

June 22, 2015

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Notice of Proposed Order and Request for Comment on an Application
for an Exemptive Order From Southwest Power Pool, Inc.

Dear Mr. Kirkpatrick:

Petitioner Southwest Power Pool, Inc. (“SPP”) appreciates the opportunity to comment on the Proposed Order and Request for Comment issued by the Commodity Futures Trading Commission (“Commission”) on May 18, 2015, and published in the Federal Register on May 21, 2015.¹ SPP supports the exemptive relief as described in the Proposed Order but recommends the Commission revise the Proposed Order in accordance with the suggested changes noted below in Sections I and II of these comments.

The Commission issued the Proposed Order in response to SPP’s Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act (“CEA”)² submitted October 1, 2013, as amended August 1, 2014, as supplemented October 7, 2014.³ SPP’s Application requests that the Commission issue an Order exempting certain transactions executed in SPP-administered markets and participants in such

¹ Notice of 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, 80 Fed. Reg. 29,490 (May 21, 2015) (“Proposed Order”).

² 7 U.S.C. § 1, *et seq.*

³ Unless otherwise noted, references in this letter to “Application” mean SPP’s Application for an Exemptive Order Updated copy, as of August 1, 2014, <http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/spp4camdappl080114.pdf>.

markets from all provisions of the CEA and Commission rules thereunder, except the Commission's general anti-fraud and anti-manipulation authority and scienter-based prohibitions under CEA sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13 and any implementing regulations promulgated under these sections including, but not limited to, Commission regulations 23.410(a)-(b), 32.4, and part 180. In its Application, SPP seeks exemptive relief substantially similar to the relief the Commission granted to a group of Federal Energy Regulatory Commission ("FERC") or Public Utility Commission of Texas regulated Regional Transmission Organizations ("RTO") and Independent System Operators ("ISOs") in a Final Order published April 2, 2013.⁴

SPP, the relevant transactions at issue, and participants in SPP's Integrated Marketplace are subject to a comprehensive regulatory framework established by FERC pursuant to the Federal Power Act. This framework is the same paradigm that formed the basis for the 4(c) exemptions granted pursuant to the RTO-ISO Order. Furthermore, SPP's market rules and eligibility requirements are substantially similar to those of the other RTOs and ISOs, and SPP has complied with all of the conditions set forth in the RTO-ISO Final Order. There is no basis for the Commission to decline to grant SPP, its markets, and its market participants the same relief granted to other RTOs and ISOs and their markets.⁵

⁴ See Proposed Order at 29,491 ("As discussed further below, the relief that SPP is requesting is substantially similar to the relief the Commission granted other RTOs and [ISOs] in April of 2013.") (citing 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, at 19,912 (Apr. 2, 2013) ("RTO-ISO Final Order")). Neither SPP nor other RTOs and ISOs concede the applicability of the CEA, but SPP nonetheless believes that exemptive relief provides marketplace certainty. See Application at 7 (stating that SPP does not presume any Commission jurisdiction over transactions in the SPP Integrated Marketplace and that SPP specifically did not ask for a Commission determination of whether such transactions fall under its jurisdiction).

⁵ See Proposed Order at 29,522, Request for Comment No. 12 ("What would be the basis for the conclusion that SPP should not receive relief that is substantially similar to the relief the Commission granted other RTOs and ISOs in the RTO-ISO [Final] Order?").

I. Discrepancy Regarding Eligibility for Exemption for Participants in Transmission Congestion Rights Transactions

In its Application, SPP identified the transactions, persons, and services covered by its request for exemptive relief.⁶ As SPP demonstrated, these classes of transactions, persons, and services are substantially similar to the classes of transactions, persons, and services for which the Commission previously granted exemptive relief to other RTOs and ISOs.⁷ With regard to eligibility to engage in Transmission Congestion Rights (“TCR”)⁸ transactions, SPP requested exemptive relief for those TCRs where “[e]ach party to the transaction is a *Market Participant* of SPP that satisfies the minimum participation requirements (or is SPP itself) and the transaction is executed on a market administered by SPP.”⁹

There is a discrepancy in the Proposed Order regarding this eligibility criterion. In its discussion on the “Scope of the Exemption” set forth in Section IV.A of the Proposed Order, the Commission explains that “the Proposed Exemption applies only to TCRs where . . . each party to the transaction is a *market participant* of SPP (or is SPP itself) and the transaction is executed on a market administered by SPP.”¹⁰ However, in its “Proposed Exemption” discussion set forth in Section VI.B of the Proposed Order, the Commission states that, for TCR transactions, “the exemption shall only apply to such [TCRs] where . . . [e]ach party to the transaction is a *member*

⁶ Application at 11-15.

⁷ *Id.* While SPP utilizes some terminology different from the other RTOs and ISOs, the transactions and services offered in SPP’s Integrated Marketplace are modeled after those successfully implemented in other RTOs and ISOs. *Id.* at 11-12 (explaining how SPP modeled its Integrated Marketplace on design features in other RTO and ISO markets and FERC’s acknowledgement of such similarities).

⁸ As SPP explained, TCRs are SPP’s equivalent of “Financial Transmission Rights” in other RTO and ISO markets for which the Commission granted an exemption in the RTO-ISO Final Order. *Id.* at 12 n.54.

⁹ *Id.* at 13 (emphasis added). All of the relevant market rules, including SPP’s creditworthiness requirements, minimum participation and capitalization requirements, record retention and information exchange provisions, and market monitoring and mitigation plans set forth in the Tariff apply to market participants.

¹⁰ Proposed Order at 29,493 (emphasis added).

of SPP (or is SPP itself) and the transaction is executed on a market administered by SPP.”¹¹

The Commission should clarify in its final order that the exemption applies to SPP “market participants” rather than “members.” Under SPP’s Tariff and other governing documents, an entity need not become a member of SPP in order to participate in SPP’s Integrated Marketplace (including the TCR markets).

II. Purported Clarification of RTO-ISO Final Order

As the Commission noted in the Proposed Order, SPP’s Application seeks substantially similar exemptive relief to the relief granted in the RTO-ISO Final Order.¹² However, the Proposed Order addresses a matter not raised in SPP’s request by including a passage purporting to clarify the applicability of the exemptive relief previously granted in the RTO-ISO Final Order to private causes of action initiated under section 22 of the CEA, 7 U.S.C. § 25.¹³ As stated in its Application and *supra* in these comments, SPP, the relevant transactions, and participants in SPP’s Integrated Marketplace, are subject to a long-standing, comprehensive regulatory framework established by FERC. This unexpected language raises important issues regarding FERC’s regulatory oversight over wholesale energy markets under its authority set forth in the Federal Power Act. SPP submits that this proceeding is not the appropriate forum in which to address such issues and respectfully suggests that the passage at issue be removed from the final order issued to SPP in this matter.

III. Conclusion

For the foregoing reasons and the reasons set forth in the Proposed Order and SPP’s Application (including amendments and supplements), the Commission should issue a final order granting SPP the requested exemptive relief, reflecting the clarification and revision identified herein.

¹¹ *Id.* at 29,517 (emphasis added).

¹² *See supra* note 4.

¹³ Proposed Order at 29,493.

Mr. Christopher Kirkpatrick

June 22, 2015

Page 5

Respectfully submitted,

/s/ Joseph W. Ghormley

Joseph W. Ghormley

Southwest Power Pool, Inc.

201 Worthen Drive

Little Rock, AR 72223

Telephone: (501) 614-3368

jghormley@spp.org

Attorney for Southwest Power Pool, Inc.