

95 FERC ¶ 61,262  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;  
William L. Massey, and Linda Breathitt.

Reporting of Natural Gas Sales  
To the California Market

Docket No. RM01-9-000

ORDER PROPOSING REPORTING REQUIREMENT  
ON NATURAL GAS SALES TO CALIFORNIA MARKET  
AND REQUESTING COMMENTS

(Issued May 18, 2001)

In the past year there has been a sharp increase in the price of natural gas sold in the California market, which has exceeded the increase in other markets. While natural gas prices have recently fallen, prices remain higher in California than in any other market in the United States, including those markets that are supplied by the same producing areas. The Commission is therefore proposing to issue an order imposing certain reporting requirements on natural gas sellers and transporters serving the California market. This reporting requirement is intended to provide the Commission with the necessary information to determine what action, if any, it should take within its jurisdiction. As discussed below, the Commission requests comments on its proposed information collection requirements.

Background

The year 2000 saw a dramatic change in the price of natural gas throughout the United States. Before December 2000, the spot price of natural gas in the California market was comparable to the spot price of natural gas in other markets.<sup>1</sup> Thus, in January 2000, the spot price range for gas sold at the California border was \$2.33-.52,<sup>2</sup> similar to the spot price range in other markets. However, by December 2000 the spot

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<sup>1</sup>The pricing information is contained in the Gas Daily 2000 Annual Price Issue.

<sup>2</sup>The price is \$/MMBTU.

price range at the California border was \$11.79-\$18.80, while in other markets the spot price range was between \$4 and \$7.

The disparity in spot market prices continues. As reported in the May 18, 2001 Gas Daily, the most recent daily spot price for gas various points on the southern California border are in excess of \$9.00, while in the producing basins and other downstream markets, the spot prices are in the \$4 range. For example, the spot price for SoCal Gas, large packages was \$9.60-11.00, while for El Paso Permian Basin area it was \$3.80-4.08, and for Transco, New York citygate it was \$4.50-4.68.

The price increases in California have led to the filing of several complaints with the Commission, requesting that the Commission take various actions. The requested actions include: (1) reimposing price-caps for short-term releases of capacity for service to the California border and to points of interconnection between interstate pipelines and California local distribution companies (LDCs);<sup>3</sup> (2) requiring sellers to state separately the transportation and commodity components of bundled rates for sales at these points;<sup>4</sup> and (3) setting a benchmark price for natural gas prices in the United States, and permitting complaints to be filed at the Commission alleging any sale prices above the benchmark to be unjust and unreasonable and seeking refunds for three years commencing January 1, 2001.<sup>5</sup> The complaints assert that the current high price for natural gas in the California market is a factor contributing to the current high cost of electric power in California.

While the relatively high prices for natural gas in California are a matter of serious concern, the Commission's legal authority to take actions that would affect those prices is limited by the existing statutory framework. The Commission does have jurisdiction under sections 1, 4, and 5, of the Natural Gas Act (NGA) to regulate the transportation of natural gas by interstate pipelines, and NGA section 7 authorizes the Commission to issue certificates for the construction of new interstate pipelines. However, the Commission's jurisdiction to regulate the prices charged by sellers of natural gas is

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<sup>3</sup>See Docket No. RP01-180-000, filed by San Diego Gas and Electric Company (SDG&E), and Docket No. RP01-222-000, filed by The Los Angeles Department of Water and Power.

<sup>4</sup>See Docket No. RP01-180-000.

<sup>5</sup>See Docket No. RP01-223-000, filed by the National Association of Gas Consumers (NAGC).

limited in light of the Natural Gas Policy Act of 1979 (NGPA), and Congress' subsequent enactment of the Natural Gas Wellhead Decontrol Act.

The NGA's grant of jurisdiction over natural gas sales in interstate commerce is limited to sales for resale.<sup>6</sup> The NGPA and the Natural Gas Wellhead Decontrol Act substantially narrowed the Commission's NGA jurisdiction over sales for resale, with the Wellhead Decontrol Act removing all "first sales" from the Commission's NGA jurisdiction as of January 1, 1993.<sup>7</sup> First sales include all sales other than sales by interstate or intrastate pipelines, LDCs, and their affiliates.<sup>8</sup> In addition, Section 3(b) of the NGA now provides that all sales of gas imported from countries with free trade agreements, such as Canada and Mexico, have first sale status even when sold by pipelines, LDCs, or affiliates. The end result of these various statutory provisions is that the only sales that the Commission currently has jurisdiction to regulate are sales for resale of domestic gas by pipelines, LDCs, or their affiliates.

#### Proposed Commission Action

Ordinarily, in a competitive, seamless national market for natural gas, where gas can flow to wherever it can command the highest price, price disparities of the type that

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<sup>6</sup>NGA section 1(b) provides:

The provisions of this act shall apply . . . to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use. . . .

<sup>7</sup>The Wellhead Decontrol Act did this by amending section 601(a)(1)(A) of the NGPA so that, since January 1, 1993, it has provided:

For purposes of section 1(b) of the Natural Gas Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply to any natural gas solely by reason of any first sale of such natural gas.

In addition, NGPA section 601(b)(1)(A), as amended by the Wellhead Decontrol Act, deems that whatever price the entity charges for a first sale is just and reasonable, and NGPA section 601(a)(1)(C) provides that the Commission may not treat the entity as a "natural gas company" subject to the Commission's NGA jurisdiction.

<sup>8</sup>NGPA section 2(21).

appear to have arisen between California and the rest of the country would not be expected to continue for sustained periods of time. The high price of natural gas in California would cause more sellers to direct gas towards the California market, thereby increasing the supply there, which would in turn lower the price in California and bring it in line with the national average. The Commission is therefore concerned that the price disparity between California and the rest of the country continues.

In order to help the Commission understand why the disparity has occurred and continues to exist, the Commission proposes to collect information from sellers of natural gas to the California market, and interstate pipelines and local distribution companies (LDCs) serving the California market, and seeks comments on this proposal. The specific information that the Commission proposes to collect is set forth in an appendix to this order. The information to be reported would include data relating to the volumes and prices of sales to the California market including transportation rates, the daily operational capacity of pipelines to, and in the California market, and the actual volumes flowing to, and in California, and gas sales and the transportation requirements of the LDCs.

This information should assist the Commission in carrying out its regulatory responsibilities. First, it will help the Commission determine what part of the problem, if any, is within the scope of its jurisdiction. For example, the information to be collected concerning sales should enable the Commission to determine what percentage of the volumes sold into the California market is domestically produced gas sold by marketers affiliated with pipelines and LDCs in sales for resales. As discussed above, those are the only sales now being made that the Commission has jurisdiction to regulate.<sup>9</sup> The information proposed to be collected should also give the Commission an accurate picture of the overall average gas costs being incurred by all purchasers of natural gas moving into the California market. While the spot market prices for gas at the California border have been relatively high, gas purchasers holding firm capacity on interstate pipelines can purchase natural gas at the spot market prices available in the producing basins, and then have the gas transported to California markets over their firm capacity. At present, the Commission does not have reliable information concerning the percentage of gas moving into the California market that is actually priced at the high spot market prices reported at the California borders.

The information to be collected will also enable the Commission to determine the extent to which the cost of interstate transportation, which is subject to the Commission's jurisdiction, affects the price for the gas commodity at the California border. Currently,

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<sup>9</sup>For the most part, interstate pipelines no longer sell natural gas.

the Commission establishes maximum rates for interstate transportation, with the exception of short-term capacity releases for which maximum rates have been waived until September 30, 2002.

The Commission recognizes that certain entities that will be required to respond to the data request may not be natural gas companies subject to the Commission's NGA section 1 jurisdiction. However, the Commission has extensive authority under NGA section 14 to collect information from participants in the natural gas market regardless of whether they are "natural gas companies." Section 14(a) of the NGA states:

The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provision of [the NGA] or any rule, regulation, or order hereunder, or to aid in the enforcement of the provisions of this act or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation to the Congress.

Section 14(c) also provides that, "for the purpose of any investigation or any other proceeding under [the NGA], any member of the Commission or any officer designated by it is empowered to . . . take evidence and require the production of any books, papers, correspondence, memoranda, contracts, agreement or other records which the Commission finds material to the inquiry."

Section 14 is not limited to natural gas companies, but refers to "persons," which is defined in section 2(1) to include "an individual or corporation." Clearly, the need for information cannot be limited to those subject to regulation when "further legislation" is a possible consideration. Moreover, NGA section 16 grants the Commission "power to perform any and all acts... as it may find necessary or appropriate to carry out the provisions of this act." Together these sections empower the Commission with the authority to require any entity to furnish the Commission any information that the Commission needs to carry out its functions.

In this case, the Commission must have an overall picture of what is occurring in the California market in order to determine the potential effectiveness of actions within the Commission's jurisdiction. Only by collecting information concerning all California sales can the Commission obtain the overall picture and feel confident that any actions it might take would have the intended consequences.

The Commission proposes the submission be on a quarterly basis, and submitted within thirty days after the end of the quarter. The Commission will develop a form for

electronic filing of the data in a standardized format that will be set forth in the request. Responses would be required to be verified under oath by a person having knowledge of the matters set forth. 18 C.F.R. § 385.2005(b) (2000). Parties responding to the request could request confidential treatment of their responses. See 18 C.F.R. § 388.112 (2000). The Commission would aggregate the data submitted and analyze it promptly. The Commission would then determine, what action, if any, is warranted.

Because the Commission anticipates requesting the information as soon as possible, the Commission, pursuant to 5 CFR 1320.13 (2000), will request the Office of Management and Budget for emergency processing of the proposed collection of information.

Comments on the proposed reporting requirement are to be submitted within thirty days of the date of issuance of this order. The Commission does not believe that reply comments are required. Accordingly, after receipt of the comments, the Commission will determine whether to proceed with the proposed reporting requirement.

By the Commission.

( S E A L )

Linwood A. Watson, Jr.,  
Acting Secretary.

## APPENDIX

Answers to all questions below that require a statement of volumes should set forth the requested volumes on an MMBtu basis.

### For Interstate Pipelines:

1. On a daily basis for the period ----- to -----, please provide the following information for each contract for transportation to the California border. Please provide this information by column from left to right:
  - a. the transaction or contract identification number;
  - b. contract demand by shipper;
  - c. the daily scheduled volume by shipper;
  - d. the daily delivered volume by shipper;
  - e. whether the service is firm or interruptible;
  - f. the rate charged;
  - g. receipt and delivery points associated with the contract; and,
  - h. whether the shipper is affiliated with the pipeline.

Along with the hard copy response, please provide a CD-ROM containing the response to this question. Please provide this information in Excel version 97 or 2000 format.

2. On a daily basis for the period ----- to -----, please provide the following information for each capacity release transaction for transportation to the California border. Please provide this information by column from left to right:
  - a. the transaction or contract identification number, or offer number; (This number should tie to contract number reported in Question 1,a., above)
  - b. the name of the releasing shipper;
  - c. the name of the acquiring shipper;
  - d. the contract quantity;
  - e. the acquiring shipper's contract rate; and,
  - f. the releasing shipper's contract rate.

Along with the hard copy response, please provide a CD-ROM containing the response to this question. Please provide this information in Excel version 97 or 2000 format.

3. On a daily basis for the period ----- to -----, please provide the following system information. Please provide this information by column from left to right:
- a. the maximum peak day design capacity;
  - b. the daily maximum flowing capacity;
  - c. the daily scheduled system volume;
  - d. the daily scheduled volume at each California delivery point;
  - e. an explanation of each instance that the daily maximum flowing capacity is below the maximum peak day design capacity; and,
  - f. an explanation of any daily variance in the maximum flowing capacity.

Along with the hard copy response, please provide a CD-ROM containing the response to this question. Please provide this information in Excel version 97 or 2000 format.

4. On a daily basis for May 1999 and May 2000, please provide the following system information. Please provide this information by column from left to right:
- a. the maximum peak day design capacity;
  - b. the daily maximum flowing capacity;
  - c. the daily scheduled system volume;
  - d. the daily scheduled volume at each California delivery point;

Along with the hard copy response, please provide a CD-ROM containing the response to this question. Please provide this information in Excel version 97 or 2000 format.

**For Sellers of Natural Gas to the California Market:**

1. State whether the seller is affiliated with an interstate or intrastate natural gas pipeline company or local distribution company, and, if so, give the name and address the affiliated company.
2. On a daily basis for the period ----- to -----, please provide the following information for each sales contract under which the gas is physically delivered at or into the California market. Please provide this information by column from left to right:

- a. the sales contract's identification number;
- b. the term of the sales contract (beginning and ending dates);
- c. the name of the buyer identifying whether the buyer is an energy marketer, local distribution company, or end user;
- d. the volumes sold (on a MMBtu basis);
- e. whether the buyer is affiliated with a pipeline and if so, which pipeline; and,
- f. the price paid by buyer.

Along with the hard copy response, please provide a CD-ROM containing the response to this question. Please provide this information in Excel version 97 or 2000 format.

3. For each sales contract, identify separately the transportation component and the gas commodity component of the price. If these components are not specifically set forth in the contract, provide a valuation, with explanation, of each component.

Along with the hard copy response, please provide a CD-ROM containing the response to this question. Please provide this information in Excel version 97 or 2000 format.

4. On a daily basis for the period ----- to -----, please provide the following information for each contract for transportation to the California border. Please provide this information by column from left to right:
  - a. the contract demand;
  - b. the daily nominated volume;
  - c. the daily scheduled volume;
  - d. the daily delivered volume;
  - e. whether the service is firm or interruptible;
  - f. the rate charged; and
  - g. receipt and delivery points associated with the contract.

Along with the hard copy response, please provide a CD-ROM containing the response to this question. Please provide this information in Excel version 97 or 2000 format.

5. For the period ----- to -----, please provide the following information for each gas purchase contract where the gas is physically delivered at or into the California market. Please provide this information by column from left to right:

- a. the purchase contract's identification number;
- b. the pipeline;
- c. the term of the purchase contract (beginning and ending dates);
- d. the volumes (on a MMBtu basis) purchased;
- e. the price paid; and,
- f. identify the point where seller took title to the gas.

Along with the hard copy response, please provide a CD-ROM containing the response to this question. Please provide this information in Excel version 97 or 2000 format.

**For Local Distribution Companies:**

1. Provide your system's gas sales and transportation requirements, (i.e, contract demands and daily demands) by core, non-core, electric generation, and non-utility loads. Provide a break down of these demands by type of service (e.g., sales and transportation) and quality of service(firm/interruptible).

Along with the hard copy response, please provide a CD-ROM containing the response to this question. Please provide this information in Excel version 97 or 2000 format.

2. On a daily basis for the period ----- to -----, please provide the following information for each contract the local distribution company has with a transportation customer. Please provide this information by column from left to right:
  - a. contract demand by shipper;
  - b. the daily scheduled volume by shipper;
  - c. the daily delivered volume by shipper;
  - d. whether the service is firm or interruptible;
  - e. the rate charged; and,
  - f. receipt and delivery points associated with the contract.

Along with the hard copy response, please provide a CD-ROM containing the response to this question. Please provide this information in Excel version 97 or 2000 format.

3. On a daily basis for the period ----- to -----, please provide the following information for each contract the local distribution company has with a sales customer. Please provide this information by column from left to right:
- the contract demand by purchaser;
  - the term of the sales contract (beginning and ending dates);
  - the volumes (on a MMBtu basis) sold; and,
  - the price paid by purchaser.

Along with the hard copy response, please provide a CD-ROM containing the response to this question. Please provide this information in Excel version 97 or 2000 format.

4. On a daily basis for the period ----- to -----, please provide the following information for each gas purchase contract. Please provide this information by column from left to right:
- the purchase contract's identification number;
  - the term of the purchase contract (beginning and ending dates);
  - the volumes (on a MMBtu basis) bought;
  - the price paid;
  - whether the price is fixed or indexed (identify the index); and,
  - identify the point where (name of local distribution company) took title to the gas.

Along with the hard copy response, please provide a CD-ROM containing the response to this question. Please provide this information in Excel version 97 or 2000 format.

5. On a daily basis for the period ----- to -----, please provide by interstate pipeline the type and quantity of transportation service your system has under contract. At each receipt point, provide maximum peak day design capacity, the daily maximum flowing capacity, and the daily scheduled volumes of the local distribution system.

Along with the hard copy response, please provide a CD-ROM containing the response to this question. Please provide this information in Excel version 97 or 2000 format.

6. On a daily basis for the period ----- to -----, please provide your storage service rights, by facility, i.e., capacity and deliverability rights. Additionally, provide daily storage balances, injections and withdrawals.

Along with the hard copy response, please provide a CD-ROM containing the response to this question. Please provide this information in Excel version 97 or 2000 format.

7. On a daily basis for the period ----- to -----, please provide how much of your system's gas supply was from intrastate production sources. Separately identify the sources, volumes, receipt points, and prices. Include the total system supply in your response.

Along with the hard copy response, please provide a CD-ROM containing the response to this question. Please provide this information in Excel version 97 or 2000 format.

8. Provide a summary of your system's gas purchases in the following categories:
- a. daily spot purchases;
  - b. monthly;
  - b. short-term (more than 1 month and less than 1 year);
  - c. medium-term (1-3 years); and,
  - d. long-term ( more than 3 years).

by month for each of the last three years in the following format by column from left to right:

- a. Price;
- b. Volume; and,
- c. identify, by name, where these purchases were made (producing basin or at the California border).

Along with the hard copy response, please provide a CD-ROM containing the response to this question. Please provide this information in Excel version 97 or 2000 format.