

**UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION**

**PETITION FOR TENASKA POWER SERVICES TO REMAIN
SUBJECT TO THE EXISTING PROVISIONS OF SECTION 2(h)
OF THE COMMODITY EXCHANGE ACT**

I. INTRODUCTION.

Tenaska Power Services (“Petitioner”) respectfully submits this petition to the Commodity Futures Trading Commission (the “Commission”) pursuant to Section 723(c)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) to obtain legal certainty that its exempt commodity transactions that fall within the terms of Section 2(h) of the Commodity Exchange Act (“CEA”) (as in existence on the day before the Enactment Date),¹ may remain subject to CEA Section 2(h) for a one year period commencing on the general effective date of the Act, *i.e.*, July 15, 2011 (“Effective Date”), or for a period deemed appropriate by the Commission (the last day of which is the “Extension Date”).

Upon the Effective Date, Title VII of the Act will repeal substantially all of the provisions of Section 2(h) of the CEA in effect immediately prior to the Enactment Date.² As set forth in Section II, Petitioner has executed, and will likely continue to execute exempt commodity transactions in reliance on the terms of CEA Section 2(h). A substantial portion of these transactions are integral to Petitioner’s core business, which includes the delivery of

¹ The Act was signed into law by President Obama on July 21, 2010 (the “Enactment Date”).

² Section 2(h) of the CEA, 7 U.S.C. § 2(h), establishes a general statutory exclusion from the CEA with respect to certain transactions in “exempt commodities.” Such exempt commodities include, among other things, energy and energy-linked commodities. Under Section 2(h)(1) of the CEA, 7 U.S.C. § 2(h)(1), market participants that are “eligible contract participants” can enter into bilateral, negotiated over-the-counter transactions, so long as such transactions are not executed on a trading facility. Under Section 2(h)(3) of the CEA, 7 U.S.C. § 2(h)(3), market participants that are “eligible commercial entities” can enter into principal-to-principal transactions executed on an electronic trading facility, *i.e.*, on an exempt commercial market.

physical energy and energy-linked commodities to consumers in U.S. energy markets. The repeal of CEA Section 2(h) will directly impact Petitioner with respect to its core business.

The Act recognizes the uncertainty that could be created in exempt commodity markets by the repeal of CEA Section 2(h) and provides a statutory mechanism that allows for the extension of the provisions of CEA Section 2(h) in effect on the day before the Enactment Date for a period of up to one year. Specifically, Section 723(c)(1) permits “any person” to submit a petition to the Commission within 60 days of the Enactment Date (September 20, 2010) to continue to remain subject to Section 2(h) of the CEA for no longer than one year after the Effective Date.

II. QUALIFICATIONS OF PETITIONER.

Tenaska Power Services is an Eligible Commercial Entity as defined by CEA Section 1a(11) (as in existence on the day before the Enactment Date) or an Eligible Contract Participant as defined by CEA Section 1(a)(12) (as in existence on the day before the Enactment Date), and Tenaska Power Services is a party to exempt commodity transactions, or is a business that operates or is otherwise, subject to the provisions of CEA Section 2(h) (as in existence on the day before the Enactment Date).

III. REQUEST FOR EXEMPT COMMODITY TRANSACTIONS TO REMAIN SUBJECT TO CEA SECTION 2(h).

Pursuant to Section 723(c)(1) of the Act, Petitioner respectfully requests that the Commission allow Petitioner’s transactions subject to CEA Section 2(h) (as in existence on the day before the Enactment Date), entered into before or after the grandfather period granted

pursuant to this petition has commenced, to remain subject to this statutory provision through the Extension Date.

Petitioner routinely engages in exempt commodity transactions involving energy and energy-linked commodities in reliance on the terms of CEA Section 2(h) (as in existence on the day before the Enactment Date). A substantial portion of these transactions are integral to Petitioner's core business of delivering physical energy and energy-linked commodities to consumers in U.S. energy markets. The repeal of CEA Section 2(h) and implementation of measures designed to comply with the new requirements of Title VII of the Act will significantly impact Petitioner, as well as all other persons that transact, operate, or otherwise rely on the existing provisions of CEA Section 2(h).

IV. POLICY SUPPORT FOR THE APPROVAL OF THE PETITION.

A. APPROVAL OF THE PETITION WILL ENSURE STABILITY IN MARKETS FOR EXEMPT COMMODITIES.

By granting this petition, the Commission will provide legal certainty and ensure an orderly regulatory transition in exempt commodity markets by (i) providing Petitioner with an appropriate amount of time to review, interpret and develop a plan to comply with rules and regulations implementing Title VII, and (ii) making clear that CEA Section 2(h) (as in existence on the day before the Enactment Date) will remain in effect during this transition period. For example, Petitioner notes that such rules and regulations will be developed over the course of the next several months and, consistent with the applicable statutory deadlines, may be finalized only days or weeks before the underlying statutory provisions of Title VII become effective. Such a short period to comply with substantial new rules and regulations could result in

considerable disruption in markets for exempt commodities, which would subject Petitioner and other market participants to significant costs and increased commercial risk.³

B. APPROVAL OF THE PETITION WILL NOT IMPEDE EFFORTS TO BRING TRANSPARENCY AND STRUCTURE TO EXEMPT COMMODITY MARKETS.

Approval of this petition will not interfere with the Commission's mandate under Title VII of the Act to bring transparency and structure to over-the-counter derivatives markets. For instance, Title VII's reporting requirements for existing uncleared swaps adopted pursuant to Section 729 of the Act will bring enhanced transparency to the markets for exempt commodities. Further, it will not impede the Commission's obligation to issue rules and regulations designed to police excessive speculation in exempt commodity markets through position limits adopted pursuant to Section 737(a)(4) of the Act. Finally, approval of this petition will leave the Commission free to focus its resources on implementing the substantive provisions of Title VII of the Act by providing legal certainty and preserving stability in markets for exempt commodities during the transition to new regulation.

C. APPROVAL OF THE PETITION WILL PROVIDE LEGAL CERTAINTY AS PETITIONER IMPLEMENTS CHANGES TO COMPLY WITH THE REQUIREMENTS OF TITLE VII IN THE LEAST COST MANNER.

Approval of this petition will provide legal certainty as Petitioner implements measures intended to mitigate costs imposed by the regulatory framework set forth in Title VII of the Act.

³ For example, pursuant to Section 721(c) of the Act, the Commission is required to adopt further rules defining critical new statutory terms, such as "Swap," "Swap Dealer," Major Swap Participant, and "Eligible Contract Participant." In addition, pursuant to sections 721(a)(16) and 721(a)(21) of the Act, respectively, the Commission is required to issue rules defining key aspects of the definition of "Major Swap Participant" and "Swap Dealer." Final rules for each of the rulemakings listed above must be issued by the Commission by no later than 360 days after the Enactment Date, *i.e.* July 15, 2011. Assuming these rules were to become effective in the minimum period of time permitted under Section 754 of the Act, parties that transact, operate or otherwise rely on the existing provisions of CEA Section 2(h), such as Petitioner, would only have a maximum of 60 days after the Enactment Date to identify how they are impacted by such rules and come into compliance.

In the energy industry, for example, cost mitigation is critical to protecting consumers from increased prices for physical energy commodities.

In order to mitigate costs associated with complying with Title VII, Petitioner may choose to implement internal structural or organizational changes or make changes to its trading operations, business practices, and internal risk management systems. Petitioner also may elect to restructure some portion of its exempt commodity transactions to minimize margin costs and regulatory capital requirements or to more easily comply with new reporting requirements.

Additionally, Petitioner will likely be required to make changes to its existing information technology systems or acquire new systems to comply with, among other things, new recordkeeping and reporting requirements. Systems changes of this magnitude often require a significant amount of time and the dedication of significant internal and external resources.

As a person that relies on CEA Section 2(h) (as in existence on the day before the Enactment Date), if Petitioner is not provided an appropriate transition period and, as a consequence, is forced to implement such changes immediately following the Effective Date, there is a substantial risk that (i) the limited, external supply of resources and expertise needed to facilitate these changes will be quickly exhausted by the demand for those resources and backlogged for a significant period of time, or (ii) Petitioner will be forced to expend considerable resources to expedite implementation. The failure to provide legal certainty and an adequate transition period will needlessly expose Petitioner to potential regulatory non-compliance and commercial risk until the required changes are fully implemented and tested.

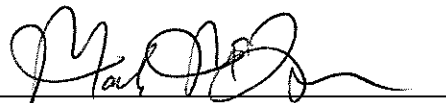
Finally, Petitioner's existing hedging and price discovery trading programs utilize exempt commodities transactions. These trading programs were developed, priced, and executed in

reliance upon the fact that exempt commodity transactions would be subject to CEA Section 2(h) (as in existence on the day before the Effective Date). Requiring comprehensive, mid-course revisions to its existing exempt transactions would likely force Petitioner to incur unforeseen costs and risks. As noted above, this uncertainty could adversely affect the efficient operation of energy markets and could potentially result in consumers paying higher prices for physical commodities, such as coal, oil, natural gas, or electricity.

V. **CONCLUSION.**

WHEREFORE, for the foregoing reasons, Petitioner respectfully requests that the Commission grant this petition as set forth herein, and allow all of its transactions that either (i) were subject to CEA Section 2(h) (as in existence on the day before the Enactment Date), or (ii) would have been subject to CEA Section 2(h) (as in existence on the day before the Enactment) but for the amendments in the Act, to be subject to such “pre-Act” provisions of CEA Section 2(h) until the Extension Date. If the Commission will not grant this petition based on the inclusion of one or more requested terms, but would otherwise grant this petition if such terms were removed or modified, Petitioner hereby requests the Commission grant this petition on such terms as if the unacceptable terms were removed or modified.

Respectfully submitted,



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