UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Safe Harbor Policy for Data Providers Docket No. RM20-7

to Price Index Developers

**Comment of Public Citizen, Inc.**

Established in 1971, Public Citizen is a national, not-for-profit, non-partisan,

research and advocacy organization representing the interests of household consumers.

Public Citizen is active before FERC promoting just and reasonable rates, and

supporting efforts for utilities to be accountable to the public interest. Our financial

details are located on our web site.[[1]](#footnote-1)

A natural gas index price is derived from trades within specific geographical boundaries that market participants voluntarily report to a price index developer. Price index developers are private, for-profit companies that classify most of the voluntarily-reported data as proprietary, that the index developers then commodify and sell only to those that can afford the very expensive subscription fees.

 These voluntarily-reported transactions determine the price of natural gas for millions of households and businesses across the country, as market participants reference index prices in their physical and financial transactions: natural gas pipelines and Regional Transmission Organizations feature natural gas indices in their FERC-jurisdictional tariffs for various terms and conditions of service; state utility commissions rely on natural gas indices as benchmarks when setting rates; and many natural gas financial derivative contracts used in hedging and speculation settle against the natural gas price indices.[[2]](#footnote-2) In a way, hundreds of billions of dollars of energy transactions rely upon voluntarily-reported price indexes—a 21st century version of a smoke-filled, price-fixing establishment.

The Commission seeks to codify its Policy Statement on Natural Gas and Electric Price Indices and provide a rebuttable presumption that energy traders reporting transaction data to the various private, for-profit price index developers will be protected by the Commission’s safe harbor policy as long as the trader did not knowingly submit false data. The Commission’s intent in codifying a legal safe harbor for energy traders is to promote increased voluntary reporting, as the transactions voluntarily reported to price index developers declined by 54% from 2010 through 2019.[[3]](#footnote-3) The Commission provides no empirical evidence in the NOPR that codifying safe harbor provisions will result in additional voluntary reporting.

Safe harbor protections cannot fix the significant problems inherent with voluntarily-reported price indexes, and codifying them will simply formalize the nation’s reliance upon a profoundly non-transparent, uncompetitive natural gas pricing system. Voluntary price indexes, whether for natural gas or the London Interbank Offered Rate (LIBOR), have systemically been vulnerable to market manipulation, as they feature bilateral transactions that are too illiquid and uncompetitive to be reliable or trustworthy reflections of market prices. Instead of codifying safe harbor protections, the Commission should scrap this NOPR and initiate a proceeding to find a replacement for voluntarily-reported price indexes.

Federal law provides a clear alternative for FERC to pursue, as **15 USC § 717t–2(a)(4)** states that “the Commission shall consider the degree of price transparency provided by existing price publishers and providers of trade processing services . . . ***The Commission may establish an electronic information system if it determines that existing price publications are not adequately providing*** ***price discovery or market transparency***” [emphasis added]. Such “an electronic information system” could be based on actual transactions, and not limited to those voluntarily reported, and would be freely available to all interested parties through a platform hosted by the Commission, rather than the proprietary, commodified data model of the index publishers.

The rest of the world has turned away from such voluntary reporting indexes. As a member of the U.S. Commodity Futures Trading Commission’s Market Risk Advisory Committee,[[4]](#footnote-4) Public Citizen participated in deliberations on the logistics of transitioning away from scandal-plagued LIBOR towards its likely replacement, the Secured Overnight Financing Rate (SOFR). Similar to the voluntarily-reported natural gas indices, LIBOR is an interest rate index that measures the rates at which banks borrow from one another, and is calculated based on the voluntary submissions by a dozen of the world’s largest banks. As much as $300 *trillion* worth of transactions around the world—from the interest rate on your home mortgage, credit cards and automobile loans, and trillions of dollars of derivatives swaps—were tied or referenced to LIBOR. Banks exploited this voluntary submission standard by reporting rates that financially advantaged their positions, thereby manipulating the rates impacting trillions of dollars in transactions. In the end, major Wall Street banks acknowledged they manipulated LIBOR and paid nearly $10 billion in penalties for operating the global financial system like a cartel.

SOFR is the estimated overnight borrowing cost collateralized by Treasury securities. The advantage of SOFR vs. LIBOR is that, unlike the voluntary reporting nature of LIBOR, SOFR is based on actual transaction data. It is therefore a reliable indicator of a bank’s overnight borrowing costs.

Our CFTC Market Risk Advisory Committee deliberations detailed the logistical challenges associated with moving trillions of dollars of derivative contracts off LIBOR and on to SOFR, a process that showed that when market participants, consumer advocates and regulators work together, complex problems can be reformed. If the Federal Reserve and the CFTC can develop an orderly, coherent process to move the global economy off of LIBOR, surely FERC can do the same for the much smaller, but just as scandal-prone, natural gas spot indices. And Congress empowered the Commission to do so at 15 USC § 717t–2(a)(4).

The post-Valentine’s Day 2021 winter storm saw unprecedented spikes in natural gas spot prices, with thirty-five natural gas spot hubs posting prices in excess of $100 per million British thermal units (MMBtu) by the first day of trading on February 16, 2021—with thirteen of those exceeding $200/MMBtu. Whereas spot natural gas prices averaged $2.56/MMBtu in the Midcontinent region on February 1, 2021, that average spot price ballooned to $328.84/MMBtu on February 17. The Southern Star spot benchmark reached an average of $622.79/MMBtu and Oneok traded as high as $999/MMBtu. Southern Star's record average price that day was based on only **two reported trades**, and Oneok’s average of $944 on twelve trades[[5]](#footnote-5) (two trades were at $999)[[6]](#footnote-6). The Commission has provided no evidence that codifying its safe harbor policy will result in any meaningful increase in the volume of reported trades.

Market prices can provide effective signals to producers and consumers if the market is competitive and functioning normally. But these punishing natural gas price spikes occurred during significant market dysfunction: many producers were unable to respond to high spot prices because their production was frozen and shut-in. And the thinly-traded, voluntarily-reported spot indices are devoid of effective transparency and competition, allowing a handful of traders to set prices.

 Furthermore, the NOPR only references manipulation of spot prices during the 2000-01 West Coast energy deregulation crisis.[[7]](#footnote-7) But the same media company behind the 2000-01 manipulation scandal was involved again in price-fixing allegations just a few years ago.[[8]](#footnote-8)

**Conclusion**

 Federal law requires the Commission to ensure that spot natural gas price indices feature adequate price discovery and market transparency. Spot natural gas price indices are structurally non-competitive and the voluntary nature of reporting trades renders them susceptible to market manipulation. Codifying safe harbor provisions for market participants reporting voluntary trading data to natural gas indices will not materially improve the number of reported trades, and therefore will fail to improve price discovery or market transparency. The rest of the world has been replacing voluntary price indices for benchmarks with far larger economic impacts that U.S. natural gas spot prices, and the Commission should ditch this NOPR and instead establish a process to establish an electronic information system, as authorized by 15 USC § 717t–2(a)(4).

 Respectfully submitted,

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1. www.citizen.org/about/annual-report [↑](#footnote-ref-1)
2. NOPR, at 4. [↑](#footnote-ref-2)
3. NOPR, at 7-8. [↑](#footnote-ref-3)
4. www.cftc.gov/About/AdvisoryCommittees/MRAC [↑](#footnote-ref-4)
5. Compiled by Rimsha Ahmed, Public Citizen Research Intern, from S&P Global Platts Gas Daily. [↑](#footnote-ref-5)
6. Naureen S Malik, Gerson Freitas Jr, and Sergio Chapa, "Gas at One U.S. Hub Is Trading at $999. Last Week It Was at $4," Bloomberg, February 16, 2021, www.bloomberg.com/news/articles/2021-02-16/gas-at-one-u-s-hub-is-trading-at-999-last-week-it-was-at-4 [↑](#footnote-ref-6)
7. NOPR, at 5. [↑](#footnote-ref-7)
8. www.citizen.org/news/mcgraw-hill-manipulation-deja-vu-once-again-media-company-at-center-of-energy-price-fixing-scandal/ [↑](#footnote-ref-8)