



National Energy Marketers Association

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

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The National Energy Marketers Association ("NEM") hereby submits Comments on "Form-910, Monthly Natural Gas Marketer Survey" ("Survey") of the Energy Information Administration ("EIA") as published in the February 25, 2002, Federal Register, pertaining to EIA's request for a three-year extension of the form as well as its proposal to increase the sample population beyond the five states currently covered by the Survey.

NEM is a national non-profit trade association representing a regionally diverse cross-section of wholesale and retail marketers of energy and financial products, services, information and technologies throughout the United States, Canada and the U.K. NEM's membership includes: small regional marketers, large international wholesale and retail energy suppliers, billing and metering firms, Internet energy providers and trading platforms, energy-related software developers, risk managers, energy brokerage firms and financial institutions, information technology providers as well as suppliers of advanced metering and distributed generation technology.

This regionally diverse, broad-based coalition of energy and technology firms has come together under the NEM auspices to forge consensus and to help eliminate as many issues as possible that would delay competition. NEM members urge lawmakers and regulators to implement:

- Laws and regulations that open markets for natural gas and electricity in a competitively neutral fashion;
- Rates, tariffs, taxes and operating procedures that unbundle competitive services from monopoly services and encourage true competition on the basis of price, quality of service and provision of value-added services;
- Competitively neutral standards of conduct that protect all market participants;
- Accounting and disclosure standards to promote the proper valuation of energy assets, equity securities and forward energy contracts, including derivatives; and
- Policies that encourage investments in new technologies, including the integration of energy, telecommunications and Internet services to lower the cost of energy and related services.

NEM maintains that EIA's Survey should properly be directed to regulated utilities who continue to be in the best position to provide the information EIA is seeking. NEM also urges that the sample population of states for which reporting would be required not be expanded. NEM has submitted comments to EIA on the previous iterations of the Survey, "Form-910, Monthly Natural Gas Marketer Survey" noticed in the March 8, 2001, and October 30, 2000, Federal Register and Form-905, Monthly Gas Biller Survey, noticed in the July 18, 2000, Federal Register.¹ 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 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

¹ Copies of NEM's previously filed comments are available on the NEM Website at http://www.energymarketers.com/documents/NEM_Comments_EIA_Form_910.PDF (Form EIA-910), [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 (Form EIA-905).

United States, and Form EIA-911 A-C (Supplement).²

Imposition of the Survey has already caused gas marketers to incur significant one-time design, development, storage and hardware costs. Expanding the sample population will require additional design and development efforts and increase the storage and hardware costs associated with compliance. In addition, compliance with the Survey causes gas marketers to incur 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 burden of 2 hours per response is understated. NEM notes that the estimated burden set forth in previous Federal Register notices with respect to the Survey was higher, ranging from a low of 3.11 hours per response in the March 8, 2001, notice, to 6 hours per response in the July 18, 2000, notice, and an estimate of 40 hours to prepare for the survey and 2 hours per month for each state in which a marketer reports in the October 30, 2000, notice. NEM submits that since the number of data elements requested has not been proposed to decrease, the compliance burden will not decrease. Furthermore, pursuant to EIA's proposal to expand the sample population to additional states, the burden will further increase.

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 Act³ and the Department of Energy Organization Act.⁴ EIA has continually failed to notify the public of proper statutory authority to impose the Survey other than to cite the Paperwork Reduction Act.⁵ 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.

² 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.wnwegymarketers.com/Documents/NEM_Comments.doc and [http://www.energymarketers.com/documents/NEM_Cmts_Forms_EIA-911_A-C_\(Supp\)_Final.PDF](http://www.energymarketers.com/documents/NEM_Cmts_Forms_EIA-911_A-C_(Supp)_Final.PDF), respectively.

³ 15 U.S.C.S. § 761 et. seq.

Additionally, NEM asserts that EIA's Survey is a 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 continues to urge that the Survey 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 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. As NEM previously argued, these entities are and will continue to be the most statistically reliable and valid sources of the information EIA is seeking. EIA currently collects data on the average price of natural gas purchased by local distribution companies at their city gates, consumption of natural gas by sector, and average sales price per sector in Form EIA-857, "Monthly Report of Natural Gas Purchases and Deliveries to Consumers." Form EIA-857 is completed by a sample of companies distributing natural gas to consumers.

NEM submits that the utilities are best able to comply with the reporting requirements at the lowest marginal costs to the industry, consumers and the economy. Unless and until 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.

As previously argued by NEM, the Survey should only be imposed on unregulated gas marketers on a voluntary basis, otherwise EIA will have engaged in an improper rulemaking.

⁴ 42 U.S.C.S. § 7101 et. seq.

⁵ 44 U.S.C.S. § 3507 (j)(1).

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, 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% migration of all gas consumers. NEM submits that if EIA is considering expanding the sample population, this threshold should be part of the initial analysis with respect to any proposed state. 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.

NEM notes that for the five states (Maryland, New York, Georgia, Ohio and Pennsylvania), for which gas marketers are currently required to complete the Survey, based on the information provided on the EIA website,⁶ many have not attained a minimal 25% migration rate for all gas consumers in the state. In New York all gas consumers are eligible to participate in retail choice programs but as of June 2001 only 6.6% of the total consumers eligible were, in fact, participating.⁷ In Pennsylvania, nearly all customers are eligible to switch and yet only 10% percent of eligible residential customers had chosen to do so as of October 2001.⁸ Figures for commercial migration rates were not provided.⁹ As of September 2001, in Maryland there were 936,010 customers eligible to switch and 21% of those customers migrated.¹⁰ In Ohio, as of February 2001, 30% of the customers eligible to switch had done so, but only 25.5% of total customers had switched.¹¹ In Georgia, 100% of the customers in Atlanta Gas

⁶ EIA's "Status of Natural Gas Residential Choice Programs by State as of December 2001," available at http://www.eia.doe.gov/oil_gas/natural_gas/restructure/restructure.html.

⁷ EIA's "Retail Unbundling - New York," available at http://www.eia.doe.gov/oil_gas/natural_gas/restructure/state/ny.html.

⁸ EIA's "Retail Unbundling - Pennsylvania," available at http://www.eia.doe.gov/oil_gas/natural_gas/restructure/state/pa.html.

⁹ Id.

¹⁰ EIA's "Retail Unbundling - Maryland," available at http://www.eia.doe.gov/oil_gas/natural_gas/restructure/state/md.html. Total residential and commercial customers eligible to participate in retail choice programs was 936,010 and the total of residential and commercial customers that migrated was 193,570 (173,282 and 20,288, respectively).

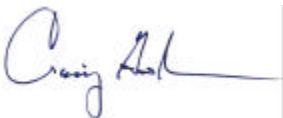
¹¹ EIA's "Retail Unbundling - Ohio," available at http://www.eia.doe.gov/oil_gas/natural_gas/restructure/state/oh.html. Total gas customers were 3,486,015 and the total of residential and commercial customers that migrated was 892,007.

Light's territory received supply from a gas marketer in December 2001, representing 82% of the total residential and commercial gas customers in the state.¹²

Alternatively, NEM recommends that once a 25% migration occurs, the Survey should be 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 continues to urge EIA to rescind Form EIA-910 and only require reporting of this data 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% total gas customer switching, and thereafter only on a random basis as is employed in the home heating oil industry. NEM also urges EIA not to expand the sample population of states for which reporting would be required.

Sincerely,



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¹² EIA's "Retail Unbundling - Georgia," available at http://www.eia.doe.gov/oil_gas/natural_gas/restructure/state/ga.html.