

December 20, 2012

**Via Email Submission**

Sauntia Warfield  
Assistant Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

**Re: Notice of Proposed Order and Request for Comment on a Petition From Certain Independent System Operators and Regional Transmission Organizations**

Dear Ms. Warfield:

On behalf of our client, Petitioner PJM Interconnection, L.L.C. (“PJM”), we respectfully submit the following supplement to PJM’s September 27, 2012 comments on the Commodity Futures Trading Commission’s (“CFTC” or “Commission”) proposed order to exempt certain transactions in the Independent System Operator (“ISO”) or Regional Transmission Organization (“RTO”) markets.<sup>1</sup>

The Commission issued the Proposed Order in response to Petitioners’ consolidated requests for an exemption (“Exemption Request”) from all but the anti-manipulation and anti-fraud provisions of the Commodity Exchange Act (“CEA”), as amended, and Commission regulations thereunder.<sup>2</sup> Under the Proposed Order, the Commission limited exemptive relief to market participants that fall within the categories of entities in section 4(c)(3) of the CEA or that qualify as eligible contract participants as defined in section 1a(18) of the CEA and section 1.3(m) of the Commission’s regulations (“Appropriate Persons”).<sup>3</sup> PJM submits these supplemental comments to provide additional information on the potential impact of the Proposed Order’s Appropriate Persons limitation on the PJM markets and to request that the Commission exercise its statutory authority, under section 4(c)(3)(K) of the CEA, to find that all PJM eligible market participants are “appropriate persons” “in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.”<sup>4</sup> In addition, PJM

---

<sup>1</sup> 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 Fed. Reg. 52138 (Aug. 28, 2012) (the “Proposed Order”).

<sup>2</sup> Petitioners filed the Exemption Request with the Commission on February 7, 2012 and updated it on June 11, 2012.

<sup>3</sup> Proposed Order at 52142; 7 U.S.C. 6(c)(3); 7 U.S.C. §1a(18); 17 C.F.R. 1.3(m).

<sup>4</sup> 7 U.S.C. 6(c)(3)(K).

requests that the Commission modify the definition of financial transmission right (“FTR”) transactions in its final exemption order, as described further below.

**I. Overview of the Impact of the Proposed Appropriate Persons Limitation on PJM Market Participants**

There are currently 588 market participants in the PJM markets with transaction rights. Based on currently available information, PJM cannot confirm that 246 of these 588 market participants would qualify as Appropriate Persons (“Affected Entities”). The Affected Entities include:

- Two Emergency Load Response Providers;
- Eighty one Generation Owners;
- Thirty one Load Serving Entities (selling electricity to retail customers); and
- One hundred and thirty two Other Suppliers (entities that do not own transmission or serve load, including traders and demand response providers).<sup>5</sup>

Set forth below is a table showing the percentage of the transaction volumes of the Affected Entities for the first ten months of 2012.

<i>Member Group Description</i>	<i>Number of Members</i>	<i>Percent of 10-Month YTD Demand Response Provided</i>	<i>Percent of 10-Month YTD Load Served</i>	<i>Percent of 10-Month YTD Virtual Bid MWs Cleared</i>	<i>Percent of 10-Month YTD FTR MWs Cleared</i>	<i>Percent of 10-Month YTD Up-to-Congestion MWs Cleared</i>
Emergency Load Program Participants	2	---	---	---	---	---
Demand Response Providers	11	22.76%	---	---	---	---
Load Aggregators	31	---	0.525%	0.356%	0.001%	7.402%
Merchant Generation Owners	81	---	---	---	---	---
Active Financial Traders <sup>6</sup>	55	---	---	0.207%	13.166%	51.529%
Inactive Financial Traders <sup>7</sup>	66	---	---	---	---	---
<b>Total</b>	<b>246</b>	<b>22.76%</b>	<b>0.525%</b>	<b>0.564%</b>	<b>13.167%</b>	<b>58.931%</b>

<sup>5</sup> All capitalized terms that are not defined herein have the meaning set out in the PJM Open Access Transmission Tariff (“PJM Tariff”) and PJM Operating Agreement *available at* <http://www.pjm.com/documents.aspx>.

<sup>6</sup> Market participants active during 2012 that do not own transmission or generation, do not serve load, and do not provide demand response.

<sup>7</sup> Market participants with transaction rights that have been inactive to date in 2012 and do not own transmission or generation, do not serve load, and do not provide demand response.

While the actual number of Affected Entities would, at first glance, appear to comprise a very large percentage of PJM's market participants (approximately 42%), as illustrated by the table above, those potentially Affected Entities account for minimal transactional activity when compared to PJM's market transactions as a whole. From a transaction volume standpoint, application of the proposed Appropriate Persons limitation would likely not have a significant impact on PJM's market liquidity.

Turning to the table set forth above, the identified market participants account for .525% of PJM's load served in 2012, and .564% of virtual bids cleared in PJM's market. Notably, however, the potentially Affected Entities comprised slightly more than 13% of the FTR megawatts and nearly 60% of the "up to congestion" transactions cleared in 2012. While this volume is significant, two points should be made.

First, "up to congestion" transactions are essentially a form of virtual (financial) trading in PJM's energy markets. This category of transactions comprise only a portion of the financial trading in PJM's energy market which, in turn, is just a portion of the total transaction activity (both financial and physical) in the energy market. In other words, the matter in question is liquidity in market, more specifically the PJM day-ahead energy market, as opposed to the liquidity of "up to congestion" transactions. "Up to congestion" transactions are just one manner of transacting in the PJM day-ahead energy market.

Second, the active financial traders largely responsible for "up to congestion" transactions have been described by PJM in this response as "potentially affected" by the Appropriate Persons limitation. This qualification is necessary because it would be erroneous to assume that *all* of these participants would be either unable or disinclined to meet the capitalization requirements associated with the Appropriate Persons standard, if required to do so. PJM's past experience has shown that many market participants, when faced with modestly higher capitalization requirements, will meet these requirements in order to remain active market participants.

## **II. The Proposed Appropriate Persons Limitation Will Subject PJM to Conflicting Regulatory Requirements**

Under the PJM Tariff, approved by the Federal Energy Regulatory Commission ("FERC"), PJM must provide open and non-discriminatory access to its markets. Under FERC's regime, PJM cannot pick and choose its counterparties and is constrained in setting differing

terms and conditions governing transactions specific to different customer classes.<sup>8</sup> Limiting the exemptive relief to Appropriate Persons will subject PJM to differing regulatory requirements imposed by FERC and the CFTC. The Appropriate Persons limitations will cause all PJM transactions with Affected Entities to be subject to both FERC and potentially, CFTC regulatory requirements, including differing requirements governing both the right to transact in PJM's market and the financial and creditworthiness rules applicable to transacting in certain instruments.

The requirements accepted by FERC in PJM's tariff, on one hand, and the CFTC proposed Appropriate Persons limitation might not be strictly inconsistent. Practically, however, in order to operate its markets under such a dual regulatory regime, without the benefit of an exemption, both PJM and the Affected Entities would be forced to evaluate whether the transaction in question implicates the CFTC's jurisdiction over swaps. This would create precisely the same confusion that the Exemption Request was designed to avoid in the first instance. Under this scenario, PJM would likely seek permission from FERC to revise its Tariff to limit participation in its markets to only those entities who demonstrate compliance with the proposed Appropriate Persons standards. Otherwise, PJM might be required to transact with participants in a manner that would expose PJM to various reporting, recordkeeping and other regulatory requirements imposed by the CFTC. It is not clear whether FERC would approve such an amendment to accommodate the practical impact of the CFTC's Appropriate Persons requirements. Accordingly, PJM reiterates its request that the Commission find all FERC-approved market participants are eligible to rely on the Commission's exemptive relief to eliminate any potentially conflicting regulatory requirements.

### **III. Clarification of the Definition of FTR Transaction**

The Proposed Order describes a "Financial Transmission Right," as a "...transaction, however, named, that entitles one party to receive, and obligates another party to pay, an amount based *solely* on the difference between the price for electricity...at a specified source...and a specified sink."<sup>9</sup> While the trivial nuances of FTR valuation are not entirely pertinent to the discussion of the proposed exemption, it should be noted that the valuation of an FTR is mostly based upon the difference in market price, but also includes an additional settlement reflecting a real-time uplift charge known as Balancing Congestion. Therefore, it would be technically

---

<sup>8</sup> FERC Order No. 888 required all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to have on file open access non-discriminatory transmission tariffs that contain minimum terms and conditions of non-discriminatory service. *Promoting Wholesale Competition Through Open-Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, 61 F.R. 21,540 (May 10, 1996) (Order No. 888). Specifically, all public utilities that own, operate or control interstate transmission facilities *must* offer transmission and ancillary services to *all* eligible buyers and sellers in wholesale bulk power markets, and to take transmission service for their own uses under the same rates, terms and conditions offered to others. Access to PJM's markets, given the role markets play in discharging PJM's Order 888 responsibilities, is governed by these same obligatory standards.

<sup>9</sup> Proposed Order at 52,141 (emphasis added).

Sauntia Warfield  
Assistant Secretary  
December 20, 2012  
Page 5

inaccurate to describe FTR valuation as being based *solely* on the difference in electricity market price since the inclusion of Balancing Congestion also plays a role in that valuation. Accordingly PJM requests that the Commission modify this description to recognize that FTR valuation is *primarily* based on the difference between the price of electricity at a specified source and a specified sink.

#### **IV. Conclusion**

PJM appreciates the Commission's consideration of its supplemental comments. For the foregoing reasons, PJM respectfully requests that the Commission: (1) find that all market participants that are eligible to participate in the PJM markets are appropriate persons that can benefit from the Commission's final order granting the Petitioners' Exemption Request; and (2) modify the definition of FTR transaction as recommended above.

Respectfully submitted,



Paul J. Pantano, Jr.  
Sohair A. Aguirre

*Counsel for  
PJM Interconnection, LLC*

cc: Robert Wasserman, Chief Counsel  
David Van Wagner, Chief Counsel  
Laura Astrada, Associate Chief Counsel  
Jocelyn Partridge, Special Counsel  
Gloria Clement, Assistant General Counsel  
Thuy Dinh, Counsel  
Robert Pease, Attorney  
Eve R. Gutman, Attorney-Advisor  
Graham McCall, Attorney-Advisor