



National Energy Marketers Association

Comments of The National Energy Marketers Association on Proposed Forms EIA-911 A-C, Surveys to Assess Effects of Interruptions of Natural Gas Supplies

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The National Energy Marketers Association ("NEM") hereby submits Comments on the proposed "Forms-911 A-C, Surveys to Assess Effects of Interruptions of Natural Gas Supplies" ("Proposed Surveys") of the Energy Information Administration ("EIA") as published in the May 29, 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 traditional international wholesale and retail energy suppliers (as well as wind and solar power), billing and metering firms, Internet energy providers, energy-related software developers, risk managers, energy brokerage firms, information

technology providers and manufacturers and suppliers of advanced distributed generation. Membership includes 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 asserts that the Proposed Surveys are another attempt by EIA to impose reporting requirements on unregulated natural gas suppliers without proper statutory authority.¹ NEM filed comments with respect to the original Forms EIA-911 A-C for which EIA sought emergency clearance² as well as the supplemental Forms EIA-911 A-C³ which sought extension of the reporting and collection period. As argued in those comments, NEM maintains that EIA has exceeded its statutory authority set forth in the Energy Administration Act⁴ and the Department of Energy Organization Act⁵ by imposing these regulatory burdens on

¹ See also Proposed Form EIA-905, Monthly Natural Gas Biller Survey (notice published in the July 18, 2000, Federal Register); Proposed Form EIA-910, Monthly Natural Gas Marketer Survey (notice published in the October 30, 2000, Federal Register); Proposed Form EIA-910, Monthly Natural Gas Marketer Survey (notice published in the March 8, 2001, Federal Register); and Proposed Form EIA-911 A-C, Bi-Weekly Surveys to Assess effects of Interruptions of Natural Gas Supplies in the Northeast United States (notice published in the December 26, 2000, Federal Register).

² The full text of NEM's Comments on Forms EIA-911 A-C are available on the NEM Website at: http://www.energymarketers.com/Documents/NEM_Comments.doc.

³ The full text of NEM's Comments on Forms EIA-911 A-C are available on the NEM Website at: [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).

⁴ 15 U.S.C.S. § 761 et. seq.

⁵ 42 U.S.C.S. § 7101 et. seq.

unregulated natural gas suppliers. EIA's compliance with the Paperwork Reduction Act does not provide the requisite statutory authority to impose new recordkeeping and reporting requirements on natural gas suppliers. Additionally, NEM asserts that EIA's Proposed Surveys are a proposed rulemaking with potentially major microeconomic and macroeconomic impacts that should have been promulgated in compliance with the Administrative Procedures Act,⁶ Executive Order 12291⁷ and the Regulatory Flexibility Act.⁸

EIA proposes to request contingency standby OMB approval of the Forms for use in the event of future natural gas supply or price emergencies. EIA will request this approval so that it can immediately implement the forms when circumstances warrant. When EIA determines that a triggering event has occurred that warrants imposition of the Forms, EIA will then decide the geographic areas to be surveyed and the frequency with which the data will be collected.⁹ This scenario will put respondents in an untenable position. Respondents will be forced to redevelop systems in case they are required by EIA to submit compliance filings even though such systems may never in fact become necessary. Respondents should not be required to develop new systems for compliance with Forms that may be imposed without notice. New major regulatory requirements imposed without notice are contrary to administrative law and impose substantial burdens on small entities.

⁶ 5 U.S.C.S. § 551 et. seq.

⁷ Executive Order 12291 of February 17, 1981.

⁸ 5 U.S.C.S. § 601 et. seq.

⁹ Federal Register, May 29, 2001, page 29098.

NEM also maintains that the costs associated with compliance have been understated. EIA estimates that it will require two hours for forty entities to complete Form EIA-911A, one hour for two hundred and seventy entities to complete Form EIA--911B, and two hours for three hundred entities to complete Form EIA-911C. NEM asserts that all of the preparation time estimates are significantly understated. For instance, the format of the proposed Form EIA-911A presupposes that natural gas suppliers records are kept in a manner that allows for completion of the Survey. The completion times and associated compliance costs will vary dramatically depending upon the geographic area surveyed, the level of detail required as to individual states within a geographic area, and the frequency with which respondents are required to submit data. The resources that intended respondents would have devoted to the development of innovative energy products and services will instead have to be devoted to completion of the Proposed Surveys. Additionally, a firm that is selected to complete the Proposed Survey is placed at a competitive disadvantage at a time when it could materially effect that firm's competitive viability.

As stated in our previously filed comments with respect to Forms EIA-911, NEM asserts that the best, most statistically reliable and valid sources of the data EIA is seeking are the local distribution companies over whom EIA has proper statutory authority to require recordkeeping and reporting. NEM urges that all of the

Proposed Surveys should be rescinded and recast to require reporting solely from those entities.

For the foregoing reasons, NEM urges that the reporting requirements of the Proposed Survey should not be imposed.

Sincerely,

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