

input helping us refine the options available. We are hopeful that the process begun on April 24th will lead to a solution. To that end, we have conducted a follow-up conference, also with CFTC participation, for both natural gas and electricity indices at which we further explored the options presented and attempted to move toward a consensus solution.

15. While we have indicated herein that we are considering requiring jurisdictional entities to report transactions to an entity responsible for index creation, we note that our efforts toward resolution of this issue will be in Docket No. AD03-7-000. Proposed 284.288(a)(1) and 284.403(a)(1) state that pipelines and blanket marketing certificate holders will be required to adhere to other standards or requirements as the Commission may order. Based upon our review of the record developed in Docket No. AD03-7-000, we may issue such an order to be implemented at the same time as the rules set forth herein.

16. The Commission will require blanket sales certificate holders to retain all relevant data for three years for reconstruction of price indices. This condition is also related to the Staff's findings that natural gas price indices were manipulated. During its investigation Staff found that there were significant barriers to the verification of natural gas price indices due, in large part, to the fact that many gas traders did not retain business records of their transactions for any significant length of time. Requiring pipelines and other jurisdictional gas sellers to maintain such records should promote transparent markets and either reduce or eliminate manipulation of gas price indices.

17. The Commission will also prohibit blanket sales certificate holders from reporting any transactions between affiliates to industry indices. The Final Report determined, as with wash trades, that there are certain types of transactions between affiliates that do not appear to have any legitimate business purpose. For example, the Final Report identified certain transactions between Enron affiliates that were completed at prices different from the true market and involved no

net gain or loss to Enron as a whole. Staff found that transactions between affiliates were designed to give the impression of volatility or to affect average prices reported through market indices. Arms length transactions, on the other hand, provide useful price information to the broader market and provide a firm foundation for buyers and sellers.

#### *C. Jurisdictional and Procedural Issues*

18. The Commission is concerned with the effect of the proposed regulations on the natural gas market. Since the Commission's NGA jurisdiction to regulate the prices charged by sellers of natural gas has been substantially narrowed, the Commission seeks comment on whether application of the code of conduct to only part of the natural gas market will have any adverse effects on the natural gas market. For example, could jurisdictional sellers of natural gas restructure their businesses so as to avoid adherence to the code of conduct, could blanket certificate holders face a competitive disadvantage due to compliance with the code of conduct, or could there be any negative impact on natural gas prices?

19. Sections 284.288(b) and 284.403(b) require that pipelines and blanket marketing certificate holders notify the Commission whether or not they engage in reporting transactions to publishers of gas indices. In order to comply with this requirement, pipelines and blanket marketing certificate holders must submit a filing with the Commission within 30 days after the effective date of the rule indicating whether or not they are engaging in such reporting. Any person who does not submit a filing with the Commission and continues to make gas sales would be making them without Commission authority and would be subject to the Commission taking remedial action.

#### *D. Remedies*

20. The Commission proposes that violation of the code of conduct may result in the disgorgement of unjust profits, suspension or revocation of the blanket sales certificate or other appropriate non-monetary remedies. The Commission seeks comment on this issue.

21. The Commission also proposes a time limit in which a person may file a complaint against a blanket sales certificate holder for violation of the code of conduct. A person will be required to file a complaint against the certificate holder no later than 60 days after the end of the calendar quarter in which the alleged violation occurred, unless that person could not have known of the alleged violation, in which case the 60-day time limit will run from the discovery of the alleged violation. The Commission believes this properly balances the interests of persons who may have been adversely affected by violations of the code of conduct against the needs of blanket sales certificate holders for finality in their gas sales transactions. The 60-day time limit would not apply to any action or investigation initiated by the Commission or its Staff.

#### **V. Information Collection Statement**

22. The proposed rule would require jurisdictional gas sellers to retain certain records for three years and also require them to notify the Commission whether or not they engage in the reporting of natural gas sales transactions to publishers of gas indices. The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under the section 3507(d) of the Paperwork Reduction Act of 1995.<sup>9</sup> OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.<sup>10</sup> The Commission identifies the information provided for under this rule as FERC-549.

23. Comments are solicited on the need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The burden estimates for complying with this proposed rule are as follows:

<sup>9</sup> 44 U.S.C. 3507(d).

<sup>10</sup> 5 CFR 1320.11.