



# National Energy Marketers Association

**Comments of**  
**The National Energy Marketers Association**  
**on Proposed Form EIA-910,**  
**Monthly Natural Gas Marketer Survey**

March XX, 2001

OMB Desk Officer for DOE  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
726 Jackson Place, NW  
Washington, DC 20503

Mr. Herbert Miller  
Statistics and Methods Group  
(EI-70)  
Forrestal Building  
U.S. Department of Energy  
Washington, DC 20585-0670

The National Energy Marketers Association ("NEM") hereby submits Comments on "Form-910, Monthly Natural Gas Marketer Survey" ("Proposed Survey") of the Energy Information Administration ("EIA") as published in the March 8, 2001, Federal Register.

The National Energy Marketers Association (NEM) is a national, non-profit trade association representing both wholesale and retail marketers of energy and energy-related products, services, information and technologies throughout the United States. NEM's membership includes: small regional marketers, large international wholesale and retail energy suppliers, billing and metering firms, Internet energy providers, energy-related software developers, risk managers, energy brokerage

firms, information technology providers and both manufacturers and suppliers of advanced distributed generation. Our membership has both affiliated and unaffiliated companies.

This regionally diverse, broad-based coalition of energy and technology firms have come together under the NEM auspices to forge consensus and to help eliminate as many issues as possible that would delay competition. NEM is committed to working with representatives of state and federal governments, large and small consumer groups and utilities to devise fair and effective ways to implement the competitive restructuring of natural gas markets.

NEM has submitted comments to EIA on the two previous iterations of the Proposed Survey, "Form-910, Monthly Natural Gas Marketer Survey" noticed in the October 30, 2000, Federal Register and Form-905, Monthly Gas Biller Survey, noticed in the July 18, 2000, Federal Register.<sup>1</sup> NEM is therefore well aware of the context within which EIA is requesting the reporting data. NEM has also submitted comments with respect to other proposed reporting requirements that EIA sought, and is currently seeking, to impose on unregulated natural gas suppliers such as Form EIA-911 A-C, Bi-weekly Surveys to Assess Effects of Interruptions of Natural Gas Supplies in the Northeast United States, and Form

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<sup>1</sup> Copies of NEM's previously filed comments are available on the NEM Website at [http://www.energymarketers.com/Documents/NEM\\_comments\\_revised\\_survey\(final\).doc](http://www.energymarketers.com/Documents/NEM_comments_revised_survey(final).doc) (Form EIA-910) and [http://www.energymarketers.com/Documents/Final\\_EIA\\_Comments\\_.doc](http://www.energymarketers.com/Documents/Final_EIA_Comments_.doc) (Form EIA-905).

EIA-911 A-C (Supplement).<sup>2</sup>

NEM continues to maintain that EIA's Proposed Survey should properly be directed to regulated utilities who continue to be in the best position to provide the information EIA is seeking. In the process of revising the Proposed Survey, EIA recast the Proposed Survey to exclude local distribution companies from the reporting requirements. This leads to the incongruous result that EIA would be relying on a smaller, less representative, sample of reporting entities to advance its interest of collecting statistically reliable and valid data.

The Proposed Survey will impose significant one-time design, development, storage and hardware costs on natural gas marketers. In addition, it will impose significant and unnecessary ongoing production, reporting, record-keeping, storage and compliance costs that place natural gas marketers, many of whom are small entities, at a competitive disadvantage and/or renders them unable to effectively compete in a deregulated energy market. Towards that end, NEM asserts that the estimated average response time of 3.11 hours is understated.

By imposing these regulatory burdens on unregulated entities rather than LDCs or other entities covered in the statute, NEM maintains that EIA has acted arbitrarily and has exceeded its statutory authority set forth in the Energy Administration Act<sup>3</sup> and the Department of Energy Organization Act.<sup>4</sup> EIA has continually failed

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<sup>2</sup> The full text of NEM's Comments on Form EIA-911 A-C and Form EIA-911 A-C (Supplement) are available at: [http://www.wnnergymarketers.com/Documents/NEM\\_Comments.doc](http://www.wnnergymarketers.com/Documents/NEM_Comments.doc) and XXXX, respectively.

<sup>3</sup> 15 U.S.C.S. § 761 et. seq.

to notify the public of proper statutory authority to impose the Proposed Surveys other than to cite the Paperwork Reduction Act.<sup>5</sup> Compliance with the Paperwork Reduction Act does not confer the requisite statutory authority on EIA to impose new recordkeeping and reporting requirements on unregulated natural gas suppliers.

Additionally, NEM asserts that EIA's Proposed Survey is a proposed rulemaking with potentially major microeconomic and macroeconomic impacts on the U.S. economy. Accordingly, EIA should have promulgated this rule in compliance with the Administrative Procedures Act (APA), Executive Order 12291 and the Regulatory Flexibility Act. Therefore, NEM urges that the Proposed Survey as currently set forth be rescinded and reissued in compliance with the APA, Executive Order 12291, the Regulatory Flexibility Act.

NEM offers the following specific recommendations with respect to the Proposed Survey:

**A. Regulated Distribution and Transmission Entities are the Most Statistically Reliable and Valid Sources of the Data Sought.**

EIA has the statutory authority to impose reporting requirements on regulated distribution and transmission entities. These entities are and will continue to be the most statistically reliable and valid sources of the information EIA is seeking. However, EIA has revised the Proposed Survey to limit its applicability solely to unregulated natural gas marketers and to exclude regulated local distribution

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<sup>4</sup> 42 U.S.C.S. § 7101 et. seq.

companies.<sup>6</sup> Accordingly, the entities that are best able to provide the information EIA is requesting will not be asked to provide it. This outcome conflicts with both EIA's statutory authority as well as its stated purpose for this rulemaking, namely to collect information from the most statistically reliable and valid source.

NEM recommends that EIA should request the data from the utilities, the entities that are best able to immediately comply with the reporting requirements at the lowest marginal costs to the industry, consumers and the economy. With respect to utilities that operate in states that have implemented customer choice, those utilities normally bill consumers and are required to publish default service rates that serve as a basis of comparison for consumers that elect to shop. Hence, for the five states that have implemented customer choice for which EIA is requesting information, the default service rates represent an easily accessible source of the data EIA is seeking. If utility default service rates are not available for any of these states, EIA should consult the utilities published transportation rates and commodity rates. Unless a large percentage of consumers in a given marketplace switch, the local distribution company is still the most statistically reliable source of the data EIA purports to require.

**B. Natural Gas Marketer Reporting, if any, Should be on a Voluntary Basis.**

NEM asserts that if the Proposed Survey is imposed on unregulated gas marketers, it should only be imposed on a voluntary basis. If the Proposed Survey is not

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<sup>5</sup> 44 U.S.C.S. § 3507 (j)(1).

<sup>6</sup> Federal Register Vol. 65, No. 210, October 30, 2000, page 64692.

imposed on a voluntary basis, EIA will have engaged in an improper rulemaking.

**C. No Reporting by Unregulated Entities Should be Required Until 25% or More of the Consumers in a Given Market Leave the Local Distribution Company.**

Additionally, if the reporting requirements of the Proposed Survey are imposed on natural gas marketers, in order to ensure that EIA is collecting the most statistically reliable and valid data, reporting requirements should only be imposed, if at all, in those states that have achieved at least a 25% consumer migration. If this threshold of migration has not occurred, statistically reliable data still resides with the utilities, and the utilities will remain the most statistically reliable and valid source of the data.

Alternatively, NEM recommends that once a 25% migration occurs, the Proposed Survey should only be imposed on unregulated gas marketers and administered in the same fashion as the random surveys EIA conducts of market participants in the home heating oil industry. Inasmuch as natural gas competes with home heating oil in many markets, this would help to ensure that natural gas marketers are not subject to disproportionately burdensome reporting requirements that could negatively impact the prices of natural gas versus other fuel selections.

NEM urges EIA to reformulate the Proposed Survey to require reporting from regulated transmission and distribution entities. It is within the scope of EIA's statutory authority to require reporting from these entities, and they are in the best position to provide the statistically valid and reliable information that EIA is

seeking. Alternatively, NEM urges EIA to ensure that any reporting requirements for natural gas marketers be imposed on a voluntary basis, in states that have achieved 25% customer switching, and thereafter only on a random basis as is employed in the home heating oil industry.

Sincerely,

Craig G. Goodman, Esq.  
President,  
National Energy Marketers Association  
3333 K Street, NW  
Suite 425  
Washington, DC 20007  
Tel: (202) 333-3288  
Fax: (202) 333-3266  
Email: [cgoodman@energymarketers.com](mailto:cgoodman@energymarketers.com)  
Website-[www.energymarketers.com](http://www.energymarketers.com)

cc: Andrew Lundquist