109 FERC ¶ 61, 184
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Price Discovery in Natural Gas and Electric Markets	Docket No. PL03-3-005
Natural Gas Price Formation	Docket No. AD03-7-005
Aquila, Inc.	Docket No. ER03-1271-000
B-R Pipeline Company	Docket No. CP01-418-000
Colorado Interstate Gas Company	Docket No. CP03-7-000
Colorado Interstate Gas Company, *et al*.	Docket No. CP03-301-000, *et al*.
Kinder Morgan Interstate Gas Transmission, LLC	Docket No. RP03-245-000
Natural Gas Pipeline Company of America	Docket Nos. RP99-176-089 and RP99-176-094
North Baja Pipeline LLC	Docket No. RP02-363-002
Northern Natural Gas Company	Docket No. RP03-398-000
Northern Natural Gas Company	Docket No. RP03-533-000
PG&E Gas Transmission, Northwest Corporation	Docket Nos. RP03-70-002 and RP03-70-003
Portland General Electric Company	Docket Nos. CP01-421-000 and CP01-421-001
Transcontinental Gas Pipe Line Corporation	Docket No. RP03-540-000
PacifiCorp	Docket No. ER04-439-001 (Not Consolidated)

TABLE OF CONTENTS

ORDER REGARDING FUTURE MONITORING OF VOLUNTARY PRICE FORMATION, USE OF PRICE INDICES IN JURISDICTIONAL TARIFFS, AND CLOSING CERTAIN TARIFF DOCKETS

(Issued November 19, 2004)

1. In this order we address issues concerning price indices in natural gas and electricity markets. The order directs the Commission's staff to continue to monitor price formation in wholesale markets, including price index developer and market participant adherence to the standards we announced in the *Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 (2003) (Policy Statement). The order reviews the submissions of ten price index developers and concludes they have fully or substantially met the Policy Statement standards for publishing price indices. The order also adopts, with some minor modifications, the criteria for a price index location to be used in a jurisdictional tariff as recommended by staff in the May 5, 2004, *Report on Natural Gas and Electricity Price Indices* in Docket Nos. PL03-3-004 and AD03-7-004 (staff report). Finally, the order applies the newly adopted criteria on a prospective basis only and closes 13 pending dockets in which changes in price indices had been accepted subject to further order. These actions will encourage market participants to engage in voluntary reporting of prices to price index developers; will increase the accuracy, reliability, and transparency of wholesale energy prices as reported in price indices; and will assure that all future uses of price indices in jurisdictional tariffs meet minimum quality and liquidity standards.

I. Introduction

2. Since early 2003 we have taken an active interest in the process by which price indices reflect and influence the formation of wholesale prices for natural gas and electricity. To encourage improvement in the accuracy, reliability, and transparency of wholesale price indices, we have held technical conferences, hosted issue-specific workshops, issued the Policy Statement, conducted two surveys of industry practices in price reporting, issued behavior rules requiring those who report transaction data do so in

accordance with the standards of the Policy Statement,[1] and directed staff to issue a report on price index issues, particularly as they relate to the use of price indices in jurisdictional tariffs.

3. On May 5, 2004, staff issued a comprehensive report. A full review of our activity on these issues is found at pages 7-15 of the staff report. Following issuance of the staff report we held another staff technical conference on June 25, 2004. The purpose of this conference was to evaluate progress in the current voluntary system of price reporting and index development, to take comments on recommendations made in the staff report, including specifically recommendations for the use of price indices in jurisdictional tariffs, and to discuss options for future Commission action. We heard testimony from 26 panelists representing all segments of the energy industry and received written comments from 29 parties.

II. Progress on Price Indices and Options for Future Action

4. A number of commenters and panelists report that there has been a significant improvement in voluntary price reporting since the issuance of the Policy Statement in July 2003. Improvement is noted in (a) the amount of transaction data being reported to

[1] *Order Amending Market-Based Rate Tariffs and Authorizations*, 105 FERC ¶ 61,218 (2003), *reh'g denied* 107 FERC ¶ 61,175 (2004), and Order No. 644, *Amendment to Blanket Sales Certificates*, FERC Stats. & Regs. ¶ 31,153 (2003), *reh'g denied* 107 FERC ¶ 61,174 (2004).

index developers, (b) the processes by which market participants provide data to index developers, (c) the amount and quality of information provided by indices, and (d) the confidence market participants currently have in price indices.[2]

A. Amount of Transaction Data Being Reported

5. Some index developers note increases in the volumes of fixed price transactions being reported and available for use in compiling indices. Platts, for instance, says volumes and transactions reported to its monthly gas survey from February through June 2004 increased 35 percent and 38 percent, respectively, from 2003 levels. In the daily gas survey, Platts states that the number of natural gas transactions reported in May 2004 is double that of November 2002. Similarly, the number of daily electricity transactions reported has increased 87 percent over the same time frame.[3]

6. Similarly, Intelligence Press, publisher of Natural Gas Intelligence (Intelligence Press/NGI) says it is now receiving data on approximately 1,900 bidweek natural gas transactions representing 12 Bcf of trading, a notable increase over levels reported in November and December 2003, and that it is negotiating with additional companies to

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[2] *See, e.g.*, comments of American Gas Association (AGA) at 2; Electric Power Supply Association (EPSA) at 2; Market Price Reporting Action Committee at 3; Natural Gas Supply Association (NGSA) at 2; Process Gas Consumers Group (PGC) at 2; EnCana Marketing (USA) Inc. at 2; New York Mercantile Exchange, Inc. at 4; Southern California Gas Company and San Diego Gas & Electric Company at 2-3; Platts at 1; Northwest Industrial Gas Users Association at 1-2; Morgan Stanley Capital Group, Inc. at 1.

Among the participants at the June 25, 2004 technical conference noting the improvement in price reporting and increased confidence in price indices were Bruce Henning (AGA), Tr. 21; Alexander Strawn (PGC), Tr. 29, 125; James Allision (ConocoPhillips), Tr. 30-31; Scott Nauman (NGSA), Tr. 72; Nathan Wilson (EPSA), Tr. 75; Jeff Walker (ACES Power Marketing), Tr. 82; Ernest Onukogu (Dow Jones), Tr. 148; Tom Haywood (Energy Intelligence Group), Tr. 155; Larry Foster (Platts), Tr. 165; Tom Jepperson (Questar Market Resources), Tr. 211; and Vince Kaminski (Sempra Energy Trading), Tr. 215, 218.

[3] Platts comments (June 14, 2004) at 1-3. Platts also noted that its gas survey now has more than 60 contributors, and that all but one of the top twelve trading companies are reporting their natural gas transactions. *Id.* at 3-4.

submit data. Intelligence Press/NGI also contends that 13 of the top 20 trading companies are reporting or plan to begin reporting, and that these 13 companies represent 96 percent of the volumes traded by the top 20 firms.[4]

7. In addition, 30 of the companies responding to the Commission's March 2004 survey state they will begin or increase reporting in the future, and 16 of those companies indicated they would do so within three months. Staff report at 32-33. Since April 1, 2004, 15 companies (including ten of the 30 survey respondents) have filed notifications, as required by the market behavior rules, that they have begun or increased reporting of energy transaction data to price index developers.[5] While some companies' plans to begin or increase reporting have not developed as quickly as the survey responses projected, there has nonetheless been a steady increase in companies notifying the Commission that they are now reporting more transaction data to index developers.

B. Process Improvement

8. Improvements in the reporting of data since issuance of the Policy Statement are documented in the staff report, which compares responses from the first industry survey in September 2003 with the second survey in March 2004. For three key price reporting standards in the Policy Statement—reporting by a source independent of trading, having an annual independent review of process, and having a public code of conduct—the March 2004 survey shows sharp improvements.

9. The percentage of companies that report to index developers through a department independent from trading has doubled to nearly two-thirds. The number of companies conducting annual independent audits of their price reporting practices has risen more than ten-fold, from five percent to 58 percent. The number of companies with a public code of conduct for buying and selling natural gas and electricity and reporting transactions to index developers has risen from 36 percent to 65 percent. The following summarizes these survey results, comparing company responses relating to the time both immediately before and after issuance of the Policy Statement with responses in March 2004 (see staff report at 32):

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[4] Intelligence Press/NGI comments (June 14, 2004) at 1-2 and Appendix A.

[5] As required by the market behavior rules, market participants with market based rate authority (electricity transactions) file notifications in Docket No. EL01-118, and holders of blanket certificate authority (natural gas transactions) file notifications in Docket No. RM03-10.

Percentage of companies following selected price reporting guidelines

	First survey (before Policy Statement)				First survey (after Policy Statement)				Second survey (March 2004)		
	No	Yes	% Yes		No	Yes	% Yes		No	Yes	% Yes
Reporting by independent group	76	38	33%		47	46	49%		33	56	63%
Annual review by independent auditor	109	6	5%		76	17	18%		37	52	58%
Public code of conduct available	108	62	36%		95	69	42%		31	58	65%

C. Information Provided By Index Developers

10. In response to industry interest in obtaining more information about the degree of trading activity at price locations, index developers have provided more information in their indices. For example, the 10xGroup, an affiliate of the Intercontinental Exchange (ICE), an electronic platform, provides the high, low, weighted average, and change in price, along with the volume, number of trades, and number of trading companies at each location for both its daily natural gas and electricity indices.

11. In July 2003 Platts and Intelligence Press/NGI began to designate trading locations in their monthly gas indices as Tier 1, Tier 2, and Tier 3 to provide an indication of the level of activity at each location. A Tier 1 location has volumes in excess of 100,000 MMBtu, Tier 2 between 25,000 and 100,000 MMBtu, and Tier 3 less than 25,000 MMBtu. In August 2004 both of these publications increased the information provided by including the number of trades as well as the volumes in their daily indices and for Tier 1 and Tier 2 locations for monthly indices.[6]

12. Other index developers also have expanded data in their indices or stated their intention to provide more information with their index prices in the future. Energy Intelligence Group, for instance, says that it provides volumes and number of transactions as a result of the Policy Statement. Tr. 156-57. Dow Jones and Company (Dow Jones) notes that it began providing highs and lows with its day-ahead electricity indices in September 2004. Dow Jones comments (November 16, 2004) at 2. Argus Media states that it will add the number of transactions in its electricity hourly indices by September 1, 2004. Tr. 142. Similarly, Io Energy says that it will provide the number of transactions in its electricity indices in the near future. Tr. 150.

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[6] Platts comments (June 14, 2004) at 7; Intelligence Press/NGI comments (June 14, 2004) at 3; Tr. 160.

13. Finally, index developers have taken steps more clearly to separate prices based on data from actual transactions from estimates or assessments of the market where few or no transactions are available. Where a price is an assessment rather than a weighted average of reported trades, Platts notes the price with an asterisk and footnote to flag that fact. Tr. 172. Other index developers, including Energy Intelligence Group, Powerdex, Argus Media, and Dow Jones, also in some fashion identify prices that are editorial assessments or indications of the market rather than prices determined from actual transactions. Tr. 174-77.

D. <u>Increase In Confidence In Indices</u>

14. The staff report notes that the overall average level of confidence in price indices, as shown by responses to the March 2004 survey, is 6.93 on a scale of one to ten. By industry group, the average ranged from 7.49 for gas utilities to 6.74 for marketers. Staff report at 27.

15. A number of commenters and conference participants indicate that confidence in indices has improved. For example, PGC states that its "faith in the price indices has been strengthened by the events of the past two years." PGC at 2. EnCana Marketing (USA), Inc., says that it has a "high degree of confidence in the prices that are being reported and published." EnCana comments at 2. The AGA points out that "confidence in price reporting has increased markedly." Tr. 22. The EPSA says "both market liquidity and reporting has increased and … the markets' confidence in indices has also increased." Tr. 76.

E. <u>Future Action</u>

16. The staff report outlined four options for future Commission action: accept current progress and take no further action; continue monitoring the existing voluntary reporting system; move towards mandatory reporting and/or centralized data collection; or encourage greater use of electronic platforms for trading, confirmation, and clearing. Most commenters urged us to continue to focus attention on price indices and voluntary reporting.[7]

[7] *See, e.g.*, comments of AGA at 3, B-R Pipeline Company at 2, EnCana at 2, Intelligence Press/NGI at 2, NGSA at 2, NYMEX at 7, Pacific Gas & Electric Company at 1, Platts at 6, Southern California Gas Company and San Diego Gas & Electricity Company at 2, Transcontinental Gas Pipe Line Corporation at 5, and Northwest Industrial Gas Users at 2.

17. A few commenters, however, urge a change to mandatory reporting and/or use of a central data hub. For example, the American Public Gas Association continues to advocate "mandatory reporting to a single independent data hub." APGA comments at 3. The Industrial Energy Consumers of America "favor mandatory reporting of all natural gas transactions to a single third party." Tr. 85. Similarly, the American Forest & Paper Association urges mandatory reporting and the National Association of State Utility Consumer Advocates urges the use of a single data collector and mandatory identification of counterparties. AF&PA comments at 1, NASUCA at comments 1, 4.

18. Other industrial users, however, believe the present system is serving them well. PGC says its members "vehemently oppose mandatory price reporting" and "support the use of free market price reporting systems, plural, as the most effective way of providing industry with price transparency." Tr. 91. Like PGC, the majority of commenters urge us not to initiate steps toward mandatory reporting. As noted previously, most participants favor the present system of voluntary reporting and multiple index developers, and urge continued monitoring of developments and more voluntary price reporting.

F. Discussion

19. In the fifteen months since the issuance of the Policy Statement, significant changes have taken place in the existing voluntary system of providing transaction data to multiple index developers. The record shows a steady increase in the number of companies reporting their transactions, and a substantial improvement in the systems by which prices are reported. Most companies are reporting from mid- and back-offices and most have adopted audit plans and codes of conduct for employees. At the same time, index developers have taken significant steps to improve the amount of information provided to their customers, adding data on the volumes transacted, the number of transactions and/or participants, and making clear where index values are assessed rather than based on reported transactions.

20. These improvements have led to increased confidence in price indices. Most participants indicate the Policy Statement has had the desirable result of increasing the confidence of market participants in the index values. One party even suggests that the Commission can accept the current level of progress and end active involvement with the industry on this issue. EPSA comments at 2.

21. We are encouraged by the industry's response to the Policy Statement and the steps taken by many market participants to improve the accuracy, reliability, and transparency of price indices. The improvements discussed above are significant and should contribute to improved price formation in energy markets. It is premature, however, to conclude that nothing further can or need be done. We agree with the

majority of the commenters and conference participants that the best course at this time is to continue monitoring price indices and wholesale price formation, and to urge all interested parties—price reporting companies and price index developers—to conform fully to the standards of the Policy Statement.

22. This monitoring can best be accomplished as part of the Commission's ongoing oversight of competitive energy markets. Staff is directed to continue to monitor the level and quality of reporting to index developers and the adherence by price reporting entities to the standards of the Policy Statement, as well as the quality of price indices and the adherence of price index developers to the standards of the Policy Statement. Trade associations and index developers are encouraged to assist staff in this monitoring. Staff should include an evaluation of the accuracy, reliability, and transparency of price formation in the next State of the Markets Report or other timely report.

III. Conformance of Price Indices to Policy Statement Standards

23. The Policy Statement set forth a number of desirable characteristics for a price index. At the time the Policy Statement was issued, few indices met all of the standards. As evidenced by filings made by the publishers of several price indices, however, changes have been made in the information provided to market participants. Indices are providing more data and clearer information about the activity underlying index prices. In this section, we will review the price index developers' response to key components of the Policy Statement standards, and indicate which price index developers have adequately met the standards at this time. Issues concerning whether a particular index and price location may be used in jurisdictional tariffs is addressed in section IV, *infra*.

A. Background

24. In order to determine which price indices meet the Policy Statement standards, price index developers were encouraged to file statements discussing their response to the five standards set out in paragraph 33 of the Policy Statement. In the staff report, staff evaluated price index developers that had filed statements regarding their operations. Staff report at 38-46. Subsequently, additional comments were filed by several index developers in connection with the June 25 conference, and representatives of nine index developers, as indicated in the table below, participated in the conference. The following ten index developers have submitted one or more statements in Docket No. PL03-3 discussing the Policy Statement standards:

Submissions by price index developers (asterisk indicates participation at the June 25, 2004 technical conference)	
*Argus Media, Inc.	January 20, March 26, and June 22, 2004
*Bloomberg L.P.	January 16, March 30, June 14, and September 2, 2004
Btu/Data Transmission Network	January 23, 2004
*Dow Jones and Company	January 21, June 25, and November 16, 2004
*Energy Intelligence Group	January 7, March 26 and June 15, 2004
*Intelligence Press, Inc. (NGI)	January 14, March 26, and June 14, 2004
*IntercontinentalExchange, Inc. (ICE)	January 6 and June 23, 2004
*Io Energy LLC	March 31 and September 15,, 2004
*Platts	January 23, March 26, June 14, June 16, and July 15, 2004
*Powerdex, Inc.	August 18, 2004

25. All of these index developers discussed the five standards of the Policy Statement as they apply to their index publications.[8] In the staff report, staff reviewed the actions of the price index developers based on statements filed as of that time and concluded that six of the developers—Argus Media, Energy Intelligence Group, Intelligence Press/NGI, ICE, Io Energy, and Platts—were in substantial compliance with the Policy Statement standards. With respect to three other developers—Bloomberg, Btu/Data Transmission Network (Btu/DTN), and Dow Jones—staff indicated certain deficiencies in the information supplied.

26. Staff also noted that its finding of substantial compliance was subject to two recommendations. To qualify for use in jurisdictional tariffs, the staff report recommended that indices should (1) provide the volume and transaction number data on which the index value is based (or clearly indicate when no such data is available) and (2) confirm that the Commission can have access to relevant data in the event of an investigation of possible false price reporting or manipulation.

[8] Reuters also filed comments with the Commission, but says it does not publish indices, but rather only “indicative price data” and therefore “does not apply the higher standards of Policy Statement ¶ 33,” and notes its participation in Docket No. PL03-3 is for purposes of “potential future services only.” Reuters statement, filed January 13, 2004. Accordingly, we will not evaluate Reuters at this time. If Reuters begins publishing price indices in the future, it may request Commission review of the consistency of its practices with the Policy Statement standards.

27. Subsequent to the staff report, Argus Media, Bloomberg, Dow Jones, Energy Intelligence Group, Intelligence Press/NGI, ICE, Io Energy, Platts, and Powerdex filed additional comments and statements. In all cases, the comments filed after the staff report supplemented and expanded upon each index developer's conformance with the Policy Statement standards.

B. Discussion

28. With respect to the six index developers staff concluded are in substantial compliance with the Policy Statement, we accept the evaluation in the staff report. Our review of their statements, including additional statements supplied after issuance of the staff report, confirms the staff conclusion that these index developers have taken substantial steps to improve the accuracy, reliability, and transparency of their indices, and that these six index developers—Argus Media, Energy Intelligence Group, Intelligence Press/NGI, ICE, Io Energy, and Platts—are in full or substantial compliance with the standards of the Policy Statement. We will not discuss the statements of these index developers further.

29. In the case of Bloomberg and Dow Jones, we received additional statements from these index developers that address the reservations expressed in the staff report. Bloomberg, for example, states that it has published on its website a code of conduct that informs customers of how price information is developed, including an explanation of its calculation methodologies. In addition, Bloomberg represents that it now publishes direct volume and transaction number data for each of its indices. This satisfactorily addresses the questions noted in the staff report.

30. Similarly, Dow Jones states that it is expanding its day-ahead electricity indices in Western markets to include the high and low prices, and notes that its hourly electricity indices already do so. Dow Jones also notes it plans to add indices for additional trading hubs as demand warrants. Dow Jones further provides a supplemental statement that includes its public code of conduct, index methodology, and sample confidentiality agreements, and confirms that it expanded its daily indices as of September 1, 2004, to include the high and low prices. These statements also satisfactorily address the questions raised in the staff report. As a result of the additional information supplied by Bloomberg and Dow Jones, we find that they also now substantially meet the Policy Statement standards.

31. The staff report indicated the Btu/DTN had not addressed whether its methodology has been made public. While Btu/DTN did not file a further statement, we note that Btu/DTN addressed all other aspects of the Policy Statement in its January 2004 comments. We find Btu/DTN is in substantial compliance with the Policy Statement

standards. In the event a price index published by Btu/DTN is proposed for use in a jurisdictional tariff in the future, however, the availability of its index calculation method should be shown.

32. Finally, Powerdex was not evaluated in the staff report as it had not then submitted a statement concerning the Policy Statement. Powerdex, however, participated at the June 25 conference and filed a written statement on August 18, 2004. Powerdex states that it provides hourly electricity indices at the seven most liquid points in the West (WECC, Mid-Columbia, COB, NP-15, SP-15, Four Corners, Palo Verde, and Mead). Each index provides the high, low, and weighted average prices each hour, as well as the volume. Powerdex provides its code of conduct and describes its index methods, including steps to protect the identity of contributing companies and to verify data received. Powerdex states that it receives data from mid- or back-offices except in the case of very small participants, and that all data is provided originally to Powerdex. Powerdex also states that it uses indicative pricing in the absence of actual trades in a given hour, derived from actual trades done at the closest delivery point and time, and that such indicative pricing is clearly noted in its indices.

33. Powerdex also addresses other elements of the Policy Statement standards, noting that it has a standard written procedure to identify and either verify or exclude anomalous price data, and that it attempts where possible to eliminate duplicate transaction reports. Powerdex also re-posts price data upon learning of any error in calculation of an index value or receiving a corrected price submission, if the correction makes more than a five cent difference in the affected index value. Powerdex maintains its data for a minimum of three years and is pursuing external auditing of its processes. Finally, Powerdex indicates that it will comply with lawful requirements to provide the Commission with access to confidential data. Based on Powerdex's submission, we find that Powerdex also has substantially met the Policy Statement standards.

34. In accepting the progress to date by price index developers, we recognize that not all index developers have met every goal of the Policy Statement. For instance, the Policy Statement urged price indices to include "the number of transactions [and] the number of transaction entities." As will be discussed in greater detail in section IV, *infra*, some indices do not provide the number of transactions that occur at a trading location, and many do not include the number of trading parties. In part this is due to the way in which some index developers obtain information.

35. In order to provide the number of trading parties, for example, an index developer would have to know the counterparties to each transaction.[9] Counterparties are a sensitive subject for reporting companies that have entered into confidentiality agreements with their trading counterparts. These companies argue that such agreements prevent them from revealing the identity of the counterparties with whom they trade. This was an area in which the industry was unable to reach consensus in June 2003. When the industry coalition filed its comments on points on which there was widespread consensus, provision of counterparty information was not included.[10]

36. In the Policy Statement, we noted the lack of consensus on this point and declined to require provision of counterparty information. Policy Statement P 35-36. We recognized that such information helps index developers match and verify transaction reports, eliminate duplication in index calculations, and provide more useful data in indices. For that reason, we urged companies to modify their master trading agreements to permit counterparty reporting.

37. Index developers still seek such information. For instance, Platts comments that it cannot publish the number of parties trading at a location because market participants do not have to supply counterparty information, and urges companies to report counterparties.[11] Intelligence Press/NGI notes in its instructions to reporting parties that

[9] The only index developer that has complete access to this information is ICE's affiliate 10x, which constructs its index from transactions on ICE's electronic trading platform and certain other transactions submitted for electronic confirmation. These data sources give 10x complete counterparty information and permit 10x indices to comply fully with the Policy Statement. Other index developers rely on voluntary price reporting, and often do not receive counterparty information.

[10] "Joint Recommendation from Industry Stakeholders To Reform Gas Price Reporting and Index Publication," Docket No. AD03-7-000, filed June 23, 2003.

[11] Platts comments (June 14, 2004) at 9. Platts also notes that several other participants have urged that counterparty information be provided. At the June 25 conference, however, Platts cautioned that making counterparty information mandatory could backfire and decrease the number of fixed price deals. Tr. 196-97. Other panelists also said that if counterparty identities were required there would be a decrease in price reporting. Tr. 118-21. Platts, supported by Dow Jones and Intelligence Press/NGI, agreed the best course is for "the Commission to urge voluntary provision of counterparty data as opposed to making it a requirement." Tr. 197.

while counterparty identity is not required, "NGI believes that this information, along with the other criteria outlined in this guide are in the best interest of market transparency and price index accuracy." Intelligence Press/NGI comments (March 26, 2004) Appendix B.

38. We continue to urge market participants to report the counterparties to their transactions to index developers under standard confidentiality agreements. In light of the overall progress made with price indices, however, we will not require this as an element of price reporting at this time. The amount of voluntary reporting has increased, and index developers are providing more information concerning the number of transactions that take place at trading locations. We remain concerned that parties' concerns over proprietary commercial information and mutual confidentiality agreements could reduce the number of transactions reported if the Commission were to require counterparty reporting. This does not diminish our interest in having full transaction information provided to index developers, however. Price discovery will be enhanced if all index developers have complete information available on the transactions reported to them. We again encourage market participants to amend their master agreements with trading partners to permit and encourage the reporting of counterparty information to price index developers.

39. Returning to the issue of adequate compliance with the Policy Statement standards, as a result of the information gathered from index developers, and subject to the discussion of issues concerning transaction numbers and Commission access to confidential data in the context of the use of indices in jurisdictional tariffs, *infra*, we are satisfied that the following ten index developers now have demonstrated that they have adopted all or substantially all of the standards of Policy Statement paragraph 33. Subject to the discussion in section IV below, indices published by these index developers may be used in jurisdictional tariffs:

Argus Media, Inc.
Bloomberg L.P.
Btu/Data Transmission Network
Dow Jones and Company
Energy Intelligence Group
Intelligence Press, Inc. (NGI)
IntercontinentalExchange, Inc. (10x)
Io Energy LLC
Platts
Powerdex, Inc.

Market participants engaging in reportable wholesale energy transactions are encouraged to report transaction data to one or more of these index developers in accordance with the standards of Policy Statement paragraph 34.

IV. Use of Price Indices in Jurisdictional Tariffs

40. While we have concluded that the ten price index developers listed above have substantially met the standards of the Policy Statement, there is a separate question of whether indices published by these index developers should be used in jurisdictional tariffs. In the Policy Statement we required "that any prospective use of any index in … jurisdictional tariffs meet the [Policy Statement] criteria . . . and reflect adequate liquidity at the referenced location to be reliable." Policy Statement P 41. In separate orders, we required staff to file a report on these issues.[12]

41. In the staff report, staff addressed both prongs of the Policy Statement requirement. As discussed above, staff evaluated price index developers that had filed statements regarding their operations with respect to each of the Policy Statement standards. The staff report also recommended that, in order to qualify for use in jurisdictional tariffs, a price index must provide the number of transactions and the price index developer should agree to provide access to data in the event of an investigation. Further, the staff report proposed minimum criteria to determine whether there is adequate liquidity for daily, weekly, and monthly gas and electricity indices. Staff report at 58-63.

42. It is important to note that the use of price indices in jurisdictional tariffs is fundamentally different from their use in commercial transactions. As was discussed in the staff report, price indices are widely used in market-based, commercial settings where parties are negotiating at arm's-length and where the transactions either are non-jurisdictional or are entered into under blanket certificate or market-based rate authorities. Staff report at 53-54. Such situations differ from tariff use of indices, as the participants can make their own informed choices about the indices on which they choose to rely in commercial transactions. The following discussion is limited to the use of price indices in jurisdictional tariffs only, and does not affect market participants' uses of price indices in commercial settings.

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[12] *See, e.g., Transcontinental Gas Pipe Line Corporation (Transco)*, 104 FERC ¶ 61,181 at P 11 (2003); *Northern Natural Gas Company (Northern Natural)*, 104 FERC ¶ 61,182 at P 8 (2003); *Natural Gas Pipeline Company of America (Natural)*, 104 FERC ¶ 61,190 at P 8 (2003).

A. Providing The Number of Transactions

1. Background

43. In the Policy Statement, we urged price index developers to "provide, for each pricing location for the day-ahead or month-ahead market, (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 P 33.2. As noted earlier, price index developers generally have responded by adding volume information if it was not already included. The number of transactions and the number of parties, however, are provided in some but not all published indices.

44. Some price index developers express concern that providing this information, particularly for points with less activity, may encourage gaming, discourage price reporting, or make it easier for market participants to determine whose trades are represented in a published index. Others state that the market has not demanded such information. For example, Platts suggests that detailed information about illiquid points "potentially could encourage gaming by allowing companies to estimate with more precision the amount of dealmaking it would take to move an index a given amount." Platts comments (June 14, 2004) at 7. Platts also argues that companies may be reluctant to contribute information to a price index out of "fear they are exposing their positions." *Id.*

45. Powerdex also states that providing the number of transactions could result in "unmasking" market participants. This, Powerdex says, would in turn result in less reporting. Powerdex indicates that its position could change if there are more reported transactions in the future. Powerdex makes a further argument in the case of hourly electricity indices. Powerdex urges the Commission to exempt hourly indices from any requirement to provide the number of transactions, stating that the hourly electricity market represents physical trades only, often in non-standard incremental volumes, and that many trades are done under the duress of transmission line deratings, generation outages, weather changes, and the like by load-serving entities following load in real-time markets.[13]

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[13] Powerdex comments at 12-13. Powerdex states, however, that it will provide the number of transactions on a daily, weekly, or monthly basis for the immediately preceding day, week, or month, but that such data will be in the aggregate and not by hour, again to prevent revealing the identity of companies reporting hourly trades. *Id.* at 13.

46. Dow Jones also questions the necessity of the number of transactions, stating that it has not heard a demand from the marketplace for this information. Dow Jones comments (June 25, 2004) at 1. While Dow Jones states that it is in agreement with the thrust of the criteria proposed in the Staff report, it does not include the number of transactions in its indices.

47. While the concerns about gaming and unmasking market participants may have some validity at very thinly traded points, many other commenters believe that market participants need more information than has been provided by price indices in the past. We note that commenters urged that more information be provided by index developers, including specifically the level of activity at specific trading points.[14] And while Dow Jones suggests that markets it serves have not demanded this information, we note that some indices already provide or have decided to provide the number of transactions (ICE, Argus Media, Io Energy), although in some cases only for more active locations (Platts, Intelligence Press/NGI).

2. <u>Discussion</u>

48. The staff report recommended that, to qualify for use in a jurisdictional tariff, an index location must provide the volume and number of transactions upon which the index value is based, or indicate when no such data is available. We will adopt this recommendation for hourly, day-ahead, weekly, and month-ahead indices.[15] As explained below, when coupled with the minimum average activity criteria discussed in section IV.C, *infra*, the concern over gaming or unmasking market participants is significantly reduced for index reference locations that may be used in jurisdictional

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[14] *See, e.g.*, comments of BP Energy Company at 4-5; ConocoPhillips Company at 2-3; Edison Electric Institute and Alliance of Energy Suppliers at 2-3; Entergy-Koch Trading at 2; Goldman Sachs & Co. at 4; National Fuel Gas Distribution Company at 3; Niagara Mohawk Power Corp. at 3-4; Pacific Gas & Electric at 2; Piedmont Natural Gas Company, Inc. at 3.

[15] The Commission notes that the Policy Statement called for providing the number of transactions for day-ahead and month-ahead markets. Policy Statement P 33.2. In certain electricity markets, index developers provide hourly indices and some index developers also provide weekly price indices. To encourage uniformity of information provided by indices and to encourage that more information be made available to market participants, the Commission will apply the criteria for use of indices in jurisdictional tariffs to all indices—hourly, day-ahead, weekly, and month-ahead.

tariffs. Moreover, as explained below, we will not require price index developers to provide the number of transactions for thinly traded locations that will not qualify for use in jurisdictional tariffs.

49. Several index developers, including specifically ICE, Platts, Intelligence Press /NGI, Energy Intelligence Group, Bloomberg, and Argus, now provide the number of transactions in their indices. The availability of this additional data provides greater transparency for users of indices and will benefit wholesale energy markets. We will not, however, require that index developers provide this information for thinly traded locations, that is, locations where trading activity is below the minimum activity levels described below for use in tariffs. Since these points will not qualify for use in jurisdictional tariffs under the minimum average criteria, permitting the index developers to omit the number of transactions addresses the concern that such information could encourage gaming or unmask participants at lightly traded locations without running counter to the Commission's interest in providing more information in indices used in jurisdictional tariffs.

B. Access to Price Data by the Commission

1. Background

50. The staff report also recommended that, in order to be eligible to be used in jurisdictional tariffs, index developers confirm that the Commission will have access to relevant data in the event of an investigation of suspected false price reporting or manipulation of prices. As called for in the Policy Statement, index developers enter into confidentiality agreements with market participants who submit transaction data. These agreements, many of which use language recommended in the "Data Submission, Usage and Confidentiality Agreement" developed by the Committee of Chief Risk Officers, provide for release of confidential information in response to a valid government request, with notice to the affected parties.

51. Some index developers have indicated willingness to provide data upon appropriate request. ICE, for instance, notes its "long history of full cooperation with Commission requests for relevant data pursuant to market investigations." ICE comments (June 23, 2004) at 2-3. Dow Jones says it "will continue to work cooperatively . . . to make sure that if there are any price anomalies that that information is appropriately provided." Tr. 148. Bloomberg notes that its confidentiality agreements are "designed to allow the Commission to access data otherwise deemed confidential." Bloomberg at 1 (March 30, 2004).

52. Other index developers have been more reticent about Commission access to data in the event of an investigation. Energy Intelligence says data could be made available if "the request clearly overrides First Amendment considerations, such as in a criminal investigation." Energy Intelligence comments (January 7, 2004) at 2. Platts asserts that it will consider voluntary response to a request for confidential data, but cannot agree in advance to "unfettered access to confidential information." Platts comments (July 15, 2004) at 2.

2. Discussion

53. We have consistently expressed our interest in obtaining confidential data to be in the context of a targeted investigation of possible false price reporting or market manipulation or other inquiry within the scope of our statutory responsibilities.[16] Our intent is to seek relevant data limited in time and scope to fit the needs of a specific investigation or inquiry. In such circumstances, we expect, upon proper request, that index developers will provide access to the requested data.

54. In the absence of a clear statement to this effect from all index developers, however, the concern remains that not all index developers have made a sufficient commitment to Commission access. This is a hypothetical concern at this point, however, as we have not yet been refused access to data by any index developer. Accordingly, we will approve the indices of all ten index developers named above for use in jurisdictional tariffs, assuming the indices meet the other requirements of providing volumes and number of transactions and exceeding the minimum average activity criteria at the selected points. We reserve the right, however, to withdraw approval of any index developer in the event an appropriate request for confidential data is refused. If that should happen, we may prospectively bar indices published by that index developer from use in jurisdictional tariffs.

C. Criteria for Reflecting Adequate Liquidity at Referenced Points

1. Background

55. In the Policy Statement, we required "that any prospective use of any index in its jurisdictional tariffs … reflect adequate liquidity at the referenced location to be reliable."

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[16] In the Policy Statement, the Commission said that it seeks access to data "where necessary (a) to conduct an investigation of suspected bad faith price reporting or potential market manipulation or (b) to otherwise carry out its statutory duties." Policy Statement ¶ 33.5.

Policy Statement P 41. Shortly thereafter, we issued orders in certain tariff dockets noting that changes had been made to index reference points.[17] These orders accepted the changes but said "the Commission is considering the use of price indices on a case by case basis"[18] and that pipelines "must, in new tariff filings, use indices that meet the criteria in the policy statement."[19]

56. We also directed our staff to file a report regarding the proposed indices[20] but noted that the "ultimate burden remains" on the filing company "to show that use of its proposed indices is just and reasonable,"[21] and made acceptance of the filed tariff sheets subject to further orders. We did not, however, impose a refund condition. Rather, we stated that any changes required as a result of criteria adopted following the staff report would be prospective only.[22] Subsequently other dockets were treated in similar fashion; at present the 13 above-captioned company-specific dockets are pending further orders concerning the use of price indices in jurisdictional tariffs.

57. As these open cases demonstrate, price indices are used in natural gas pipeline tariffs for purposes such as (1) establishing cashout values, through mechanisms established in tariff provisions, for the resolution of volume imbalances between transporters and shippers and as components of operational balancing agreements on regulated pipelines and (2) determining certain penalties if a shipper fails to deliver nominated and scheduled gas supplies. Use of indices in electricity transmission tariffs is less common, but some electricity tariffs use indices for financial settlement of imbalances and losses, similar to the gas pipeline cashout mechanisms.

58. Staff held a workshop on liquidity issues on November 2, 2003, to get public and industry input on how the adequate liquidity requirement of the Policy Statement should be implemented. At that workshop, and at the June 25 conference, several parties noted

[17] *See, e.g., Transco*; *Northern Natural*; and *Natural*.

[18] *Transco* at P 10.

[19] *Northern Natural* at P 7.

[20] *Transco* at P 11; *Northern Natural* at P 8; *Natural* at P 8.

[21] *Transco* at P 14; *Northern Natural* at P 10; *Natural* at P 10.

[22] *Id.*

that there was little controversy over the use of price indices in tariffs for these purposes, and several parties urged the Commission not to disrupt these arrangements on short notice.[23]

59. The staff report recommends that, in order to be used in jurisdictional tariffs, a price index for a particular location should be available on a regular basis. Staff report at 60-61. To establish the availability, the staff report recommends a review over a 90 day period for daily or weekly indices and over a one year period for monthly indices. In that period, an index should publish a price for the location on every trading day if the tariff uses a specific day's, week's, or month's index price. If the tariff uses an average—such as a monthly average of daily prices—then the index should publish a price for the location at least four trading days per week.

60. In addition to availability, the staff report recommends a flexible minimum test for adequate liquidity at the location. To meet this requirement, the staff report suggested an index location should fulfill at least one of the following criteria:

Daily indices should meet at least one of the following conditions for all non-holiday weekdays within a 90 day review period:

1. Average daily volume traded, over the review period, of at least 25,000 MMBtus for gas or 4,000 MWh for power
2. Average daily number of transactions, over review period, of five or more.
3. Average daily number of counterparties, over the review period, of five or more.

Weekly indices should meet at least one of the following conditions in the 13 weeks within a 90 day review period:

1. Average volume traded, over 13 weeks, of at least 25,000 MMBtus/day for gas or 4,000 MWh/day for power.
2. Average number of transactions, over 13 weeks, of eight or more per week.

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[23] The Interstate Natural Gas Association of America (INGAA) supported the existing flexible use of indices for cashouts and expressed concern that arbitrage activity around cashouts would be exaggerated by any action by the Commission that significantly reduced the number of acceptable indices available for use in cashout mechanisms. As INGAA stated, "the Commission should avoid an answer that results in the current cashout mechanisms becoming unworkable." INGAA Comments (June 14, 2004) at 1. At the June 25 conference, several parties urged the Commission not to disrupt existing tariff cashout mechanisms. Tr. 19-20, 25-28, 38-39, 49-51, 54-56.

3. Average number of counterparties, over the 13 weeks, of eight or more per week.

Monthly indices should meet at least one of the following conditions in a one year review period:

1. Average volume traded, over the 12 months, of 25,000 MMBtus/day for gas or 4,000 MWh/day for power.
2. Average number of transactions, over the 12 months, of ten or more per month.
3. Average number of counterparties, over the 12 months, of ten or more per month.

The staff report also recommended that if the proposed tariff pricing mechanism is an average of more than one index, then at least one of the indices has to pass both the availability and market activity criteria.

61. Some commenters questioned certain of the proposed criteria. Platts suggested that for electricity indices the proposed criteria of five deals or 4,000 MWh may be adequate for on-peak markets in the Eastern Interconnection, but will not work in Western electricity markets because the standard deal size in Western markets is 25 MWh rather than 50 MWh. Platts states this effectively means in Western markets that the proposed 4,000 MWh/day standard translates to ten deals rather than five.[24] A similar point was made by Argus Media. Argus says that the proposed standard is not uniformly appropriate, also noting the smaller standard size of Western transactions. In addition, Argus says "region and seasonality/weather play a large role in dictating the peak vs. off-peak market transaction behavior" and that it is "important to measure volume and number of transactions in peak vs. off-peak market hours separately."[25]

2. <u>Discussion</u>

62. We agree there should be minimum criteria for the use of an index point in a jurisdictional tariff. Information gathered in this proceeding suggests that many locations listed in published price indices may have little or no trading activity on many if not most days. Thin trading activity suggests an absence of liquidity. We note that two index publishers, Platts and Intelligence Press/NGI, began providing the number of transactions

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[24] Platts comments (June 14, 2004) at 8.

[25] Argus Media comments (June 22, 2004) at 6.

in their daily indices in August 2004 and, at the same time, dropped a number of locations because of a lack of reported trading activity.[26]

63. In adopting minimum criteria, we have given consideration to comments that a single standard may not work in all electricity markets.[27] In light of the differences in Western and Eastern electricity markets, we will modify the recommended criteria to accommodate the smaller standard block of energy traded in Western markets.

64. We will not adopt separate criteria for hourly indices, but the aggregate of hourly transactions in a day should meet the minimum level of activity for a daily index. In this way trading within hours or blocks of hours during a day will not be subject to minimum levels of activity. In response to the concerns raised by Powerdex about unmasking market participants trading in certain locations at specific hours, it will be sufficient for an hourly index to provide the number of transactions in the aggregate for the day.

65. We also adopt the staff report recommendation that, in order to qualify for use in a tariff, a trading location in an index should be reviewed for a reasonable past period. For hourly, daily, or weekly indices, review of the price location over a previous 90 day period is sufficient. For monthly indices a longer review period is appropriate; the staff report recommends a one year review period. This long a period, however, may present difficulties, particularly in instances where index developers have only recently begun publishing the volume and number of transactions data. To facilitate this transition, we will permit monthly indices to be evaluated over a six month period rather than one year. In some cases, a pipeline or utility may need to obtain historical information from the

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[26] For example, earlier this year Platts announced plans for "discontinuing publishing prices for several daily and monthly bidweek gas locations that have demonstrated low or no levels of trading over the past year or longer." *Gas Market Report*, April 9, 2004, at 4. A total of 17 trading locations were identified for the daily survey and seven for the bidweek survey, and another 19 locations were placed on a "watch list." The purpose of the "watch list" was to "serve notice to those interested in seeing them continue that a greater amount of dealmaking needs to be done and reported or they too will be eliminated in favor of locations that trade more deeply." *Id.* Platts later confirmed the first 17 price locations would be discontinued on August 1, 2004. *Gas Daily*, June 3, 2004, at 3.

[27] This does not appear to be an issue for natural gas indices, however, as no comments were filed in response to the staff recommendations for adequate natural gas trading.

publisher of the price index to show that the chosen price location meets one or more of the criteria. We note that the price index developers present at the June 25 conference generally agreed that they would make such historical information available to companies making a tariff filing. Tr. 197. We encourage price index developers to assist pipelines or utilities in evaluating price index locations.

66. Accordingly, we adopt the following criteria for minimum levels of activity at a particular trading location in order for that index location to be used in jurisdictional tariffs:

Daily or hourly indices should meet at least one of the following conditions on average for all non-holiday weekdays within a 90 day review period:

1. Average daily volume traded of at least 25,000 MMBtus for gas or 2,000 MWh for power
2. Average daily number of transactions of five or more.
3. Average daily number of counterparties of five or more.

Weekly indices should meet at least one of the following conditions on average for all weeks within a 90 day review period:

1. Average daily volume traded of at least 25,000 MMBtus/day for gas or 2,000 MWh/day for power.
2. Average daily number of transactions of eight or more per week.
3. Average daily number of counterparties of eight or more per week.

Monthly indices should meet at least one of the following conditions on average in a six month review period:

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

67. We also clarify that the above criteria are minimum *average* standards. Discussion at the June 25 conference revealed concern that if the minimum criteria had to be met each day, there may be widely used trading locations that would be disqualified because they fall below the minimum level on occasion. As INGAA noted, if the criteria are applied as an average over the review period "it would be much less problematic." Tr. 42. The AGA agreed, noting that unless an average approach is used "over half of those points drop out." Tr. 43. The staff report should not be construed so restrictively. If an index price location meets the criteria on average over the review period, and is routinely published, it may qualify for use in jurisdictional tariffs.

68. In orders dealing with index changes after the filing of the Policy Statement, we noted that the burden of filing and supporting a new index is on the pipeline or utility making the tariff change.[28] If in filing a new price index reference in a tariff, or changing an existing price index reference, a pipeline or utility proposes to use an index location published by one of the price index developers identified in section III.B and demonstrates that the index location meets one or more of the applicable criteria for the appropriate review period, we will apply a presumption that the proposed index location will result in just and reasonable charges. If parties to the proceeding protest the use of the index location, they will have to support the protest with evidence that the selected location does not meet the criteria or show good reason why the price location will not result in just and reasonable charges and should not be used.

69. While we will apply a presumption in favor of an index price location that meets the criteria and is published by a price index developer meeting the standards of the Policy Statement, a pipeline or utility may also file to use a price location that falls outside of these parameters. In such a case, the pipeline or utility bears the burden of showing why the price location will result in just and reasonable charges, and must support its filing accordingly.

V. Resolution of Pending Dockets

A. Background

70. There are 13 open cases in which we have accepted tariff sheets with changes in price indices, subject to further order. Twelve involve natural gas tariffs and one involves an electric tariff. As noted earlier, we did not impose a refund requirement in these cases, but left open the possibility that changes in filed tariff sheets would be required on a prospective basis.

71. Several participants urge the Commission not to require across-the-board changes in price indices in tariffs. The AGA urges the Commission not to "take any action that threatens the viability of an efficient cash-out mechanism." Tr. 19. In its comments, INGAA notes that imbalance cashout mechanisms and similar uses of price indices in tariffs "generally are working well and are non-controversial within the industry." INGAA comments (June 14, 2004) at 1. INGAA also questions whether there is sufficient basis to act under Section 5 of the Natural Gas Act to require all pipelines to

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[28] *See, e.g., Northern Natural* at P 10 ("the ultimate burden remains on Northern to show that use of its proposed indices is just and reasonable").

modify their tariffs, and suggests instead that "the Commission policy apply only prospectively to modifications of existing cashout provisions or challenges to existing cashout provisions." *Id.* at 5; Tr. 27-28.

B. Discussion

72. We are persuaded that a prospective application policy adequately addresses our interest in having qualifying indices used in jurisdictional tariffs. When the Policy Statement was issued, we had not at that time evaluated the degree to which price index publishers meet the standards then announced. Similarly, the Policy Statement indicated that indices used in tariffs must reflect adequate liquidity, but no specific criteria were identified by which the adequacy of liquidity could be measured. While the staff report supplied recommendations concerning these matters, drawing on extensive industry and public input through the liquidity workshop, industry surveys, statements by index developers, comments, and the June 25 conference, we did not previously adopt any specific criteria.

73. The record compiled in this proceeding provides an adequate basis upon which we can evaluate the degree to which index developers meet the standards of the Policy Statement and can adopt specific criteria to determine when a particular index location reflects adequate liquidity. The criteria adopted herein will now be applied on a prospective basis to any tariff filings which propose a new or changed index price location. As noted above, pipelines and utilities must, when they make such tariff filings, make a showing that each selected tariff location (1) is provided by an index developer that we have found meets or substantially meets the Policy Statement standards and (2) meets or exceeds one or more of the minimum average criteria for liquidity.

74. Accordingly, we will close the following 13 dockets with respect to the issue of whether the price index locations filed in tariff sheets pass muster under the Policy Statement. We note there have been no protests filed in any of the 13 dockets with respect to the choice of indices or specific price locations, and that in some of the dockets the revised tariff sheets have been in effect for more than fifteen months.[29] Participants in these dockets were invited to file comments on the source of indices used in the

[29] For example, in *Transco* the tariff change was made effective June 1, 2003. *Transco* at P 12. In *Northern Natural* the tariff change was made effective July 20, 2003. *Northern Natural* at P 11.

revised tariff sheets and proposed liquidity criteria, but no parties complained that the filed index locations should be replaced because of deficiencies of the index developer or in the liquidity of the trading location.

Aquila, Inc., Docket No. ER03-1271-000
B-R Pipeline Company, Docket No. CP01-418-000
Colorado Interstate Gas Company, Docket No. CP03-7-000
Colorado Interstate Gas Company, *et al*., Docket No. CP03-301-000, *et al*.
Kinder Morgan Interstate Gas Transmission, LLC, Docket No. RP03-245-000
Natural Gas Pipeline Company of America, Docket Nos. RP99-176-089 and RP99-176-094
North Baja Pipeline LLC, Docket No. RP02-363-002
Northern Natural Gas Company, Docket No. RP03-398-000
Northern Natural Gas Company, Docket No. RP03-533-000
PG&E Gas Transmission, Northwest Corporation, Docket Nos. RP03-70-002 and RP03-70-003
Portland General Electric Company, Docket Nos. CP01-421-000 and CP01-421-001
Transcontinental Gas Pipe Line Corporation, Docket No. RP03-540-000
PacifiCorp, Docket No. ER04-439-001

75. The decision to close the above dockets is only with respect to price indices in the applicable tariffs. Some of the dockets may have other issues pending requiring further proceedings or orders. In such cases the dockets remain open for those purposes.

<u>The Commission orders</u>:

(A) Staff will continue to monitor the process of price formation in wholesale energy markets, including particularly the accuracy, reliability, and transparency of price indices and the degree to which price reporting entities and index developers are adhering to the standards of the Policy Statement. Staff is directed to include a discussion of these issues in the next State of the Markets Report or other timely report.

(B) The following index developers have adopted all or substantially all of the standards of Policy Statement P 33. Subject to the criteria in Ordering Paragraph (D), price indices published by these index developers may be used in jurisdictional tariffs.

Argus Media, Inc.
Bloomberg L.P.
Btu/Data Transmission Network
Dow Jones and Company
Energy Intelligence Group
Intelligence Press, Inc. (NGI)
IntercontinentalExchange, Inc. (10x)
Io Energy LLC
Platts
Powerdex, Inc.

As discussed in the body of this order, the Commission places the index developers on notice that the approval for use in jurisdictional tariffs may be withdrawn by subsequent order if the index developer fails to provide the Commission will access to price data in response to a lawful request for such data.

(C) In order for a price index to be used in a jurisdiction tariff, the index must be published or provided by an index developer that has met all or substantially all of the standards of Policy Statement paragraph 33, and must provide the volume and number of transactions upon which the index value is based, or indicate when no such data is available.

(D) In order for an index of a price at a particular location to be used in a jurisdictional tariff, the index location must meet one or more of the following criteria:

Daily or hourly indices should meet at least one of the following conditions on average for all non-holiday weekdays within a 90 day review period:

1. Average daily volume traded of at least 25,000 MMBtus for gas or 2,000 MWh for power
2. Average daily number of transactions of five or more.
3. Average daily number of counterparties of five or more.

Weekly indices should meet at least one of the following conditions on average for all weeks within a 90 day review period:

1. Average daily volume traded of at least 25,000 MMBtus/day for gas or 2,000 MWh/day for power.
2. Average daily number of transactions of eight or more per week.
3. Average daily number of counterparties of eight or more per week.

Monthly indices should meet at least one of the following conditions on average in a six month review period:

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

(E) Any tariff filing made by a pipeline or utility after the date of this order must meet the criteria in Ordering Paragraphs (C) and (D) prospectively. If an index is published or provided by an index developer that has met all or substantially all of the standards of Policy Statement paragraph 33 and the index location is shown to meet the minimum average criteria for liquidity, the Commission will apply a presumption that the use of the index price location will result in just and reasonable charges.

(F) The individual tariff dockets identified in the body of this order are closed with respect to the issue of whether the index price location currently used in the tariff meets Policy Statement criteria.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.