DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2595–000, EL03–34–000, ER03–1277–000, ER03–2458–000, ER04–106–000, ER04–446–000, ER04–454–000 (Not Consolidated), EL04–43–000, EL04–46–000, ER04–364–000, ER04–375–000, ER04–456–000, ER04–571–000]

Midwest Independent Transmission System Operator, Inc., Tenaska Power Services Co. v. Midwest Independent Transmission System Operator, Inc., Cargill Power Markets, LLC v. Midwest Independent Transmission System Operator, Inc., American Electric Power Service Corporation, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., Ameren Services Company, Midwest Independent Transmission System Operator, Inc., Ameren Services Company; Notice of Commission Staff Participation at Technical Conference

March 5, 2004

Representatives of the Commission's staff will attend a technical conference pertaining to the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) anticipated Energy Markets Tariff Filing. The technical conference will be held on March 10, 2004, from 10 a.m. to 6 p.m., and on March 11, 2004, from 8 a.m. to noon. The conference will take place at the Lakeside Corporate Center (directly across from the Midwest ISO's headquarters), 630 West Carmel Drive, Carmel, Indiana. Further details of the conference are available at *http://www.midwestiso.org/meetings.shtml*.

The purpose of the technical conference is to discuss the Midwest ISO's anticipated Energy Markets Tariff Filing, expected to be filed with the Commission on March 31, 2004. The technical conference is open to the public. During the course of the meeting, it is possible that discussions may overlap with issues pending in the above-captioned dockets.

For more information about the technical conference, contact Patrick Clarey, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, at (317) 249–5937 or *patrick.clarey@ferc.gov*, or Christopher Miller, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov*.

Magalie R. Salas,
Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL03–3–000 and AD03–7–000 (Not Consolidated)]

Price Discovery in Natural Gas and Electric Markets; Natural Gas Price Formation; Staff Notice of Request for Comments

March 5, 2004.

Staff issues this notice to provide an opportunity for comments on the current state of natural gas and electricity price formation, and whether there has been any increase in confidence in natural gas and electric price indices. These comments will assist Staff in evaluating developments since the issuance by the Commission of the *Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 (2003).

Over the past year the Commission has taken several actions to improve the quality of and confidence in price indices that both reflect and influence the formation of wholesale prices for natural gas and electricity. In Docket No. AD03–7, the Commission's Staff held technical conferences on April 24 and June 24, 2003, issued Staff discussion papers, and held a follow-up workshop on July 2, 2003, to explore the desirability of a ''safe harbor'' for good faith reporting of prices to price index developers.

The conferences and workshops led the Commission to issue the Policy Statement in Docket No. PL03–3 on July 24, 2003.[1] In the Policy Statement, the Commission explained what it expects of natural gas and electricity price index developers and companies that report transaction data to index developers, and created a rebuttable presumption that companies that report trade data in accordance with the standards of the Policy Statement are doing so in good faith and will not be subject to administrative penalties for inadvertent errors in reporting.

The Commission further required, prospectively, that price indices used in jurisdictional tariffs meet the criteria set forth in the Policy Statement and reflect adequate liquidity at the referenced index points. The Commission also directed Staff to monitor the level of reporting of transaction data to price index developers and the adherence by market participants and price index developers to the Policy Statement standards.

With respect to prospective use of price indices in tariffs, the Commission issued separate orders on tariff filings where jurisdictional companies had proposed to make changes in indices used in the tariff. The Commission accepted and suspended the tariff sheets, permitting them to become effective subject to further action by the Commission following receipt of a report on the compliance and liquidity issues from the Commission Staff.[2] The reports are due April 30, 2004.[3]

Staff has actively monitored industry response to the Policy Statement. In September 2003 Staff sent a survey to 266 companies seeking information on their price reporting practices before and after issuance of the Policy Statement. To address the liquidity requirement of the Policy Statement, Staff held a workshop on liquidity issues on November 4, 2003. To evaluate whether index developers have adopted the Policy Statement standards, Staff solicited statements from price index developers, which statements were filed in January 2004 in Docket No. PL03–3–000.

Meanwhile, on November 17, 2003, the Commission issued two orders adopting behavior rules for market participants. In Docket Nos. EL01–118–000 and -001 the Commission issued its *Order Amending Market-Based Rate Tariffs and Authorizations*, 105 FERC ¶ 61,218, and in Docket No. RM03–10–000 the Commission issued Order No. 644, *Amendment to Blanket Sales Certificates*, 105 FERC ¶ 61,217. Both of these orders adopt a behavior rule requiring that, to the extent holders of market-based rate authority and sellers using blanket certificate sales authority report transactions to entities that

[1] *See* the Policy Statement, ¶¶ 6–32, for a detailed discussion of the role of price indices in energy markets, concerns with price index quality and reliability, industry efforts to improve index quality, and the steps leading to the Commission's issuance of the Policy Statement. Subsequently the Commission also issued an *Order on Clarification of Policy Statement on Natural Gas and Electric Price Indices*, 105 FERC ¶ 61,282 (2003).

[2] *See* ''Order Accepting and Suspending Tariff Sheets, Subject to Further Proceedings'' in *Transcontinental Gas Pipe Line Company*, 104 FERC ¶ 61,181 (2003); *Northern Natural Gas Company*, 104 FERC ¶ 61,182 (2003); and *Natural Gas Pipeline Company of America*, 104 FERC ¶ 61,190 (2003).

[3] *See, e.g.*, Northern Natural Gas Company, *et al.*, ''Notice Deferring Submission of Staff Reports,'' Docket Nos. RP03–533–000, *et al.*, issued January 27, 2004.

develop and publish price indices, they must report such transactions in accordance with the Policy Statement.

The behavior rules orders also directed all market-based rate sellers and holders of blanket certificate authority to notify the Commission whether or not they report prices to index developers in accordance with the Policy Statement. Numerous such notices were filed in January 2004.

Finally, Staff will soon send a second survey to a set of companies that buy and/or sell natural gas and electricity in wholesale markets. The results of this second phase survey will be an important part of Staff's status report to the Commission on price formation.

As noted, the Commission instructed Staff to monitor ''both the level of reporting to index developers and the amount of adherence to the standards set forth herein,'' Policy Statement ¶ 43, and to report to the Commission about specific indices involved in certain tariff filings. The issues of the robustness of voluntary price reporting, price index developer adherence to Policy Statement standards, and the reliability of referenced index points all are related to the overall progress in improving the quality of price indices and of encouraging greater voluntary reporting of transaction data by market participants. As a result, Staff intends to report to the Commission on overall progress in restoring confidence in price indices and voluntary price formation as well as on the adequacy of indices referenced in specified tariffs.

While Staff will shortly conduct the second industry survey to determine whether steps taken by the Commission have assisted the industry in restoring vitality and confidence in published price indices, Staff also provides this opportunity for comments by interested parties on changes since the issuance of the Policy Statement.

Price Index Developers

A number of price index developers filed statements in Docket No. PL03–3–000 in January. At this time, Staff provides a further opportunity for any natural gas or electricity price index developer to submit a statement regarding its compliance with the Policy Statement standards, or to supplement its previous statement. Specifically, we request that index developers file in Docket No. PL03–3–000 (1) a statement whether the developer has adopted, or will adopt, the standards of Policy Statement ¶ 33 and (2) a description of the developer's practices in each of the five areas identified by the Commission in the Policy Statement. The description should include the following:

1. *Code of conduct and confidentiality.* Provide a copy of the public portions of any applicable code of conduct or ethics, along with a description of how the public code relates to the treatment of price data obtained, the methodology for calculating indices, and the procedures for assuring confidential treatment of trade data. Provide a sample copy of any uniform confidentiality agreements used with market participants. Explain and document provisions permitting Commission access to price data necessary for performance of the Commission's statutory duties.

2. *Completeness.* Discuss the scope of information collected for use in the indices. Provide sample indices showing how you report ''(a) the total volume, (b) the number of transactions, (c) the number of transaction entities, (d) the range of prices (high/low), and (e) the volume-weighted average price.'' Policy Statement ¶ 33.2. Describe any liquidity measures to inform users about the degree of activity or other indicators of reliability in the prices reported at each trading location.

3. *Data verification, error correction, and monitoring.* Discuss the means by which you verify the prices reported to you. Explain or provide information on any error correction process used, including when and how error corrections are published. Describe and document your data monitoring and surveillance systems, and the steps to be taken (including notifying the Commission or other agencies) in the event anomalous data reported to you cannot be explained or resolved by the data provider.

4. *Verifiability.* Describe the scope of and document the independent audit or verification of your data collection, evaluation, index calculation and index production processes, including whether there is any external process review.

5. *Accessibility.* Describe the availability of your price indices to the industry. Discuss the measures taken to provide the Commission access to relevant data in the event of suspected bad faith reporting or potential manipulation.

Failure to file will lead Staff to operate on the assumption that the index developer has initiated no changes in its practices. Information or data previously provided in any Commission docket or otherwise available publicly may be incorporated by reference in or included with the statement. In addition, index developers are invited to comment on whether the number of price reporting entities and the number of reported fixed price transactions have increased since issuance of the Policy Statement.

Price Reporting Entities

Interested market participants are invited to file comments on the developments since issuance of the Policy Statement. Parties are encouraged to address the following questions:

1. Has the Policy Statement safe harbor for good faith reporting been helpful for your firm in its consideration of whether to engage in the reporting of price transaction data?

2. Have you adopted the standards of ¶ 34 of the Policy Statement or otherwise taken steps to improve the quality of trade data submitted to price index developers?

3. Have changes by price index developers materially improved the transparency of information contained in price indices?

4. Do price index developers provide enough information about the level of trading activity at locations for which index prices are provided?

5. Is it clear to you in publications what information is intended to be price indices and what information is intended to be ''market price indications'' or other market-related information? Do price index developers make clear which prices are indices prepared according to their index methodology?

6. Do you have any specific concerns regarding the quality of price indices? If so, what are they? Please be specific about the basis for the concerns as well as what the concerns are.

7. Do you have more confidence in price indices today than before issuance of the Policy Statement?

Interested parties should submit written comments on the issues outlined above no later than March 26, 2004. The Commission encourages electronic submission of comments in lieu of filing on paper. The Commission's electronic filing system and instructions for filing can be found at the ''eFiling'' link on the Commission's Web site (*http://www.ferc.gov*). Commenters are not required to serve copies of their comments on other commenters. For further information contact Ted Gerarden at 202–502–6187 or *ted.gerarden@ferc.gov*.

Magalie R. Salas,

Secretary.

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