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Parker McCullough, Chair • Neal Walker, Vice Chair • John W. Fainter, President & CEO • Walton L. Baum, Executive Vice President • Christopher Miller, Corporate Secretary

Christopher Kirkpatrick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21st Street, NW  
Washington, DC 20581

Re: May 21, 2015 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 (the "Proposed Order")

Dear Secretary Kirkpatrick:

The Association of Electric Companies of Texas, Inc., ("AECT") respectfully submits these comments to the Commodity Futures Trading Commission ("CFTC" or "Commission") to communicate the concerns of its membership regarding the Proposed Order cited above. AECT is a trade organization representing electric generating companies, transmission and distribution utilities, retail electric providers and vertically-integrated utilities in Texas with members active in three Regional Transmission Organizations ("RTOs"): the Electric Reliability Council of Texas ("ERCOT"), the Midcontinent Independent System Operator ("MISO") and the Southwest Power Pool ("SPP").

The Proposed Order was issued in response to an Application for an Exemptive Order filed by SPP on October 17, 2013, and amended August 1, 2014. SPP's Application seeks to exempt certain Transmission Congestion Rights, Energy Transactions, and Operating Reserve Transactions from the provisions of the Commodity Exchange Act and Commission regulations. SPP seeks the same exemptive relief the Commission had granted other RTOs in the Commission's April 2, 2013 Final Order<sup>1</sup>, where the Commission found it was in the public interest to grant the requested exemptions ("RTO Order").

The Proposed Order largely tracks the RTO Order, and, in general, AECT fully supports extending the exemptions sought by SPP in its Application. However, the Proposed Order departs from the RTO Order by including language about private rights of action in its

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<sup>1</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 FR 19880 (Apr. 2, 2013).


preamble. This new language in the Proposed Order preamble suggests that the Commission believes private rights of action under Section 22 of the Commodities Exchange Act (“CEA”) continue to exist, notwithstanding the exemption from all provisions of the CEA except for the Commission authority to investigate fraudulent or manipulative behavior in the markets. If this language were to be included in the final order, the result would be an order significantly different from the RTO Order.

AECT strongly echoes the joint comments filed by the American Public Power Association (“APPA”), Edison Electric Institute (“EEI”), Electric Power Supply Association (“EPSA”), and the National Rural Electric Cooperative Association (“NRECA”) (“Joint Trade Associations”) regarding the Proposed Order. These comments noted (among other things) that allowing a private right of action to survive in a final order on SPP’s Application for Exemption would cause confusion and uncertainty, and be detrimental to the orderly regulation of electricity markets – not just SPP, but potentially the RTOs and ISOs covered by the RTO Order.

The fact is, RTO markets are among the most highly regulated in the country, subject to comprehensive rules and tariffs, with oversight by independent market monitors, state regulatory agencies and the FERC. Permitting private rights of action would upend this market oversight structure, with no additional benefit to consumers. Indeed, it could create a scenario where a transaction approved by state and federal agencies (i.e., an RTO market monitor, a state’s regulatory agency, the FERC and the CFTC) could nonetheless be challenged by a private party, simply because the private party may hope to gain a settlement payment. This would simply create nothing more than regulatory uncertainty in the marketplace.

Given these concerns, AECT respectfully requests the Commission delete the preamble language referencing Section 22 of the CEA from the Proposed Order, but otherwise grant the exemption requested by SPP by exempting transactions conducted in its market from the CEA, excluding only the Commission’s own anti-manipulation authority. This will clarify the Proposed Order while ensuring the continued orderly oversight of SPP’s market.

Respectfully submitted,

  
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