

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

NATURAL GAS PRICE FORMATION) Docket No. AD03-7-001

**Reporting natural gas and electricity transaction information –
Comments of the Edison Electric Institute and The Alliance of Energy
Suppliers**

Dated: July 10, 2003

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The Edison Electric Institute (EEI) and The Alliance of Energy Suppliers (The Alliance) submit these comments on the Federal Energy Regulatory Commission’s (“FERC or Commission”) request for comments regarding companies reporting natural gas and electricity transaction information in the above captioned docket. EEI is the association of the nation’s shareholder-owned electric utilities and affiliates and associates worldwide. The Alliance of Energy Suppliers is a division of EEI that specifically represents unbundled, bundled and independent power suppliers, as well as trading, marketing, and risk management. EEI and The Alliance members are engaged in all aspects of the electricity utility industry, including generation, competitive power supply, transmission, distribution, service to end-use customers and other retail energy marketing services. EEI and The Alliance members are deeply involved in the natural gas and electricity markets that this docket addresses and thus are interested in assuring that natural gas and electricity indices are credible. Neither EEI nor The Alliance were invited to participate in the prior stakeholder consensus meeting addressing some of these reporting issues relating to gas indices.

Market price indices are an important part of the energy industry. Such indices currently serve as the basis for price settlement for many natural gas transactions and

could follow suit in electricity markets as they develop. These indices also serve as a market indicator that businesses rely upon when making investment or divestment decisions. Therefore, it is vital to the energy industry that index producers continue to provide these indices and that the industry strives to make these indices more robust for natural gas and for electricity as more liquid hubs develop. It is vital that parties reporting transaction data to index producers provide complete and accurate data to ensure that the indices are reliable and truly indicative of the average market value of such commodity at the relevant delivery locations. EEI and The Alliance submit that reliable energy indices are essential for the development of robust forward energy markets that allow companies to efficiently manage their risk, thus restoring confidence in the energy markets and fostering infrastructure investment.

Notwithstanding the preceding paragraph, the energy industry has significant concerns regarding potential regulatory liability associated with submitting transaction data to index producers. Given the perception of such liability and potential imposition of penalties, some energy participants have opted out of submitting any transaction data to index producers until regulatory certainty is established. The criticality of the broadest participation in the development of price indices warrants the removal of all disincentives and the establishment of incentives to encourage companies to report transactions. Imposing additional disincentives will serve not only to keep companies that are currently not reporting away from participation, but push others to follow suit. To this end, EEI and The Alliance propose that FERC adopt criteria that form a “safe harbor” for entities that report such transaction data. This safe harbor would protect entities from inadvertent errors or omissions, but would not protect said entities from

fraud or manipulative actions, which should be controlled through other procedures adopted by the companies. EEI and The Alliance submit that this safe harbor provision be set forth initially in a policy statement to create the regulatory certainty requested by the industry stakeholders. If the Commodity Futures Trading Commission (CFTC) becomes involved in monitoring indices, its policies must be consistent with those of FERC and should probably be developed jointly with FERC.

FERC should take into account in the evaluation of this issue that the electric and gas markets are structurally different, even though there is some commonality in the principles of transaction reporting. Electric markets are much less reliant on price indices for the setting of tariffs and rates. Electric markets have not evolved to the level of standardization that is seen in natural gas; there are fewer liquid hubs and more bilateral transactions which are simply not susceptible to use in indices. The highest liquidity is observed where there are Regional Transmission Organizations (RTO)/Independent System Operators (ISO) that operate liquid real-time markets. Since RTOs and ISOs are by definition independent of market participants and have access to considerable data, they can objectively perform the data collection and index development function in an accurate, timely, and credible manner as part of their basic function. The issues related to natural gas indices are more critical. Thus, FERC should concentrate its current efforts on improving the reliability of natural gas indices, allowing the electric markets to evolve.

The issues associated with reporting counter-party information are incredibly profound and complex, as they impact a company's most proprietary information and also give rise to market data that creates extensive commercial ramifications.

Accordingly, EEI and The Alliance recommend further dialogue with the industry stakeholders to create long term reliable indices while maintaining the voluntary participation in reporting such transactions.

In conclusion, EEI and The Alliance look forward to continue providing input and working with FERC on establishing and maintaining well functioning markets and their price indices. We reemphasize our earlier point that the issues surrounding natural gas indices is more critical at this time. The electric market is much less dependent on indices, has fewer liquid hubs, and where there is liquidity RTO/ISOs perform the price discovery/index function. We are confident that by the time more liquid electricity hubs suitable for new indices develop, the industry's experience on how best to improve gas indices can be readily applied at that time.

We appreciate the opportunity to comment on this matter.

Sincerely,

/s/

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