

January 25, 2008

**VIA ELECTRONIC FILING**

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
Office of the Secretary  
888 First Street, N.E.  
Washington, D.C. 20426

**RE: Transparency Provisions of Section 23 of the Natural Gas Act  
Docket No. RM07-10-000**

Dear Ms. Bose:

Enclosed please find for electronic filing Request for Clarification and/or Rehearing of American Forest & Paper Association and the Industrial Energy Consumers of America in the above captioned proceeding.

Thank you for your attention to this matter.

Regards,

*Donald J. Sipe/s/*

Donald J. Sipe  
Counsel to American Forest & Paper Association

Enclosure  
CC: Service List

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UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

**Transparency Provisions of Section 23 of the  
Natural Gas Act**

**Docket Nos. RM07-10-000**

**REQUEST FOR CLARIFICATION AND/OR REHEARING OF  
AMERICAN FOREST & PAPER ASSOCIATION AND THE INDUSTRIAL ENERGY  
CONSUMERS OF AMERICA**

Pursuant to 18 C.F.R. §385.713 (2007) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), American Forest and Paper Association (“AF&PA”) and the Industrial Energy Consumers of America (“IECA”) seek clarification and/or rehearing of the Final Rule issued by the Commission on December 26, 2007 in this proceeding.<sup>1</sup>

**I. COMMUNICATIONS.**

Service of all pleadings, documents and communications in this docket should be addressed to:

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<sup>1</sup> *Final Rule*, 121 FERC ¶ 61,295 (“Order No. 704”).

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## **II. BACKGROUND.**

On April 19, 2007, the Commission issued a Notice of Proposed Rulemaking (“NOPR”)<sup>2</sup> in this docket. The Commission proposes to revise its regulations to (1) require that intrastate pipelines post daily the capacities of, and volumes flowing through, their major receipt and delivery points and mainline segments in order to make available the information needed to track daily flows of natural gas throughout the United States and (2) require that buyers and sellers of more than a de minimis volume of natural gas report annual numbers and volumes of relevant transactions to the Commission in order to make possible an estimate of the size of the physical U.S. natural gas market, assess the importance of the use of index pricing in that market, and determine the size of the fixed-price trading market that produces the information. These revisions are intended to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce.

## **III. DESCRIPTION OF AMERICAN FOREST & PAPER ASSOCIATION AND INDUSTRIAL ENERGY CONSUMERS OF AMERICA.**

AF&PA is the trade association of the forest, pulp, paper, paperboard, and wood products industry in the United States. AF&PA’s members are among the nation’s largest consumers of electric power, purchasing over 82 billion kilowatt-hours of electricity annually nationwide. AF&PA’s members include electricity consumers and producers. In addition

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<sup>2</sup> 119 FERC ¶61,068 (April 19, 2007).

AF&PA members are large consumers of natural gas and rely upon reasonably priced and reliable gas supply to remain competitive.

Industrial Energy Consumers of America is a nonprofit nonpartisan organization created to promote the interests of manufacturing companies for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets.

#### **IV. REQUEST FOR CLARIFICATION.**

AF&PA and IECA support the Commission's efforts to increase transparency in the natural gas market through better tracking of Wholesale purchases and sales that affect formation of index and other prices at wholesale. AF&PA and IECA appreciate the Commission's consideration of its views in modifying its original proposal to eliminate retail purchases from the reporting requirements under the Final Rule. Consistent with this modification, AF&PA and IECA seek two limited clarifications and/or rehearing of the Commission's Rule.

1. AF&PA and IECA seek clarification that balancing or cash out transactions associated with a retail purchase contract between an end use customer and a commodity supplier or LDC are not reportable transactions under the Rule. Such balancing transactions take various forms but are simply the result of an inability to exactly match consumption to retail delivery schedules due to fluctuations in the end user's business processes.
2. AF&PA and IECA request clarification and/or rehearing of the Commission's Rule as appropriate to eliminate the reporting requirement for any person who holds a blanket certificate pursuant to section 284.402 of the Commission's Rules solely by virtue of being a retail customer engaged in balancing or cash out transactions pursuant to a retail

level gas service contract. Given the sheer number of end use customers who require balancing services of some kind under marketer or LDC contracts, the burden of having each such end user report on an annual basis, (even the non-volumetric information of Form 552) may be disproportionate to the public benefit of such reporting and not consistent with the intent of the Order.

**A. The Commission Should Clarify its Rule to Find That Balancing or Cash Out Transactions Associated With End User Purchases of Gas Pursuant to Retail Gas Service Contracts Are Not Reportable Transactions Under the Rule.**

In Paragraph 107 of its Order, the Commission requires interstate pipelines to report purchase and sale volumes related to cash outs, imbalance make-ups and operations. The Commission Order seems appropriately focused on the aggregation of these transactions at the pipeline level, where significant volumes of imbalance transactions may have some impact on wholesale price formation. Other market participants, however, including end users under retail contracts, typically engage in a variety of transactions which might be considered “cash out” or balancing type transactions under take or pay or other types of contractual arrangements. Such transactions are undertaken in order to balance scheduled gas quantities with actual consumption at particular facilities. At present, AF&PA does not believe any of its members engage in balancing transactions sufficient to trigger the de minimis threshold. However, AF&PA members have expressed concern that unless they institute procedures to monitor activities under a host of retail purchase contracts at various facilities, they might at some time in the future inadvertently trigger the de minimis threshold without recognizing it.

No end user wishes to schedule volumes that do not reflect accurately expected usage, and be subject to cash out or balancing penalties or fees. Under most tariffs, unless they have their own storage, end use customers simply have no choice other than to cash out imbalances.

Thus, exceeding any such threshold would be involuntary, unwanted and counter-productive. Moreover, the contractual terms surrounding balancing of load and supply at the retail level present a bewildering variety of terms and conditions.<sup>3</sup> Determining which aspects of these various transactions may or may not be reportable and by whom (i.e. either the marketer supplying the gas, the pipeline, or the end use customer) in accordance with the contractual terms, further complicates any monitoring or reporting which might need to be done. Further, AF&PA and IECA believe that to the extent these cash outs or balancing transactions at the retail level impact flows of gas at wholesale, they will already be reflected in the sales and imbalance transactions reported at the pipeline level. Finally, AF&PA and IECA do not believe that the inevitable balancing transactions that occur under individual retail contracts factor appreciably, if at all, into wholesale price formation or represent a significant “way of transferring value among market participants.” Rather, they are the necessary and involuntary results of the practical inability to perfectly match sometimes very erratic consumption with schedules at the retail level.

For all of these reasons, AF&PA and IECA request that the Commission clarify its Rule and Order to indicate that balancing and cash out transactions associated with the retail service contracts of end use customers are not reportable transactions and therefore not counted towards the de minimis threshold.

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<sup>3</sup> Under some contracts, end users simply pay a monthly fee to a supplier who adjusts payment obligations to reflect usage without ever taking delivery or title to any unburned gas; under others an LDC may mediate the transaction through specific tariff provisions under which the LDC purchases gas back from the retail customer at discounted rates; in yet another variation the customer may have its own transport capacity, but have a separate commodity contract with a supplier who cashes out and balances prior to delivery to the receipt point on the end users capacity or, conversely, the end user may take title to the gas at its receipt point and settle imbalances for its own account thereafter with the pipeline on which it holds capacity.

**B. The Commission Should Clarify And/Or Modify its Rule and Order as Necessary to Provide That Retail Customers Who May Hold a Blanket Marketing Certificate Pursuant to 284.402 of the Commission's Rules Solely by Virtue of Balancing or Cash Out Transactions Associated With Retail Purchase Contracts Need Not Report Annually on Form No. 552.**

As the Commission is aware, most retail gas customers of any size take service under contracts which contain some provision for balancing loads and schedules. There are a wide variety of contractual provisions and arrangements under which balancing services are taken by industrial, commercial and other gas customers both under LDC tariffs and through individually negotiated contracts. Some set of these balancing or payment arrangements may be construed as wholesale sales by the Commission. To the extent any such balancing activity is considered a wholesale sale, the retail customer may have been issued a blanket marketing certificate pursuant to 284.402(a) of the Commission's regulations. AF&PA and IECA are relatively certain that most end use customers engaged in such activity will be completely unaware that they may have such a certificate from the Commission by virtue of simply taking retail service with a balancing provision. The automatic grant of a Commission certificate under Section 284.402 provides no notification of this fact to your typical industrial, commercial or other end use customer who may avail themselves of such a contract. Depending upon how the Commission interprets the various contractual provisions under which imbalance services are provided by pipelines, marketers or LDCs, the number of such customers may be surprisingly large. Given the Commission's stated objective in its rules, reporting by every individual retail customer who takes balancing services from a marketer or LDC would not seem necessary and would provide little useful information to the Commission beyond a national registry of most or all industrial, commercial and small business gas consumers in the nation. Given that a very large percentage of these customers will never suspect they hold such a certificate, and the legal and administrative effort of analyzing the various contractual arrangements under which they receive balancing service to determine

whether a wholesale transaction requiring such a certificate is involved, the public benefit of establishing such a registry is unlikely to outweigh its costs.

For these reasons, AF&PA and IECA request that the Commission clarify or modify its Order and Rule as necessary to indicate that those persons who may hold a blanket marketing certificate from the Commission solely by virtue of engaging in balancing or cash out transactions pursuant to a retail gas service or supply contract, shall not be required to report on Form 552 absent other activity in the wholesale market that would trigger such reporting requirements.

#### **V. CONCLUSION AND RECOMMENDATIONS.**

For the reasons stated fully above, AF&PA and IECA request that the Commission 1) clarify that balancing or cash out transactions associated with a retail purchase contract between an end use customer and a commodity supplier or LDC are not reportable transactions under the Rule; and 2) clarify or grant rehearing of the Commission's Rule as appropriate to eliminate the reporting requirement for any person who holds a blanket certificate pursuant to section 284.402 of the Commission's Rules solely by virtue of being a retail customer engaged in balancing or cash out transactions pursuant to a retail level gas service contract.

Dated at Augusta, Maine this 25th day of January, 2008.

Respectfully submitted,

Donald J. Sipe/s/

Donald J. Sipe, Esq.

Counsel to American Forest & Paper  
Association

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**Docket No. RM07-10-000**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served via electronic service list the foregoing document upon each person who is designated on the service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure.

Dated at Augusta, Maine this 25<sup>th</sup> day of January, 2008

*Donald J. Sipe/s/*

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Donald J. Sipe, Esq.  
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Association