

September 27, 2012

Mr. David Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Public Comments on Petition from Certain Independent System Operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Commission or the Public Utility Commission of Texas from Certain Provisions of the Commodity Exchange Act

Dear Mr. Stawick:

Texas Energy Association for Marketers (TEAM)¹ and Alliance for Retail Markets² (ARM) file these comments in support of the Petition for Proposed Exemption filed by ERCOT and other RTOs and ISOs.³ TEAM and ARM are separate associations of retail electric providers (REPs) serving customers in the competitive retail electric market in the Electric Reliability Council of Texas (ERCOT) power region. The REP members comprising TEAM and ARM collectively serve a significant percentage of customers in Texas, and many of them have participated in the ERCOT market since the inception of retail competition in 2002. Some of the associations' members also actively participate in competitive retail electric markets in other regional transmission

¹ The members of TEAM participating in this proceeding are: Accent Energy, Amigo Energy, Cirro Energy, DPI Energy (d/b/a Truesmart), Green Mountain Energy, Hudson Energy Services, Just Energy, StarTex Power, Stream Energy, Tara Energy Inc., and TriEagle Energy.

² The members of ARM participating in this proceeding are: Champion Energy Services, LLC; Direct Energy, LP; Green Mountain Energy Company; StarTex Power; and Stream Energy.

³ In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by California Independent Service Operator Corporation; In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by the Electric Reliability Council of Texas, Inc.; In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by ISO New England Inc.; ; In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by Midwest Independent Transmission System Operator, Inc.; In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by New York Independent System Operator, Inc.; and ; In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by PJM Interconnection, L.L.C. (Feb. 7, 2012, as amended June 11, 2012) (Petition for Proposed Exception).

organization (RTO) and independent system operator (ISO) regions across the United States. The REP members of TEAM and ARM are subject to the jurisdiction of the Public Utility Commission of Texas (PUCT), which includes the certification of companies to provide retail electric service in Texas based on financial, technical, and managerial resources and capability.

TEAM and ARM offer these comments specifically in support of including all REPs certified by the PUCT as “appropriate persons” pursuant to Commodity Exchange Act (CEA) section 4(c)(3)(K), even if the REP does not fall within any category of CEA section 4(c)(3)(A) through (J) and is not an “eligible contract participant” as defined by CEA section 1(a)(12). The regulations of the PUCT and administration of ERCOT market rules include rigorous financial liquidity and credit requirements that protect the market from the harm that might occur from a REP’s transactions for the purchase or sale of electricity-related products. The relatively small scale of those transactions – generally conducted for the narrow purposes of purchasing electricity for provision to retail customers and for hedging the dynamic risks of purchasing supply to meet demand - makes it particularly unlikely that the transactions will result in market harm.

In exercising its jurisdiction to certify REPs, the PUCT imposes strong financial requirements on companies providing retail electric service in Texas. To be certified, a REP must have an investment-grade credit rating, a tangible net worth greater than \$100 million, or shareholder equity of \$1 million with an additional irrevocable letter of credit payable to the commission with a face value of \$500,000.⁴ In addition, ERCOT maintains a separate set of capital requirements through its protocols that individual REPs must meet commensurate with their market exposure in order to engage in ERCOT market transactions. In 2012, ERCOT amended its protocols to establish itself as the central counterparty to all transactions in the ERCOT market, other than those involving bilateral trades or self-arranged services, to mitigate any impact on the market that could occur from the bankruptcy of a market participant owing money to ERCOT.⁵

Although it is likely that many REPs participating in the ERCOT competitive retail market would qualify as “appropriate persons” within CEA sections 4(c)(3)(A) through (J), TEAM and ARM support the inclusion of all REPs certified by the PUCT and in compliance with ERCOT regulations as “appropriate persons” within CEA section 4(c)(3)(K). These REPs must operate within the financial and other requirements established by the PUCT and must comply with the PUCT’s rules for customer protection⁶ and market reporting.⁷ The inclusion of all REPs in the ERCOT market will

⁴ P.U.C. SUBST. R. 25.107(f)(1)(A)-(B).

⁵ NPRR 458, revising ERCOT Protocols 1.2, 2.1, 4.4.7.1, 4.4.7.1.1, 4.6.4, 6.5.7.5, 22A, 22B, 22D and 22F (Jul. 17, 2012).

⁶ P.U.C. SUBST. R. 25.471 – 25.498.

⁷ P.U.C. SUBST. R. 25.88.

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not have a materially adverse impact on any financial market or the ability of the Commodity Futures Trading Commission (CFTC) to regulate those markets. TEAM and ARM will work with the PUCT and ERCOT as needed to comply with any condition required for the inclusion of REPs as "appropriate persons", including compliance with FERC Order 741 if that is a condition of approval of the Petition for Proposed Exemption.

TEAM and ARM appreciate the consideration of these comments and are available to provide any additional information as needed.

Respectfully submitted
on behalf of Joint Commenters,



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