

to such other standards and requirements for price reporting as the Commission may order.³³

64. Commenters argue that the Commission should not prescribe reporting requirements that might prevent innovation of better long-term solutions to the industry's evolving future needs for price information.³⁴ Others argue that the proposed penalties may discourage market participants from voluntarily reporting price data.

65. Commenters also argue that the confidential treatment of reported data, as required by the *Policy Statement*, is critical to the voluntary reporting process.³⁵ Moreover, several commenters recommend that the Commission articulate specific reporting requirements, consistent with the *Policy Statement*. Commenters submit that many aspects of the reporting process remain unclear. For instance, they argue that it is unclear what data must be reported, the format for the data, the policy for confirming the accuracy of the data, and to which entities the seller must report. BP seeks clarification of this rule, contending that it does not mandate reporting, but simply requires that any information reported be "complete." Specifically, BP asks the Commission to clarify that where an entity voluntarily reports, that entity should not be required to report all sales at all locations. Coral suggests that general reviews followed by spot checks should be all that is required to assure a reasonable level of accuracy in reported trade price information.³⁶ Other commenters argue that the *Policy Statement* obviates the need for a reporting rule.³⁷

66. Several other commenters assert that the rule does not go far enough.³⁸ They recommend that the Commission require that all entities holding blanket certificates report all of their trades to the data collectors. They assert that only reporting occasional bits of information could lead to inaccuracies.

67. Moreover, several commenters request clarification as to whether the

Commission notification requirement is a one-time or ongoing obligation.³⁹ BP argues that the Commission should clarify that it is only necessary to indicate to the Commission that the entity engages in reporting. Merrill Lynch and Morgan Stanley requests that the Commission clarify that if new entrants or entities that currently do not report to indices subsequently initiate reporting, such entities must notify the Commission within 30 days from the first date they initiated reports.

68. As part of the reporting provisions, numerous parties recommend that the Commission incorporate a safe harbor provision into its proposal so that an industry participant who, in good faith, provides trade data to index developers, will not be subject to penalties for inadvertent mistakes in reporting the information. Several commenters ask that the safe harbor provisions mirror the one adopted in the Commission's *Policy Statement*.⁴⁰ Commenters submit that incorporation of a safe harbor provision will encourage the voluntary reporting of information. Commenters also request the Commission to clarify the proposed false reporting prohibition so that it only applies to information that is known to be false at the time it is reported, as opposed to false reports based on inadvertent mistakes or human error.⁴¹ Nicor and NGSA add that the Commission should expressly state that the safe harbor protections in the *Policy Statement* are not eliminated or negated by the subject reporting requirements.

69. Calpine contends that any safe harbor provision must be adopted into the proposed code without the burden on industry participants to self-audit and self-correct errors not otherwise discovered in the ordinary course of business. Given the volumes of data to be reported, Calpine believes it a certainty that inadvertent errors that do no harm to the overall integrity of the indices will be made. NEMA urges that the safe harbor be extended to index prices published by parties that meet the Commission's protocols.

70. The Commission proposed this regulation to assure that to the degree

that a market-based rates seller reports its transactions to publishers of natural gas price indices, such seller must do so honestly and accurately. The Commission also proposed to require sellers to inform it if they undertook such reporting. Based upon the comments received, we have modified Sections 284.288(b) and 284.403(b) to read as follows:

To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller shall provide accurate and factual information and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement on Natural Gas and Electric Price Indices*, issued by the Commission in Docket No. PL03-3-000 and any clarifications thereto. Seller shall notify the Commission within 15 days of the effective date of this tariff provision of whether it engages in such reporting of its transactions and update the Commission within 15 days of any subsequent change to its transaction reporting status. In addition, Seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

71. In our June 26 NOPR, we referred to our on-going proceeding investigating price index formation. As many commenters have pointed out, since our proposal regarding these rules was issued we have also issued a *Policy Statement* addressing standards we believe appropriate for the formation of price indices that will be robust and accurate in the context of a voluntary reporting regime.⁴² Included in the *Policy Statement* is a "Safe Harbor" under which reporting errors will not be subject to Commission sanction. Here, we explicitly adopt the standards set forth in the *Policy Statement* for transaction reporting. Further, we also adopt the "Safe Harbor" set forth therein as a component of our enforcement policy with respect to this rule.

72. The Commission clarifies that the requirement that entities notify the Commission of any change in status with regard to price reporting to indices is an ongoing obligation. As such, the entities must, upon the implementation of these regulations, inform the Commission of whether they report to the index publishers. As shown above, the Commission will modify the text of Sections 284.288(b) and 284.403(b) of its proposed regulations to provide that the blanket marketing certificate holder shall, after the initial notification to the Commission, inform the Commission of

³³ Proposed regulation Section 284.403(b) provides a similar requirement stating:

To the extent that blanket marketing certificate holder engages in reporting of transactions to publishers of gas price indices, the blanket certificate holder shall provide complete, accurate and factual information to any such publisher. The blanket marketing certificate holder shall notify the Commission of whether it engages in such reporting for all sales. In addition, the blanket marketing certificate holder shall adhere to such other standards and requirements for price reporting as the Commission may order.

³⁴ See e.g., Western.

³⁵ See e.g., PSCNY, NEMA, NGSA, Reliant, TXU.

³⁶ See Coral at 7.

³⁷ See e.g., Mirant, Hess, Coral.

³⁸ See e.g., EMIT, Platts, NASUCA.

³⁹ See e.g., AGA, BP (recommending a one-time obligation), Peoples.

⁴⁰ See e.g., Select; see also AGA (recommending that rather than incorporating a safe harbor provision into the subject proceeding, the Commission should clarify that the safe harbor announced in the *Policy Statement* applies specifically to a blanket marketing certificate holder's obligation, to the extent it engages in reporting of transactions to publishers of gas price indices, to provide complete, accurate, and factual information to any publisher).

⁴¹ See e.g., Merrill Lynch and Morgan Stanley, Select, Mirant.

⁴² *Policy Statement*, 104 FERC ¶ 61,121 (2003).