

122 FERC ¶ 61,085
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 1, 2008

In Reply Refer To:
Insight Research, Inc.
Docket No. PL03-3-007

Insight Research, Inc.
3004 SW First Avenue
Portland, OR 97201

Attention: David Ramberg
Editor, *Energy Market Reports*

Reference: Price Index Methodology and Standards

Dear Mr. Ramberg:

1. On September 4, 2007, Insight Research, Inc. (Insight), publisher of *Energy Market Reports* (EMR), submitted a statement of standards regarding the methodology it uses to create price indices for bulk electricity markets in its EMR publication. Insight seeks Commission review of this methodology and a determination by the Commission that EMR is suitable for use in jurisdictional tariffs. As discussed below, the Commission finds EMR's methodology to be substantially consistent with applicable standards under Commission policy. Therefore, the Commission determines that the use of EMR's price indices in jurisdictional tariffs would, as a general matter, be consistent with Commission policy, similar to our approval of other indices in the Commission's November 19, 2004, order regarding the use of price indices in jurisdictional tariffs (Price Indices Order).¹ Ultimately, however, whether such future use in a specific jurisdictional

¹ *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).

tariff is determined to be just and reasonable will depend on the additional factors discussed in the Price Indices Order.²

2. In its filing,³ Insight requests that the Commission review Insight's proposed price index—EMR—to determine whether it complies with the standards discussed in the Price Indices Order. Insight states that its price index methodology is considerably more robust and rigorous than the Commission's minimum standards for use in jurisdictional tariffs. Therefore, Insight requests that the Commission find that EMR complies with all or substantially all of the standards set forth in the Price Indices Order such that EMR could be used in jurisdictional tariffs.

3. In the Price Indices Order, the Commission reviewed the standards for price index developers set forth in the *Policy Statement on Natural Gas and Electric Price Indices* (Policy Statement).⁴ The Commission determined 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 paragraph 33 of 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.⁵ Additionally, for a price index at a particular location to be used in a jurisdictional tariff, the index location must meet or exceed one or more of the minimum average criteria for liquidity.⁶ The Commission also concluded in the Price Indices Order that ten price index developers had demonstrated that they adopted all or substantially all of those standards.⁷

4. In order to determine whether Insight's EMR may be used in a jurisdictional tariff, we first examine Insight's methodology in light of the five minimum standards set forth

² *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 Insight continues to provide the Commission access to data in the event of an investigation).

³ On September 17, 2007, Insight made a supplemental filing in response to certain clarifications requested by Commission Staff.

⁴ *Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 at P 33 (2003) (Policy Statement).

⁵ Price Indices Order, 109 FERC ¶ 61,184, at Ordering Para. (C) (citing Policy Statement, 104 FERC ¶ 61,121 at P 33).

⁶ *Id.* at Ordering Para. (D).

⁷ *Id.* at Ordering Para. (B).

in the Price Indices Order. We then address additional criteria for specific index locations (i.e., volume and number of transactions, Commission access to data, and adequate liquidity), as contemplated by the Price Indices Order.

I. Conformance of Price Indices to Policy Statement Standards

5. The Policy Statement sets forth five minimum standards for a price index publisher: 1) codes of conduct and confidentiality; 2) completeness; 3) data verification, error correction, and monitoring; 4) verifiability; and 5) accessibility.⁸ The Commission subsequently adopted these standards in the Price Indices Order. As discussed below, the Commission determines that Insight's EMR has met all or substantially all of these standards.

Codes of Conduct and Confidentiality

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 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. Insight meets this standard because it has adopted a code of conduct, which is posted on-line and includes, among other things, its methods for collecting and maintaining data, as well as an equation for how an index would be calculated. Furthermore, the code of conduct discusses Insight's confidential treatment of data. It also indicates that it uses the Data Submission, Usage and Confidentiality Agreement (DSUCA) developed by Committee of Chief Risk Officers (CCRO) for confidentiality. Therefore, the Commission determines that Insight meets substantially all of the aspects of the "code of conduct" standard consistent with the Commission's previous review of price indices.

Completeness

7. 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."⁹ Insight plans to publish, for each price index, the following information:

⁸ Policy Statement, 104 FERC ¶ 61,121 at P 33.

⁹ *Id.* P 33.

the total volume, the number of transactions, the range of prices (high/low), and the volume-weighted average price. Insight states that it does not plan to provide the number of transaction entities because it feels that at low liquidity points, other market participants can infer the identities of the few counterparties, and because many data providers have chosen not to provide Insight with information on the counterparties to particular transactions. Insight, therefore, expresses its concern that requiring data providers to report the identities of counterparties to all transactions could jeopardize its ability to retain data providers for its index.

8. In the Price Indices Order, we determined that although we encouraged the reporting of full transaction information to price index publishers, including counterparty identity, we would not require price indices to report this piece of information.¹⁰ We continue 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, we will not require such information from Insight, where we did not require it from previous price index publishers reviewed in the Price Indices Order. Therefore, the Commission determines that Insight meets substantially all of the aspects of the “completeness” standard consistent with the Commission’s previous reviews of price indices.

Data verification, error correction, and monitoring

9. The Policy Statement calls for price index publishers to verify price data through matching buys and sells, to adopt an error resolution process to correct mistakes, and to publish a correction notice when significant errors are made.¹¹ It also calls on publishers to have sufficient monitoring and surveillance systems in place to detect attempted price manipulations.¹² Insight states that this standard is nearly identical to the CCRO’s requirements in the DSUCA, which Insight states it uses (and has used for the past two years) as the foundation for its tradesheet interactions with data providers for development of the EMR. Such interactions include the gathering of trade summary sheets of price and unit outage from the mid- or back-offices of brokers, marketers, utilities, etc., and transmitting them to Insight. Insight further states that if any suspicious data is found, the tradesheet provider is contacted as soon as possible for verification, and that in the absence of verification, the data in question are omitted from formulation of price indices. Insight also notes that since 2003, it has archived all data received, and segregated data received by phone from those received in electronic format to allow for careful auditing of past reports. The Commission determines that Insight’s internal

¹⁰ Price Indices Order, 109 FERC ¶ 61,184 at P 38.

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

¹² *Id.*

processes complement its obligations under its confidentiality agreements with individual data providers to substantially meet this standard.

Verifiability

10. The Policy Statement calls for an independent audit or verification at least once annually, the results of which should be made public.¹³ The audit should review data systems, quality control measures, and data to confirm that the index is developed in accordance with the published methodology. Insight states that it plans to utilize the services of an auditor when it starts publishing price indices. Moreover, Insight notes that because it is already contractually obligated to conform to the CCRO's DSUCA, it meets the verifiability standard. The Commission agrees that Insight meets this standard.

Accessibility

11. The Policy Statement calls for price index publishers to make their publications available to customers on a timely basis.¹⁴ 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 and in situations where the Commission needs the data to carry out its statutory duties.¹⁵ Insight's EMR is a daily publication, and its subscribers receive the report via e-mail text with an attached .pdf file containing the same information. Insight states that it would not object to sharing the data used to formulate price indices with the Commission provided that the Commission respects the confidentiality agreements under which Insight itself is bound and also that the Commission's request for data is limited to investigations of suspected bad faith price reporting or market manipulation, or situations where such information is necessary for the Commission to carry out its statutory duties.

12. We have consistently expressed our 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 our statutory responsibilities.¹⁶ Our intent is to seek relevant data limited in time and scope to fit the needs of a specific

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

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

investigation or inquiry. In such circumstances, we expect, upon proper request, that index developers will provide access to the requested data.

13. Insight has represented that it will cooperate with the above-mentioned information requests from the Commission. Accordingly, we will approve Insight's EMR for use in jurisdictional tariffs, assuming the indices meet the other requirements of providing volumes and number of transactions and exceeding the minimum average liquidity criteria at the selected points (as discussed further below). Similar to our disposition in the Price Indices Order, we reserve the right to withdraw this approval in the event an appropriate request for confidential data is refused.¹⁷ If that should happen, we may prospectively bar indices published by Insight from use in jurisdictional tariffs.¹⁸

II. Use of Price Indices in Jurisdictional Tariffs

14. Having determined that Insight's EMR meets all or substantially all of the Policy Statement standards, we now turn to whether it is suitable for use in jurisdictional tariffs.¹⁹ 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, Insight states that it will provide the total volume and number of transactions. Insight further states that it agrees to provide the Commission with access to information in the event of an investigation.

15. 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.²⁰ 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

¹⁷ Price Indices Order, 109 FERC ¶ 61,184 at 54.

¹⁸ *Id.*

¹⁹ *See* Price Indices Order at P 40 (noting that whether a price index complies with the Policy Statement standards and whether it should be used in jurisdictional tariffs are separate questions). *See also id.* P 42 (noting that the focus here is on the use of price indices in filed jurisdictional tariffs and not on their use in other commercial transactions).

²⁰ *See id.* P 62-69.

location.²¹ We reserve this inquiry for a time when an entity seeks to use the EMR in a filed jurisdictional tariff at a particular pricing location.

16. Thus, consistent with our disposition in the Price Indices Order, the Commission determines that Insight's EMR is suitable for use in jurisdictional tariffs, subject to conditions stated in this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

²¹ *Id.*