

the Commission will take the form of a call to our Hotline alleging inappropriate behavior or communication with our enforcement Staff.

■ 3. In § 284.402, the second sentence of paragraph (a) is revised to read as follows:

§ 284.402 Blanket Marketing Certificates.

* * * A blanket certificate issued under Subpart L is a certificate of limited jurisdiction which will not subject the certificate holder to any other regulation under the Natural Gas Act jurisdiction of the Commission, other than that set forth in this Subpart L, by virtue of the transactions under this certificate.

■ 4. Section 284.403 is added to read as follows:

§ 284.403 Code of conduct for persons holding blanket marketing certificates.

(a) Any person making natural gas sales for resale in interstate commerce pursuant to § 284.402 is prohibited from engaging in actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices, market conditions, or market rules for natural gas. Prohibited actions and transactions include but are not limited to:

(1) Pre-arranged offsetting trades of the same product among the same parties, which involve no economic risk and no net change in beneficial ownership (sometimes called “wash trades”); and

(2) Collusion with another party for the purpose of manipulating market prices, market conditions, or market rules for natural gas.

(b) 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 regulation 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.

(c) A blanket marketing certificate holder shall retain, for a period of three years, all data and information upon which it billed the prices it charged for the natural gas sold pursuant to its market based sales certificate or the prices it reported for use in price indices.

(d) Any violation of the preceding paragraphs may subject Seller to disgorgement of unjust profits from the date when the violation occurred. Seller may also be subject to suspension or revocation of its blanket certificate under § 284.284 or other appropriate non-monetary remedies.

(e) Any person filing a complaint against a blanket marketing certificate holder for violation of paragraphs (a) through (c) must do so no later than 90 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 90-day time limit will run from the discovery of the alleged violation. The Commission will act within 90 days from the date it knew of an alleged violation of these code of conduct regulations or knew of the potentially manipulative character of an action or transaction. Commission action in this context means a Commission order or the initiation of a preliminary investigation by Commission Staff pursuant to 18 CFR Section 1b. If the Commission does not act within this time period, the seller will not be exposed to potential liability regarding the subject action or transaction. Knowledge on the part of the Commission will take the form of a call to our Hotline alleging inappropriate behavior or communication with our enforcement Staff.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix

List of Commenters

Amerada Hess Corporation (Hess)
American Gas Association (AGA) *
Atmos Energy Corp.
BP America Production Company and BP Energy Company (BP)
California Electricity Oversight Board (Oversight Board)
Calpine Corporation
Cinergy Marketing & Trading, LP (Cinergy) *
Coalition for Energy Market Integrity and Transparency (EMIT)
Coral Energy Resources, L.P. (Coral)
Duke Energy Corporation (Duke)
Electric Power Supply Association (EPSA)
EnCana Marketing (USA) Inc. (EnCana)
FPL Group, Inc. (FPL Group)
Intercontinental Exchange, Inc. (ICE)

Merrill Lynch Capital Services, Inc. and Morgan Stanley Capital Group, Inc. (Merrill Lynch and Morgan Stanley) *
Mirant Americas Energy Marketing, LP (Mirant)
Missouri Public Service Commission (Missouri PSC)
National Association of State Utility Consumer Advocates (NASUCA)
National Energy Marketers Association (NEMA)
Natural Gas Supply Association (NGSA)
New Jersey Resources Corporation (NJRC Companies)
Nicor Gas (Nicor)
NiSource, Inc. (NiSource)
Pacific Gas and Electric Company (PG&E)
Peoples Gas Light and Coke Company, North Shore Gas Company, and Peoples Energy Resources Corp. (Peoples)
Piedmont Natural Gas Co., Inc.
Platts
ProLiance Energy, LLC (ProLiance)
Public Service Electric and Gas Co., PSEG Power LLC and PSEG Energy Resources & Trade LLC (collectively, PSEG Companies)
Public Service Commission of the State of New York (PSCNY)
Public Utilities Commission of the State of California (CPUC)
Questar Energy Trading Company (Questar)
Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (Reliant)
Select Energy, Inc. (Select)
Sempra Energy (Sempra)
Shell Offshore Inc. (Shell Offshore)
TXU Portfolio Management Company LP (TXU)
USG Pipeline Company, B–R Pipeline Company, and United States Gypsum Company (USG)
Virginia Industrial Gas Users' Association (VIGUA)
Virginia Natural Gas, Inc. **
Western Gas Resources, Inc. (Western)

* Entities filing reply comments in addition to initial comments.

** Entity filing reply comments only.

Massey, Commissioner, *concurring in part:*
The tariff conditions that the Commission approves today send a clear message to market-based rate sellers: Don't lie, don't manipulate market conditions, don't violate market rules and don't collude with others. For sellers who choose to behave otherwise, the Commission now has the tools to sanction such bad behavior and we give notice of what some of those sanctions could be. This action should help to restore the faith in energy markets that has been lost in the last few years.

There is one aspect of today's order, however, that I would have written differently. I would not limit the monetary penalty for tariff violations to disgorgement of unjust profits. Market manipulation can raise the market prices paid by all market participants and collected by all sellers. In such a case, the appropriate remedy may be that the manipulating seller makes the market whole. I would prefer to not take this or any monetary remedy off of the table, but instead to allow the Commission the flexibility to tailor the remedy to the circumstances of each case.