



## **DEPARTMENT OF ENERGY**

### **Federal Energy Regulatory Commission**

#### **18 CFR Parts 35, 284 and 284**

**[Docket No. RM20-7-000]**

#### **Safe Harbor Policy for Data Providers to Price Index Developers**

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Withdrawal of notice of proposed rulemaking and termination of rulemaking proceeding.

**SUMMARY:** The Federal Energy Regulatory Commission is withdrawing a notice of proposed rulemaking, which proposed to amend its regulations to codify the Safe Harbor Policy established in the Commission's Policy Statement on Natural Gas and Electric Price Indices. The Commission is also terminating this rulemaking proceeding.

**DATES:** The notice of proposed rulemaking published in the Federal Register at 86 FR 12132 on March 2, 2021, is withdrawn as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

#### **FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

## I. Background

1. On December 17, 2020, the Federal Energy Regulatory Commission (Commission) issued a notice of proposed rulemaking (NOPR), proposing to amend 18 CFR 35.41(c), 284.288(a), and 284.403(a) of the Commission's regulations by adding language to indicate: (1) that there will be a rebuttable presumption of accuracy, timeliness, and good faith for data providers, i.e., market participants that submit transaction data to price index developers; and (2) that inadvertent reporting errors by data providers will not constitute violations of the Commission's regulations.<sup>1</sup>

2. The Commission received nine comments in response to the NOPR.<sup>2</sup> Eight of the comments generally supported the proposal, reasoning that codification of the Commission's existing policies regarding natural gas data providers could encourage more price reporting to index developers.<sup>3</sup> One commenter objected to the proposal, arguing that there was no evidence that the regulation would result in any meaningful improvement in reporting to index developers.<sup>4</sup> Commenters also included some proposals beyond the scope of the NOPR, including changes to the Commission's audit

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<sup>1</sup> *Safe Harbor Pol'y for Data Providers to Price Index Developers*, 86 FR 12132 (March 2, 2021) 173 FERC ¶ 61,238 (2020) (NOPR).

<sup>2</sup> Comments were filed by the Electric Power Supply Association, Argus Media Inc., Pacific Gas and Electric Company, EQT Energy, LLC, Public Citizen, Inc., the Natural Gas Supply Association, Edison Electric Institute, the American Public Gas Association, and American Gas Association.

<sup>3</sup> *See* comments of the Electric Power Supply Association, Argus Media Inc., Pacific Gas and Electric Company, EQT Energy, LLC, the Natural Gas Supply Association, Edison Electric Institute, the American Public Gas Association, and American Gas Association.

<sup>4</sup> Comments of Public Citizen, Inc. at 4.

and investigation processes and creation of natural gas indices directly by the Commission.

3. For the reasons set forth below, we are exercising our discretion to withdraw the NOPR and terminate the rulemaking proceeding.

## **II. Discussion**

4. As discussed in the NOPR, the Commission initially adopted and clarified policies on index development in the wake of the 2000-2001 Western Energy Crisis.<sup>5</sup> In this Price Index Policy Statement, the Commission affirmed the need for robust, reliable indices and accurate reporting of transaction data to price index developers. The Commission issued the Price Index Policy Statement, in part, “to explain what the Commission expects of natural gas and electric price indices and under what conditions the Commission will give industry participants safe harbor protection for good faith reporting of transaction data to entities that develop price indices.”<sup>6</sup> Regarding this safe harbor, “the Commission [created] a rebuttable presumption that companies and individuals that report trade data to price index developers in accordance with the standards adopted here are doing so in good faith, and will not be investigated or subjected to administrative penalties for inadvertent mistakes made in the course of reporting energy transaction information.”<sup>7</sup>

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<sup>5</sup> *Price Discovery in Nat. Gas & Elec. Mkts.*, 104 FERC ¶ 61,121, at P 37, clarified, 105 FERC ¶ 61,282 (2003), further clarified, 112 FERC ¶ 61,040 (2005) (collectively, Price Index Policy Statement).

<sup>6</sup> Price Index Policy Statement, 104 FERC ¶ 61,121 at P 5.

<sup>7</sup> NOPR, 173 FERC ¶ 61,238 at P 6 (explaining the “Safe Harbor Policy” adopted in the Price Index Policy Statement).

5. The NOPR proposed to codify the Safe Harbor Policy in the Commission's regulations to eliminate concern that the Commission might choose to depart from the Safe Harbor Policy in future enforcement proceedings. The NOPR postulated that, by providing reassurance through codification, regulatory risk would be reduced and more participants would elect to report transactions to price index developers.<sup>8</sup>

6. Concurrent with the issuance of the NOPR, the Commission issued a Proposed Revised Policy Statement<sup>9</sup> on price indices to encourage additional market participants to report their transactions to price index developers, provide greater transparency into the natural gas price formation process, and increase confidence in the accuracy and reliability of wholesale natural gas prices. Subsequently, on April 21, 2022, the Commission adopted a Revised Policy Statement addressing these matters.<sup>10</sup> In the Revised Policy Statement, the Commission stated that it did not intend to act on the NOPR at that time but reiterated that the Safe Harbor Policy "remains in effect."<sup>11</sup>

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<sup>8</sup> *Id.* at P 11.

<sup>9</sup> *Actions Regarding the Comm'n's Pol'y on Price Index Formation & Transparency, & Indices Referenced in Nat. Gas & Elec. Tariffs*, 85 FR 83940 (Dec. 23, 2020) 173 FERC ¶ 61,237 (2020) (Proposed Revised Policy Statement).

<sup>10</sup> *Actions Regarding the Comm'n's Pol'y on Price Index Formation & Transparency, & Indices Referenced in Nat. Gas & Elec. Tariffs*, 87 FR 25237 (April 28, 2022) 179 FERC ¶ 61,036 (2022) (Revised Policy Statement). The Revised Policy Statement allowed greater flexibility for market participants choosing to provide data to index developers. The Revised Policy Statement permitted market participants that report transaction data to price index developers to report either their non-index based next-day transactions, their non-index based next-month transactions, or both, to price index developers. In addition, the Commission encouraged data providers to report transactions to as many Commission-approved price index developers as possible, and allowed data providers to self-audit on a biennial basis.

<sup>11</sup> *Id.* at P 106.

7. Since the issuance of the NOPR, the price reporting burden for data providers has lessened and the number of new data providers has increased, thereby, bolstering price index formation. The Revised Policy Statement, issued in 2022, reduced the price reporting burden by allowing data providers to report their monthly transactions to price index developers without also being required to report their daily transactions. The next year, 2023, twenty-three new companies began reporting to price index developers according to Form No. 552 submissions.<sup>12</sup> Some of these newly-reporting companies report monthly (rather than monthly *and* daily) transactions to price index developers, taking advantage of the data reporting flexibilities announced in the Revised Policy Statement. In addition, some price index developers have increased the robustness of their price indices by including a large number and volume of fixed-priced transactions from the Intercontinental Exchange (ICE).<sup>13</sup> Further, consistent with the Revised Policy Statement, four natural gas price index developers submitted successful reapprovals in Docket No. PL03-3 demonstrating that their processes continue to meet all or substantially all of the Commission's standards for price index developers' indices to be referenced in Commission-jurisdictional tariffs.<sup>14</sup> These events indicate that formal amendment of the Commission's regulations is not necessary to promote reporting of transactions to price index developers at this time.

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<sup>12</sup> Form No. 552 information may be accessed at [www.ferc.gov/industries-data/natural-gas/industry-forms/form-no-552-download-data](http://www.ferc.gov/industries-data/natural-gas/industry-forms/form-no-552-download-data).

<sup>13</sup> See, e.g., S&P Global Commodity Insights, FERC Policy Statement Price Index Developer Commission Re-approval, Docket No. PL03-3-000, at P 4 (February 9, 2023) (noting inclusion of ICE data in the relevant price indices).

<sup>14</sup> Revised Policy Statement, 173 FERC ¶ 61,237 at P 76.

8. Consistent with the Safe Harbor Policy, for over two decades the Commission has neither investigated nor imposed penalties on any company for inadvertent reporting errors. As noted above, in 2022, the Commission reiterated the Safe Harbor Policy in the Revised Policy Statement.<sup>15</sup> We remain committed to the Safe Harbor Policy, as it promotes robust, voluntary reporting to index developers. Consistent application of the Safe Harbor Policy and the Revised Policy Statement will continue to reduce any lingering concerns by data providers and other market participants about the regulatory risk of reporting to index developers.

The Commission orders:

The NOPR is hereby withdrawn and Docket No. RM20-7-000 is hereby terminated.

By direction of the Commission.

Issued: November 20, 2025.

**Carlos D. Clay,**

*Deputy Secretary.*

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<sup>15</sup> *Id.* at P 106.