

128 FERC ¶ 61,194
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 27, 2009

In Reply Refer To:
Argus Media, Inc.
Docket No. PL03-3-008

Argus Media, Inc.
1012 14th Street, NW, Suite 1500
Washington, DC 20005

Attention: Euan Craik
CEO Americas

Reference: Argus North American Natural Gas Report

Dear Mr. Craik:

1. On December 30, 2008, Argus Media Inc. (Argus) submitted a statement of standards regarding the Methodology and Code of Conduct it will use to create day-ahead and month-ahead (bid-week)¹ price indices for natural gas physically traded in North America, which Argus will publish in the Argus North American Natural Gas Report. On May 1, 2009, Argus filed a supplement to its initial request. Argus seeks a determination by the Commission (1) that the Argus North American Natural Gas Methodology and Code of Conduct meets all or substantially all of the standards set forth in the *Policy Statement on Natural Gas and Electric Price Indices*² and (2) that it establishes minimum criteria for liquidity for particular index points for the indices to qualify for use in jurisdictional tariffs. As discussed below, the Commission finds that the Argus North American Natural Gas Methodology and Code of Conduct is

¹ Hereafter, month-ahead index refers to month-ahead (bid-week) index as differentiated from Argus's monthly average of day-ahead indices as well as any monthly forward market assessments that may also be included in the Argus North American Natural Gas Report.

² *Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121, at P 33 (2003) (Policy Statement).

substantially consistent with the applicable standards under Commission policy. This finding is similar to findings made with respect to other indices in the Commission's November 19, 2004 order regarding the use of price indices in jurisdictional tariffs (Price Indices Order)³ and more recently in *Insight Research, Inc. (Insight)*.⁴ Ultimately, however, whether the future use of Argus's day-ahead and month-ahead natural gas price indices in a specific tariff is found to be just and reasonable will depend on the additional factors discussed in the Price Indices Order.⁵

2. In both its initial and supplemental filings, Argus indicates that it is developing a new publication—Argus North American Natural Gas Report—in which it will publish day-ahead and month-ahead price indices. Previously, in the Price Indices Order, the Commission found that Argus met all or substantially all of the standards applicable to price index developers.⁶ Argus currently seeks a further Commission determination specific to its planned natural gas price indices, given that the determination by the Commission in the Price Indices Order was made on the basis of Argus's U.S. Hourly Power Methodology for electric indices. Argus asserts that it continues to meet all or substantially all of the standards set forth in the Policy Statement (discussed below).

3. In the Price Indices Order, the Commission reviewed the standards for price index developers set forth in the Policy Statement. The Commission found that in order for a price index to be used in a jurisdictional tariff, the index must be published by an index developer that has met all or substantially all of the five standards discussed in the Policy Statement, and it must also provide the volume and number of transactions upon which the index value is based, or indicate when no such data is available.⁷ Additionally, for a particular price index location to be used in a jurisdictional tariff, it must meet or exceed

³ *Price Discovery in Natural Gas and Electric Markets*, “order regarding future monitoring of voluntary price formation, use of price indices in jurisdictional tariffs, and closing certain tariff dockets,” 109 FERC ¶ 61,184, at P 39 (2004) (Price Indices Order).

⁴ *Insight Research, Inc.*, 122 FERC ¶ 61,085 (2008).

⁵ *Id.* at P 48-49, 53-54, 62-69, 73 (discussing such additional factors as whether the selected index location provides the volume and number of transactions upon which the index value is based, whether it meets or exceeds one or more of the minimum average criteria for liquidity, and whether Argus continues to provide the Commission access to data in the event of an investigation).

⁶ Price Indices Order, 109 FERC ¶ 61,184, at Ordering Para. (B).

⁷ *Id.*, at Ordering Para. (C) (citing Policy Statement, 104 FERC ¶ 61,121 at P 33).

one or more of the minimum average criteria for liquidity.⁸ The Commission also concluded in the Price Indices Order that ten price index developers—of which Argus was one—had demonstrated that they adopted all or substantially all of those standards.⁹ More recently, the Commission found that an additional price index developer, Insight Research Inc., also demonstrated substantial compliance with these standards.¹⁰

4. Because Argus seeks a finding that new day-ahead and month-ahead price indices to be published in the Argus North American Gas Report meet the standards set forth in the Price Indices Order for use in a jurisdictional tariff, its proposal is evaluated in a manner similar to the Commission's evaluation of a new price index in *Insight*. Accordingly, the Commission will examine Argus's Methodology and Code of Conduct in light of the five minimum standards set forth in the Price Indices Order and will address additional criteria for the use of specific index locations in jurisdictional tariffs, as contemplated in the Price Indices Order.

5. The Policy Statement sets forth minimum standards for a price index publisher in five areas: 1) codes of conduct and confidentiality; 2) completeness; 3) data verification, error correction, and monitoring; 4) verifiability; and 5) accessibility.¹¹ The Commission subsequently adopted these standards in the Price Indices Order. As discussed below, the Commission finds that Argus has met all or substantially all of these standards with respect to the day-ahead and month-ahead gas price indices that will be published in the Argus North American Gas Report.

6. The Policy Statement calls for price index publishers to adopt and make public a written code of conduct that discloses how the developer will obtain, treat, and maintain price data, and how it will develop price information. The Policy Statement also calls on price index developers to treat trade data as confidential and to enter into uniform confidentiality agreements with market participants that specify that commercially sensitive information will be held in confidence except to the extent necessary to verify the index or to allow the Commission to perform its statutory duties.

7. Argus meets substantially all aspects of this standard because it has adopted a Methodology and Code of Conduct which is posted online and includes, among other things, its methods for collecting and maintaining data as well as an explanation as to

⁸ *Id.* at Ordering Para. (D).

⁹ *Id.* at Ordering Para. (B).

¹⁰ *Insight*, 122 FERC ¶ 61,085.

¹¹ Policy Statement, 104 FERC ¶ 61,121 at P 33.

how an index will be calculated. Argus states that the day-ahead and month-ahead natural gas price indices are based on data voluntarily submitted by risk-management or non-commercial (i.e., back office) divisions. The Methodology and Code of Conduct also includes an explanation of how outliers¹² are treated, as well as a summary of Argus's ethics policy and data retention standards. For month-ahead indices, Argus states that when no transactions are received for a pricing point, any assessments made will be clearly marked.

8. Furthermore, Argus indicates in its Methodology and Code of Conduct that it has taken appropriate steps to ensure that all data submitted will be treated confidentially. Argus also states that it has entered into confidentiality agreements with all data providers.¹³ Although Argus does not enter into *uniform* confidentiality agreements with data providers, for the reasons stated above, the Commission finds that Argus meets substantially all of the aspects of the "code of conduct" standard, consistent with the Commission's previous review of price indices.

9. The Commission encourages data providers to maintain continuous public posting of the indices' Methodology and Code of Conduct. Indices for which code of conduct documentation is not publically available may not be eligible for use in a jurisdictional tariff.

10. The Policy Statement calls on price index publishers to "maximize the amount of useful and appropriate information they collect and disseminate.... In publishing prices, an index developer should provide, for each pricing location for the day-ahead or month-ahead market: (a) the total volume (b) the number of transactions (c) the number of transaction entities; (d) the range of prices (high/low); and (e) the volume-weighted average price."¹⁴

¹² See Argus, May 1, 2009, Transmittal Letter, at 10 ("Trades that deviate significantly from the median of trades reported for that delivery point will be scrutinized by Argus editors and excluded from the index if they are deemed not representative of market conditions at the time of the trade or if there is any doubt about the accuracy of a trade that cannot be resolved.")

¹³ As examples, Argus submits copies of its own confidentiality agreement as well as the Data Submission, Usage, and Confidentiality Agreement (DSUCA). Argus states, however, that it "uses whichever confidentiality agreement the data providers prefer." Argus, May 1, 2009, Transmittal Letter, at 2.

¹⁴ Policy Statement, 104 FERC ¶ 61,121 at P 33.

11. In its filings, Argus states that it plans to collect and to publish total volume, number of transactions, range, and volume weighted price for each price index included in the Argus North American Gas Report. Noting that few data contributors provide counterparty information, Argus states that it will review whether the number of trading entities at each hub can be disclosed without revealing too much information about the activities of individual participants. Argus contends that the volume and number of transactions should suffice to show whether an index is based on a robust sample of trade, noting however, that if participation in the data gathering process warrants further disclosure, the data manager will authorize the release of information. Moreover, Argus indicates minimum volume thresholds below which a price index will not be published.

12. In the Price Indices Order, the Commission found that although it encouraged the reporting of full transaction information to price index publishers, including counterparty identity, it would not require price indices to report this piece of information.¹⁵ The Commission continues to urge market participants to provide price index publishers with full transaction information, including counterparty identity, and to amend confidentiality agreements where necessary to allow such reporting. However, consistent with the Commission's decision in *Insight* and the Price Indices Order, the reporting of such information will not be required here. Accordingly, the Commission finds that Argus meets substantially all of the aspects of the "completeness" standard consistent with the Commission's previous reviews of price indices.

13. The Policy Statement calls for price index publishers to verify price data, to adopt an error resolution process to correct mistakes, and to publish a correction notice when significant errors are made.¹⁶ It also calls on publishers to have sufficient monitoring and surveillance systems in place to detect attempted price manipulations and to notify the Commission in the event anomalous data is not able to be resolved.¹⁷

14. Argus states that because few data providers report counterparty information, the Argus North American Gas Report indices may include both sides of the same transaction. Argus asserts, however, that such double reporting should not skew the index in a significant way. Argus also indicates that it will scrutinize trades that deviate significantly from the median of trades reported for a specific delivery point, and such trades will be excluded from the index if they are deemed not representative of market conditions at the time of the trade or if there is doubt as to the accuracy of the trade that cannot be resolved. Moreover, Argus states that if a trade is identified as an outlier, Argus

¹⁵ Price Indices Order, 109 FERC ¶ 61,184 at P 38.

¹⁶ Policy Statement, 104 FERC ¶ 61,121 at P 33.

¹⁷ *Id.*

may decline to include it in the index if the source will not provide additional information to resolve the discrepancy. Argus states that it will not accept updated trade data after the cut-off times,¹⁸ and that corrections that may have a significant impact on a price point will be considered on an individual basis. Argus explains that if it learns of an error, the data manager will assess the impact of the error and will issue a correction if a significant error has distorted the index price (more than two cents). The Commission finds that the processes set forth by Argus with respect to this standard should enable Argus to ensure the integrity of the information upon which its price indices are based. Argus does not address monitoring and surveillance of manipulation or notification of any agency in the case of anomalous data; however, this appears to be consistent with *Insight* and other indices reviewed under the Price Indices Order. Accordingly, the Commission finds that Argus substantially meets this standard.

15. The Policy Statement calls for an independent audit or verification at least once annually, the results of which should be made public.¹⁹ The audit should review data systems, quality control measures, and data to confirm that the index is developed in accordance with the published Methodology and Code of Conduct.

16. Argus states that its natural gas price index procedures will be audited annually by the company's finance department and that the results of the audit will be made available on the company's website. Such commitments are consistent with the requirements set forth in the Policy Statement, and accordingly the Commission finds that Argus meets this standard.

17. The Policy Statement calls for price index publishers to make their publications available to customers on a timely basis.²⁰ It also calls on publishers to make relevant data available to the Commission in situations where the Commission is investigating suspected bad faith price reporting or manipulation and in situations where the Commission needs the data to carry out its statutory duties.²¹

¹⁸ See Argus, May 1, 2009, Transmittal Letter, at 9 (“Day-ahead deals include all deals done for delivery through the following business day, before the 11:30 Central Time cut-off deadline. Day-ahead trade data should be sent to Argus by 3 p.m. CST daily.”).

¹⁹ Policy Statement, 104 FERC ¶ 61,121 at P 33.

²⁰ *Id.*

²¹ *Id.*

18. Argus states that it will make its natural gas price indices freely available to the public during an initial trial period. Thereafter, subscribers may receive the data via subscription options. Argus explains that in the event that Commission requests data in the course of an investigation or to otherwise carry out its statutory duties, Argus will provide such data that does not violate prior confidentiality agreements (written or tacit). In the event that Argus is required to surrender information by law or applicable legal process, order, regulation, ruling, subpoena or order of an administrative or governmental authority or tribunal with competent jurisdiction, Argus states that it will do so only in a manner consistent with applicable confidentiality agreements.

19. The Commission has consistently expressed an interest in obtaining confidential data in the context of a targeted investigation of possible false price reporting or market manipulation or other inquiry within the scope of the Commission's statutory responsibilities.²² The Commission's intent is to seek relevant data limited in time and scope to fit the needs of a specific investigation or inquiry. In such circumstances, the Commission expects that, upon proper request, index developers will provide access to the requested data.

20. Argus has represented that it will cooperate with the above-mentioned information requests from the Commission. Accordingly, the Commission finds that Argus's day-ahead and month-ahead natural gas price indices meet the standards set forth in the Policy Statement and may be eligible for use in jurisdictional tariffs assuming the indices meet the other requirements (discussed below). Similar to the Commission's disposition in the Price Indices Order, the Commission reserves the right to withdraw this approval in the event an appropriate request for confidential data is refused.²³ If that should happen, the Commission may prospectively bar indices published by Argus from use in jurisdictional tariffs.²⁴

21. In the Price Indices Order, the Commission accepted Staff recommendations that, in order to qualify for use in jurisdictional tariffs, a price index must provide the number of transactions at the specific location, and the price index developer should agree to provide access to data in the event of an investigation. As discussed above, Argus states that it will provide the total volume and number of transactions. Argus further states that

²² In the Policy Statement, the Commission said that it seeks access to data "where necessary (a) to conduct an investigation of suspected bad faith price reporting or potential market manipulation or (b) to otherwise carry out its statutory duties." *Id.*

²³ Price Indices Order, 109 FERC ¶ 61,184 at 54.

²⁴ *Id.*

it agrees to provide the Commission with access to information in the event of an investigation.

22. Finally, the use of a particular index point in a jurisdictional tariff must meet the average minimum criteria for liquidity discussed in the Price Indices Order.²⁵ These criteria, which must be reviewed over a reasonable past period, are average minimum standards designed to assure an adequate level of activity at a particular trading location.²⁶ Argus has included minimum criteria for liquidity consistent with those required in the Price Indices Order. However, the Commission declines at this time to find that the particular index points used by Argus in its indices will meet such criteria. The inquiry into whether a particular index point meets such average minimum criteria for liquidity is properly reserved for a time when a specific request is made to use the point in a jurisdictional tariff.

23. Thus, consistent with the Commission's disposition in both the Price Indices Order and *Insight*, the Commission finds that Argus's day-ahead and month-ahead natural gas price indices are suitable for use in jurisdictional tariffs, subject to conditions stated in this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁵ *See id.* P 62-69.

²⁶ *Id.*