



June 22, 2015

Via Electronic Submission

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

Re: Comments of the Texas Competitive Power Advocates (“TCPA”) on the May 21, 2015, Commodity Futures Trading Commission (“Commission”) Notice of Proposed Order and Request for Comment on the Application for an Exemptive Order from the Southwest Power Pool, Inc., (“SPP”) from Certain provisions of the Commodity Exchange Act

Dear Secretary Kirkpatrick:

TCPA is a trade association representing power generation companies and wholesale power marketers with investments in Texas and the Electric Reliability Council of Texas (ERCOT) wholesale electric market. TCPA members and their affiliates provide a wide range of important market functions and services in ERCOT and in other Regional Transmission Organizations (“RTO”) across the United States, including the development, operation, and management of power generation assets. TCPA members provide over 45,000 megawatts of installed capacity to the ERCOT/Texas market – that is more than 50 percent of the total net operable electric generating capacity in ERCOT, they also represent billions of dollars of investment in the state, and they employ thousands of Texans.

TCPA now respectfully submits these comments to the Commission’s aforementioned Proposed Order.

The Commission’s Proposed Order, issued on May 21, 2015, was in response to SPP’s Application for an Exemptive Order where SPP seeks the same exemptive relief the Commission had granted to ERCOT and other RTOs in the Commission’s April 2, 2013 Final Order¹. In that

¹ *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).*

Final Order, the Commission found it was in the public interest to grant the requested exemptions (“RTO Order”).

TCPA supports extending the exemptions sought by SPP in its Application, but also notes that the Proposed Order differs significantly from the 2013 RTO Order and appears to attempt to rewrite the RTO Order by including language regarding private rights of action in its preamble. This newly inserted language, not included in the RTO Order, suggests that the Commission believes private rights of action under Section 22 of the Commodities Exchange Act (“CEA”) continue to exist, even though the exemption is for all provisions of the CEA except for the Commission authority to investigate fraudulent or manipulative behavior in the markets. TCPA believes, however, that the Commission should not create private right of action where none currently exists. In our opinion, the ERCOT market currently receives strict, multi-layered oversight by an Independent Market Monitor (“IMM”) and the Public Utility Commission of Texas (“PUCT”) and in the RTO Order, the Commission retained the authority to investigate fraudulent or manipulative behavior in the U.S. markets.

Further, TCPA supports the comments filed by the Joint Trade Association² on June 22nd regarding the Proposed Order. These comments note that allowing a private right of action to survive in a final order on SPP’s Application for Exemption would cause confusion, increase regulatory uncertainty, and be detrimental to the orderly regulation of electricity markets – not just in SPP, but potentially across the RTOs and the Independent System Operators (“ISO”) covered by the RTO Order.

TCPA, therefore, requests the Commission strike the preamble language referencing Section 22 of the CEA from the Proposed Order but grant the exemption requested by SPP. This will clarify the Proposed Order while ensuring the continued orderly oversight of SPP’s market.

Respectfully submitted,



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² The “Joint Trade Association” includes the American Public Power Association (APPA), Edison Electric Institute (EEI), Electric Power Supply Association (EPSA), and the National Rural Electric Cooperative Association (NRECA).