-8.

[7] *Id.*, 5.

Under these circumstances, subjecting jurisdictional sales to more frequent or detailed reporting will not improve market transparency and, in fact, may harm it because the reports will not provide a true reflection of the broader market. At the same time, imposing expanded reporting requirements on jurisdictional sales is certain to place an inconsistent and unjustified burden on INGAA members and others who make the sales (or purchases) that fall within the Commission's jurisdiction.[8]

The entire natural gas community, from wellhead to burner tip, agrees that the Commission should reconsider its approach to natural gas market transparency and not move forward with the proposal set forth in the Notice. INGAA fully agrees with that recommendation.

II. If the inquiry announced in the Notice moves forward, the Commission should acknowledge existing, well-reasoned, reporting exclusions and affirm that they will not be disturbed.

Currently there are two Commission-approved exclusions to transactional reporting. First, Order No. 704-C[9] exempts cash-outs, balancing and in-kind transactions (collectively, "cash-outs").[10] Second, section 260.401(b)(1)(ii) and (iii) of the Commission's regulations, promulgated as part of Order No. 704,[11] establishes a *de minimis* reporting threshold for natural gas market participants that "engage[ ] in reportable physical natural gas sales that amount to less than 2,200,000 MMBtus for the previous calendar year" and that "engage[ ] in reportable

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8 The Joint Comments address these points in detail at 8-11 (discussing inconsistency of burden) and 12-13 (discussing lack of justification). The Joint Comments address the considerable compliance burden associated with the Notice's proposed reporting requirements at 13-15.

9 *Transparency Provisions of Section 23 of the Natural Gas Act*, 75 Fed. Reg. 35632 (2010).

10 *Id.*, P 45.

11 *Transparency Provisions of Section 23 of the Natural Gas Act*, 73 Fed. Reg. 1014 (2008).

physical natural gas purchases that amount to less than 2,200,000 MMBtus for the previous calendar year."[12]

The Notice does not explicitly mention either of these Commission-approved exclusions. Perhaps these omissions should be interpreted to mean the continued availability of the cash-out exemption and *de minimis* threshold are presumptively (albeit implicitly) outside the scope of the inquiry initiated by this Notice. However, the Notice speaks broadly of "amending regulations," without identifying which regulations might be amended, and requiring market participants to report "every" jurisdictional transaction, without any limiting language:

> [T]he Commission is now seeking comments on whether it should **amend its regulations** to further facilitate price transparency in the natural gas markets. In particular, the Commission is considering proposing to require all market participants engaged in sales of wholesale physical natural gas in interstate commerce to report quarterly to the Commission every natural gas transaction within the Commission's NGA jurisdiction that entails physical delivery for the next day (i.e., next day gas) or for the next month (i.e., next month gas).
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> The Commission believes such regular reporting **of every natural gas transaction within the Commission's [Natural Gas Act] jurisdiction** that entails physical delivery for the next day or for the next month would facilitate price transparency in the natural gas market . . . .[13]

As a result, the Notice could be read to suggest that the continuation of the cash-out exemption and the *de minimis* threshold may be matters open for discussion in this docket. This reading of the Notice, even if unintended, cannot be left to stand without comment.

INGAA strongly opposes any effort to remove or restrict the cash-out exemption or the *de minimis* threshold. Each of these exclusions rests on sound reasoning, with the Commission

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[12] 18 C.F.R. § 260.401(b)(1)(ii)-(iii).

[13] Notice, PP 9, 14 (emphasis supplied).

concluding that reporting these transactions was not necessary to advance natural gas market transparency. There is no basis for disturbing these conclusions now.

INGAA would prefer the inquiry announced in the Notice not go forward. But if the inquiry goes forward, the Commission should acknowledge the cash-out and *de minimis* exclusions and affirm that the inquiry initiated by the Notice will not cause these exclusions to be removed or restricted.

A. The reporting exemption for cash-outs correctly recognizes that these transactions are inherently retrospective, play no role in price formation, and refer to index prices for reasons that advance price transparency and deter market manipulation.

Apart from the fact that cash-outs constitute a trivial share of the natural gas purchases and sales within the Commission's jurisdiction, Order No. 704-C exempted these transactions from reporting because they are inherently retrospective:

> [G]iven the after-the-fact accounting for these sorts of operational transactions, we find it may be unduly burdensome for some respondents to report these volumes as compared to any benefit achieved by such reports.[14]

The reasons that prompted the Commission to establish the cash-out exemption remain equally valid today. Price formation, which lies at the heart of the Commission's transparency initiative, is inherently and fundamentally prospective. In contrast, cash-outs are inherently and fundamentally retrospective. Cash-outs are not for gas to be delivered; rather, they settle over-deliveries or under-deliveries that have already occurred.

Because cash-outs are retrospective, they do not and could not contribute to price formation. As the physical transactions take place and the corresponding imbalances are

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[14] Order No. 704-C, *supra*, P 45.

incurred and offset within a given month, neither the pipeline[15] nor the shipper know which of them will be making an imbalance payment or what the unit price will be. Cash-outs provide a convenient tool for settling imbalances on a regular, periodic basis, and there is no link between these transactions and price formation. During the March 25, 2010, technical conference preceding Order No. 704-C, Mr. John Poe of Exxon captured the point succinctly, correctly noting that cash-outs "would never contribute to the development of an index because of the nature of them being after-the-fact."[16]

Moreover, while payments associated with cash-outs reference price indexes, cash-outs "rely" on these indexes not in the prospective, price-forming manner germane to natural gas market transparency, but as a convenience and a means to further pro-competitive policies against arbitrage. In fact, cash-outs would have a greater impact on price formation if they were **not** based on index prices. The alternative to using an index price would be using a fixed price, and using a fixed price invites arbitrage. When market prices are less than the cash-out fixed price, arbitrageurs have an incentive to intentionally over-deliver or "park" gas on the pipeline. Conversely, when market prices exceed the cash-out fixed price, arbitrageurs have an incentive to intentionally under-deliver or "drain" gas from the pipeline. Basing cash-outs on index prices tends to counter these incentives.

All of these characteristics of cash-outs continue to apply now as they did when the Commission established the cash-out exclusion in Order. No. 704-C. Nothing warrants removing or restricting this exclusion, which the Commission adopted after considerable

[15] In these comments "pipeline(s)" refers to interstate natural gas pipeline(s) unless the context clearly indicates otherwise.

[16] Technical Conference Transcript, p. 63.

deliberation,[17] and the continued availability of this exclusion should not be up for discussion in this docket.

B. A sound *de minimis* threshold is required by statute and essential to the market transparency reporting requirements; therefore, material changes to the *de minimis* rule established in Order No. 704 should not be open for discussion.

A *de minimis* limitation has been part of the Commission's market transparency role from its genesis in section 23 of the Energy Policy Act of 2005.[18] The current *de minimis* reporting limitations (2.2 million MMBtus) were part of the proposed rule that launched the Commission's transparency initiative,[19] and these limitations were included in the first market transparency regulations issued under Order No. 704.[20] The Commission must retain a *de minimis* limitation by statute, so outright repeal is not open for discussion in this docket.

Material restriction or restructuring of the *de minimis* limitation also should not be open for discussion. For any set of reporting requirements, including reporting requirements tied to market transparency, a *de minimis* threshold is indispensible. Without a threshold, parties would be required to file reports even though they would be reporting information of no analytical significance.

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[17] The Commission initially denied this exclusion, and adopted it after a year and a half of discussion and reflection. *Compare*, Order No. 704-A, *Transparency Provisions of Section 23 of the Natural Gas Act*, 73 Fed. Reg. 55726 (2008) PP 59-63 *with* Order No. 704-C, PP 40-45.

[18] Pub. L. No. 109-58, 119 Stat. 594 (2005) § 23(d)(2), *codified at*, 15 U.S.C. § 717t-2(d)(2)("The Commission shall not require natural gas producers, processors, or users who have a de minimis market presence to comply with the reporting requirements of this section.").

[19] *Transparency Provisions of Section 23 of the Natural Gas Act; Transparency Provisions of the Energy Policy Act*, 72 Fed. Reg. 20791 (2007) P 52.

[20] *Transparency Provisions of Section 23 of the Natural Gas Act*, 73 Fed. Reg. 1014 (2008) P 59.

The Commission acknowledged the necessity of a well-reasoned *de minimis* standard in Order No. 704, where the Commission defended its adoption of the *de minimis* level appearing in its proposed rule:

> 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.[21]

The Commission chose the current *de minimis* thresholds precisely because of how small they were relative to the U.S. natural gas market:

> [T] he Commission proposed in the [proposed rule] 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. 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).[22]

Given the growth in domestic natural gas consumption since Order No. 704, the current *de minimis* threshold translates into even less than one-ten thousandth of the U.S. market.

There is no known reason (and none identified in the Notice) for tightening the current *de minimis* threshold directly, through amendments to the annual figures appearing in the Commission's regulations.[23] There is also no reason to tighten the current threshold indirectly, through improper, prorated disaggregation. For example, the Notice states that the Commission is considering requiring market participants to file reports quarterly rather than annually.[24] In these circumstances, one might be tempted to set the quarterly *de minimis* threshold at one-quarter of the annual threshold.

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21 *Id.*, P 80.

22 *Id.*, P 78 (footnotes omitted).

23 18 C.F.R. § 260.401(b)(1)(ii)-(iii).

24 *See, e.g.*, Notice, P 9.

This would be a serious mistake. For many market participants, the volume of natural gas sold and purchased in jurisdictional transactions varies widely over the year. Setting a quarterly *de minimis* threshold at one-fourth of the annual level virtually guarantees that participants who were under the threshold (and rightly so) will be required to start filing reports. And, because so much of the cost of reporting lies in creating the systems necessary to complete the reports, the burden imposed on those who become subject to reporting because they exceed the "one fourth of annual" limit in some quarters will not be offset by not having to file reports in other quarters.

The additional burdens imposed by improperly prorating the annual *de minimis* into equal quarters would be compounded to the extent the annual limit is improperly prorated into even smaller units (as would happen under the proposed reporting at the individual transaction level).

The *de minimis* threshold established in Order No.704 is soundly reasoned and integral to the Commission's market transparency regulations. Even if the inquiry in this docket moves forward, the Commission should state clearly that the current threshold is not to be materially disturbed.

III. The inquiry announced in the Notice should not consider requiring pipelines to report data elements that they do not have, are commercially unnecessary, and would be costly to obtain.

The Notice announces that the Commission is considering requiring transaction-specific reporting, with the following data elements required for each transaction:

- Name, address, and contact information of the trading company;
- Name and location of its holding company;
- Product traded (i.e., next day delivery natural gas or next month delivery natural gas);
- Trade execution method (i.e., exchange or off-exchange, and name of exchange or broker);

- Settlement type (e.g., fixed or index priced);
- Volume (in MMBtu) of natural gas traded;
- Location (hub), price, and date and time of the transaction;
- Name of the counterparty; and
- Name(s) of the Index publisher(s) to which each transaction was reported. [25]

In many cases, pipelines do not have all of this information. For example, one INGAA member reports that the invoices for its operational sales and purchases contain only four of the nine data elements identified in the Notice:

- Name, address, and contact information of the trading company;
- Settlement type (e.g., fixed or index priced);
- Volume (in MMBtu) of natural gas traded; and
- Location (hub), price, and date of the transaction.[26]

This pipeline's invoices are not unusual. Pipelines typically do not have information for several of the suggested data elements, and they do not have this information because it is not necessary to complete the underlying sales and purchases.

INGAA opposes the mandatory reporting of commercially unnecessary data elements that pipelines do not have. A pipeline should not have to incur the considerable expense of obtaining, sorting, storing, assembling and reporting information that it does not currently collect and that is unrelated to its business.[27]

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[25] Notice, P 12.

[26] In contrast to the data element specified in the Notice, these invoices include the date of the transaction but they do not include the time of the transaction.

[27] *See also* Joint Comments at 15 (discussing the burden on market participants associated with developing the internal systems necessary to compile the reports suggested in the Notice).

CONCLUSION

The Joint Comments, signed by virtually the entire natural gas community, urge the Commission to recede from the market transparency initiatives contemplated in the Notice. INGAA hopes the Commission does so. However, should the Commission move forward, it is imperative the Commission acknowledge and affirm its existing cash-out and *de minimis* exclusions, and, in addition, the Commission should refrain from requiring pipelines to bear the expense of obtaining commercially unnecessary information.

Respectfully submitted,

/s/

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