

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:

In a Proposed Order and Request for Comment¹ (“Proposed Order”) published in the Federal Register on August 28, 2012, the Commodity Futures Trading Commission (“CFTC” or “the Commission”) proposed to provide an exemption for certain transactions from regulation as swaps pursuant to Section 4(c) of the Commodity Exchange Act² (“4(c) Exemption”) in response to a petition made on February 7, 2012 by regional transmission organizations (“RTOs”)³ that are regulated by the Federal Energy Regulatory Commission (“FERC”) or the Public Utility Commission of Texas (“PUCT”).⁴ Specifically, the Petition sought an exemption for RTO-

¹ *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*, 77 FR 52138 (Aug. 28, 2012).

² 7 U.S.C. 6(c).

³ The filing RTOs are the California Independent Service Operator Corporation; the Electric Reliability Council of Texas, Inc.; ISO New England Inc.; the Midwest Independent Transmission System Operator, Inc.; the New York Independent System Operator, Inc.; and PJM Interconnection, L.L.C.

⁴ 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

related transactions from regulation as “swaps” under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”).⁵

By this letter, the Coalition of Physical Energy Companies (“COPE”)⁶ provides comment on the Proposed Order. Several COPE members actively participate in RTO markets. Further, COPE believes that the Proposed Order represents an example of the Commission extending its regulation into areas already pervasively regulated by FERC and other regulators which affect all COPE members, creating confusing and duplicative regulation.⁷

The Commission Should Issue An Unambiguous and Unconditional Exemption to RTOS

It has been COPE’s consistent position that the Commission should not exercise direct or indirect jurisdiction over FERC (or PUCT) regulated RTO or other products or services.⁸ The Proposed Order is an example of the problematic duplicative regulation that can occur when the Commission addresses activities that are already pervasively regulated. While the Proposed Order purports to exempt RTO transactions from regulation as swaps, it does so in a manner that both creates new threshold regulatory requirements for RTO participation, and appears to provide for ongoing regulatory oversight of these already pervasively regulated transactions.

Congress instructed the Commission and the FERC to “appl[y] their respective authorities in a manner so as to ensure effective and efficient regulation in the public interest” and avoid “to

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) (the “Petition”).

⁵ Public Law No. 111-203, 124 Stat. 1376 (2010).

⁶ The members of the Coalition of Physical Energy Companies’ are physical energy companies in the business of producing, processing, and merchandizing energy commodities at retail and wholesale. The members are: Apache Corporation; EP Energy LLC; Enterprise Products Partners, L.P.; Iberdrola Renewables, Inc.; Kinder Morgan; MarkWest Energy Partners, L.P.; Noble Energy, Inc.; NRG Energy, Inc.; Shell Energy North America (US), L.P.; SouthStar Energy Services LLC; and Targa Resources.

⁷ See also, for example, the Commission’s apparently inclusion of certain natural gas pipeline and storage agreements within the definition of “Swap.” *Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”*; *Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, 77 Fed. Reg. 48208, 48242 (August 13, 2012) (Final Rule).

⁸ See, e.g., COPE Comments to Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; *Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, 76 Fed. Reg. 29818 (May 23, 2011) (Notice of Proposed Rulemaking), filed July 22, 2011, at pp 8-9.

the extent possible, conflicting or duplicative regulation.”⁹ Accordingly, the FERC Staff has requested that the Commission not assert jurisdiction over RTO transactions.¹⁰

Nevertheless, the Commission declined to adopt FERC Staff’s position and, in response to the Petition, issued the Proposed Order. As a result of the combination of explicit conditions¹¹ and conditions precedent¹² in the Proposed Order, the Commission effectively creates duplicative regulation and even seems to require that a state regulatory body (the PUCT) adopt regulations established by a federal regulatory body (FERC) for different markets under different law.¹³ COPE requests that the Commission step back from the Proposed Order and simply and cleanly exempt the requested transactions from regulation (within the scope of the Petition) under the Commodity Exchange Act.

Adoption of the Proposed Order Would Create Unnecessarily Confusing and Overly Complex Regulation of RTO Transactions

The Proposed Order creates significant ambiguity and questions concerning the nature, scope, and timing of the exception granted thereunder. For example: it is unclear when a final order may be issued; what the status of the “exempted” transactions is in the interim; what the status of the transactions described in supplemental RTO filings is while they are pending; how transactions that are “logical extensions” of the exempted transactions will be regulated in the future; whether the Commission intends to indirectly regulate RTOs by virtue of its reservation of jurisdiction; and what will happen if other regulators do not act in manner found acceptable by the Commission. Set forth below are issues raised by the Proposed Order identified by COPE.

⁹ Dodd-Frank at § 720.

¹⁰ See FERC Comments to Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 76 Fed. Reg. 29818 (May 23, 2011) (Notice of Proposed Rulemaking), filed July 22, 2011, at p 2 (“We have previously submitted comments on other proposed Dodd-Frank implementing rules in which we explained that, depending on how broadly the term ‘swap’ is construed, CFTC regulation of swaps could lead to inconsistent regulation of participants and transactions in the wholesale electricity and natural gas markets subject to FERC jurisdiction, and in particular the organized markets. As we noted in our prior comments, we are concerned that transactions such as financial transmission rights (FTRs), forward capacity sales, and day-ahead market transactions conducted in the organized markets that FERC regulates . . . could be subject to regulation as ‘swaps,’ depending on how that term is defined. Based on these concerns, we have stated that the CFTC should interpret and apply the CEA, as amended by Dodd-Frank, to ensure that CFTC jurisdiction and FERC jurisdiction do not overlap (except as determined by Congress in anti-manipulation contexts).”).

¹¹ See Proposed Order at 52166 (*Conditions*).

¹² *Id.* at 52164.

¹³ *Id.* at 52166 (“*Conditions*. . . . With respect to ERCOT, information sharing arrangements between the Commission and PUCT that are acceptable to the Commission are executed and continue to be in effect. With respect to all other Requesting Parties, information sharing arrangements between the Commission and FERC that are acceptable to the Commission continue to be in effect.”).

- When will a final order be issued and the exemption become effective?
 - According to the Proposed Order, the Commission will “refrain from issuing a final order to a specific RTO or ISO[:]”
 - (1) “unless the RTO or ISO has adopted all of [the] requirements set forth in FERC regulation 35.47 [FERC RTO Credit Reform, Order No. 741]; such tariff provisions have been permitted to take effect by the FERC or PUCT, as applicable; and such tariff provisions have been fully implemented by the particular RTO or ISO[:]”¹⁴ and
 - (2) “a well-reasoned legal opinion or memorandum from outside counsel” is filed with the Commission “that, in the Commission’s sole discretion, provides the Commission with assurance that the netting arrangements contained in the approach selected by the particular [RTO] satisfy the obligations contained in FERC regulation 35.47(d) and will, in fact, provide the [RTO] with enforceable rights of setoff against any of its market participants under title 11 of the United States Code in the event of the bankruptcy of the market participant.”¹⁵
- As the CFTC and FERC have been unable to negotiate the Congressionally-mandated memorandum of understanding concerning the avoidance of duplicative regulation, what will happen if the FERC or PUCT do not accede to (or are barred by legal restrictions from complying with) the Commission’s requirements concerning information sharing?¹⁶
- Does the Commission’s subpoena secrecy requirement described in the Proposed Order¹⁷ mandate that FERC approve tariff changes that are required by the Commission regardless of whether FERC views them to be “just and reasonable” as required by the Federal Power Act?¹⁸
- Rather than fully exempting the RTO transactions, is the Commission effectively retaining complete regulatory authority to, upon a change in material fact or at its discretion, alter or revoke the exemptions?¹⁹ Is this a way to indirectly regulate RTOs?

¹⁴ *Id.* at 52164 (internal footnote omitted).

¹⁵ *Id.* at 52165 (internal footnote omitted).

¹⁶ *Supra* fn 14.

¹⁷ Proposed Order at 52166 (“With respect to [each RTO], neither the tariffs nor any other governing documents of the particular RTO or ISO pursuant to whose tariff the agreement, contract or transaction is to be offered or sold, shall include any requirement that the RTO or ISO notify its members prior to providing information to the Commission in response to a subpoena or other request for information or documentation.”).

¹⁸ 16 U.S.C. § 824d(a) (2006).

¹⁹ *Id.* at 52167 (“Any material change or omission in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its finding that the exemption contained therein is appropriate and/or in the public interest. Further, the Commission reserves the right, in its discretion, to revisit any of the terms and conditions of the relief provided herein, including but not limited to, making a determination that certain entities and transactions described herein should be subject

- How will the supplementary filings that were not addressed by the Proposed Order²⁰ be treated? Will there be aspects of RTO activities that are not exempt and thereby regulated by the Commission even if the Proposed Order is made final?
- Since the Proposed Order rejects the RTO requests that “logical extensions” of the exempted transactions also be exempted,²¹ should such transactions be viewed as Commission-regulated until a future exemption is issued, thus effectively subordinating FERC and PUCT regulation to CFTC regulation with respect to such transactions?
- Since the Proposed Order limits its application to “Appropriate Persons,”²² is it the Commission’s intention to regulate minimum RTO participation standards?
- Since the definition of “Swap” becomes effective on October 12, 2012 (prior to a final order), will the transactions which are the subject of the Proposed Order be Commission regulated swaps on that date?

When one thinks through the logistical issues and ambiguous direct and indirect retention of jurisdiction set forth in the Proposed Order, it seems more of a delegation of authority (to FERC and the PUCT) than an exemption. In fact, it appears to COPE that the Proposed Order effectively establishes a sort of joint regulation going forward, with the CFTC setting minimum RTO participation standards, approving new transactions or “material” modifications of existing transactions, and, through its ability to alter or withdraw the exemption, indirectly regulating RTOs.

While COPE believes the appropriate course of action would have been to exclude RTO transactions from the definition of ‘Swap,’ the RTOs and the Commission have chosen to go the route of a 4(c) Exemption. That being the case, the Commission should grant the exemption in the most broad and definitive manner possible.

In recognition of the pervasive regulation of the RTOs by the FERC and PUCT, the Commission should abandon the approach set forth in the Proposed Order, and simply and immediately grant the broadest unconditional blanket exemption for RTO transactions from CFTC regulation under the CEA that is permitted by law.²³ As shown above, the approach adopted by the Commission is fraught with problems and seems destined to result in duplicative and confusing direct and indirect regulation. FERC and the PUCT have been successfully regulating RTOs for many years. That regulation is pervasive and complex. An additional layer of regulation is not required and will only result in confusion and inefficiency.

to the Commission’s full jurisdiction, and to condition, suspend, terminate or otherwise modify or restrict the exemption granted in this order, as appropriate, upon its own motion.”)

²⁰ *See id.* at fn 379.

²¹ *Id.* at 52163.

²² *Id.* at 52166.

²³ Similarly, the Commission should withdraw its apparent regulation of natural gas transportation and other infrastructure services transactions as swaps. *See supra* fn 7.

Request for Comment

In the Proposed Order, the Commission has sought comment regarding certain specified topics. Below COPE provides its responses to the Commission's request. The items for which the CFTC has requested comment and COPE's responses are as follows:²⁴

1. Has the Commission used the appropriate standard in analyzing whether the Proposed Exemption is in the public interest?

No. Since RTOs are neither Designated Contract Markets ("DCM") nor Swap Execution Facilities ("SEF"), the application of core principles to such markets provides little value. RTOs are physical electricity transmission and market operators pervasively regulated by either FERC or the PUCT. The existence of such regulation should be the premise upon which an exemption is granted.

2. The Commission recognizes that there may be differences among the Petitioners with respect to size, scope of business, and underlying regulatory framework. Should any provisions of the Proposed Exemption be modified or adjusted, or should any conditions be added, to reflect such differences?

No. The existence of FERC and PUCT regulation should be the premise upon which an exemption is granted. Other factors should not be considered.

3. Is the scope set forth for the Proposed Exemption sufficient to allow for innovation? Why or why not? If not, how should the scope be modified to allow for innovation without exempting products that may be materially different from those reviewed by the Commission? Should the Commission exempt such products without considering whether such exemption is in the public interest? Consider this question also with the understanding that any Petitioner (or any entity that is not a current petitioner) may separately petition the Commission for an amendment of any final order granted in this matter.

It is inefficient and counterproductive for the scope of the exemption to be limited as proposed. The Commission should truly exempt RTO transactions and defer to the FERC and PUCT. Given the very long period it took for the Commission to issue its Proposed Order and the need for clear non-duplicative regulation of RTOs, all FERC- or PUCT- approved products should be exempted.

4. Should the Commission exercise its authority pursuant to section 4(c)(3)(K) of the CEA to extend the Proposed Exemption to agreements contracts or transactions that are entered into by parties other than "appropriate persons" as defined in sections 4(c)(3)(A) through (J) of the CEA, or "eligible contract participants," as defined in section 1a(18)(A) or (B) of the Act and Commission regulation 1.3(m)? If so, please provide a description of the additional parties that should be included.

- a. The Commission specifically seeks comment regarding whether (and, if so, why) it is in the public interest to expand the list of such parties to include market participants who "active[ly] participat[e] in the generation, transmission or distribution of electricity" but who are neither "appropriate persons," as defined in section 4(c)(3)(A) through (J) of the

²⁴ Proposed Order at 52172-52173.

CEA, nor “eligible contract participants,” as defined in section 1a(18)(A) of the Act and Commission regulation 1.3(m)?

b. If any additional parties should be added, please provide:

(1) An explanation of the financial or other qualifications of such persons or the available regulatory protections that would render such persons “appropriate persons.”

(2) The basis for the conclusion that such parties could bear the financial risks of the agreements, contracts, and transactions to be exempted by the Proposed Exemption.

(3) The basis for the conclusion that including such parties would not have any adverse effect on the relevant RTO or ISO.

(4) The basis for the conclusion that failing to include such parties would have an adverse effect on any relevant RTO or ISO.

Yes. All persons approved to participate in RTO markets by the FERC or PUCT should be within the exemption. Access to physical electricity markets should not be regulated by the CFTC. There is no reason for the CFTC to oversee this threshold issue. Unlike derivative markets, physical markets are not a risk management tool but rather a cash market where electricity is obtained. The CFTC is not the gatekeeper of cash markets.

5. Should the Commission require each Petitioner that is regulated by FERC to have fully implemented the requirements set forth in FERC Order 741 as a condition precedent to the issuance of a final order granting the Proposed Exemption to the particular Petitioner? Why or why not?

No. The FERC is undertaking a measured and thoughtful approach to implement Order 741. Implementation may take time and undergo modifications. There is no reason to withhold the exemption during the pendency of the FERC process.

6. Should ERCOT be required to comply with the requirements set forth in FERC Order 741 as a prerequisite to the issuance to ERCOT of a final order granting the Proposed Exemption as to ERCOT? Why or why not?

(a) The Commission specifically seeks comment upon whether and why ERCOT would or would not be able to comply with each of the requirements set forth in FERC Order 741. Are any of these requirements inapplicable for an RTO/ISO?

(b) Should ERCOT be permitted to adopt alternatives to any of the specific requirements set forth in FERC Order 741 (such as the seven day settlement period in FERC regulation 35.47(b))? What is the basis for the conclusion that the alternative measures would be the equivalents of the FERC requirements in terms of protecting the financial integrity of the transactions that are within the scope of the exemption?

ERCOT should not be required to comply with FERC Order 741. The PUCT and ERCOT are not FERC-jurisdictional. The PUCT should not have to implement FERC orders and FERC should not have to implement PUCT orders.

The ERCOT RTO market has been successfully operated for well over a decade. It has its own regulatory scheme and practices. Where it deems appropriate it should adopt practices similar to FERC's. As stated above, the existence of PUCT regulation should be the premise upon which an exemption is granted. Other factors should not be considered.

7. Should the Commission require, as a prerequisite to issuing a final order granting the Proposed Exemption to a particular Petitioner, that the Commission be provided with a legal opinion or memoranda of counsel, applicable to the tariffs and operations of that Petitioner, that provides the Commission with assurance that the approach selected by the Petitioner to satisfy the obligations contained in FERC regulation 35.47(d) will provide the Petitioner with rights of setoff, enforceable against any of its market participants under title 11 of the United States Code in the event of the bankruptcy of the market participant? Why or why not? Are there alternative ways to provide the requisite assurance regarding the bankruptcy protections provided by the approach to 35.47(d) compliance selected by Petitioners and the requisite assurance that the central counterparty structure selected by Petitioners will be consistent or contain elements commonly associated with central counterparties?

The Commission should not be the arbiter of whether a FERC approved RTO regime consistent with Order 741 meets bankruptcy goals. As stated above, the existence of FERC regulation should be the premise upon which an exemption is granted. Other factors should not be considered.

8. Should the Commission require the execution of an acceptable information sharing arrangement between the Commission and PUCT as a condition precedent to the issuance to ERCOT of a final order granting the request for an exemption?

No. ERCOT and the PUCT are responsible regulatory bodies. A one-way information sharing requirement acceptable to the CFTC is beyond what is necessary and implies that the Commission does not trust PUCT regulation.

9. Should the Proposed Exemption be conditioned upon the requirement that the Petitioners cooperate with the Commission in its conduct of special calls/further requests for information with respect to contracts, agreements or transactions that are, or are related to, the contracts, agreements, or transactions that are the subject of the Proposed Exemption?

No. Regulatory comity is a laudable goal. A requirement imposed by one regulator upon another is a different thing. The CFTC should respect FERC and PUCT regulation and allows them to be the regulators of these transactions. They should be truly exempted, not indirectly regulated.

10. Should Petitioners be required to have the ability to obtain market data and other related information from their participants with respect to contracts, agreements or transactions in markets for, or related to, the contracts, agreements or transactions that are the subject of the Proposed Exemption? The Commission specifically seeks comment on whether the Petitioners should be capable of re-creating the Day-Ahead Market and Real-Time prices.

Since the RTOs "create" day ahead and real-time prices through their markets today, COPE assumes they can explain their formation. It is unclear to COPE, however, why this is relevant if the transactions are being exempted.

11. What is the basis for the conclusion that Petitioners do, or do not, provide to the public sufficient timely information on price, trading volume, and other data with respect to the markets for the contracts, agreements and transactions that are the subject of the Proposed Exemption? What RTO or ISO tariff provisions, if any, require them to do so or preclude them from doing so?

RTO markets are transparent and significant timely data is made available. COPE members receive all data they believe is necessary to fully participate in a transparent market from the various RTOs.

12. What is the basis for the conclusion that the Proposed Exemption will, or will not, have any material adverse effect on the Commission's ability to discharge its regulatory duties under the CEA, or on any contract market's ability to discharge its self-regulatory duties under the CEA?

Congress specifically included in Dodd-Frank a directive to the Commission to apply its authority in a manner so as to ensure effective and efficient regulation in the public interest and avoid, to the extent possible, conflicting or duplicative regulation.²⁵ The Commission's duty under the CEA is to find that it is in the public interest to exempt the regulation of RTOs based upon the existence of pervasive FERC and PUCT regulation. RTOs are not contract markets. Thus, their ability to discharge self-regulatory duties under the CEA is not relevant. COPE can see no impact on other contract markets.

13. What are the bases for the conclusions that the Petitioners' tariffs, practices, and procedures do, or do not, appropriately address the regulatory goals of each of the DCO Core Principles?

As stated above, since RTOs are neither Designated Contract Markets ("DCMs") nor Swap Execution Facilities ("SEFs"), the application of core principles for such markets provides little value. RTOs are physical electricity transmission and market operators pervasively regulated by either FERC or the PUCT. The existence of such regulation should be the premise upon which an exemption is granted

14. What factors support, or detract from, the Commission's preliminary conclusion that FTRs, Energy Transactions, Capacity and Reserve Transactions are not readily susceptible to manipulation for the reasons stated above? Could a market participant use an FTR to manipulate the price of electricity established on the Day-Ahead and Real-Time markets operated by Petitioners? If so, what is the basis for that conclusion? What is the basis for the conclusion that market participants can, or cannot, use Energy Transactions, Capacity or Reserve Transactions to manipulate electricity prices without detection by Independent Market Monitors?

The regime put in place by FERC and the PUCT is more than adequate to detect market manipulation. The fact that they have such a regime in place should be more than adequate for the Commission to grant a public interest exemption.

²⁵ See *supra* fn 9.

15. What is the basis for the conclusion that Petitioners have, or have not, satisfied applicable market monitoring requirements with respect to FTRs, Energy Transactions, Capacity and Reserve Transactions? What is the basis for the conclusion that the recordkeeping functions performed by Petitioners are, or are not, appropriate to address any concerns raised by the market monitoring process? What is the basis for the conclusion that the market monitoring functions performed by Petitioners and their MMUs do, or do not, provide adequate safeguards to prevent the manipulation of Petitioners' markets?

As stated above, the regime put in place by FERC and the PUCT is more than adequate to detect market manipulation. The fact that they have such a regime in place should be more than adequate for the Commission to grant a public interest exemption.

16. What is the basis for the conclusion that Petitioners, or their participants, should, or should not, be required to satisfy position limit requirements with respect to any of the contracts, agreements or transactions that are the subject of the Proposed Exemption? Specifically, what is the basis for the conclusion that it is, or is not, possible for Petitioners, or their participants, to violate position limits with FTRs or Virtual Bids? What is the basis for the conclusion that the nature of FTRs or Virtual Bids do, or do not, inherently limit the ability of market participants to engage in manipulative conduct?

The existence of FERC and PUCT regulation should be the premise upon which an exemption is granted. Other factors should not be considered. It is unclear how or why position limits have any relevance to these markets or why the CFTC would view FERC or PUCT regulation inadequate in this area.

17. What are the bases for the conclusions that Petitioners do, or do not, adequately satisfy the SEF requirements for (a) recordkeeping and reporting, (b) preventing restraints on trade or imposing any material anticompetitive burden, (c) minimizing conflicts of interest, (d) providing adequate financial resources, (e) establishing system safeguards and (f) designating a CCO? Specifically, do the procedures and principles in place allow the Petitioners to meet the requirements of SEF core principles 10–15?

As stated above, since RTOs are neither Designated Contract Markets ("DCM") nor Swap Execution Facilities ("SEF"), the application of core principles for such markets provides little value. RTOs are physical electricity transmission and market operators pervasively regulated by either FERC or the PUCT. The existence of such regulation should be the premise upon which an exemption is granted. Further it is unclear how or why the CFTC would view FERC or PUCT regulation inadequate in this area

18. What is the basis for the conclusion that the Petitioners' eligibility requirements for participants are, or are not, appropriate to ensure that market participants can adequately bear the risks associated with the Participants markets?

The FERC and the PUCT have assured that the eligibility requirements for participants are appropriate to ensure that market participants can adequately bear the risks associated with RTO markets.

19. What is the basis for the conclusion that Petitioners do, or do not, have adequate rules in place to allow them to deal with emergency situations as they arise? What deficiencies, if any, are there with respect to their emergency procedures that would prevent any Petitioner from taking necessary action to address sudden market problems?

The FERC and the PUCT have assured that that RTOs have adequate rules in place to allow them to deal with emergency situations as they arise. The Commission should remember that these are physical markets that are essential to public health and safety. All relevant contingencies are adequately addressed both from a physical and market perceptive.

20. The Commission invites comment on its consideration of the costs and benefits of the Proposed Exemption, including the costs of any information requirements imposed therein. The Commission also seeks comment on the costs and benefits of this Proposed Exemption, including, but not limited to, those costs and benefits specified within this proposal. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

Redundant regulation by its nature imposes unnecessary costs. The Commission should recognize the regulation of FERC and the PUCT and limit to the degree possible any regulatory burden imposed on RTOs and their members.

Conclusion

For the reasons set forth above, COPE requests that the Commission revise the approach set forth in the Proposed Order and, based upon the pervasive and successful regulation of the FERC and PUCT, grant an unconditional exemption in the most broad and definitive manner possible.

Respectfully Submitted,

/s/ David M. Perlman

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