

its reporting status within 15 days of the effective date of these regulations and within 15 days of any subsequent change in reporting status.

73. Finally, some commenters have asked that we require mandatory reporting while others contend that we have created requirements that will have a chilling effect on reporting. We believe that we have struck an appropriate balance in these rules. For the moment, we are attempting to work within the framework of voluntary reporting. We are awaiting our staff's review of the comprehensiveness of reporting in the wake of our *Policy Statement*. At this time, we are not mandating reporting. However, we have engaged in a comprehensive investigation of transaction reporting and related issues and believe that the practices set forth in our *Policy Statement* represent the necessary minimum for those entities that choose to report. Accordingly, we will not require reporting, but will seek to learn which sellers are reporting and set forth standards for those that do.

5. Three-Year Data and Information Retention Requirement

74. Proposed Section 284.288(c) of the Commission's regulations provides that:

A pipeline that provides unbundled natural gas sales service under § 284.284 shall retain all relevant data and information necessary for the reconstruction of price indices for three years.⁴³

75. Several entities comment on the Commission's proposed three-year data and information retention requirement.⁴⁴ Other commenters request clarification as to what constitutes "relevant data", and suggest that the Commission specify what types of data and information must be retained, and in what format (e.g., paper or electronic).⁴⁵ Commenters are concerned that the required documentation will prove too burdensome due to both the time and the money required to store and retrieve information. NJR Companies argues that the proposal may create a new set of business records that could lead to decreased market activity, and a slow-

down or elimination of certain transactions.

76. BP asserts that relevant data should be limited to accounting data that records the details of each reported transaction, along with a record of the data transmitted to the index developer, if applicable. BP adds that requiring data maintained in the accounting records would be consistent with the Commission's proposed requirement for price reporting in its recent *Policy Statement*, which requires that price, volume, buy/sell indicator, delivery/receipt point, transaction date and time, term, and any counterparty name be maintained. It argues that negotiation materials and other ancillary data should not be required to be maintained.

77. Several commenters argue that the three-year retention period is too long, and that the burden may dissuade blanket marketing certificate holders from reporting data.⁴⁶ Other commenters argue that the three-year retention period is too short, and that with current computer technology, a longer retention period should not result in additional costs to market participants.⁴⁷ Finally, some commenters argue that the three-year record retention period is consistent with the commercial practices of many natural gas sellers.⁴⁸

78. Several commenters argue that the record retention requirement will only be meaningful if the Commission makes reporting of all trade data mandatory.⁴⁹ At the same time, other commenters argue that if an entity does not report, then documentation is not necessary to verify the accuracy of price indices.⁵⁰ Other commenters submit that only relevant data should be retained and not peripheral documents that may have been generated in association with a transaction, but which have no bearing on the data reported to index publishers.⁵¹

79. This proposed rule requires that sellers maintain relevant records regarding their sales for three years. After review of the comments received, we revise Section 284.288(c) to read:

A pipeline that provides unbundled natural gas sales service under 284.284 must retain, for a period of three years, all data and information upon which it billed the prices

it charged for the natural gas it sold pursuant to this certificate or the prices it reported for use in price indices for a period of three years.⁵²

80. In revising the proposed rule, we clarify that we are not seeking retention "cost-of service" or analytical data related to sellers' sales as some commenters perceived from our suggestion that entities retain all relevant data "necessary for the reconstruction of price indices" in our original proposal. Rather, we are requiring that sellers retain the complete set of contractual and related documentation upon which such entities billed their customers for sales. The Commission is indifferent as to whether this material is retained in paper form or in an electronic medium as long as the data can be made accessible in a reasonable fashion if its review is required. In addition, commenters raise several issues in regard to the three-year retention period. On balance, the Commission does not believe that requiring sellers to retain records for a three-year period constitutes an undue burden given the fact that the Commission is prepared to allow the records to be kept in electronic or paper form. To permit a shorter retention period may not allow sufficient time for the investigations into possible violations.

6. Prohibition on Reporting Transactions With Affiliates

81. Proposed section 284.288(d) of the Commission's regulations provides that:

A pipeline that provides unbundled natural gas sales transactions under § 284.284 is prohibited from reporting any natural gas sales transactions between the pipeline and its affiliates to industry indices.⁵³

82. Commenters generally agree with this restriction.⁵⁴ NASUCA agrees to the prohibition of affiliate transactions from price indices calculations, but contends that other non-price information, such as the number of trades and the volumes associated with each trade, is important information that will help determine the liquidity at various hubs for which prices are calculated. It recommends that the regulation be modified to state that pipelines and certificate holders should separately report other non-price

⁴³ Similarly, proposed Section 284.403(c) provides:

A blanket marketing certificate holder shall retain all relevant data and information necessary for the reconstruction of price indices for three years.

⁴⁴ See e.g., BP, NJR Companies, NEMA, NGSA, EMIT, Western, Sempra, Reliant, Coral, Hess, Peoples, Mirant, EnCana, NASUCA, ProLiance, Merrill Lynch and Morgan Stanley, PG&E, Duke.

⁴⁵ See e.g., BP, NJR Companies, NEMA, Coral, Peoples, Mirant, EnCana, ProLiance, Merrill Lynch and Morgan Stanley, PG&E.

⁴⁶ See e.g., ProLiance (requesting a 2-year retention period), NEMA (requesting a 1-year retention period), Coral.

⁴⁷ See e.g., NASUCA (requesting a 6-year retention period).

⁴⁸ See e.g., Western.

⁴⁹ See e.g., EMIT.

⁵⁰ See e.g., Sempra.

⁵¹ See e.g., BP, Hess, Mirant, Merrill Lynch and Morgan Stanley.

⁵² The Commission will modify Section 284.403(c), applying to blanket marketing certificate holders, in a like manner.

⁵³ Proposed Section 284.403(d) of the Commission's regulations provides that:

A blanket marketing certificate holder is prohibited from reporting any natural gas sales transactions between the blanket market certificate holder and its affiliates to industry indices.

⁵⁴ See ProLiance, NASUCA, EnCana, Hess, NEMA.