COMMODITY FUTURES TRADING COMMISSION

Orders Finding that the (1) Phys,[1] BS,[2] LD1 [3] (US/MM), AB–NIT;[4] (2) Phys, BS, LD1 (US/MM), Union-Dawn; [5] (3) Phys, FP,[6] (CA/GJ),[7] AB–NIT; (4) Phys, FP, (US/MM), Union-Dawn; and (5) Phys, ID,[8] 7a [9] (CA/GJ), AB–NIT Contracts, Offered for Trading on the Natural Gas Exchange, Inc., Do Not Perform a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Final orders.

SUMMARY: On October 20, 2009, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment in the **Federal Register** [10] a notice of its intent to undertake a determination whether the (1) Phys, BS, LD1 (US/MM), AB–NIT ("Alberta Basis"); (2) Phys, BS, LD1 (US/MM), Union-Dawn ("Union-Dawn Basis"); (3) Phys, FP, (CA/GJ), AB–NIT ("Alberta Fixed-Price"); (4) Phys, FP, (US/MM), Union-Dawn ("Union-Dawn Fixed-Price"); and (5) Phys, ID, 7a (CA/GJ), AB–NIT ("7a Index") contracts, which are listed for trading on the Natural Gas Exchange, Inc. ("NGX"), an exempt commercial market ("ECM") under sections 2(h)(3)–(5) of the Commodity Exchange Act ("CEA" or the "Act"), perform a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by NGX as well as other available information. The Commission has reviewed the entire record in this matter, including all comments received, and has determined to issue orders finding that the Alberta Basis, Union-Dawn Basis, Alberta Fixed-Price, Union-Dawn Fixed-Price and 7a Index contracts do not perform a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective Date:* April 28, 2010.

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SUPPLEMENTARY INFORMATION:

I. Introduction

The CFTC Reauthorization Act of 2008 ("Reauthorization Act") [11] significantly broadened the CFTC's regulatory authority with respect to ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts ("SPDCs") are traded—and treating ECMs in that category as registered entities under the CEA.[12] The legislation authorizes the CFTC to designate an agreement, contract or transaction as a SPDC if the Commission determines, under criteria established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes such a determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.[13] As relevant here, rule 36.3 imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports of its contracts, an ECM must notify the Commission promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged five trades per day or more over the most recent calendar quarter, and for which the exchange sells its price information regarding the contract to market participants or industry publications, or whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another contract.

Commission rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish notice in the **Federal Register** that it intends to undertake an evaluation whether the specified agreement, contract or transaction performs a significant price discovery function and to receive written views, data and arguments relevant to its determination from the ECM and other interested persons. Upon the close of the comment period, the Commission will consider, among other things, all relevant information regarding the subject contract and issue an order announcing and explaining its determination whether or not the contract is a SPDC. The issuance of an affirmative order signals the effectiveness of the Commission's regulatory authorities over an ECM with respect to a SPDC; at that time such an ECM becomes subject to all provisions of the CEA applicable to registered entities.[14] The issuance of such an order also triggers the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4).[15]

II. Notice of Intent To Undertake SPDC Determination

On October 20, 2009, the Commission published in the **Federal Register** notice of its intent to undertake a determination whether the Alberta Basis, Union-Dawn Basis, Alberta Fixed-

[1] The acronym "Phys" indicates physical delivery of natural gas.

[2] The acronym "BS" indicates that the contract is a cash-settled basis swap.

[3] The acronym "LD1" indicates the final settlement price of the New York Mercantile Exchange's ("NYMEX's") physically-delivered Henry Hub Natural Gas futures contract for the corresponding contract month, which is expressed in U.S. dollars and cents per million British thermal units (mmBtu).

[4] The acronym "AB–NIT" refers to the Alberta, Canada, market center and Nova Inventory Transfer hub.

[5] "Union-Dawn" refers to the Union Gas, Ltd.'s, Dawn hub, which is located in Canada across the U.S. border from Detroit, Michigan.

[6] The acronym "FP" refers to a fixed-price contract.

[7] The abbreviation CA/GJ refers the Canadian dollars per gigajoule, which is a unit of measure for energy. One GJ is equal to 0.9478 mmBtu.

[8] The acronym "ID" refers to an index contract.

[9] The term "7a" refers to a price index that is computed as a volume-weighted average of transactions that occur on the Natural Gas Exchange's trading platform during a particular calendar month. Such transactions specify the physical delivery of natural gas at the AB–NIT hub in the following calendar month.

[10] 74 FR 53724 (October 20, 2009).

[11] Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

[12] 7 U.S.C. 1a(29).

[13] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

[14] Public Law 110–246 at 13203; *Joint Explanatory Statement of the Committee of Conference,* H.R. Rep. No. 110–627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). *See* also 73 FR 75888, 75894 (Dec. 12, 2008).

[15] For an initial SPDC, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDCs, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

Price, Union-Dawn Fixed Price and 7a Index contracts perform a significant price discovery function and requested comment from interested parties.[16] Comments were received from the Federal Energy Regulatory Commission ("FERC"), NGX and Working Group of Commercial Energy Firms ("WGCEF").[17] The comment letter from FERC[18] did not directly address the issue of whether or not the subject contracts are SPDCs. NGX stated that the subject contracts lack sufficient liquidity to perform a significant price discovery function. WGCEF argued that the Alberta Basis and Union-Dawn Basis contracts fail to meet the material price reference, price linkage and material liquidity criteria for SPDC determination. Similarly, the 7a Index contracts lack sufficient liquidity to perform a significant price discovery function.[19] NGX's and the Working Group's comments are more extensively discussed below, as applicable.

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider the following criteria in determining a contract's significant price discovery function:

• *Price Linkage*—the extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market ("DCM") or derivatives transaction execution facility ("DTEF"), or a SPDC traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.

• *Arbitrage*—the extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.

• *Material price reference*—the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing or consulting, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.

• *Material liquidity*—the extent to which the volume of agreements, contracts or transactions in a commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

Not all criteria must be present to support a determination that a particular contract performs a significant price discovery function, and one or more criteria may be inapplicable to a particular contract.[20] Moreover, the statutory language neither prioritizes the criteria nor specifies the degree to which a SPDC must conform to the various criteria. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the Commission observed that these criteria do not lend themselves to a mechanical checklist or formulaic analysis. Accordingly, the Commission has indicated that in making its determinations it will consider the circumstances under which the presence of a particular criterion, or combination of criteria, would be sufficient to support a SPDC determination.[21] For example, for contracts that are linked to other contracts or that may be arbitraged with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two markets essentially become interchangeable. This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function. In evaluating a contract's price discovery role as a price reference, the Commission the extent to which, on a frequent and recurring basis, bids, offers or transactions are directly based on, or are determined by referencing, the prices established for the contract.

IV. Findings and Conclusions

The Commission's findings and conclusions with respect to the Alberta Basis, Union-Dawn Basis, Alberta Fixed-Price, Union-Dawn Fixed-Price and 7a Index contracts are discussed separately below.

a. The Phys, BS, LD1 (US/MM), AB–NIT (Alberta Basis Contract) and the SPDC Indicia

The Alberta Basis contract calls for the physical delivery of natural gas based on the final settlement price for New York Mercantile Exchange's ("NYMEX's") Henry Hub physically-delivered Natural Gas ("NG") futures contract for the specified calendar month, plus or minus the price differential (basis) between the Alberta delivery point and the Henry Hub. There is no standard size for the Alberta Basis contract, although a minimum

[16] The Commission's Part 36 rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

[17] FERC is an independent Federal regulatory agency that, among other things, regulates the interstate transmission of natural gas, oil and electricity. NGX is Canada's leading energy exchange and North America's largest physical clearing and settlement facility; NGX is wholly owned by the TMX Group, Inc. WGCEF describes itself as "a diverse group of commercial firms in the domestic energy industry whose primary business activity is the physical delivery of one or more energy commodities to customers, including industrial, commercial and residential consumers" and whose membership consists of "energy producers, marketers and utilities." FIEG describes itself as an association of investment and commercial banks who are active participants in various sectors of the natural gas markets, "including acting as marketers, lenders, underwriters of debt and equity securities, and proprietary investors." The comment letters are available on the Commission's website: comment letters are available on the Commission's Web site: *http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/09-029.html.*

[18] FERC stated that the subject contracts call for physical delivery of natural gas in Canada, and thus do not appear to be interstate commerce under the Natural Gas Act ("NGA"). Accordingly, FERC expressed the opinion that a determination by the Commission that any of the contracts performs a significant price discovery function "would not appear to conflict with FERC's exclusive jurisdiction under NGA over certain sales of natural gas in interstate commerce for resale or with its other regulatory responsibilities under the NGA" and further that "FERC staff will continue to monitor for any such conflict * * * [and] advise the CFTC" should any such potential conflict arise. CL01.

[19] WGCEF did not address whether the Alberta Fixed Price or Union-Dawn Fixed Price contracts are SPDCs.

[20] In its October 20, 2009, **Federal Register** release, the Commission identified material price reference, price linkage and material liquidity as the possible criteria for SPDC determination of the Alberta Basis and Union-Dawn Basis contracts (arbitrage was not identified as a possible criterion). With respect to the Alberta Fixed-Price, Union-Dawn Fixed-Price and 7a Index contracts, the **Federal Register** release identified material price reference and material liquidity as the possible criteria for SPDC determination (price linkage and arbitrage were not identified as possible criteria). The criteria not indentified in the initial release will not be discussed further in this document or the associated Orders.

[21] 17 CFR part 36, Appendix A.

volume of 100 million British thermal units ("mmBtu") is required in increments of 100 units per day. The Alberta Basis contract is listed for 60 consecutive calendar months.

The Henry Hub,[22] which is located in Erath, Louisiana, is the primary cash market trading and distribution center for natural gas in the United States. It also is the delivery point and pricing basis for the NYMEX's actively traded, physically-delivered natural gas futures contract, which is the most important pricing reference for natural gas in the United States. The Henry Hub, which is operated by Sabine Pipe Line, LLC, serves as a juncture for 13 different pipelines. These pipelines bring in natural gas from fields in the Gulf Coast region and ship it to major consumption centers along the East Coast and Midwest. The throughput shipping capacity of the Henry Hub is 1.8 trillion mmBtu per day.

In addition to the Henry Hub, there are a number of other locations where natural gas is traded. In 2008, there were 33 natural gas market centers in North America.[23] Some of the major trading centers include Alberta, Northwest Rockies, Southern California border and the Houston Ship Channel. For locations that are directly connected to the Henry Hub by one or more pipelines and where there typically is adequate shipping capacity, the price at the other locations usually directly tracks the price at the Henry Hub, adjusted for transportation costs. However, at other locations that are not directly connected to the Henry Hub or where shipping capacity is limited, the prices at those locations often diverge from the Henry Hub price. Furthermore, one local price may be significantly different than the price at another location even though the two markets' respective distances from the Henry Hub are the same. The reason for such pricing disparities is that a given location may experience supply and demand factors that are specific to that region, such as differences in pipeline shipping capacity, unusually high or low demand for heating or cooling or supply disruptions caused by severe weather. As a consequence, local natural gas prices can differ from the Henry Hub price by more than the cost of shipping and such price differences can vary in an unpredictable manner.

The Alberta hub is far removed from the Henry Hub and is not directly connected to the Henry Hub by an existing pipeline. Located in the Canadian province of Alberta, the Alberta natural gas market is a major connection point for long-distance transmission systems that ship natural gas to points throughout Canada and the United States. The Alberta province is Canada's dominant natural gas producing region; six of the nine Canadian market centers are located in the Alberta province. The throughput capacity at the AECO–C hub is ten billion cubic feet per day. Moreover, the number of pipeline interconnections at that hub was four in 2008. Lastly, the AECO–C hub's capacity is 20.4 billion cubic feet per day.[24]

The local price at the Alberta hub typically differs from the price at the Henry Hub. Thus, the price of the Henry Hub physically-delivered futures contract is an imperfect proxy for the Alberta price. Moreover, exogenous factors, such as adverse weather, can cause the Alberta gas price to differ from the Henry Hub price by an amount that is more or less than the cost of shipping, making the NYMEX Henry Hub futures contract even less precise as a hedging tool than desired by market participants. Basis contracts [25] allow traders to more accurately discover prices at alternative locations and hedge price risk that is associated with natural gas at such locations. In this regard, a position at a local price for an alternative location can be established by adding the appropriate basis swap position to a position taken in the NYMEX physically-delivered Henry Hub contract (or in the NYMEX or ICE Henry Hub look-alike contract, which cash settle based on the NYMEX physically-delivered NG contract's final settlement price).

In its October 20, 2009, **Federal Register** notice, the Commission identified material price reference, price linkage and material liquidity as the potential SPDC criteria applicable to the Alberta Basis contract.[26] Each of these criteria is discussed below.

1. Material Price Reference Criterion

The Commission's October 20, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to the Alberta Basis contract. The Commission noted that NGX forged an alliance with the IntercontinentalExchange, Inc., ("ICE") to use the ICE's matching engine to complete transactions in physical natural gas contracts traded on NGX. In return, NGX agreed to provide clearing services for such transactions. As part of the agreement, NGX provides ICE with transaction data, which are then made available to market participants on a paid basis. ICE offers NGX's price data in several packages, which vary in terms of the amount of available historical data. For example, the ICE offers the "OTC Gas End of Day" data package with access to all price data, or just current prices plus a selected number of months (i.e., 12, 24, 36, or 48 months) of historical data.

The Commission will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.[27] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry

[22] The term "hub" refers to a juncture where two or more natural gas pipelines are connected. Hubs also serve as pricing points for natural gas at the particular locations.

[23] *See http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

[24] *See http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf*

[25] Basis contracts denote the difference in the price of natural gas at a specified location minus the price of natural gas at the Henry Hub. The differential can be either a positive or negative value.

[26] As noted above, the Commission did not find an indication of arbitrage in connection with this contract; accordingly, that criterion is not discussed in reference to the Alberta Basis contract.

[27] 17 CFR part 36, Appendix A.

participants in pricing cash market transactions.

The Alberta hub is a major trading center for natural gas in North America. Traders, including producers, keep abreast of the prices of the Alberta market center when conducting cash deals. However, ICE's cash-settled AECO Financial Basis contract is used more widely as a price reference than the NGX Alberta Basis contract. Traders look to ICE contract's competitively determined price as an indication of expected values of natural gas at the Alberta hub when entering into cash market transactions for natural gas, especially those trades providing for physical delivery in the future. Moreover, traders use ICE's AECO Financial Basis contract, as well as other basis contracts, to hedge cash market positions and transactions. The substantial volume of trading and open interest in the ICE contract attests to its use for this purpose.[28] In contrast, trading volume in the NGX Alberta Basis contract is much smaller than in ICE's cash-settled version of the contract. In this regard, total trading volume in the NGX Alberta Basis contract in the third quarter of 2009 was equivalent to 52,158 NYMEX physically-delivered natural gas contracts, which has a size of 10,000 mmBtu.

Accordingly, although the Alberta Hub is a major trading center for natural gas and, as noted, NGX provides price information for the Alberta Basis contract to ICE which sells it, the Commission has found upon further evaluation that the Alberta Basis contract is not routinely consulted by industry participants in pricing cash market transactions and thus does not meet the Commission's Guidance for the material price reference criterion. In this regard, the ICE AECO natural gas futures contract is routinely consulted by industry participants in pricing cash market transactions at this location. Because both the NGX and the ICE contracts basically price the same commodity at the same location and time and the ICE contract has significantly higher trading volume and open interest, it is not necessary for market participants to independently refer to the NGX Alberta Basis contract for pricing natural gas at this location.

Thus, the Alberta Basis contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the Alberta Basis contract's prices is not indirect evidence of material price reference. The Alberta Basis contract's prices are published with those of numerous other contracts, including ICE's AECO Financial Basis contract, which are of more interest to market participants. Thus, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the NGX Alberta Basis contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. **Federal Register** Comments

NGX states its opinion that the Alberta Basis contract does not satisfy the material price reference criteria because the contract lacks sufficient liquidity, and "the consideration of liquidity is implicitly understood to be a relevant, if not fundamental factor, where material price reference is being considered." [29] Furthermore, NGX opined that the Commission purported "to adopt a threshold as low as 5, 10 or 20 trades per day as sufficiently material to attract a SPDC designation." [30] In this regard, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs" [31] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC. However, this does not mean that the contract will be found to be a SPDC merely because it met the reporting threshold. WGCEF states that there is no direct evidence that any contracts on any market settle to or reference the NGX Alberta Basis price. Moreover, WGCEF "does not believe the fact that ICE publishes the settlement prices of NGX physical transactions constitutes sufficient evidence of a Material Price Reference necessary to satisfy the requirements of CEA Section 2(h)(7)(B)(iii)." It notes that the publication of NGX price data by ICE is the result of a unique arrangement between ICE and NGX, whereby ICE serves as the exclusive trading platform for NGX contracts and NGX does not publish any trade data on its own website. "Given this unique arrangement," WGCEF asserts, "it is only logical that ICE publishes transaction data regarding the NGX physical deals in its "OTC Gas End of Day" publication." As noted above, the Commission believes that publication of the Alberta Basis contract's prices is not indirect evidence of material price reference. The Alberta Basis contract's prices are published with those of numerous other contracts, including ICE's AECO Financial Basis contract, which are of more interest to market participants. As a result, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the NGX Alberta Basis contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the NGX Alberta Basis contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the Alberta Basis contract's price (direct evidence). Moreover, while the Alberta Basis contract's price data is sold to market participants, market participants likely do not specifically purchase the ICE data packages for the Alberta contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Price Linkage Criterion

In its October 20, 2009, **Federal Register** notice, the Commission identified price linkage as a potential basis for a SPDC determination with respect to the Alberta Basis contract. In this regard, the final settlement of the Alberta Basis contract is based, in part, on the final settlement price of NYMEX's Henry Hub physically delivered NG futures contract, where NYMEX is registered with the Commission as a DCM.

The Commission's Guidance on Significant Price Discovery Contracts notes that a "price-linked contract is a contract that relies on a contract traded on another trading facility to settle, value or otherwise offset the price-linked contract." [32] Furthermore, the Guidance notes that "[f]or a linked contract, the mere fact that a contract is linked to another contract will not be sufficient to support a determination that a contract performs a significant

[28] In the third quarter of 2009, 6,320 separate trades occurred on ICE's electronic platform in its AECO Financial Basis contract, resulting in a daily average of 95.8 trades. During the same period, the ICE contract had a total trading volume on its electronic platform of 736,412 contracts (which was an average of 11,158 contracts per day). As of September 30, 2009, open interest in the ICE AECO Financial Basis contract was 483,561 contracts.

[29] CL 02.

[30] *Id.*

[31] 73 FR 75892 (December 12, 2008)

[32] Appendix A to the Part 36 rules.

price discovery function. To assess whether such a determination is warranted, the Commission will examine the relationship between transaction prices of the linked contract and the prices of the referenced contract. The Commission believes that where material liquidity exists, prices for the linked contract would be observed to be substantially the same as, or move substantially in conjunction with, the prices of the referenced contract." The Guidance proposes a threshold price relationship such that prices of the ECM linked contract will fall within a 2.5 percent price range for 95 percent of contemporaneously determined closing, settlement or other daily prices over the most recent quarter. Finally, the Commission also stated in the Guidance that it would consider a linked contract that has a trading volume equivalent to 5 percent of the volume of trading in the contract to which it is linked to have sufficient volume potentially to be deemed SPDC ("minimum threshold").

To assess whether the Alberta Basis contract meets the price linkage criterion, Commission staff obtained price data from NGX and performed the statistical tests cited above. Staff found that, while the Alberta Basis contract price is determined, in part, by the final settlement price of the NYMEX physically delivered natural gas futures contract (a DCM contract), the imputed Alberta price (derived by adding the NYMEX Henry Hub Natural Gas price to the Alberta Basis price) is not within 2.5 percent of the settlement price of the corresponding NYMEX Henry Hub natural gas futures contract on 95 percent or more of the days. Specifically, during the third quarter of 2009, none of the Alberta Basis natural gas prices derived from the NGX basis values were within 2.5 percent of the daily settlement price of the NYMEX Henry Hub futures contract. In addition, staff found that the Alberta Basis contract fails to meet the volume threshold requirement. In particular, the total trading volume in the NYMEX NG contract during the third quarter of 2009 was 14,022,963 contracts, with 5 percent of that number being 701,148 contracts. Trades on the NGX centralized market in the Alberta Basis contract during the same period was 52,168 NYMEX-equivalent contracts. Thus, centralized-market trades in the Alberta Basis contract amounted to less than the minimum threshold.

i. Federal Register Comments

NGX states its belief that the Alberta Basis contract does not meet the price linkage factor because there is insufficient trading activity in this contract.

WGCEF acknowledges that the Alberta Basis contract is technically linked to the NYMEX Henry Hub NG contract. However, WGCEF contends that a comparison of the Alberta Basis contract price with NYMEX NG settlement prices from July 21, 2009 through November 2, 2009 clearly establishes that prices for these contracts are not substantially the same and do not move substantially in conjunction with one another.

ii. Conclusion Regarding the Price Linkage Criterion

The Commission finds that the NGX Alberta Basis contract does not meet the price linkage criterion because it fails the price relationship and volume test provided for in the Commission's Guidance.

3. Material Liquidity Criterion

As noted above, in its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity, price linkage and material price reference as potential criteria for SPDC determination of the AB contract. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject-contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

With respect to the material liquidity criterion, the Commission noted that the average number of transactions in the Alberta Basis nearby month contract was 23.2 trades per day in the second quarter of 2009. During the same period, the Alberta Basis contract had an average daily trading volume of 5,869,000 mmBtu (or 587 NYMEX-equivalent contracts of 10,000 mmBtu size). Moreover, open interest as of June 30, 2009, was 150,213,600 mmBtu in the nearby month (15,021 NYMEX equivalents) and 10,112,200 mmBtu (1,011 NYMEX equivalents) for delivery two months out.[33]

In a subsequent filing, NGX reported that in the third quarter of 2009 the total number of transactions was 2,640 trades (an average of 40 trades per day). Trading volume in the third quarter of 2009 was 521,580,000 mmBtu (52,158 NYMEX-equivalent contracts) or an average of 7,900,000 mmBtu (790 NYMEX-equivalent contracts) on a daily basis. As of September 30, 2009, open interest in the Alberta Basis contract was 6,440,000 mmBtu (644 NYMEX-equivalent contracts).

The number of trades per day remained relatively low from the second to third quarters of 2009, and averaged only slightly more than the reporting level of five trades per day. Moreover, trading activity in the Alberta Basis contract, as characterized by total quarterly volume, indicates that the Alberta Basis contract experiences trading activity that is similar to that of minor futures markets.[34] Thus, the Alberta Basis contract does not meet a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.[35]

i. **Federal Register** Comments

NGX stated in its comment letter that the Alberta Basis contract does not meet the material liquidity criterion for SPDC determination for a number of reasons.

First, NGX opined that the Commission "seems to have applied a threshold for 'material liquidity' that is extremely low, and in general insufficient to support a determination that these contracts are no longer emerging markets but in fact serve a significant price discovery function." NGX also noted that the Commission's Guidance states that material liquidity was intended to be a "broad concept that captures the ability to transact immediately with little or no price concession." The Guidance also states that where "material liquidity exists, a more or less continuous stream of prices can be observed and the prices should be similar," such as "where trades occur multiple times per minute." NGX then opined that "[t]he levels of liquidity

[33] Second quarter 2009 data was submitted to the Commission in a different format than in later filings. In this regard total trading volume and total number of trades per quarter were not identified.

[34] Based on the Commission's experience, a minor futures contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less.

[35] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is an SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." For the reasons discussed above, the Commission has found that the Union-Dawn Basis contract does not meet either the price linkage or material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since it cannot be used alone as a basis for an SPDC determination.

outlined above for the Proposed Contracts cannot be what Congress intended in establishing the dividing line between contracts ripe for regulation and those still emerging and in need of further incubation."

WGCEF used arguments similar to those of NGX in opining that the Alberta Basis contract does not meet the material liquidity criterion. For example, WGCEF stated that the Alberta Basis contract does not have an effect on other contracts that are listed for trading, particularly the NYMEX NG contract. WGCEF pointed out the Commission's Guidance which states that a "continuous stream of prices" should be observed in markets with material liquidity. In addition, WGCEF indicated that in liquid markets observed prices should be similar to each other and that transactions should occur multiple times per minute; "the trade frequency of the Alberta Basis Contract in terms of multiple trades per minute is very low." In this regard, the Commission notes that it adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs" [36] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC but this does not mean that the contract will be found to be a SPDC merely because it met the reporting threshold. Furthermore, the Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the Alberta Basis contract does not meet the material liquidity criterion.

4. Overall Conclusion Regarding the Alberta Basis Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the NGX Alberta Basis contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the NGX Alberta Basis contract does not meet the material price reference, price linkage, or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the Alberta Basis contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard NGX as a registered entity in connection with its Alberta Basis contract.[37] Accordingly, with respect to its Alberta Basis contract, NGX is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, NGX must continue to comply with the applicable reporting requirements for ECMs.

b. The Phys, BS, LD1 (US/MM), Union-Dawn (Union-Dawn Basis) Contract and the SPDC Indicia

The NGX Union-Dawn Basis contract is a monthly contract that calls for physical delivery of natural gas based on the final settlement price for NYMEX's Henry Hub physically-delivered natural gas futures contract for the specified calendar month, plus or minus the price differential (basis) between the Dawn delivery point and the Henry Hub. There is no standard size for the Union-Dawn Basis contract, although a minimum volume of 100 mmBtu is required in increments of 100 units per day. The Union-Dawn Basis contract is listed for 60 consecutive calendar months.

The Henry Hub,[38] which is located in Erath, Louisiana, is the primary cash market trading and distribution center for natural gas in the United States. It also is the delivery point and pricing basis for the NYMEX's actively traded, physically-delivered natural gas futures contract, which is the most important pricing reference for natural gas in the United States. The Henry Hub, which is operated by Sabine Pipe Line, LLC, serves as a juncture for 13 different pipelines. These pipelines bring in natural gas from fields in the Gulf Coast region and ship it to major consumption centers along the East Coast and Midwest. The throughput shipping capacity of the Henry Hub is 1.8 trillion mmBtu per day.

In addition to the Henry Hub, there are a number of other locations where natural gas is traded. In 2008, there were 33 natural gas market centers in North America.[39] Some of the major trading centers include Alberta, Northwest Rockies, Southern California border and the Houston Ship Channel. For locations that are directly connected to the Henry Hub by one or more pipelines and where there typically is adequate shipping capacity, the price at the other locations usually directly tracks the price at the Henry Hub, adjusted for transportation costs. However, at other locations that are not directly connected to the Henry Hub or where shipping capacity is limited, the prices at those locations often diverge from the Henry Hub price. Furthermore, one local price may be significantly different than the price at another location even though the two markets' respective distances from the Henry Hub are the same. The reason for such pricing disparities is that a given location may experience supply and demand factors that are specific to that region, such as differences in pipeline shipping capacity, unusually high or low demand for heating or cooling or supply disruptions caused by severe weather. As a consequence, local natural gas prices can differ from the Henry Hub price by more than the cost of shipping and such price differences can vary in an unpredictable manner.

Union Gas, Ltd., is a major Canadian natural gas storage, transmission, and distribution company based in Ontario, Canada. Union Gas offers premium storage and transportation services to customers at the Dawn hub, which is the largest underground storage facility in Canada and one of the largest in North America. The Dawn hub offers customers an important link for natural gas moving from Western Canadian and U.S. supply basins to markets in central Canada and the northeast United States. The throughput capacity at the Dawn hub is 9.3 billion cubic feet per day. Moreover, the number of pipeline interconnections at that hub was ten in 2008. Lastly, the Dawn hub's capacity is 12.8 billion cubic feet per day.[40]

The local price at the Dawn hub typically differs from the price at the Henry Hub. Thus, the price of the Henry Hub physically-delivered futures contract is an imperfect proxy for the Dawn price. Moreover, exogenous factors, such as adverse weather, can cause the Dawn gas price to differ from the Henry Hub price by an amount that is more or less than the cost of shipping, making the NYMEX Henry Hub futures

[36] 73 FR 75892 (December 12, 2008).

[37] *See* 73 FR 75888, 75893 (Dec. 12, 2008).

[38] The term "hub" refers to a juncture where two or more natural gas pipelines are connected. Hubs also serve as pricing points for natural gas at the particular locations.

[39] *See http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

[40] *See http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

contract even less precise as a hedging tool than desired by market participants. Basis contracts [41] allow traders to more accurately discover prices at alternative locations and hedge price risk that is associated with natural gas at such locations. In this regard, a position at a local price for an alternative location can be established by adding the appropriate basis swap position to a position taken in the NYMEX physically-delivered Henry Hub contract (or in the NYMEX or ICE Henry Hub look-alike contract, which cash settle based on the NYMEX physically-delivered natural gas contract's final settlement price).

In its October 20, 2009, **Federal Register** notice, the Commission identified material price reference, price linkage and material liquidity as the potential SPDC criteria applicable to the Union-Dawn Basis contract. Each of these criteria is discussed below.[42]

1. Material Price Reference Criterion

The Commission's October 20, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to this contract. The Commission noted that NGX forged an alliance with ICE to use ICE's matching engine to complete transactions in physical natural gas contracts traded on NGX. In return, NGX agreed to provide the clearing services for such transactions. As part of the agreement, NGX provides ICE with transaction data, which are then made available to market participants on a paid basis. ICE offers the NGX data in several packages, which vary in terms of the amount of available historical data. For example, the ICE offers the "OTC Gas End of Day" data packages with access to all price data, or just current prices plus a selected number of months (*i.e.,* 12, 24, 36, or 48 months) of historical data.

The Commission will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.[43] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The Union-Dawn hub is a relatively important trading center for natural gas in North America. Traders use the NGX Union-Dawn Basis contract to hedge cash market positions and transactions. Nevertheless, the relatively small volume of trading and open interest [44] in the Union-Dawn Basis contract does not support a finding that the contract is consulted on a frequent and recurring basis in establishing cash market transaction prices. Thus, the Union-Dawn Basis contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the Union-Dawn Basis contract's prices is not indirect evidence of material price reference. The Union-Dawn Basis contract's prices are published with those of numerous other contracts, including ICE's AECO Financial Basis contract, which are of more interest to market participants. Thus, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the NGX Union-Dawn Basis contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. **Federal Register** Comments

NGX expressed the opinion that the Union Dawn Basis contract does not meet the material price reference criterion because there is insufficient trading activity in this contract.

WGCEF stated that there is no evidence that the Union-Dawn Basis contract does not directly affect the "settlement of the NYMEX NG Contract nor does it influence physical pricing at the Henry Hub." [45] Moreover, there is no evidence that a contract in any market is tied directly or indirectly to the settlement price of the Union-Dawn Basis contract. With respect to indirect evidence, WGCEF believes that ICE's publication of the NGX contract's settlement prices does not "constitute sufficient evidence" of material price reference, and is simply an extension of the "unique [business] arrangement" between ICE and NGX.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the NGX Union-Dawn Basis contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the Union-Dawn Basis contract's price (direct evidence). Moreover, while the Union-Dawn Basis contract's price data is sold to market participants, individuals likely do not specifically purchase the ICE data packages for the Union-Dawn Basis contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Price Linkage Criterion

In its October 20, 2009, **Federal Register** notice, the Commission identified price linkage as a potential basis for a SPDC determination with respect to the Union-Dawn Basis contract. In this regard, the final settlement of the Union-Dawn Basis contract is based, in part, on the final settlement price of the NYMEX's Henry Hub physically-delivered natural gas futures contract, where the NYMEX is registered with the Commission as a DCM.

The Commission's Guidance on Significant Price Discovery Contracts notes that a "price-linked contract is a contract that relies on a contract traded on another trading facility to settle, value or otherwise offset the price-

[41] Basis contracts denote the difference in the price of natural gas at a specified location minus the price of natural gas at the Henry Hub. The differential can be either a positive or negative value.

[42] As noted above, the Commission did not find an indication of arbitrage in connection with this contract; accordingly, that criterion is not discussed in reference to the Union-Dawn Basis contract.

[43] 17 CFR part 36, Appendix A.

[44] In the third quarter of 2009, the Union-Dawn Basis contract had a total trading volume that was equivalent to 28,090 NYMEX physically-delivered NG futures contracts (the size of one NYMEX NG contract is 10,000 mmBtu); the Union-Dawn contract also had an open interest equivalent to 2,948 NYMEX NG futures contracts.

[45] CL 03.

linked contract." [46] Furthermore, the Guidance notes that "[f]or a linked contract, the mere fact that a contract is linked to another contract will not be sufficient to support a determination that a contract performs a significant price discovery function. To assess whether such a determination is warranted, the Commission will examine the relationship between transaction prices of the linked contract and the prices of the referenced contract. The Commission believes that where material liquidity exists, prices for the linked contract would be observed to be substantially the same as, or move substantially in conjunction with, the prices of the referenced contract." The Guidance proposes a threshold price relationship such that prices of the ECM linked contract will fall within a 2.5 percent price range for 95 percent of contemporaneously determined closing, settlement or other daily prices over the most recent quarter. Finally, the Commission also stated in the Guidance that it would consider a linked contract that has a trading volume equivalent to 5 percent of the volume of trading in the contract to which it is linked to have sufficient volume potentially to be deemed a SPDC ("minimum threshold").

To assess whether the Union-Dawn contract meets the price linkage criterion, Commission staff obtained price data from NGX and performed the statistical tests cited above. Staff found that, while the Union-Dawn Basis contract price is determined, in part, by the final settlement price of the NYMEX physically-delivered natural gas futures contract (a DCM contract), the imputed Union-Dawn price (derived by adding the NYMEX Henry Hub Natural Gas price to the Union-Dawn Basis price) is not within 2.5 percent of the settlement price of the corresponding NYMEX Henry Hub natural gas futures contract on 95 percent or more of the days. Specifically, during the third quarter of 2009, 27.4 percent of the Union-Dawn Basis natural gas prices derived from the NGX basis values were within 2.5 percent of the daily settlement price of the NYMEX Henry Hub futures contract. In addition, staff found that the Union-Dawn Basis contract fails to meet the volume threshold requirement. In particular, the total trading volume in the NYMEX NG contract during the third quarter of 2009 was 14,022,963 contracts, with 5 percent of that number being 701,148 contracts. Trades on the NGX centralized market in the Union-Dawn Basis contract during the same period was 28,090 NYMEX-equivalent contracts. Thus, centralized-market trades in the Union-Dawn Basis contract amounted to less than the minimum threshold.

i. **Federal Register** Comments

NGX states its belief that the Union Dawn Basis contract does not meet the price linkage factor because there is insufficient trading activity in this contract. WGCEF acknowledges that the Union-Dawn Basis is technically linked to the NYMEX physically-delivered NG futures contract. The Working Group notes that a comparison of the Union-Dawn Basis with NYMEX NG settlement prices from July 21, 2009, through November 2, 2009, clearly establishes that these contracts are not substantially the same and do not move substantially in conjunction with one another.

ii. Conclusion Regarding the Price Linkage Criterion

The Commission finds that the Union-Dawn Basis contract does not meet the price linkage criterion because it fails the price relationship and volume tests provided for in the Commission's Guidance.

3. Material Liquidity Criterion

As noted above, in its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity, price linkage and material price reference as potential criteria for SPDC determination of the Union-Dawn Basis contract. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject-contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

In its October 20, 2009, **Federal Register** release, the Commission noted that the total number of transactions executed on NGX's electronic platform in the nearby month of the Union-Dawn Basis contract was 8.3 trades per day in the second quarter of 2009. During the same period, the Union-Dawn Basis contract had an average daily trading volume of 1,332,400 mmBtu (or 133 NYMEX-equivalent contracts per day). Moreover, open interest as of June 30, 2009, was 28,203,800 mmBtu (2,820 NYMEX-equivalent contracts) in the nearby contract month and 12,908,400 mmBtu (1,291 NYMEX-equivalent contracts) for delivery two months out.[47]

In a subsequent filing, NGX reported that total trading volume in the third quarter of 2009 was 28,090 contracts (or 425 contracts on a daily basis). In term of number of transactions, 1,831 trades occurred in the third quarter of 2009 (28 trades per day). As of September 30, 2009, open interest in the Union-Dawn Basis contract was 23,289 NYMEX-equivalent contracts.

As indicated above, the average number of trades per day in the second and third quarters of 2009 was only slightly above the minimum reporting level (5 trades per day). Moreover, trading activity in the Union-Dawn Basis contract, as characterized by total quarterly volume, indicates that the Union-Dawn Basis contract experiences trading activity similar to that of minor futures markets.[48] Thus, the Union-Dawn Basis contract does not meets a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.[49]

i. **Federal Register** Comments

NGX stated in its comment letter that the Union-Dawn Basis contract does not meet the material liquidity criterion for SPDC determination for a number of reasons.

First, NGX opined that the Commission "seems to have applied a threshold for 'material liquidity' that is extremely low, and in general insufficient to support a determination that these contracts are no longer emerging markets but in fact serve a significant price discovery function". NGX also noted that the Commission's Guidance states that material liquidity was intended to be a "broad concept that captures the ability to transact immediately with little or no price

[46] Appendix A to the Part 36 rules.

[47] Second quarter 2009 data was submitted to the Commission is a different format than in later filings. In this regard total trading volume and total number of trades per quarter were not identified.

[48] Based on the Commission's experience, a minor futures contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less.

[49] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." For the reasons discussed above, the Commission has found that the Union-Dawn Basis contract does not meet either the price linkage or material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since it cannot be used alone as a basis for a SPDC determination.

concession." The Guidance also states that where "material liquidity exists, a more or less continuous stream of prices can be observed and the prices should be similar", such as "where trades occur multiple times per minute." NGX then opined that "[t]he levels of liquidity outlined above for the Proposed Contracts cannot be what Congress intended in establishing the dividing line between contracts ripe for regulation and those still emerging and in need of further incubation.

The WGCEF used arguments similar to those of NGX in opining that the Union-Dawn Basis contract does not meet the material liquidity criterion. In addition, WGCEF noted that to be materially liquid, a contract must have "a material effect of other contracts" and have "sufficient liquidity to perform a significant price discovery function." WGCEF stated that the Union-Dawn Basis contract lacks both of those features.

In this regard, the Commission notes that it adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs" [50] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC but this does not mean that the contract will be found to be a SPDC merely because it met the reporting threshold. Furthermore, the Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the Union-Dawn Basis contract does not meet the material liquidity criterion.

4. Overall Conclusion Regarding the Union-Dawn Basis Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the Union-Dawn Basis contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the Union-Dawn Basis contract does not meet the material price reference, price linkage, or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the Union-Dawn Basis contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard NGX as a registered entity in connection with its Union-Dawn Basis contract.[51] Accordingly, with respect to its Union-Dawn Basis contract, NGX is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, NGX must continue to comply with the applicable reporting requirements for ECMs.

c. The Phys, FP, (CA/GJ), AB–NIT (Alberta Fixed Price) Contract and the SPDC Indicia

The Alberta Fixed-Price contract calls for physical delivery of natural gas at the Alberta hub over a number of different time periods. This contract allows delivery of natural gas during the following day, Friday plus two or three days, Saturday plus three or four days, Sunday plus two days, the remainder of the month, throughout the nearby calendar month, and during a specific future calendar month. Each delivery period is considered to be a separate contract, and market participants value each delivery period separately. However, overlapping delivery days are considered fungible, and, thus, may be offset by traders. There is no standard size for the Alberta Fixed-Priced contract, although a minimum volume of 94.78 mmBtu is required in increments of 100 units per day. The NGX lists the Alberta Fixed-Price contract for 60 calendar months.

As noted above, the primary pricing point for natural gas in North America is the Henry Hub, which is located in Erath, Louisiana. In addition to the Henry Hub, there are a number of other locations where natural gas is traded. In 2008, there were 33 natural gas market centers in North America.[52] Some of the major trading centers include Alberta, Northwest Rockies, Southern California border and the Houston Ship Channel. For locations that are directly connected to the Henry Hub by one or more pipelines and where there typically is adequate shipping capacity, the price at the other locations usually directly tracks the price at the Henry Hub, adjusted for transportation costs. However, at other locations that are not directly connected to the Henry Hub or where shipping capacity is limited, the prices at those locations often diverge from the Henry Hub price. Furthermore, one local price may be significantly different than the price at another location even though the two markets' respective distances from the Henry Hub are the same. The reason for such pricing disparities is that a given location may experience supply and demand factors that are specific to that region, such as differences in pipeline shipping capacity, unusually high or low demand for heating or cooling or supply disruptions caused by severe weather. As a consequence, local natural gas prices can differ from the Henry Hub price by more than the cost of shipping and such price differences can vary in an unpredictable manner.

The Alberta hub is far removed from the Henry Hub and is not directly connected to the Henry Hub by an existing pipeline. Located in the Canadian province of Alberta, the Alberta natural gas market is a major connection point for long-distance transmission systems that ship natural gas to points throughout Canada and the United States. The Alberta province is Canada's dominant natural gas producing region; six of the nine Canadian market centers are located in the Alberta province. The throughput capacity at the AECO–C hub is ten billion cubic feet per day. Moreover, the number of pipeline interconnections at that hub was four in 2008. Lastly, the AECO–C hub's capacity is 20.4 billion cubic feet per day.[53]

The local price at the Alberta hub typically differs from the price at the Henry Hub. Thus, the price of the Henry Hub physically-delivered futures contract is an imperfect proxy for the Alberta price. Moreover, exogenous factors, such as adverse weather, can cause the Alberta gas price to differ from the Henry Hub price by an amount that is more or less than the cost of shipping, making the NYMEX Henry Hub futures contract even less precise as a hedging tool than desired by market participants.

In its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity and material price reference as the potential SPDC criteria applicable to the Alberta Fixed-Price contract. Each of these factors is discussed below.[54]

[50] 73 FR 75892 (December 12, 2008).

[51] *See* 73 FR 75888, 75893 (Dec. 12, 2008).

[52] *See http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

[53] *See http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf*

[54] As noted above, the Commission did not find an indication of arbitrage and price linkage in

Continued

1. Material Price Reference Criterion

The Commission's October 20, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to this contract. The Commission noted that the NGX forged an alliance with ICE to use the ICE's matching engine to complete transactions in physical gas contracts traded on NGX. In return, the NGX agreed to provide the clearing services for such transactions. As part of the agreement, NGX provides the ICE with transaction data, which are then made available to market participants on a paid basis. The ICE offers the NGX data in several packages, which vary in terms of the amount of available historical data. For example, the ICE offers the "OTC Gas End of Day" data package with access to all price data, or just current prices plus a selected number of months (*i.e.,* 12, 24, 36, or 48 months) of historical data.

The Commission will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.[55] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The Alberta hub is a major trading center for natural gas in North America. Traders, including producers, keep abreast of the prices of the Alberta market center when conducting cash deals. However, ICE's cash-settled AECO Financial Basis contract is used more widely as a price reference than the NGX Alberta Fixed-Price contract. Traders look to the ICE contract's competitively determined price as an indication of expected values of natural gas at the Alberta hub when entering into cash market transactions for natural gas, especially those trades providing for physical delivery in the future. Traders use ICE's AECO Financial Basis contract, as well as other basis contracts, to hedge cash market positions and transactions. The substantial volume of trading and open interest in the ICE contract attests to its use for this purpose.[56] In contrast, trading volume in the NGX Alberta Fixed-Price contract is much smaller than in ICE's AECO Financial Basis contract. In this regard, total trading volume in the NGX Alberta Fixed Price contract in the third quarter of 2009 was equivalent to 50,313 NYMEX physically-delivered NG contracts, which has a size of 10,000 mmBtu.[57]

Accordingly, although the Alberta Hub is a major trading center for natural gas and, as noted, NGX provides price information for the Alberta Fixed Price contract to ICE which sells it, the Commission has found upon further evaluation that the Alberta Fixed Price contract is not routinely consulted by industry participants in pricing cash market transactions and thus does not meet the Commission's Guidance for the material price reference criterion. In this regard, the ICE AECO Financial Basis contract is routinely consulted by industry participants in pricing cash market transactions at this location. Because both the NGX and the ICE contracts basically price the same commodity at the same location and time[58] and the ICE contract has significantly higher trading volume and open interest, it is not necessary for market participants to independently refer to the NGX Alberta Fixed-Price contract for pricing natural gas at this location. Thus, the Alberta Fixed-Price contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the NGX Alberta Fixed-Price contract's prices is not indirect evidence of material price reference. The NGX Alberta Fixed-Price contract's prices are published with those of numerous other contracts, which are of more interest to market participants. Thus, the Commission has concluded that traders likely do not specifically purchase the ICE data packages for the NGX Alberta Fixed-Price contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. Federal Register Comments

NGX states its belief that the Alberta Fixed Price contract does not meet the material price reference factor because there is insufficient trading activity in this contract.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the NGX Alberta Fixed-Price contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the Alberta Fixed Price contract's price (direct evidence). Moreover, while the Alberta Fixed-Price contract's price data is sold to market participants, market participants likely do not specifically purchase the ICE data packages for the Alberta Fixed-Price contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

As noted above, in its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity and material price reference as potential criteria for SPDC determination of the Alberta Fixed-Price contract. With respect to the material liquidity criterion, the Commission noted that the total number of transactions executed in the contract on NGX's electronic platform during the second quarter of 2009 was 122.1, 36.0,

connection with this contract; accordingly, those criteria are not discussed in reference to the Alberta Fixed-Price contract.

[55] 17 CFR part 36, Appendix A.

[56] In the third quarter of 2009, 6,320 separate trades occurred on ICE's electronic platform, resulting in a daily average of 95.8 trades. During the same period, the ICE contract had a total trading volume on its electronic platform of 736,412 contracts (which was an average of 11,158 contracts per day). Open interest in ICE's AECO Financial Basis Contract was 483,561 contracts as of September 30, 2009.

[57] Trading volume in the ICE AECO Financial Basis contract during the third quarter of 2009 was equivalent to 184,103 NYMEX NG contracts.

[58] The Alberta natural gas price can be derived using the Alberta Basis contract and the NYMEX Henry Hub NG contract. In this regard, the imputed price is the Henry Hub price plus or minus the basis at Alberta, as indicated by the NGX Alberta Basis contract.

7.0, 30.1, 7.4, 68.6 and 12.8 trades for the following delivery periods—following day, Friday plus two days, Friday plus three days, Saturday plus three days, Saturday plus four days, Sunday plus two days, remainder of the month, nearby calendar month, and any single future calendar month, respectively. During the same period, the Alberta Fixed-Price contract had a total trading volume of 1,209,505 mmBtu; 821,565 mmBtu; 223,874 mmBtu; 754,175 mmBtu; 672,568 mmBtu; 6,634,030 mmBtu; and 1,233,958 mmBtu for the following delivery periods—next day, Friday plus two days, Friday plus three days, Saturday plus three days, Saturday plus four days, Sunday plus two days, remainder of the month, nearby calendar month, and any single future calendar month, respectively. Moreover, the net open interest as of June 30, 2009, was 96,003,450 mmBtu for next-month delivery. For delivery two months out, the open interest was 54,456,997 mmBtu.[59]

In a subsequent filing NGX reported that total trading volume in the third quarter of 2009 was 50,313 contracts (or 762 contracts on a daily basis). In term of number of transactions, 4,694 trades occurred in the third quarter of 2009 (73 trades per day), for those Alberta Fixed-Price contracts that specify delivery in the spot month. As of September 30, 2009, open interest in the Alberta Fixed-Price contract was 23,961 NYMEX-equivalent contracts.

The average number of trades per day in the second and third quarters of 2009 was only moderately above the minimum reporting level (5 trades per day). Moreover, trading activity in the Alberta Fixed-Price contract, as characterized by total quarterly volume, indicates that the Alberta Fixed-Price contract experiences trading activity similar to that of minor futures markets.[60] Thus, the Alberta Fixed-Price contract does not meets a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.[61]

i. Federal Register Comments

NGX stated in its comment letter that the Alberta Fixed-Price contract does not meet the material liquidity criterion for SPDC determination for a number of reasons.

First, NGX opined that the Commission "seems to have applied a threshold for "material liquidity" that is extremely low, and in general insufficient to support a determination that these contracts are no longer emerging markets but in fact serve a significant price discovery function." NGX also noted that the Commission's Guidance states that material liquidity was intended to be a "broad concept that captures the ability to transact immediately with little or no price concession". The Guidance also states that where "material liquidity exists, a more or less continuous stream of prices can be observed and the prices should be similar", such as "where trades occur multiple times per minutes. NGX then opined that "[t]he levels of liquidity outlined above for the Proposed Contracts cannot be what Congress intended in establishing the dividing line between contracts ripe for regulation and those still emerging and in need of further incubation.

In this regard, the Commission notes that it adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"[62] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC but this does not mean that the contract will be found to be a SPDC merely because it met the reporting threshold. Furthermore, the Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the Alberta Fixed-Price contract does not meet the material liquidity criterion.

3. Overall Conclusion Regarding the Alberta Fixed-Price Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the Alberta Fixed-Price contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the Alberta Fixed-Price contract does not meet the material price reference or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the Alberta Fixed-Price contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard NGX as a registered entity in connection with its Alberta Fixed-Price contract.[63] Accordingly, with respect to its Alberta Fixed-Price contract, NGX is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, NGX must continue to comply with the applicable reporting requirements.

d. The Phys, FP, (US/MM), Union-Dawn (Union-Dawn Fixed-Price) Contract and the SPDC Indicia

The Union-Dawn Fixed-Price contract calls for physical delivery of natural gas at the Dawn hub over two different time periods: The following day and Saturday plus three days. Each delivery period is considered to be a separate contract, and the market participants value each delivery period separately. However, overlapping delivery days are considered fungible, and, thus, may be offset by traders. There is no standard size for the Union-Dawn Fixed-Priced contract, although a minimum volume of 100 mmBtu required in increments of 100 units per day. The NGX lists the Union-Dawn Fixed-Price contract for 60 calendar months.

Union Gas, Ltd., is a major Canadian natural gas storage, transmission, and distribution company based in Ontario, Canada. Union Gas offers premium storage and transportation services to customers at the Dawn hub, which the largest underground storage facility in Canada and one of the largest in North America. The Dawn hub offers customers an important link for natural gas moving from Western Canadian and U.S. supply basins to markets in central

[59] Second quarter 2009 data was submitted to the Commission is a different format than in later filings. In this regard total trading volume and total number of trades per quarter were not identified.

[60] Based on the Commission's experience, a minor futures contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less.

[61] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." For the reasons discussed above, the Commission has found that the Alberta Fixed-Price contract does not meet either the price linkage or material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since it cannot be used alone as a basis for a SPDC determination.

[62] 73 FR 75892 (December 12, 2008).

[63] *See* 73 FR 75888, 75893 (Dec. 12, 2008).

Canada and the northeast United States. The throughput capacity at the Dawn hub is 9.3 billion cubic feet per day. Moreover, the number of pipeline interconnections at that hub was ten in 2008. Lastly, the Dawn hub's capacity is 12.8 billion cubic feet per day.[64]

In its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity and material price reference as the potential SPDC criteria applicable to the Union-Dawn Fixed-Price contract. Each of these factors is discussed below.[65]

1. Material Price Reference Criterion

The Commission's October 20, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to this contract. The Commission noted that NGX forged an alliance with ICE to use the ICE's matching engine to complete transactions in physical gas contracts traded on NGX. In return, the NGX agreed to provide the clearing services for such transactions. As part of the agreement, NGX provides the ICE with transaction data, which are then made available to market participants on a paid basis. The ICE offers the NGX data in several packages, which vary in terms of the amount of available historical data. For example, the ICE offers the "OTC Gas End of Day" data packages with access to all price data, or just current prices plus a selected number of months (*i.e.,* 12, 24, 36, or 48 months) of historical data.

The Commission will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.[66] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The Dawn hub is a major trading center for natural gas in the United States. Traders use the NGX Union-Dawn Fixed-Price contract to hedge cash market positions and transactions. Nevertheless, the relatively small volume of trading and open interest[67] in the Union-Dawn Fixed-Price contract does not support a finding that the contract is consulted on a frequent and recurring basis in establishing cash market transaction prices. Thus, the Union-Dawn Fixed-Price contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the Union-Dawn Fixed-Price contract's prices is not indirect evidence of material price reference. The Union-Dawn Fixed-Price contract's prices are published with those of numerous other contracts, which are of more interest to market participants. Thus, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the NGX Union-Dawn Fixed-Price contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. **Federal Register** Comments

NGX states its belief that the Union Dawn Fixed Price contract does not meet the material price reference factor because there is insufficient trading activity in this contract.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the NGX Union-Dawn Fixed-Price contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the Union-Dawn Fixed-Price contract's price (direct evidence). Moreover, while the Union-Dawn Fixed-Price contract's price data is sold to market participants, traders likely do not specifically purchase the ICE data packages for the NGX Union-Dawn Fixed-Price contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

As noted above, in its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity and material price reference as potential criteria for SPDC determination of the Union-Dawn Fixed-Price contract. With respect to the material liquidity criterion, the Commission noted that the total number of transactions executed on NGX's electronic platform in the Union-Dawn Fixed-Price contract during the second quarter of 2009 was 114.1 trades and 23.9 trades for next-day delivery and delivery Saturday plus the next three days, respectively. During the same period, the Union-Dawn Fixed-Price contract had an average daily trading volume of 812,800 mmBtu and 458,000 mmBtu for the delivery periods next day and Saturday plus three days, respectively. Moreover, the net open interest as of June 30, 2009, was 2,241,600 mmBtu for next-day delivery (equivalent to 224 NYMEX NG contracts).[68]

In a subsequent filing, NGX reported that total trading volume in the third quarter of 2009 was the equivalent of 8,333 NYMEX NG contracts (or 130 contracts on a daily basis).[69] In term of number of transactions, 7,899 trades occurred over the entire third quarter, which equates to 123 trades per day.[70] As of September 30, 2009, open interest

[64] *See http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

[65] As noted above, the Commission did not find an indication of arbitrage and price linkage in connection with this contract; accordingly, those criteria are not discussed in reference to the Union-Dawn Fixed-Price contract.

[66] 17 CFR part 36, Appendix A.

[67] In the third quarter of 2009, the Union-Dawn Fixed-Price contract had a total trading volume that was equivalent to 145 NYMEX physically-delivered NG futures contracts (the size of one NYMEX NG contract is 10,000 mmBtu); the Union-Dawn contract also had an open interest equivalent to 1,738 NYMEX NG futures contracts.

[68] Second quarter 2009 data was submitted to the Commission is a different format than in later filings. In this regard total trading volume and total number of trades per quarter were not identified.

[69] Approximately 96 percent of the contracted natural gas volume was specified for delivery on either the next day or on the weekend. The remaining volume was to be delivered over the specified month or during the remainder of the current month.

[70] Nearly all (more than 99 percent) of the trades were in contracts that specified next-day or weekend delivery of natural gas.

in the Union-Dawn Fixed-Price contract was 1,738 NYMEX NG contracts.

The Commission notes that while trading activity in the Union-Dawn Fixed-Price appears to be substantial, it is important to keep in mind that the majority of trades involve close to immediate delivery, many times on a daily basis. With deliveries occurring each day, it is reasonable that more contracts would be traded compared to those contracts that specify delivery over an entire month. Moreover, trading activity in the Union-Dawn Fixed-Price contract, as characterized by total quarterly volume, indicates that the Union-Dawn Fixed-Price contract experiences less trading activity than minor futures markets.[71] Thus, the Union-Dawn Fixed-Price contract does not meets a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.[72]

i. **Federal Register** Comments

NGX stated in its comment letter that the Union-Dawn Fixed-Price contract does not meet the material liquidity criterion for SPDC determination for a number of reasons.

First, NGX opined that the Commission "seems to have applied a threshold for "material liquidity" that is extremely low, and in general insufficient to support a determination that these contracts are no longer emerging markets but in fact serve a significant price discovery function". NGX also noted that the Commission's Guidance states that material liquidity was intended to be a "broad concept that captures the ability to transact immediately with little or no price concession". The Guidance also states that where "material liquidity exists, a more or less continuous stream of prices can be observed and the prices should be similar", such as "where trades occur multiple times per minutes. NGX then opined that "[t]he levels of liquidity outlined above for the Proposed Contracts cannot be what Congress intended in establishing the dividing line between contracts ripe for regulation and those still emerging and in need of further incubation.

In this regard, the Commission notes that it adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"[73] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC but this does not mean that the contract will be found to be a SPDC merely because it met the reporting threshold. Furthermore, the Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."

ii. Conclusion Regarding Material Liquidity

Based on the above, the Commission finds that the NGX Union-Dawn Fixed-Price contract does not meet the material liquidity criterion.

3. Overall Conclusion Regarding the Union-Dawn Fixed-Price Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the Union-Dawn Fixed-Price contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the NGX Union-Dawn Fixed-Price contract does not meet the material price reference or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the Union-Dawn Fixed-Price contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard NGX as a registered entity in connection with its Union-Dawn Fixed-Price contract.[74] Accordingly, with respect to its Union-Dawn Fixed-Price contract, NGX is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, NGX must continue to comply with the applicable reporting requirements for ECMs.

e. The Phys, ID, 7a (CA/GJ), AB–NIT (7a Index) Contract and the SPDC Indicia

The NGX 7a Index contract calls for physical delivery of natural gas at the Alberta, Canada, trading hub during the specified calendar month. When trading this contract, market participants price the difference between the anticipated value of natural gas at the time of delivery and the average of actual trades on the NGX system. The average of transactions on the NGX system is reported as a volume-weighted average price index in the first publication of the delivery month of Canadian Enerdata, Ltd.'s *Canadian Gas Price Reporter.* At the time of delivery, the negotiated price premium or discount is added or subtracted to the published index price. There is no standard size for the 7a Index contract, although a minimum volume of 94.78 mmBtu is required in increments of 100 units per day. The NGX lists the 7a Index contract for 60 calendar months.

Located in the Canadian province of Alberta, the Alberta natural gas market is a major connection point for long-distance transmission systems that ship natural gas to points throughout Canada and the United States. The Alberta province is Canada's dominant natural gas producing region; six of the nine Canadian market centers are located in the Alberta province. The throughput capacity at the AECO–C hub is ten billion cubic feet per day. Moreover, the number of pipeline interconnections at that hub was four in 2008. Lastly, the AECO–C hub's capacity is 20.4 billion cubic feet per day.[75]

In its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity and material price reference as the potential SPDC criteria applicable to the 7a Index contract. Each of these factors is discussed below.[76]

1. Material Price Reference Criterion

The Commission's October 20, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to this contract. The Commission noted that NGX forged an alliance with ICE to use ICE's matching engine to complete transactions in

[71] Based on the Commission's experience, a minor futures contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less.

[72] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." For the reasons discussed above, the Commission has found that the Alberta Fixed-Price contract does not meet either the price linkage or material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since it cannot be used alone as a basis for a SPDC determination.

[73] 73 FR 75892 (December 12, 2008).

[74] *See* 73 FR 75888, 75893 (Dec. 12, 2008).

[75] *See http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

[76] As noted above, the Commission did not find an indication of arbitrage and price linkage in connection with this contract; accordingly, those criteria are not discussed in reference to the 7a Index contract.

physical gas contracts traded on NGX. In return, NGX agreed to provide the clearing services for such transactions. As part of the agreement, NGX provides ICE with transaction data, which are then made available to market participants on a paid basis. ICE offers the NGX data in several packages, which vary in terms of the amount of available historical data. For example, the ICE offers the "OTC Gas End of Day" data packages with access to all price data, or just current prices plus a selected number of months (*i.e.,* 12, 24, 36, or 48 months) of historical data.

The Commission will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.[77] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The Alberta hub is a major trading center for natural gas in North America. Traders, including producers, keep abreast of the prices of the Alberta market center when conducting cash deals. However, ICE's cash-settled AECO Financial Basis contract is used more widely as a price reference than the NGX 7a Index contract. Traders look to the ICE contract's competitively determined price as an indication of expected values of natural gas at the Alberta hub when entering into cash market transactions for natural gas, especially those trades providing for physical delivery in the future. Traders use ICE's Alberta contract, as well as other basis contracts, to hedge cash market positions and transactions. The substantial volume of trading and open interest in the ICE contract attests to its use for this purpose.[78] In contrast, trading volume in the 7a Index contract is much smaller than in ICE's cash-settled version of the contract. In this regard, total trading volume in the NGX 7a Index contract in the third quarter of 2009 was equivalent to 1,946 NYMEX physically-delivered natural gas contracts, which has a size of 10,000 mmBtu.

Accordingly, although the Alberta Hub is a major trading center for natural gas and, as noted, NGX provides price information for the 7a Index contract to ICE which sells it, the Commission has found upon further evaluation that the 7a Index contract is not routinely consulted by industry participants in pricing cash market transactions and thus does not meet the Commission's Guidance for the material price reference criterion. In this regard, the ICE AECO Financial Basis contract is routinely consulted by industry participants in pricing cash market transactions at this location. Because both the NGX and the ICE contracts basically price the same commodity at the same location and time and the ICE contract has significantly higher trading volume and open interest, it is not necessary for market participants to independently refer to the 7a Index contract for pricing natural gas at this location. Thus, the 7a Index contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the 7a Index contract's prices is not indirect evidence of material price reference. The 7a Index contract's prices are published with those of numerous other contracts, which are of more interest to market participants. Thus, the Commission has concluded that traders likely do not specifically purchase the ICE data packages for the 7a Index contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. Federal Register Comments

NGX expressed the opinion that the 7a Index contract does not meet the material price reference criteria because it lacks sufficient trading activity.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the NGX 7a Index contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the 7a Index contract's price (direct evidence). Moreover, while the 7a Index contract's price data is sold to market participants, market participants likely do not specifically purchase the ICE data packages for the 7a Index contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

As noted above, in its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity and material price reference as potential criteria for SPDC determination of the 7a Index contract. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject-contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

The Commission noted that the average number of transactions in the 7a Index contract was 10.9 in the second quarter of 2009. During the same period, the 7a Index contract had an average daily trading volume of 2,438,627 mmBtu (244 NYMEX-equivalent contracts of 10,000 mmBtu size). Moreover, the net open interest as of June 30, 2009, was 6,287,794 mmBtu (629 NYMEX-equivalent contracts of 10,000 mmBtu size) for delivery in the following month.[79]

[77] 17 CFR part 36, Appendix A.

[78] In the third quarter of 2009, 6,320 separate trades occurred on ICE's electronic platform, resulting in a daily average of 95.8 trades. During the same period, the ICE contract had a total trading volume on its electronic platform of 736,412 contracts (which was an average of 11,158 contracts per day). As of September 30, 2009, open interest in the ICE AECO Financial Basis contract was 483,561 contracts.

[79] Second quarter 2009 data was submitted to the Commission is a different format than in later filings. In this regard total trading volume and total number of trades per quarter were not identified.

In a subsequent filing dated November 13, 2009, NGX reported that total trading volume in the third quarter of 2009 was 1,964 NYMEX-equivalent contracts. In terms of number of transactions, 1,056 trades occurred in the third quarter of 2009 (an average of 17 trades per day). As of September 30, 2009, open interest in the 7a Index contract was 14,355 NYMEX-equivalent contracts.

The Commission notes that trading activity in the 7a Index contract increased between the second and third quarters of 2009. In any case, the number of trades per day was only slightly more than the minimum reporting threshold (5 trades per day). Moreover, trading activity in the 7a Index contract, as characterized by total quarterly volume, indicates that the Index contract experiences trading activity similar to that of minor futures markets.[80] Thus, the 7a Index contract does not meets a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.[81]

i. Federal Register Comments

NGX stated in its comment letter that the 7a Index contract does not meet the material liquidity criterion for SPDC determination for a number of reasons.

First NGX opined that the Commission "seems to have applied a threshold for "material liquidity" that is extremely low, and in general insufficient to support a determination that these contracts are no longer emerging markets but in fact serve a significant price discovery function". NGX also noted that the Commission's Guidance states that material liquidity was intended to be a "broad concept that captures the ability to transact immediately with little or no price concession." The Guidance also states that where "material liquidity exists, a more or less continuous stream of prices can be observed and the prices should be similar", such as "where trades occur multiple times per minutes. NGX then opined that "[t]he levels of liquidity outlined above for the Proposed Contracts cannot be what Congress intended in establishing the dividing line between contracts ripe for regulation and those still emerging and in need of further investigation.

WGCEF also stated that the 7a contract lacks sufficient liquidity to perform a significant price discovery function. They cite the data in the Notice of Intent as evidence that trade frequency in terms of multiple trades per day is extremely low.

In this regard, the Commission notes that it adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs" [82] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC but this does not mean that the contract will be found to be a SPDC merely because it met the reporting threshold. Furthermore, the Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the 7a Index contract does not meet the material liquidity criterion.

3. Overall Conclusion Regarding the 7a Index Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the 7a Index contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the 7a Index contract does not meet the material price reference or material liquidity criteria at this time. Accordingly, the Commission will issue the attached Order declaring that the 7a Index contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard NGX as a registered entity in connection with its 7a Index contract.[83] Accordingly, with respect to its 7a Index contract NGX is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, NGX must continue to comply with the applicable reporting requirements.

V. Related Matters

a. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA") [84] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA. OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

b. Cost-Benefit Analysis

Section 15(a) of the CEA[85] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

When a futures contract begins to serve a significant price discovery function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price manipulation or other disruptions to market integrity, both on the ECM itself and in any related futures contracts

[80] Based on the Commission's experience, a minor futures contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less.

[81] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." For the reasons discussed above, the Commission has found that the TCO contract does not meet either the price linkage or material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since it cannot be used alone as a basis for a SPDC determination.

[82] 73 FR 75892 (December 12, 2008).

[83] See 73 FR 75888, 75893 (Dec. 12, 2008).

[84] 44 U.S.C. 3507(d).

[85] 7 U.S.C. 19(a).

trading on DCMs. An Order finding that a particular contract is a SPDC triggers this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issue of a SPDC Order increases transparency and helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Section 4(i) of the CEA authorize the Commission to require reports for SPDCs listed on ECMs. These increased responsibilities, along with the CFTC's increased regulatory authority, subject the ECM's risk management practices to the Commission's supervision and oversight and generally enhance the financial integrity of the markets.

The Commission has concluded that NGX's Alberta Basis, Union-Dawn Basis, Alberta Fixed-Price, Union-Dawn Fixed-Price and 7a Index contracts that are the subject of the attached Orders are not SPDCs; accordingly, the Commission's Orders impose no additional costs and no additional statutorily or regulatory mandated responsibilities on the ECM.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [86] requires that agencies consider the impact of their rules on small businesses. The requirements of CEA section 2(h)(7) and the Part 36 rules affect ECMs. The Commission previously has determined that ECMs are not small entities for purposes of the RFA.[87] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these Orders, taken in connection with section 2(h)(7) of the Act and the Part 36 rules, will not have a significant impact on a substantial number of small entities.

VI. Orders

a. Order Relating to the Phys, BS, LD1 (US/MM), AB–NIT Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Phys, BS, LD1 (US/MM), AB–NIT contract, traded on the Natural Gas Exchange, Inc., does not at this time satisfy the material price preference, price linkage or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the Natural Gas Exchange, Inc., is not considered a registered entity [88] with respect to the Phys, BS, LD1 (US/MM), AB–NIT contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the Natural Gas Exchange, Inc., are not applicable to the Phys, BS, LD1 (US/MM), AB/NIT contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the Natural Gas Exchange, Inc., dated August 25, 2009, and October 15, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Phys, BS, LD1 (US/MM), AB–NIT contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the Natural Gas Exchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

b. Order Relating to the Phys, BS, LD1 (US/MM), Union-Dawn Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Phys, BS, LD1 (US/MM), Union-Dawn contract, traded on the Natural Gas Exchange, Inc., does not at this time satisfy the material price reference, price linkage or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the Natural Gas Exchange, Inc., is not considered a registered entity [89] with respect to the Phys, BS, LD1 (US/MM), Union-Dawn contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the Natural Gas Exchange, Inc., are not applicable to the Phys, BS, LD1 (US/MM), Union-Dawn contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the Natural Gas Exchange, Inc., August 25, 2009, and October 15, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Phys, BS, LD1 (US/MM), Union-Dawn contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the Natural Gas Exchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

c. Order Relating to the Phys, FP, (CA/GJ), AB–NIT Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Phys, FP, (CA/GJ), AB–NIT contract, traded on the Natural Gas Exchange, Inc., does not at this time satisfy the material price reference or material liquidity reference criteria for significant price discovery contracts. Consistent with this determination, the Natural Gas Exchange, Inc., is not considered a registered entity [90] with respect to the Phys, FP, (CA/GJ), AB–NIT contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the Natural Gas Exchange, Inc., are not applicable to the Phys, FP, (CA/GJ), AB–NIT contract with the issuance of this Order.

[86] 5 U.S.C. 601 *et seq.*

[87] 66 FR 42256, 42268 (Aug. 10, 2001).

[88] 7 U.S.C. 1a(29).

[89] 7 U.S.C. 1a(29).

[90] 7 U.S.C. 1a(29).

This Order is based on the representations made to the Commission by the Natural Gas Exchange, Inc., dated August 25, 2009, and October 15, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Phys, FP, (CA/GJ), AB–NIT contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the Natural Gas Exchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

d. Order Relating to the Phys, FP, (US/MM), Union-Dawn Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Phys, FP, (US/MM), Union-Dawn contract, traded on the Natural Gas Exchange, Inc., does not at this time satisfy the material price reference or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the Natural Gas Exchange, Inc., is not considered a registered entity [91] with respect to the Phys, FP, (US/MM), Union-Dawn contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the Natural Gas Exchange, Inc., are not applicable to the Phys, FP, (US/MM), Union-Dawn contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the Natural Gas Exchange, Inc., dated August 25, 2009, and October, 15, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Phys, FP, (US/MM), Union-Dawn contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the Natural Gas Exchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

e. Order Relating to the Phys, ID, 7a (CA/GJ), AB–NIT Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Phys, ID, 7a (CA/GJ), AB–NIT contract, traded on the Natural Gas Exchange, Inc., does not at this time satisfy the material price reference or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the Natural Gas Exchange, Inc., is not considered a registered entity [92] with respect to the Phys, ID, 7a (CA/GJ), AB–NIT contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the Natural Gas Exchange, Inc., are not applicable to the Phys, ID, 7a (CA/GJ), AB–NIT contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the Natural Gas Exchange, Inc., dated August 25, 2009, and October 15, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Phys, ID, 7a (CA/GJ), AB–NIT contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the Natural Gas Exchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

Issued in Washington, DC on April 28, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–10314 Filed 5–3–10; 8:45 am]

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[91] 7 U.S.C. 1a(29).

[92] 7 U.S.C. 1a(29).

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 10–C0003]

Jo-Ann Stores, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Jo-Ann Stores, Inc., containing a civil penalty of $50,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 19, 2010.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 10–C0003, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Sean R. Ward, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7602.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: April 28, 2010.

Todd A. Stevenson,

Secretary.

In the Matter of Jo-Ann Stores, Inc.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Jo-Ann Stores, Inc. ("*Jo-Ann*") and the staff ("*Staff*") of the United States Consumer Product Safety Commission ("*CPSC*" or the "*Commission*") enter into this Settlement Agreement ("*Agreement*"). The Agreement and the incorporated attached Order ("*Order*") settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to the Consumer Product