UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

INITIAL COMMENTS OF THE
AMERICAN PUBLIC GAS ASSOCIATION

Pursuant to notice of the Federal Energy Regulatory Commission (FERC or Commission) of proposed revisions to the policy statement on natural gas and electric indices ("Revised PS Proposals"),[1] the American Public Gas Association (APGA) files these initial comments:

I. COMMUNICATIONS

Any communications regarding this pleading or this proceeding should be addressed to:

David Schryver
President
American Public Gas Association
Suite C-4
201 Massachusetts Avenue, NE
Washington, DC 20002
dschryver@apga.org

John P. Gregg
McCarter & English, LLP
1301 K Street, N.W. STE 1000W
Washington, D.C. 20005
Telephone: (202) 753-3400
jgregg@mccarter.com

---

1 Actions Regarding the Commission's Policy on Price Index Formation and Transparency, and Indices Referenced in Natural Gas and Electric Tariffs, Proposed revised policy statement on natural gas and electric indices, 85 Fed. Reg. 83940 (Dec. 23, 2020).

II. STATEMENT OF INTEREST

APGA is the national, non-profit association of publicly-owned natural gas distribution systems, with more than 735 members in 38 states. Overall, there are approximately 1,000 publicly-owned systems in the United States. Publicly-owned gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities.

APGA members purchase interstate natural gas transportation services from pipelines at rates and under terms and conditions that are regulated by FERC, so they are of course subject to the utilization of price indices in those tariffs. Moreover, as explained in its comments filed in Docket No. PL17-2 on July 31, 2017, APGA's members purchase nearly all of their gas under an index. Accordingly, APGA was among the first to bring to the Commission concerns about the accuracy of price indices created by publishers that take price surveys in the 1990's.

As non-profit entities governed locally, APGA's members are strongly incented to resell the lowest priced gas reliably available that is correctly priced. As APGA's technical conference participant stated in 2017: "commodity costs … represent roughly 60% of our expenses for the gas system for the year so it is substantial so we want to make sure they are correct." Tr. 110.

III. EXECUTIVE SUMMARY: APGA ENTHUSIASTICALLY SUPPORTS THE COMMISSION'S GOAL AND SUPPORTS THE PROPOSED REVISIONS

APGA is very pleased to see the Commission's Revised PS Proposals. APGA participated at each of the junctures at which the Commission has attempted to encourage better transparency of price formation in wholesale energy markets. Most recently, APGA participated in the 2017 Technical Conference in Docket PL17-2 and is pleased to comment now in favor of the Commission's new proposals designed to make voluntary price reporting more robust and transparent.

Participants at the Commission's 2017 Technical Conference proclaimed deep support for the efficacy of the current natural gas marketplace and even pronounced confidence in the price indices themselves. Yet today the Commission's Revised PS Proposals makes evident that the current system continues to weaken. The decade-long fall off in reporting has not turned around.[2] At the same time, as the Commission now observes, index pricing is more popular than ever in contracting—*constituting as much as more than 4 of 5 transactions*.[3] APGA previously commented that this dissonance is somewhat like <u>whistling in the dark</u>.

APGA is pleased to support the Commission's leadership in making sensible reforms that should receive a broad consensus of support. APGA also had requested the codification of the Commission's Safe Harbor Policy, and supports the pending Notice of Proposed Rulemaking issued concurrently to do just that.

---

[2] See 85 Fed. Reg. at 3941.

[3] At the 2017 Technical Conference, Staff calculated that nearly half of the gas sold and purchased on a physical basis is tied to monthly indices. Tr. 16. Now the Commission observes that 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 2010 to 82% in 2019. 85 Fed. Reg. at 83941.

IV. OBSERVATIONS FROM WINTER STORM URI

The winter storm that brought record sustained cold causing such human misery to Texas also deeply affected the mid-Continent at the same time. Natural gas index prices quickly rose to unprecedented *and unthinkable* levels. Along with the record prices came unforeseen and unthinkable volatility, *i.e.,* the range of price changes from day to day. For the majority of buyers, including APGA members, the daily index was the price paid for incremental quantities purchased in response to the record cold.[4] Dozens of APGA members and their customers were affected. Some received pipeline penalties calculated using these unthinkable index prices.

A. Index Impact on Incremental Gas Supply Purchases

What happened in the price indices from Trade Date February 11 through February 19 had an enormous economic impact on consumers and the economies of energy consuming states—both the direct use of natural gas and gas-fired electric generation. It is almost impossible to overstate these impacts. *For example, some APGA members were compelled to pay for February gas deliveries what they otherwise would have paid for an entire year.* Any error or manipulation of those index prices could have translated into billions of dollars. A 10% error in a \$2 price is \$0.20 per unit while a 10% error in a \$200 price is \$20 per unit. The comments of Joe Bowring,

---

[4] The typical APGA member LDC pays for wholesale gas purchases at a first-of-month (FOM) index price for baseload monthly nominations and a daily index price for swings, plus premiums. *E.g.,* S&P Global Platts *Inside FERC's Gas Market Report, and* S&P Global Platts *Gas Daily.* Platts has proposed, incidentally, that, due to historically illiquid trading levels during the fourth and fifth trading days of bidweek, to shorten bidweek from five trading days to three trading days for both the preliminary and final Platts and ICE monthly indices beginning June 2021 bidweek, which commences trading on May 24.

President, Monitoring Analytics, made at the 2017 Technical Conference resonate today: "[Market participants] are confident most of the time except for when you really need to be confident when prices are going wild…." Tr. at 210. Accordingly, the Commission should scrutinize how the indices behaved during Winter Storm Uri.

APGA offers below a sampling of indices that affected a number of its members during this period. The data is taken from the publications of S&P Global Platts: *Inside FERC Gas Market Report* and *Gas Daily.* This index price developer publishes the number of "Deals"[5] on which the index survey is based along with their associated volumes or "Vol."[6] The data below also shows the price "Midpoint" that is common to many gas purchase contracts.[7]

Texas Gas Zone SL

Flow Date(s)		Price	Vol	Deals
FOM	$	2.680	0	0*
12-Feb	$	5.550	0	0*
Feb 13-16	$	6.050	10	2
17-Feb	$	16.955	23	3
18-Feb	$	25.000	5	2

Southern Star

Flow Date(s)		Price	Vol	Deals
FOM	$	2.520	83	14

5 A deal is a physical fixed-price deal negotiated that day for delivery throughout the next month or day, respectively. See S&P Global Platts "Methodology and specifications guide US and Canada natural gas" (May 2020).

6 Volumes for all monthly index locations are published by Platts in the Liquidity in North American Monthly Gas Markets table found at: https://www.spglobal.com/platts/plattscontent/_assets/_files/en/our-methodology/methodology-specifications/tiers.xlsx.

7 The Midpoint, also called the GDA (Gas Daily Average), is the volume weighted average of all transactions submitted to Platts.

12-Feb	$	44.780	104	26
Feb 13-16	$	329.595	50	7
17-Feb	$	622.785	16	2
18-Feb	$	44.530	75	13

Enable Gas, East

Flow Date(s)		Price	Vol	Deals
FOM	$	2.610	80	22
12-Feb	$	34.385	170	39
Feb 13-16	$	375.810	74	18
17-Feb	$	300.000	0.2	2
18-Feb	$	428.640	21	5

Oneok, Okla.

Flow Date(s)		Price	Vol	Deals
FOM	$	2.630	40	10
12-Feb	$	76.035	258	49
Feb 13-16	$	368.330	372	83
17-Feb	$	944.000	46	12
18-Feb	$	1,193.150	37	17

These data are curious and raise some obvious questions that APGA is unable to answer:

Were Unthinkable Index Price Increases Based on an Illiquid Market—Too Few Deals?

On the Flow Date for February 17, customers who contracted to purchase at Southern Star paid $293.19 more per MMBtu than the prior day, based upon just two reported deals. The First-of-Month (“FOM”) price was based upon 14 Deals but only 7 and 2, respectively, for the Flow Days of consequence: February 13-17 when the price was highest.

Meanwhile, the nearby “Enable Gas, East” the daily index price actually fell $75.81 on February 17 based upon just two deals—apparently at only at total of 200 MMBtu. The price then rose 43% the next day.

Prior to Uri, the nadir of liquidity may have occurred in September 2019 when the important Henry Hub FOM price was based upon just two deals and a mere 20,000 MMBtu.[8]

Was there a lack of correlation between the amount of gas flowing and the number of transactions (Deals) reported?

It is curious that at Texas Gas Zone SL, the FOM price was based on a “market assessment”[9] and no Deals for the month February 2021, as it has been for most months for some time. The same was true of the daily price index for February 12. But as prices burst out, Deals suddenly were reported. The same leap in reported transactions is evident at other locations. APGA cannot determine whether that reflects trading started there when gas supplies grew scarce or because of possible efforts at index price manipulation.

Does the change in the average size of a reported Deal suggest manipulation?

At Oneok, Okla., where the highest daily index price ever was recorded for February 18, some 17 deals were recorded at 40,000 MMBtu, or 2,353 per MMBtu Deal on average. The average for the FOM was 4,000 MMBtu per Deal; that rose to 4,482 MMBtu for the Presidents Day Weekend. Is it reasonable to infer that deal sizes were

[8] See the posting for the September Index Price as published by Platts INSIDE FERC’s Gas Market Report, on September 2, 2019.

[9] See P28, 85 Fed. Reg. at 83944.

manipulated to affect the index price? What else would account for such fluctuation in the size of the average deal?

B. Impact of Historic Index Prices on Pipeline Penalties

Jurisdictional interstate pipelines reference natural gas price indices in their FERC-jurisdictional tariffs for various terms and conditions of service.[10] The primary reliance upon index prices is to calculated penalties.

Perhaps the highest pipeline penalty every calculated came during the storm and was on Southern Star Central Gas Pipeline, Inc.—one of the reasons that the pipeline sought the Commission's blessing for it to waive them.[11] The applicable OFO Penalties under Southern Star's Tariff are calculated at 2.5x the average Gas Daily Index for Southern Star, which peaked during the OFO Period at over $622 per MMBtu. That would result in OFO Penalties for one day over $1,555 per MMBtu. In contrast, the applicable Gas Daily Index for Southern Star was $9.62 for February 12, 2021, and $7.94 for February 19, 2021 (the bookends of the OFO Period). Accordingly, the OFO Penalties would impose penalties that are *more than 161 and 195 times the already unusually high price of gas during parts of the OFO Period.* APGA believes that imposition of penalties at such levels would be unjust and unreasonable, as well as inequitable. The Commission should have these topics included in its Office of Enforcement ongoing examination of the wholesale natural gas and electricity market activity during February 2021 (as announced February 22, 2021).

10 85 Fed. Reg. at 83940-91.

11 Southern Star Central Gas Pipeline, Inc., Request for OFO Penalties Waiver, Docket No. RP21-618 (filed Mar. 11, 2021).

Moreover, this Commission-authorized penalty structure—typical for interstate pipelines—underscores the necessity for the Commission to verify the accuracy and efficacy of the daily index on which they are based. As noted above, that $622 daily index price was developed from only two deals. APGA does not believe that the Commission's responsibility ends under the terms of the *Price Index Order.*[12] Given these extraordinary prices, the Commission must specially investigate.

V. APGA MEMBERS ARE PRICE INDEX CONSUMERS AND NOT INDEX ORIGINATORS

In its 2017 comments and participation in the Technical Conference, APGA expressed as strongly as possible its concern about the lack of liquidity in index price formation at many locations. No one disputes the illiquidity at many points that increasingly are formed by a market assessment.[13] Yet these least robust trading points often are the indices at which smaller APGA members purchase all of their supplies.[14] The functionality of price indices is a perennial topic at APGA meetings for these reasons.

---

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

[13] See P28, 85 Fed. Reg. at 83944.

[14] APGA's participant at the Technical Conference, Donnie Sharp, Senior Natural Gas Supply Coordinator for Huntsville Utilities, observed that many locational indices are thinly traded and not clearly reliable. Tr. 111. APGA members utilize daily indices although most purchase most of their natural gas at a monthly index price. Thus, hundreds of communities throughout the United States are directly dependent upon the fairness, accuracy, and transparency of these price indices. The vast majority of these gas systems are relatively small purchasers of gas, and the vast majority purchase all of their gas using a natural gas index. They pay a cost-plus price under a contract with a marketer generally. "Cost" is deemed to be an index at a point reported by one of the index publishers. APGA members also are far flung: these communities are all over the U.S., so they are subject to most of the locational indices available.

Form No. 552 filings tell a story about APGA's system members, which are all distribution entities. First, most are not large enough to be required to file a Form 552. Many are rolled up into the reports of joint action agencies that resell to system members. Second, of those that do file, including their joint action agencies, none report any fixed price transactions.[15] Therefore, APGA members are not responsible for any lack of reporting. They do not make bilateral fixed-price deals.

Ironically, an exception to this state of affairs just occurred during the emergency caused by Uri. APGA is aware of a few members whose suppliers issued them a force majeure on firm gas nominated at an index price. Those suppliers then sold replacement gas at a fixed price to the desperate utility. Whether that was permissible under the contract or a "price majeure" remains under review. In some cases, the supplier took action without consulting the buyer about the exact package. Therefore it is not clear whether those transactions would be considered unilateral or whether they constituted reportable bilateral, arms-length, fixed price, physical natural gas transactions between non-affiliated companies. Regardless, these fixed priced transactions occurred for the first time for these utilities.

APGA has advocated reforms in price index formation as a consumer of price indices. It cannot speak for its members' experience with price reporting *because its members have nothing to report.*

---

[15] This is based on an informal survey of most identifiable members of APGA. If one or two entities evaded that review, that does not change the import of this statement. Further, physical hedged prices are a fixed price but do not contribute to an index and are not reportable. APGA also acknowledges that its members may make incidental sporadic fixed price purposes to balance intraday quantities. These amounts are de minimis and are not reportable under Form 552 as they normally are intraday purchases.

Who Are The Price Reporters Now?

In its 2017 Comments, APGA requested that the Commission remain vigilant and make periodic reports on the state of the natural gas price indices. For example, Staff's periodic state of the market reports to the Commission could include a section on index price liquidity trends. "The more light shed on this topic, the better," we said.

In this vein, further explication of just what sort of entities are doing the price reporting would add transparency. Cornerstone Research has reported that since 2008 index-priced transactions have comprised an increasing share of the Form 552 transactions while the percentage of fixed prices has steadily declined.[16] Back in 2017 at the Technical Conference, Staff reported that at that time, of the 1,234 entities that have ever submitted a Form 552, only 134 have indicated that they report to index publishers. Tr. 15. Last year, Cornerstone similarly reported that for 2019, only about 14% of Form 552 responded indicated that they were price reporting, and they accounted for 39% of fixed-price volumes, compared to more than 63% in 2008.[17] It would appear that APGA's members actually are in the mainstream: few bilateral fixed-price transactions exist. So who does have fixed-price deals to report? It would be interesting to know what entities regularly report fixed-priced transactions and whether the absence of another type of entity suggests that index are less reliable than believed.

---

[16] Cornerstone Research, *Characteristics of U.S. Natural Gas Transactions* (2020),

[17] *Id.* at p. 17.

VI. COMMENTS IN SUPPORT OF POLICY STATEMENT AMENDMENTS

A. Reporting Transactions to Price Index Developers

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. In its 2017 Comments, APGA offered 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.

The Commission now proposes to allow data providers to report *either* their next-day transactions or their next-month transactions to price index developers (as well as reporting both sets of transactions if desired). APGA supports this change.

B. Encouraging Comprehensive Reporting

The Commission has clarified that there is no policy that data providers should not report to more than one price index developer. APGA agrees that it would be helpful for all data providers to report their transaction data to as many Commission-approved price index developers as possible.

C. Reducing the Self-Audit Burden

The Commission has proposed a couple of ways to reduce the audit burden created in the Policy Statement. First, data providers would perform a self-audit on a biennial basis instead of annually. Second, and independent auditor is not a requirement. This is consistent with most compliance efforts in the industry. APGA supports these changes.

D. Increasing Confidence in Price Indices

APGA has seen price index developers make great strides toward transparency in an effort to improve confidence in their product.[18] It appears to a large extent that most already have adopted the Commission's proposed tweak to the code of conduct to inform customers how it makes assessments in its publications and in its data distributions.[19] APGA is of course quite concerned by the proliferation of "market assessments" in general, so it supports this policy modification.

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

The Commission observed that it has not reexamined whether certified price index developers remain in compliance with the price index developer standards in some 16 years. Accordingly, the Commission would require that a price index developer seek re-approval from the Commission every seven years. APGA does not object.

F. Clarifying Liquidity Standards for Price Index References

The Commission proposes to clarify the liquidity standards, 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-

---

[18] For example, to enhance market transparency, Platts publishes the volumes and number of transactions at each trading point in the daily and monthly price index. To provide a broad overview of market liquidity, Platts locations are grouped in the final monthly process into three tiers: tier 1, points with volumes of at least 100,000 MMBtu/day and at least 10 trades; tier 2, volumes of 25,000 to 99,999 MMBtu/day and at least five trades; and tier 3, points with volumes below 25,000 MMBtu/day and/or fewer than five trades. Volumes, deal counts, and tier level for all monthly index locations are published in the Liquidity in North American Monthly Gas Markets table found at: https://www.spglobal.com/platts/plattscontent/_assets/_files/en/our-methodology/methodology-specifications/tiers.xlsx.

[19] See S&P Global Platts "Methodology and specifications guide US and Canada natural gas" (May 2020).

jurisdictional tariff, in its so-called *Price Index Order.*[20] APGA supports these detailed reforms as well.

VII. CONCLUSION

APGA respectfully requests that the Commission continue its vigilance regarding the price index problem and issue a revised policy statement at its earliest opportunity. APGA also requests that the Commission specifically include the operation of price indices in its Office of Enforcement ongoing examination of the wholesale natural gas and electricity market activity during February 2021.

Respectfully submitted,

AMERICAN PUBLIC GAS ASSOCIATION

By __/s/__ John P. Gregg________________

John P. Gregg
McCarter & English, LLP
1301 K Street, N.W.
STE 1000W
Washington, DC 20005
202.753.3400
jgregg@mccarter.com

Its Attorney

March 22, 2021

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