

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D. C. 20426

OFFICE OF THE GENERAL COUNSEL

June 22, 2015

VIA ELECTRONIC SUBMISSION

Christopher Kirkpatrick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street NW  
Washington, DC 20581

**Re: Proposed Order and Request for Comment on an Application for an Exemptive Order from Southwest Power Pool, Inc. from Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in Section 4(c)(6) of the Act**

Comments of the Staff of the Federal Energy Regulatory Commission

Dear Mr. Kirkpatrick:

On May 18, 2015, the Commodity Futures Trading Commission (CFTC) issued a proposed order and request for comment on a proposed exemption issued in response to an application from Southwest Power Pool, Inc. (SPP) to exempt certain Transmission Congestion Rights, Energy Transactions, and Operating Reserve Transactions (collectively, Covered Transactions) from certain provisions of the Commodity Exchange Act and CFTC regulations.<sup>1</sup> In general, the Proposed Exemption is similar to the relief that the CFTC granted other regional transmission organizations (RTO) and independent system operators (ISO) in an April 2013 order.<sup>2</sup>

As discussed in our prior comment letters,<sup>3</sup> the Federal Energy Regulatory Commission (FERC) regulates the transmission and sale for resale of electricity in interstate commerce pursuant to the Federal Power Act. In our prior comment letters, we also discussed the development of RTOs and ISOs as critical

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<sup>1</sup> 80 Fed. Reg. 29,490 (May 21, 2015) (Proposed Exemption).

<sup>2</sup> Final Order in Response to 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 Regulatory Commission or the Public Utility Commission of Texas from Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in the Act, 78 Fed. Reg. 19,880 (Apr. 2, 2013) (RTO-ISO Order).

<sup>3</sup> See, e.g., FERC Staff Comments to Proposed Order and Request for Comment on Petition of Independent System Operators and Regional Transmission Organizations for Exemption of Specified Transactions from Certain Provisions of the Commodity Exchange Act, 77 Fed. Reg. 52,138 (Aug. 28, 2012), filed Sept. 27, 2012.

components in carrying out FERC's statutory responsibilities. RTOs and ISOs operate not only transmission facilities but also markets for trading electric energy among utilities. These RTO and ISO markets and transmission services are tightly integrated and are regulated to a greater extent than other commodity markets. Indeed, the RTOs and ISOs themselves are legally considered to be "public utilities" and are regulated by FERC more extensively than other public utilities. In light of these characteristics, we have urged the CFTC to interpret the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)<sup>4</sup> as not applying to any contract or instrument traded in an RTO or ISO market pursuant to a FERC-accepted or approved tariff or rate schedule. FERC staff continues to see that approach as the most appropriate application of Dodd-Frank to these circumstances.

Nonetheless, we offer the following comment on the Proposed Exemption. Consistent with SPP's application, the Proposed Exemption does not extend to the CFTC's anti-fraud and anti-manipulation authority, which Dodd-Frank expanded (similar to Congress's assignment to FERC of anti-manipulation authority in the Energy Policy Act of 2005). FERC staff does not take issue with the CFTC's retention of anti-manipulation authority generally. However, because FERC also retains its anti-manipulation authority, as well as its regulatory and oversight responsibilities, with respect to RTO and ISO markets, we encourage the CFTC to make that clear in its final order in this proceeding. To that end, we request that the CFTC clarify that its action on SPP's application, including any statements in this proceeding with respect to private claims for fraud or manipulation under the Commodity Exchange Act, do not limit or otherwise affect FERC's authority.

Sincerely,



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Cc: Norman C. Bay, Chairman  
Philip D. Moeller, Commissioner  
Cheryl A. LaFleur, Commissioner  
Tony Clark, Commissioner  
Colette D. Honorable, Commissioner

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<sup>4</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010).