173 FERC ¶ 61,237
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. PL20-3-000]

Actions Regarding the Commission's Policy on Price Index Formation and Transparency, and Indices Referenced in Natural Gas and Electric Tariffs

(Issued December 17, 2020)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Proposed revised policy statement on natural gas and electric indices.

SUMMARY: The Commission's price index policy is set forth in its *Policy Statement on Natural Gas and Electric Price Indices*. The Commission proposes several revisions to that policy to encourage more market participants to report their transactions to price index developers and to provide greater transparency into the natural gas price formation process to increase confidence in the accuracy and reliability of wholesale natural gas prices. First, the Commission proposes to allow data providers (market participants that report transaction data to price index developers) to report either their non-index based next-day natural gas transactions, their non-index based next-month natural gas transactions, or both, to price index developers. In addition, the Commission proposes to encourage data providers to report to all available Commission approved price index developers and also allow data providers to self-audit on a biennial basis. The Commission also proposes to modify the Commission's standards to remain an approved natural gas price index developer such that price index developers should: indicate whether a published index price is assessed in their published indices and obtain

recertification in order for their indices to continue to be included in FERC-jurisdictional tariffs. Finally, the Commission proposes to clarify the review period for assessing the liquidity of price indices submitted for reference in FERC-jurisdictional tariffs.

DATES: Initial Comments are due **[INSERT DATE 90 days after date of publication in the Federal Register]**.

ADDRESSES: Comments, identified by docket number, may be filed electronically at http://www.ferc.gov in acceptable native applications and print-to-PDF, but not in scanned or picture format. For those unable to file electronically, comments may be filed by mail addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, DC 20426. Hand-delivered comments must be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The Comment Procedures Section of this document contains more detailed filing procedures.

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SUPPLEMENTARY INFORMATION:

173 FERC ¶ 61,237
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James P. Danly, Chairman;
Neil Chatterjee and Richard Glick.

Actions Regarding the Commission's Policy on Price Index Formation and Transparency, and Indices Referenced in Natural Gas and Electric Tariffs	Docket No. PL20-3-000

PROPOSED REVISED POLICY STATEMENT ON NATURAL GAS PRICE INDICES

(Issued December 17, 2020)

1. The Commission's price index policy is set forth in its *Policy Statement on Natural Gas and Electric Price Indices*.[1] We propose several revisions to that policy to encourage more market participants to report their transactions to price index developers and to provide greater transparency into the natural gas price formation process to increase confidence in the accuracy and reliability of wholesale natural gas prices. First, we propose to allow data providers (market participants that report transaction data to price index developers) to report either their non-index based next-day natural gas transactions, their non-index based next-month natural gas transactions, or both, to price index developers. In addition, we propose to: (1) encourage data providers to report to all available Commission approved price index developers and (2) allow data providers to

[1] 104 FERC ¶ 61,121 (*Initial Policy Statement*), *clarified*, *Order on Clarification of Policy Statement on Natural Gas and Electric Price Indices*, 105 FERC ¶ 61,282 (2003) (*2003 Clarification Order*), *clarified*, *Order Further Clarifying Policy Statement on Natural Gas and Electric Price Indices*, 112 FERC ¶ 61,040 (2005) (*2005 Clarification Order*) (collectively, *Policy Statement*).

self-audit on a biennial basis.[2] We also propose to modify the Commission's standards to remain an approved natural gas price index developer such that price index developers should: (1) indicate whether a published index price is assessed in their published indices and (2) obtain recertification in order for their indices to continue to be included in FERC-jurisdictional tariffs. Finally, we propose to clarify the review period for assessing the liquidity of price indices submitted for reference in FERC-jurisdictional tariffs. We seek comment on these proposed revisions.

I. Background

A. The Use of Natural Gas Price Indices in Commission Jurisdictional Activities

2. Natural gas price indices play a vital role in the energy industry, as they are used to price billions of dollars of natural gas and electricity transactions annually in both the physical and financial markets. A natural gas price index is a weighted average price derived from a set of fixed-price natural gas transactions[3] within distinct geographical boundaries that market participants voluntarily report to a price index developer.

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[2] S&P Global Platts (Platts), Natural Gas Intelligence (NGI), Argus Media, and Natural Gas Week are examples of price index developers.

[3] The term "fixed-price natural gas transactions" refers to fixed-price next-day delivery, fixed-price next-month delivery, and physical basis transactions (for next-month delivery). These transaction types are defined in the FERC Form No. 552: Annual Report of Natural Gas Transactions (FERC Form No. 552) instructions. The FERC Form No. 552 requires market participants that annually buy or sell more than 2.2 trillion British Thermal Units (Btu) of physical natural gas to provide aggregated data related to their fixed-price, physical basis, Nymex plus, and index-based transactions made in the next-day and next-month (bidweek) markets

3. Natural gas price indices serve as a proxy for the locational cost of natural gas in the daily and monthly markets, as many market participants reference natural gas index prices in their physical and financial transactions. Interstate natural gas pipelines, public utilities, Independent System Operators (ISOs), and Regional Transmission Organizations (RTOs) reference natural gas price indices in their FERC-jurisdictional tariffs for various terms and conditions of service. State commissions also use natural gas price indices as benchmarks when reviewing the prudence of natural gas or electricity purchases. Finally, many natural gas financial derivative contracts that are used in hedging and speculation settle against natural gas price indices.

4. Given that natural gas price index developers use physical fixed-price natural gas transactions to calculate the price of published natural gas price indices, it is important that transaction reporting is robust and that index development is transparent. The significant role played by natural gas indices became apparent during the 2000-2001 Western Energy Crisis, when companies intentionally misreported transactions to price index developers to manipulate natural gas index prices in the Western United States.[4] Subsequently, in the Energy Policy Act of 2005 (EPAct 2005), Congress amended the Natural Gas Act (NGA)[5] to give the Commission additional authority with respect to natural gas price indices. Pursuant to this authority, the Commission established

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[4] *See Initial Policy Statement*, 104 FERC ¶ 61,121 at P 8 & n.1.

[5] Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 691-692 (2005) (codified in relevant part at Natural Gas Act of 1938, 15 U.S.C. 717c-1, 717t-1, 717t-2).

guidelines to ensure that natural gas price indices that are used in tariffs are robust, free from manipulation, and reflect market fundamentals.[6]

5. Subsequently, market participants increased the reporting of their fixed-priced natural gas transactions to price index developers, which resulted in greater confidence in those indices. However, after 2010, the estimated traded volume of fixed-price natural gas transactions reported to price index developers began to decline significantly.[7] FERC Form No. 552 data show that the estimated volume of fixed-price transactions voluntarily reported to price index developers declined by approximately 54% from 2010 until 2019.[8] At the same time that fixed-price reporting to price index developers decreased, the traded volume of natural gas transactions that referenced natural gas indices, known as index gas, increased. For example, FERC Form No. 552 data showed that index gas increased from 69% of the traded volumes in the U.S. physical natural gas market in

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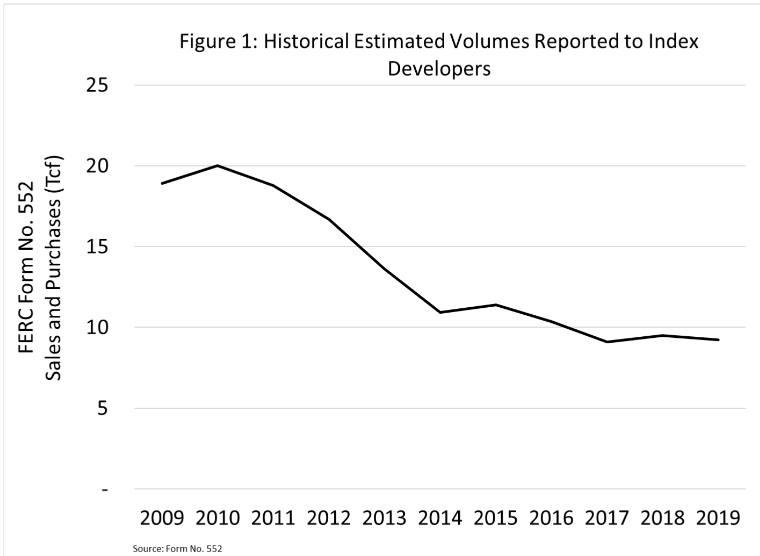
[6] *Price Discovery in Natural Gas and Elec. Markets*, 109 FERC ¶ 61,184 (2004) (*Price Index Order*).

[7] Two index developers now include fixed-price transactions from the InterContinental Exchange (ICE) to increase the liquidity of their indices. Staff analysis of the estimated volumes reported to index developers does not include that supplemental information from ICE.

[8] The Commission must estimate the volumes reported to price index developers on the FERC Form No. 552 because FERC Form No. 552 filers can provide aggregated data for themselves and their affiliates, some of whom may or may not report to index developers. Commission staff estimates this volume by calculating the average of the minimum volume reported (filers with affiliates that all indicate that they report to price index developers) and the maximum possible volume reported (filers with at least one affiliate that indicates that it reports to price index developers).

2010 to 82% in 2019. Figure 1 shows estimated physical natural gas volumes reported to index developers based on FERC Form No. 552 data.



6. Commission staff held a technical conference on June 29, 2017, which addressed natural gas index liquidity and transparency issues and potential actions the Commission could consider taking to increase both the volume of transactions reported to natural gas price index developers and the transparency of the physical natural gas price formation process.[9]

B. Standards for Indices used in Jurisdictional Tariffs

7. The Commission has a statutory obligation to ensure that the rates for energy transactions within its jurisdiction are just and reasonable. Under the NGA and Federal Power Act (FPA), the Commission's jurisdiction extends to sales of electricity and

[9] Docket No. AD17-12-000. A staff-led technical conference addressing similar issues was held in 2003 in Docket No. AD03-7-000.

natural gas for resale in interstate commerce, interstate transmission of electricity and natural gas, and the related pricing mechanisms within jurisdictional tariffs.[10] One way the Commission ensures just and reasonable jurisdictional rates is through the review and approval of natural gas price indices referenced in Commission approved pipeline and ISO/RTO tariffs.

8. An interstate natural gas pipeline, public utility, ISO, or RTO proposing to include a price index in its FERC-jurisdictional tariff bears the burden of supporting its proposed index.[11] In the *Price Index Order*,[12] the Commission stated that, when a pipeline or utility proposes to use a new natural gas or electric price index reference in a jurisdictional tariff or to change an existing natural gas price index reference, the Commission would apply a presumption that the proposed price index location will result in just and reasonable rates if the pipeline or ISO/RTO: (1) proposes to use an index location published by one of the price index developers that the Commission has previously found to meet the developer criteria established in the *Policy Statement*, and (2) demonstrates that the price index location meets one or more of the applicable

[10] *See, e.g.*, 15 U.S.C. 717(b)-717(d); Natural Gas Policy Act of 1978, 15 U.S.C. 3431(a)(1)(A)-3431(a)(1)(D); 16 U.S.C. 824(b)-824(f)

[11] *See, e.g., Northern Natural Gas Co.*, 104 FERC ¶ 61,182, at P 10 (2003) (*Northern Natural*).

[12] *Price Index Order,* 109 FERC ¶ 61,184 at P 68 (citing *Northern Natural*, 104 FERC ¶ 61,182 at P 10).

liquidity criteria for the appropriate review period.[13] If parties to the proceeding protest the use of the proposed price index location, they are required to support the protest with evidence that the selected location does not meet the criteria or show good reason why the location will not result in just and reasonable rates and should not be used. An interstate natural gas pipeline or public utility may also file to reference a price index location that falls outside of these two parameters. In such a case, the pipeline or utility bears the burden of showing that the price index location will result in just and reasonable rates and must support its filing accordingly.[14]

9. Under the *Policy Statement*, reporting by market participants to price index developers is voluntary. For those market participants that choose to report to price index developers, in the *Policy Statement*, the Commission set forth the following minimum reporting standards for data providers: (1) code of conduct – adopting and making public a code of conduct that employees will follow when buying and selling natural gas or reporting data to index developers; (2) source of data – having trade data reported by a department of the company that is independent from and not responsible for natural gas trading; (3) data reported – reporting each bilateral transaction between non-affiliated companies which details the price, volume, whether it was a purchase or a sale, the delivery/receipt location, and whether it was a next-day or next-month transaction; (4) error resolution process – cooperating with the error resolution process adopted by the

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[13] *Id*. P 68.

[14] *Id*. P 69.

index developer in a timely manner; and (5) data retention and review –establishing minimum time periods for retaining all relevant data related to reported trades.[15] These standards are designed to create a uniform process of reporting which provides price index developers assurance that the data they receive from data providers is accurate and truthful. If the data provider can demonstrate that it has adopted and followed the standards for reporting set forth in the Commission's *Policy Statement*, it will benefit from a rebuttable presumption that it has submitted its transactions accurately, timely, and in good faith (Safe Harbor Policy).[16]

10. Under the *Policy Statement*, becoming a Commission-approved price index developer is also voluntary. Prior to the *Policy Statement,* the Commission evaluated on a case-by-case basis whether a price index developer's price index was appropriate for inclusion in a FERC-jurisdictional tariff. In the *Policy Statement*, the Commission set forth minimum standards that, if met, establish a presumption that a price index developer's index location will result in just and reasonable charges. These standards for index developers include the following elements: (1) a code of conduct and confidentiality –publicly disclosing how it will obtain, treat, and maintain price data, including how it calculates its indices while also entering into confidentiality agreements with its data providers; (2) completeness – publishing all available trade information for each hub including: total volume, the number of transactions, the high/low range of

[15] *Initial Policy Statement*, 104 FERC ¶ 61,121 at P 34.

[16] *Id.* P 37.

prices, and the weighted average price; (3) data verification, error correction, and monitoring – verifying its data by matching purchases with sales and contacting data providers over any discrepancies as well as publishing a notice of the corrected price if a reported price is significantly erroneous; (4) verifiability – participating in an independent audit or verification of its processes annually and making the results of that audit public; and (5) accessibility – providing all interested customers reasonable access to the data in a timely fashion and providing the Commission access to the data to conduct an investigation.[17] The purpose of these standards is to ensure that market participants and regulators have confidence that natural gas price indices published by price index developers that are referenced in FERC-jurisdictional tariffs are based on consistent, transparent and verifiable processes and methodologies that help to ensure reliable prices.

11. Under the Commission's market behavior rules,[18] marketers and interstate pipelines making jurisdictional sales of natural gas and jurisdictional sellers of electric energy that have or are seeking market-based rate authority that elect to report to price

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[17] *Id.* P 33.

[18] The natural gas market behavior rules were codified in 2003 in Order No. 644. *Amendment to Blanket Sales Certificates*, Order No. 644, 105 FERC ¶ 61,217 (2003), *reh'g denied,* 107 FERC ¶ 61,174 (2004) (codified at 18 CFR 284.288, 18 CFR 284.403); *Order Amending Market-Based Rate Tariffs and Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g and clarification,* 107 FERC ¶ 61,175 (2004). The electric market behavior rules were codified later in 2006. *Conditions for Public Utility Market-Based Rate Authorization Holders*, Order No. 674, 114 FERC ¶ 61,163 (2006) (codified at 18 CFR 35.41(c)).

index developers must submit accurate and factual information and report in a manner consistent with the procedures set forth in the *Policy Statement*.[19]

II. Discussion

12. As part of its mandate to ensure just and reasonable rates in the wholesale electric and natural gas markets, the Commission reviews its existing policies and regulations from time to time. The Commission's policies and regulations related to natural gas and electric price indices date to the early 2000s and were adopted in response to a lack of confidence in price indices. Since then, the physical trading of natural gas, the reporting of those transactions, and the development of price indices by price index developers has changed.

13. Natural gas price indices are calculated by the voluntary reporting of fixed-price transactions to price index developers; however, in recent years, such reporting has declined. FERC Form No. 552 data show that the estimated volume of fixed-price transactions voluntarily reported to price index developers declined by approximately 54% from 2010 until 2019. In addition, FERC Form No. 552 data show that an increasing amount of physical natural gas transactions are being priced off of indices while the prices of those indices were being calculated based on a decreasing amount of volume of fixed-price transactions estimated to be reported to price index developers.

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[19] 18 CFR 35.41; 18 CFR 284.288(a); 18 CFR 284.403(a); *Initial Policy Statement*, 104 FERC ¶ 61,121 at P 37. These standards are also the subject of a Notice of Proposed Rulemaking that is being issued concurrently with the instant order, in which the Commission proposes to codify the Safe Harbor Policy at 18 CFR 35.41(c), 284.288(a), and 284.403(a) (2020), 173 FERC ¶ 61,238 (2020).

For example, FERC Form No. 552 data show that in 2019, index gas represented 82% of the traded volumes in the U.S. physical natural gas market compared to 2010 when index gas represented 69% of such transactions.

14. As a result of these changes, on June 29, 2017, Commission staff held a technical conference that addressed index liquidity and transparency and potential actions the Commission could consider taking in order to increase both the volume of transactions reported to natural gas price index developers and the transparency of the physical natural gas price formation process. Among other things, Commission staff sought industry input on the existing policies for natural gas price index developers and the use of price indices in jurisdictional tariffs set forth in the *Policy Statement* and the *Price Index Order*.

15. Post-technical conference comments suggested policy changes would encourage more parties to engage in price reporting and result in more reliable, robust, and transparent index formation.[20] Commenters suggested several revisions to the Commission's *Policy Statement*. These proposed revisions included: (1) changes to the Commission's Safe Harbor Policy (including placing the Safe Harbor Policy into the

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[20] American Gas Ass'n (AGA), Comments, Docket No. AD17-12-000, at 3; American Public Gas Ass'n, Comments, Docket No. AD17-12-000, at 3; Edison Electric Institute, Comments, Docket No. AD17-12-000, at 8; Energy Intelligence Group, Inc., Comments, Docket No. AD17-12-000, at 1; NGI, Comments, Docket No. AD17-12-000, at 8; Natural Gas Supply Ass'n, Comments, Docket No. AD17-12-000, at 12; Platts Comments, Docket No. AD17-12-000, at 2; Process Gas Consumers Group, Comments, Docket No. AD17-12-000, at 9; Tenaska Marketing Ventures, Comments, Docket No. AD17-12-000, at 4 (all filed July 31, 2017); and Rice Energy Marketing LLC, Comments, Docket No. AD17-12-000, at 4 (filed Aug. 1, 2017).

Commission's regulations); (2) allowing market participants to report just their next-day or their next-month transactions; (3) encouraging data providers to report to all available price index developers; and (4) changes to the data provider price index data audit structure.

16. With information gained at the technical conference, we propose several revisions to the Commission's natural gas price index policy applicable to natural gas data providers. These changes are intended to reduce the reporting burden and, thereby, increase reporting to natural gas price index developers. Increased price reporting would contribute to the robustness of the price indices which would lead to more accurate and reliable index prices referenced in jurisdictional tariffs.

17. We also propose revisions to the *Policy Statement* applicable to natural gas price index developers. These revisions are intended to reflect changes in how such developers form natural gas price indices and to ensure that natural gas price index developers continue to adhere to the Commission's policies. These revisions will increase the transparency of the natural gas price formation process and maintain industry confidence in the price indices. Finally, we propose to clarify the timeframe over which to assess the liquidity for natural gas and electric price indices referenced in natural gas and electric tariffs. This revision would ensure that natural gas price indices referenced in Commission jurisdictional tariffs are liquid at the time of attestation. We seek comment on these proposed revisions, which we now describe in detail.

A. <u>Reporting Transactions to Price Index Developers</u>

18. Under the Commission's *Policy Statement*, a natural gas or electric data provider should report "*each* bilateral, arm's length transaction between non-affiliated companies in the physical (cash) markets." [21] These transactions are non-index based transactions and include both a data provider's next-day and next-month transactions.[22] The Commission later acknowledged that physical basis transactions during bidweek[23] "are a significant aspect of wholesale natural gas markets and utilize or could contribute to the formation of price indices."[24]

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[21] *See Initial Policy Statement*, 104 FERC ¶ 61,121 at P 34 ("[A] data provider should report *each* bilateral, arm's length transaction between non-affiliated companies in the physical (cash) markets at all trading locations.") (emphasis added). As a part of outreach with market participants over the past couple of years, Commission staff have directed market participants to report both their next-day and next-month transactions, or to not report at all.

[22] *See 2003 Clarification Order*, 105 FERC ¶ 61,282 at P 12 & n.4 ("As noted in Policy Statement ¶ 34.3, reportable transactions are non-index based 'bilateral, arm's-length transaction between non-affiliated companies in the physical (cash) markets at all trading locations.' Note, however, that if a participant reports trades to an index developer that publishes only a limited or regional index, the market participant must report trades in other areas not covered by the limited or regional index to another index developer.").

[23] Bidweek is a time frame occurring during the last five business days of every month at which most next-month contracts are traded. Delivery of these contracts take place the following the month.

[24] *Transparency Provisions of Section 23 of the Natural Gas Act*, Order No. 704, 121 FERC ¶ 61,295 (2007), *order on reh'g and clarification*, Order 704-A, 124 FERC ¶ 61,269, at P 89, *reh'g denied*, Order No. 704-B, 125 FERC ¶ 61,302 (2008).

19. Under the current policy, a data provider should report both its next-day fixed-price natural gas transactions as well as its next-month bidweek fixed-price and physical basis natural gas transactions to price index developers. However, allowing a data provider to report only next-day transactions or only next-month transactions may ease the reporting burden on data providers and result in increased reporting. At the 2017 technical conference, several commenters and panelists stated that market participants would be more likely to report their next-month transactions to price index developers if they were given the option to report only their next-month transactions rather than both their next-day and next-month transactions.[25] Many cited the significant burden of reporting next-day transactions, especially for those market participants that primarily transact in next-month markets. Panelists also noted that trading and reported volumes in the next-month market showed a continued decline relative to the next-day market. Panelists added that this was a concern among data providers who trade in the next-month markets due to perceived increased compliance scrutiny with higher market concentrations from trading in these comparatively less-liquid markets.

[25] Energy Intelligence Group, Inc., Comments, Docket No. AD17-12-000, at 2; Tenaska Marketing Ventures, Comments, Docket No. AD17-12-000, at 5; Process Gas Consumers Group, Comments, Docket No. AD17-12-000, at 9; Platts Comments, Docket No. AD17-12-000, at 2; Edison Electric Institute, Comments, Docket No. AD17-12-000, at 8; NGI, Comments, Docket No. AD17-12-000, at 8; American Public Gas Ass'n, Comments, Docket No. AD17-12-000, at 10; Natural Gas Supply Ass'n, Comments, Docket No. AD17-12-000, at 12-13 (all comments were filed July 31, 2017); and Rice Energy Marketing LLC, Comments, Docket No. AD17-12-000, at 4 (filed Aug. 1, 2017).

20. Accordingly, to reduce the burden on data providers and encourage more reporting, we propose to allow data providers to report either their next-day transactions *or* their next-month transactions to price index developers. Data providers may also report both sets of transactions. This policy revision could benefit reporting in the next-month market, where reporting to price index developers is most needed, according to the FERC Form No. 552 data. For instance, the data show that in 2019, the estimated reported fixed-price and physical basis volume in the next-month market was smaller than the estimated reported volume in the next-day market.[26] But, nonetheless, the volume of index gas in the next-month market was larger than the volume of index gas in the next-day market.[27] Further, the estimated voluntarily reported volume for the next-month market for 2019 remain 55% below 2010 levels.[28]

21. Thus, in order to ease the burden associated with next-month price reporting, we propose to modify the *Policy Statement* to allow market participants to elect to report

[26] Next-month fixed-price and physical basis values were approximately 88% of the next-day fixed-price values.

[27] Next-month index gas values were approximately 117% of the next-day index gas values.

[28] As mentioned earlier, two price index developers now include transactions from ICE to increase the level of fixed-price volumes used to calculate their next-day and next-month indices. Trading on ICE in the next-day market is more robust than trading in the next-month market. For example, the inclusion of ICE transactions in Platts' indices resulted in a 126% increase in Platts' next-day index volumes but Platts' next-month indices only resulted in a 76% increase. Thus, although Platts next-day and next-month index volumes increased with the inclusion of ICE's transactions in its indices, the benefit to its indices was greater in the next-day market than the next-month market.

either all non-index based next-day transactions, all non-index based bidweek next-month transactions, or both non-index based next-day and non-index based bidweek next-month transactions. Under this proposal, whichever set of transactions a data provider chooses to report (next-day, next-month, or both) it should submit data on *each* bilateral, arm's length transaction within that set.

B. Encouraging Comprehensive Reporting

22. Under the Commission's price index policy, "[g]enerally, a market participant need not report to more than one index developer, so long as the relevant data for all reportable transactions are given to that developer."[29] Some market participants have interpreted this language to mean that data providers *should not* report to more than one price index developer.[30] This interpretation is not correct. We reiterate that "a participant, of course, may report transactions to more than one index developer."[31] We strongly encourage data providers to report to as many Commission approved price index developers as possible.

23. Although there may be some burden for reporting to additional price index developers, we understand that the burden of reporting to multiple price index developers

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[29] *2003 Clarification Order*, 105 FERC ¶ 61,282 at P 12.

[30] *See, e.g.*, Energy Intelligence Group, Inc., Comments, Docket No. AD17-12-000, at 1-2 (July 31, 2017).

[31] *2003 Clarification Order*, 105 FERC ¶ 61,282 at P 12.

has declined since the issuance of the *Policy Statement*.[32] If more market participants voluntarily report their transactions to multiple price index developers, it will likely result in more robust price formation for all price index developers. Thus, we urge all data providers to report their transaction data to as many Commission approved price index developers as possible.

C. Reducing the Self-Audit Burden

24. In the *Policy Statement*, the Commission stated that data providers should perform a self-audit of their reporting process every year either by an independent third-party auditor or an internal auditor. In an effort to encourage price reporting, we propose to allow data providers to now perform a self-audit on a biennial basis. In other words, every other year a data provider would perform an audit covering the previous two years, if choosing this option. This revision would ease the burden on data providers, potentially increasing the number of market participants who voluntarily report.[33]

25. More specifically, we propose to revise the timing of the standard that a data provider have an independent auditor review the implementation of, and adherence to, the data gathering and submission process adopted by the company so that the audit be

[32] For example, data providers can now send one email with price reporting data to multiple index developers.

[33] The previous data retention period of three years described in the *Initial Policy Statement* was superseded by changes to our regulations and is now five years, and the biennial audit period does not change the data retention requirements set forth in the regulations at 18 C.F.R. 284.288 and 18 C.F.R. 284.403.

undertaken on a biennial basis. As stated in the *Policy Statement,* the results of the audit should be made available to any price index developer to which the data provider submits trade data, and the data provider should permit the price index developer to recommend changes to improve the accuracy and timeliness of data reporting.[34]

26. To the extent that the terms and costs for such an external audit may be overly burdensome, we continue to find that it is acceptable for internal auditors to perform the self-audits, in order to avoid raising barriers to voluntary reporting. While there are advantages to having an independent third-party audit, the independent audit can be performed by a company's internal auditor, so long as the internal audit personnel are independent from the trading and reporting departments and personnel, and the audit follows internal auditing standards, such as those prescribed by the Institute of Internal Auditors or other similar generally accepted auditing standards.[35] Adequately documented and effective audits by an independent internal or external audit function can serve as an appropriate compliance control. Relying on these self-audits will ensure that price reporting by market participants is accurate and reliable to maintain industry confidence in indices.

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[34] *Initial Policy Statement*, 104 FERC ¶ 61,121 at P 34.

[35] *See* the Institute of Internal Auditors' (IIA), *International Standards for the Professional Practice of Internal Auditing* (the *Standards*) (Oct. 2016), https://na.theiia.org/standards-guidance/Public%20Documents/IPPF-Standards-2017.pdf.

D. Increasing Confidence in Price Indices

27. Under the price index policy, for the Commission to approve a price index for use in a jurisdictional tariff, the price index developer should adopt and make public a written code of conduct and confidentiality. Specifically, a price index developer's code of conduct "should inform customers how the price information was developed, including index calculation method, relevant formulas and algorithms, treatment of aberrant data, and use of judgments, assessments, or similar subjective adjustments."[36] We propose to clarify that, with respect to assessments, a price index developer's code of conduct should inform customers how it makes assessments in its publications and in its data distributions. Price index assessment transparency would give market participants better information about the liquidity of certain hub locations.

28. A price index developer is considered to use a "market assessment" when it uses market information, other than the trades at the index's specified location, to determine the value of the index price. Some price index developers use market assessments to produce index prices when an insufficient amount of volume or number of reported deals are available at a given location. In its post-technical conference comments, the AGA recommended that price index developers should clearly indicate when they engage in

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[36] *Id.* P 33.

market assessments rather than calculating price indices based on weighted averages of reported trades.[37]

29. We believe that this clarification is timely because the number of market assessments appears to have recently increased. Platts, for instance, published 356 index prices at various hubs in 2019 without publishing a corresponding number of deals for those prices.[38] This represents a significant increase from 2018, when Platts published 246 index prices without a corresponding number of deals.

30. We agree with AGA that a price index developer should distinguish assessed index prices from index prices calculated from weighted averages of reported trades. We propose that price index developers indicate in their publications and data distributions when they use a market assessment to calculate a published index price in order for that price index developer to maintain its status as a Commission approved price index developer. Specifically, we propose that price index developers clearly define in their methodology guide a method to determine if a price assessment is made in its data distributions.[39] This revision would give market participants a mechanism for identifying

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[37] AGA, Comments, Docket No. AD17-12-000, at 3 (filed July 31, 2017).

[38] Staff calculated this figure by counting the number of index prices published without a corresponding number of deals.

[39] Price index developers publicly post a document which describes how their indices are calculated. This is commonly referred to as a methodology guide. *See, e.g.*, Platts, *Methodology and Specifications Guide* (March 2020), https://www.spglobal.com/platts/plattscontent/_assets/_files/en/our-methodology/methodology-specifications/na_gas_methodology.pdf.

assessments. The additional clarity provided by indicating assessed prices should increase the transparency of price index development and, more generally, natural gas price formation and provide the market with more information about the liquidity of certain locations. In turn, such transparency should increase industry's confidence in price indices.

E. Ensuring Price Index Developers' Continued Adherence to the Price Index Policy

31. In the *Policy Statement*, the Commission developed five standards for price index developers to show that their internal processes were sufficient to become a Commission approved price index developer and, thus, have their price indices referenced in jurisdictional tariffs. As detailed above, those five standards include: (1) a code of conduct and confidentiality; (2) completeness; (3) data verification, error correction, and monitoring; (4) verifiability; and (5) accessibility. After the *Policy Statement* was issued, 10 price index developers made filings with the Commission asserting that they complied with these standards. In the *Price Index Order*, the Commission approved those price index developers as satisfying all or substantially all of the standards.[40] Since then, the Commission also granted approval to three additional price index developers.[41]

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[40] *Price Index Order*, 109 FERC ¶ 61,184 at P 24 (Argus Media, Inc., Bloomberg L.P., Btu/Data Transmission Network, Dow Jones and Company, Energy Intelligence Group, Inc., Intelligence Press, Inc. (NGI), ICE, Io Energy LLC, Platts, Powerdex, Inc.).

[41] Many of the original indices have ceased publication or been acquired and rebranded and not reapproved. As such, only five pre-approved price index developers remain: Energy Intelligence Group, Inc. (Natural Gas Week), Intelligence Press/NGI, Platts, Powerdex, and Argus Media. Although, it was not pre-approved, SNL Energy

32. Under the current *Policy Statement*, once approved, there is no verification process to ensure that price index developers continue to meet these standards. As a result, for most of the currently approved price index developers, the Commission has not reexamined their compliance with the price index developer standards in 16 years, despite the myriad changes in natural gas markets that have occurred during that time.[42]

33. To ensure that price index developers continue to meet these standards, we propose to revise the price index policy. A Commission approved price index developer should now seek re-approval from the Commission every seven years that it continues to meet the standards. We propose that, beginning six months after the adoption of this proposal, interstate natural gas pipelines and public utilities proposing the use of the indices in jurisdictional tariffs will no longer be entitled to the rebuttable presumption that a price index developer's indices produce just and reasonable rates unless the price index developer has obtained re-approval from the Commission within the last seven years that it continues to meet the criteria in the *Policy Statement*.[43]

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continues to publish indices after purchasing IO Energy and BTU/Data Transmission Network in 2004 and 2009, respectively.

[42] For example, some price index developers now receive transactions from ICE, at some hub locations basis transactions are now being used to create next-day indices, and declines in reporting have resulted in hubs that were historically liquid to require routine price assessments.

[43] Consistent with prior practice, price index developers would file for both initial Commission approval and re-approval in the PL03-3-000 docket.

34. We believe that these proposed changes will confirm that price index developers continue to meet the Commission's standards, which will help to ensure that rates which reference price indices remain just and reasonable.

F. Clarifying Liquidity Standards for Price Index References

35. In the *Price Index Order,* the Commission adopted a set of criteria delineating the minimum level of activity at a particular trading location in order for that price index trading location to be referenced in a FERC-jurisdictional tariff – effectively known as liquidity standards.[44] We propose to clarify these liquidity standards.

36. The *Price Index Order* states that interstate natural gas pipelines and ISOs/RTOs, when proposing new natural gas and electric price indices to be used in jurisdictional tariffs, should confirm that the proposed price index location(s) have met the minimum liquidity standards over a 90-day period for daily or weekly indices, and a six-month period for monthly indices.[45] The *Price Index Order* did not specify a specific timeframe during which the applicant should show that the proposed price index location meets the liquidity threshold. As a result, interstate natural gas pipelines and ISOs/RTOs have used different 90-day or six month-periods to submit price index location data in order to assess liquidity.[46]

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[44] *Price Index Order*, 109 FERC ¶ 61,184 at P 66.

[45] *Id.* P 65.

[46] *E.g.,* in Docket No. RP20-59-000, filed on October 10, 2019, Dominion Energy Transmission Inc. submitted transactions for an index location for the period from June 4, 2019 to August 30, 2019. In Docket No. RP19-1395-000, filed on July 24, 2019,

37. Shifts in regional production and market demand areas have resulted in changes in the liquidity of natural gas price index hubs across the U.S. In light of the dynamic and seasonal nature of natural gas trading, some price indices may not provide a reasonable representation of natural gas costs consistently enough to be included within a tariff at the time of attestation. We believe additional clarity would be helpful to ensure applicants' approach to assessing liquidity is reflective of the most recent market activity.[47] While we continue to find the current minimum levels of activity for each price index location to be appropriate market activity thresholds, we propose to modify the review period over which the price index location should meet the minimum level of activity for all indices referenced in FERC-jurisdictional tariffs to at least 180 continuous days out of the most recent 365 days from the filing date of any such proposal. We believe that expanding the review period will ensure that natural gas price index references in FERC-jurisdictional tariffs are sufficiently liquid which will ultimately benefit customers who are subject to the tariff provisions.

38. Accordingly, we propose to revise the criteria established in the *Price Index Order* as follows (revised language shown in italics). We also propose removing the term

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Southern Natural Gas Company, L.L.C. submitted transactions for an index location on April 1, 2019 to July 16, 2019. Both of these filings were accepted given that the pipelines provided 90 days of data, but the latter filing included a more timely review period closer to the date of filing.

[47] As explained previously, the voluntary reporting of fixed-price transactions to price index developers has declined in recent years. This has resulted in fluctuating liquidity for certain natural gas price index locations.

"daily" from the daily, weekly, and monthly liquidity requirements to provide clarity to the conditions that should be met for those types of price indices.[48]

> Daily or hourly indices should meet at least one of the following conditions, on average, for all non-holiday weekdays *for at least 180 continuous days out of the most recent 365 days*:
>
> 1. Average volume traded of at least 25,000 million Btus (MMBtu) *per day* for natural gas or 2,000 Megawatt hours (MWh) *per day* for power; or
> 2. Average number of transactions of five or more *per day*; or
> 3. Average-number of counterparties of five or more *per day*.
>
> Weekly indices should meet at least one of the following conditions on average for all weeks *for at least 180 continuous days out of the most recent 365 days*:
>
> 1. Average volume traded of at least 25,000 MMBtu *per day* for gas or 2,000 MWh *per day* for power; or
> 2. Average number of transactions of eight or more per week; or
> 3. Average number of counterparties of eight or more per week.
>
> Monthly indices should meet at least one of the following conditions on average *for at least 180 continuous days out of the most recent 365 days*:

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[48] The *Price Index Order* used the term "daily" as the metric for determining the average volume, average number of transactions, and average number of counterparties required for indices to be sufficiently liquid for use in jurisdictional tariffs. In this *Revised Policy Statement*, we remove the term "daily" from the Commission's index liquidity measurements. We do not believe that this revision changes the original intent of the criteria as indices will continue to meet the same minimum liquidity conditions necessary as before but now for 180 continuous days out of the most recent 365 days.

1. Average volume traded of 25,000 MMBtu *per day* for gas or 2,000 MWh *per day* for power; or
2. Average number of transactions of ten or more per month; or
3. Average number of counterparties of ten or more per month.

39. Aside from the changes to the minimum criteria specifically discussed above, all other criteria for reflecting adequate liquidity at referenced points adopted in the *Policy Statement* would remain unchanged.

G. **Additional Policy Changes to Electric Indices and Electric Price Index Developers**

40. The modifications in this proposed *Revised Policy Statement* would apply solely to natural gas price indices and natural gas price index developers. However, we recognize that the Policy Statement applied to both the electric and natural gas industries. For that reason, Commission staff will conduct outreach to explore the need for, and scope of, any potential policy updates for the electric industry.

III. **Information Collection Statement**

41. The Paperwork Reduction Act (PRA) requires each federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information (including reporting, record keeping, and public disclosure requirements) directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements (including deletion, revision, or implementation of new requirements). Upon approval of a collection of information, OMB will assign an OMB control number

and an expiration date. Respondents subject to the filing requirements will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

42. The Commission solicits comments from the public on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility and clarity of the information collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Specifically, the Commission asks that any revised burden or cost estimates submitted by commenters be supported by sufficient detail to understand how the estimates are generated.

43. This proposed revised policy statement will affect the existing data collection: FERC-549, NGPA Title III Transactions and NGA Blanket Certificate Transactions. Estimates of the PRA-related burden and cost[49] follow. The following table summarizes the estimated increases and decreases in burden due to the proposed policy changes above.

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[49] The Commission staff estimates that industry is similarly situated in terms of hourly cost (for wages plus benefits). Based on the Commission's Fiscal Year (FY) 2020 average cost of $172,329/year (for wages plus benefits, for one full-time employee), $83.00/hour is used.

Modifications Due to the Proposed Revised Policy Statement in Docket No. PL20-3					
	No. of Respondents (1)	**Annual No. of Responses Per Respondent (2)**	**Total No. of Responses (1)*(2)=(3)**	**Average Burden (Hrs.) & Cost ($) Per Response (4)**	**Total Annual Burden Hrs. & Total Annual Cost ($) (3)*(4)=(5)**
Proposed Burden Reductions[50]					
Data Providers-perform biennial self-audit (not annual)	125	.5	62.5	80 hrs.; $6,640	5,000 hrs.; $415,000
Data Providers—provide month-ahead (not day-ahead on a daily basis)[51]	9	249[52]	2,241	4 hrs.; $332	8,964 hrs.; $744,012
Proposed Reductions					**13,964 hrs.; $1,159,012**
Proposed Burden Increases to FERC-549					
Price Index Developers—re-certify every 7 yrs.	6	0.14	0.84	320 hrs.; $26,560	268.8 hrs.; $22310.40
Price Index Developers—code of conduct & confident.; & inform customers	6	1	6	80 hrs.; $6,640	480 hrs.; $39,840

[50] The proposed burden reductions are provided for information and comment. To be conservative, the Commission may not remove the hours from its information collection estimates in the OMB-approved inventory.

[51] Staff assumes respondents with 2019 estimated volumes of next-month and

Price Index Developers —identify assessed index price vs. calculated	6	1	6	80 hrs.; $6,640	480 hrs.; $39,840
Proposed Increases to FERC-549					**1,228.8 hrs.; $101,990.40**
Net Total Proposed Reduction					**12,735.2 hrs.; $1,4057,021.6**

The Commission seeks comments on the burden and cost related to complying with the proposed revised policy statement.

Title: FERC-549, NGPA Title III Transactions and NGA Blanket Certificate Transactions.

OMB Control No.: 1902-0086.

Respondents: Natural Gas Data Providers (Market Participants That Report Transaction Data to Price Index Developers) and Price Index Developers.

Frequency of Responses: As discussed.

physical basis transactions reported to index developers that exceeded two thirds of their total estimated volumes reported to index developers will no longer report their next-day transactions to index developers.

[52] We are proposing to allow companies to report just monthly, instead of monthly and daily. The figure (249 annual responses per respondent) relates to reporting on all non-holiday trading days.

Necessity of the Information:

The collection of this information helps to provide accuracy and transparency to the formation of natural gas price indices.

Internal Review: These requirements conform to the Commission's goal for efficient information collection, communication, and management. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, Attn: Ellen Brown, Office of the Executive Director, e-mail: DataClearance@ferc.gov, or phone: (202) 502-8663.

IV. Comment Procedures

44. We invite comments on this proposed *Revised Policy Statement* within **[INSERT DATE 90 days after date of publication in the Federal Register]**.

V. Document Availability

45. The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (http://www.ferc.gov). At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020.

46. From the Commission'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.

47. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email 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.

By the Commission. Commissioner Clements is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.