

September 27, 2012

Via Online Submission

Stacy Yochum
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Proposed Order and Request for Comment on a 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 Ms. Yochum:

I am pleased to share the comments of the Financial Institutions Energy Group (FIEG) to the proposed order to exempt specified transactions for the purchase or sale of certain electricity-related products (the "Proposed Exemption") from the provisions of the Commodity Exchange Act and Commission regulations, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"), in response to the consolidated petition (the "Petition") from several regional transmission organizations ("RTOs") and independent system operators ("ISOs") (the "Petitioners"). FIEG appreciates the thoughtful consideration of the Commission in crafting the Proposed Exemption, and believes that it will provide greater regulatory certainty to market participants that engage in contracts, agreements or transactions in markets administered by RTOs or ISOs, which are regulated by the Federal Energy Regulatory Commission ("FERC").

FIEG is a trade association consisting of commercial and investment banks regulated by the Federal Reserve Bank, the Security and Exchange Commission, and/or foreign banking regulators. Its members are active in both physical and financial energy markets throughout the United States and in multiple foreign countries. As with any trade association, views expressed by FIEG are solely those of the organization and do not necessarily reflect the views or official position of any individual member.

FIEG supports the Commission's Proposed Exemption to exempt products that are traded in RTO and ISO markets. In that regard, in accordance with and similar to the comments submitted by the Joint Trade Associations (Edison Electric Institute, the Electric Power Supply

Association, National Rural Electric Cooperative Association, and the American Public Power Association), FIEG supports the Petitioners' Request for Exemption, with the modifications/clarifications to the Proposed Exemption requested herein.

While FIEG supports the Proposed Exemption, it provides comments to the Commission on the following:

Inclusion of Virtual Transactions in the Proposed Exemption

The Proposed Exemption would extend to four specific transactions: financial transmission rights, energy transactions, forward capacity transactions and reserve or regulation transactions.¹ However, the Proposed Exemption appears to be silent with regard to "virtual bids/transactions."

The Proposed Order states, "[t]o be clear, however, financial transactions that are not tied to the allocation of the physical capabilities of an electric transmission grid would not be suitable for exemption because such activity would not be inextricably linked to the physical delivery of electricity."² FIEG is concerned that this language creates an ambiguity. Whether or not "virtual" transactions are exempted hinges on the interpretation of "... tied to the physical capabilities of the electric transmission grid..." While virtual bids are indeed financial, they do not exist in isolation from the capabilities of the electric grid. Indeed, RTOs significantly restrict virtual bids based in large part on their potential to tangibly impact the electric grid itself. For this reason, our view is that the cited language does indeed exempt virtual bids, along with the four transaction types explicitly mentioned. However, due to the importance of the need to clarify the language mentioned, we strongly urge the CFTC to address any ambiguity with regard to virtual bids/transactions and explicitly clarify that these important risk management tools are indeed subject to the exemption.

Exemption for Future Products

In the Proposed Exemption, the Commission did not extend the proposed exemption to transactions, contracts, products or agreements that are not specifically included in the Petition, but may be developed at some point in the future. FIEG urges the Commission to consider including RTO/ISO products and services that are "logical outgrowths" of Petitioners' functions as RTOs/ISOs in order to enable the Petitioners to continue to develop and provide new products and services on an ongoing basis, without the need to seek, via formal petition in each instance, explicit confirmation such products or services are in fact exempt.

¹ 77 Fed. Reg. 52138 at 52141.

² *Id.* at 52143.

Separate Position Limits in the RTOs/ISOs are Not Necessary

As requested by Petitioners, the Commission has not made a determination that products covered by the Proposed Exemption are swaps or futures. Accordingly, FIEG requests that the Commission make clear that it is not applying the regulatory regime for futures markets to the RTO/ISO markets. In particular, FIEG requests that this be made clear with respect to position limits. Any such application would be a duplication of the currently applicable financial assurance requirements already required by FERC in each of the Petitioners' tariffs.

FIEG thanks the Commission for consideration of these comments.

Respectfully Submitted,

/s/ David M. Perlman

David M. Perlman
George D. Fatula

Counsel to
Financial Institutions Energy Group