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Paul M. Architzel

VIA E MAIL: secretary@cftc.gov

+1 202 663 6240(t)
+1 202 663 6363(f)
paul.architzel@wilmerhale.com

Melissa Jurgens
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre,
1155 21st Street N.W.
Washington, DC. 20581

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

Dear Ms. Jurgens:

On behalf of our clients, Petitioners ISO New England Inc. (“ISO-NE”) and California Independent System Operator Corporation (“CAISO”), we respectfully submit these supplemental comments to the Commodity Futures Trading Commission (“Commission”), in response to the Proposed Order and Request for Comment published by the Commission on August 28, 2012.¹

I. Introduction

The Proposed Order is in response to a consolidated Petition filed on February 7, 2012, and updated on June 11, 2012 by ISO-NE, CAISO, and four other Independent System Operators (“ISOs”) and Regional Transmission Organizations (“RTOs”). Pursuant to section 4(c)(6) of the Commodity Exchange Act, 7 U.S.C. § 1 et seq. (“CEA” or “Act”), the Petition requested that the Commission exempt from the provisions of the Act certain Transactions on Petitioners’ markets that are conducted pursuant to a tariff or protocol approved by the Federal Energy Regulatory Commission (“FERC”) or the Public Utility Commission of Texas (“PUCT”). Sections 4(c)(1) and (2) of the Act specify that such an exemption may be granted if the Commission finds that the exemption would be “consistent with the public interest and the purposes of [the Act],” that the exempted transactions would solely involve “appropriate persons,” and that the transactions would not have a “material adverse effect” on the Commission’s regulatory jurisdiction.

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 *Fed. Reg.* 52138 (Aug. 28, 2012) (the “Proposed Order”).

Melissa Jurgens
Secretary
Page 2

ISO-NE and CAISO on September 27, 2012, submitted to the Commission a joint comment letter with the four other Petitioner ISOs/RTOs. This comment letter expressed the shared views of the petitioning ISOs/RTOs. Subsequently, each of the ISOs/RTOs filed supplemental comment letters to address separately the facts and circumstances particular to each of their markets. ISO-NE and CAISO filed a supplemental comment addressing the composition of their respective markets on January 9, 2013.²

Since then, it has come to the attention of ISO-NE and CAISO that the language in the Proposed Order with one modest clarifying change would be able to include within its scope certain Transactions that are currently available on ISO-NE and CAISO and that are included in the settlement of Energy Transactions in the ISO-NE and CAISO Day-Ahead and Real-Time Markets which were the subject of a separate request for relief by ISO-NE and CAISO. With this supplemental comment letter, ISO-NE and CAISO bring this to the Commission's attention and request that the Commission take the views expressed herein into consideration in issuing its final Order.

II. ISO-NE and CAISO

ISO-NE is a nonstock corporation organized under the laws of Delaware and recognized as a 501(c)(3) tax-exempt organization by the Internal Revenue Service, recognized by FERC as an ISO in 1997 and as an RTO in 2005 and responsible for ensuring the day-to-day reliable operation of New England's bulk power generation and transmission system; overseeing and ensuring the fair administration of the region's wholesale electricity markets; and managing comprehensive, regional planning processes.

CAISO is a nonprofit public benefit corporation organized under the laws of California. It was authorized by FERC as an Independent System Operator in 1997 and began operations on April 1, 1998. CAISO is responsible for the reliable operation of the bulk of the electricity grid in the State of California, comprising the transmission systems of several entities.

III. Suggested language

As Proposed, the Order defines "Energy Transactions," as

transactions in a "Day-Ahead Market" or "Real-Time Market," as those terms are defined in paragraphs 5e and 5f of this Order, for the purchase or sale of a specified quantity of electricity at a specified location (including "Demand Response," as defined in paragraph 5c(2) of this Order, where:

² See, Comment Letter from Paul M. Architzel dated January 9, 2013, at: [http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59046&SearchText=.](http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59046&SearchText=)

Melissa Jurgens
 Secretary
 Page 3

- (1) The price of the electricity is established at the time the transaction is executed;
- (2) Performance occurs in the Real-Time Market by either
 - (a) Delivery or receipt of the specified electricity, or
 - (b) A cash payment or receipt at the price established in the Real-Time Market;
 and
- (3) The aggregate cleared volume of both physical and cash-settled energy transactions for any period of time is limited by the physical capability of the electricity transmission system operated by a Requesting Party for that period of time.

Proposed Order at 52167.

Certain Transactions which were the subject of a separate request for relief by ISO-NE and CAISO are included within the settlement of the ISO-NE and CAISO Day-Ahead and Real-Time Markets. These ISO-NE and CAISO Transactions would be more clearly included within the scope of the definition of “Energy Transaction” if the language of paragraph 2(b) of the definition of “Energy Transaction” as it appears in the Proposed Order were amended by adding the words “Day-Ahead Market or” before “the words “Real-Time Market” and the words “(as permitted by each ISO/RTO in its Tariff)” after the words “Real-Time Market”, to read as follows:

- (b) A cash payment or receipt at the price established in the Day-Ahead or Real-Time Market (as permitted by each ISO/RTO in its Tariff); (additions are underscored).

This revision to the language of the Proposed Order would clarify that these Transactions, which currently are included within the ISO-NE and CAISO’s settlement of the Day-Ahead and Real Time Market for Energy Transactions, could be included within the scope of the exemptive relief. These Transactions are currently included within the settlement of the Day-Ahead Market and Real-Time Market under tariff provisions which have been approved by the FERC. Once entered into the settlement system of ISO-NE or CAISO for the Day-Ahead and Real Time Market, these Transactions are operationally treated the same as any other Energy Transaction included in the Commission’s Proposed Order.

The revision to the language is requested because the cash payment or receipt associated with these Transactions may be at a price that is established in *either* the Day-Ahead or Real-Time Markets. Because the Day-Ahead Market is more liquid than the Real-Time Market on both ISO-NE and CAISO, these Transactions often settle by a cash payment or receipt at the price established in the Day-Ahead Market. Accordingly, inclusion of those words in the definition of “Energy Transaction” would clarify that these Transactions, as permitted under the terms of the ISO-NE and CAISO tariff language may be included within the scope of the exemptive relief. This clarification would ensure that these Transactions could continue to be treated on the same basis after issuance of the Commission’s Order as they are currently.

Melissa Jurgens
Secretary
Page 4

The requested language to make clear that these Transactions may be included within the scope of the Exemptive Order would not materially change the analysis provided in the Consolidated Request for relief and discussed by the Commission in the Proposed Order. The Consolidated Request for relief addressed the operation of the ISOs as a market and as a clearing house. Clarifying the language of the Order so that these Transactions may be included therein would not materially change the operation of an ISO/RTO market or its related functioning and does not therefore change the analysis included in the Consolidated Petition and in the Commission's Proposed Order.

IV. Conclusion

ISO-NE and CAISO appreciate the Commission's consideration of their views as expressed in this letter. For the foregoing reasons, ISO-NE and CAISO respectfully submit that the relief requested in the Consolidated Petition will be more fully realized if the Commission issues the Order as suggested herein.

In the Dodd-Frank Act, Congress requested the Commission and FERC to "apply[] their respective authorities in a manner so as to ensure effective and efficient regulation in the public interest," "resolv[e] conflicts concerning overlapping jurisdiction," and to "avoid[], to the extent possible, conflicting or duplicative regulation." Pub. L. 111-203 § 720, 124 Stat. 1376 (2010). This comment presents the Commission with an opportunity to do so in light of FERC's existing oversight of the Transactions.

Respectfully submitted,



Paul M. Architzel
WILMERHALE
1875 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006
TEL: (202) 663.6240
paul.architzel@wilmerhale.com

*Counsel for
California Independent System Operator Corporation
and ISO New England Inc.*

Melissa Jurgens
Secretary
Page 5

Cc: Chairman Gensler
Commissioner Chilton
Commissioner Sommers
Commissioner O'Malia
Commissioner Wetjen
Robert Wasserman, Chief Counsel, DCR
David Van Wagner, Chief Counsel, DMO
Laura Astrada, Associate Chief Counsel
Graham McCall, Attorney-Advisor