Comments of the University of Houston’s Global Energy Management Institute Regarding a “Safe Harbor”

As a supplement to the comments provided by the University of Houston’s Global Energy Management Institute (“UH-GEMI”) at the June 24, 2003 Federal Energy Regulatory Commission (“FERC”) technical conference on price reporting in the energy industry, UH-GEMI submits these additional comments regarding the operation of a “safe harbor” protection for those energy companies who report information regarding energy transactions. UH-GEMI believes that the most effective method of obtaining transparency and accuracy in the reporting of energy transaction information is to combine effective internal controls at the reporting company with the verification and aggregation of such data by an independent entity that does not have any vested interest in the data reported. When combined with the protection of a FERC instituted “safe harbor”, the combination of internal controls and independent verification will provide a framework under which the energy market companies will have incentives to report transaction data and the publishers of the energy market indices will have a robust source of accurate and verified data.

1. **Internal Controls.** The need for accurate information begins with the need to ensure that accurate and correct data is reported at the data’s point of creation, the transacting company. UH-GEMI advocates using internal controls substantially similar to those suggested by the Committee of Chief Risk Officers (the “CCRO”) in its
document titled “Best Practices for Energy Price Indices” issued on February 27, 2003 and endorsed by many industry stakeholders in submitted testimony before the FERC.

2. **Independent Verification.** While the internal controls suggested by CCRO will improve the quality of data reported by an industry participant, the verification of the data that is reported by an industry participant is an equally crucial step to ensure that the data used in the calculation of an index are accurate. UH-GEMI suggests that the data be reported to an independent third party that verifies the data and then forwards the authenticated data to the indexing publications. This will restore public confidence in the indices and in index publishers because the public will know that the data are accurate and reliable as a result of its verification (which will include matching) by a disinterested third party.

Some industry participants suggest that the index publications perform the authentication of data internally and have monitoring and surveillance systems to identify market manipulation. Authentication by index publishers alone is not a sufficient protection of the public’s interest to merit “safe harbor” protection from FERC. First, providing “safe harbor” protection in a framework where the only authentication of data is performed by industry participants who have a vested interest in the sales of the publication or in the index published will not restore public confidence in the energy markets. Second, by having a disinterested third party perform authentication of the data, the depth and breadth of the data, and therefore the indices, will be improved significantly and will enable FERC to more easily perform its oversight role through a few discreet points of data collection. The restoration of public confidence necessitates
that “safe harbor” protection should not be available unless there are both internal controls and independent verification by a disinterested third party.

3. Application of a Safe Harbor. Because many companies are not reporting transaction data, the number of occasions where publications do not have sufficient information to publish an index is growing. UH-GEMI believes that “safe harbor” protection will be the catalyst necessary for more companies to return to reporting their transaction data and thereby strengthen the depth and breadth of data available for index publications.

4. Conclusion. The combination of “safe harbor” protection, internal controls and external verification will have the dual effect of stimulating industry participants to resume reporting price information and restore the public trust in the accuracy of the energy market indices. Anything short of having independent authentication may have the unintended consequence that FERC is appearing to allow the same fox to guard the same henhouse.