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June 8, 2016

Christopher Kirkpatrick
Secretary of the Commission
Commodity Future Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington DC 20581

Dear Mr. Kirkpatrick:

The Oklahoma Municipal Power Authority (OMPA) is writing to express our concerns with the CFTC's decision to reopen, and in the case of the Southwest Power Pool (OMPA's RTO), modify the Commodity Exchange Act Section 4c exemption orders provided to each of the nation's RTOs and ISOs. The Commission's disposition of this issue in connection with the pending SPP exemption order could adversely impact SPP's market and could have precedential implication for the other RTOs and ISOs that previously were granted exemptions by the Commission.

This proposal harms consumers and undermines the well-established regulatory frameworks that have been effectively implemented by FERC and the CFTC in the regulation and oversight of electricity markets to facilitate the system reliability and economic benefits that have inured to the benefit of consumers over the past approximately two decades.

The Wall Street Reform Act (Dodd-Frank Act) revised the Commodity Exchange Act (CEA) in a manner that raised potential jurisdictional overlap issues between the CFTC and FERC. The issue arose with respect to ISO/RTO market products that are subject to a comprehensive regulatory structural and behavioral framework that has been historically within the sole jurisdiction of FERC.

Dodd-Frank effectively recognized the potential CFTC-FERC jurisdictional overlap issue. To address it, the Act preserved each agency's jurisdiction, specifically provided CFTC with the authority to exempt ISO/RTO projects under Section 4c of the Act, and also

directed CFTC and FERC to enter into a memorandum of understanding (MOU) to manage potential areas of overlap.

With respect to Section 4c exemptions, Paragraph (6) explicitly directs CFTC to exempt ISO/RTO products (it's stated more generally and not explicitly in terms of ISO/s/RTO/s) if it is in the public interest. Notably, there are no limitations with respect to Private Rights of Action under Section 22 of the CEA. Allowing Private Rights of Action could undermine FERC's comprehensive regulatory and oversight authority of ISO/RTO markets.

In response to the concern created by Dodd-Frank, 6 of the 7 ISOs are filed for exemptions under Section 4c of the CEA. The scope of the exemption requests included the relevant ISO/RTO products and the entities that transacted in/provided services for those products. The exemptions asked to be exempt from all sections of the CEA except CFTC behavioral enforcement oversight. The exemptions also explicitly asked CFTC to not make any finding with respect to whether the relevant products were jurisdictional under the CEA.

CFTC granted the exemptions as requested.

SPP subsequently filed for an analogous exemption on the same basis as the other ISOs/RTOs.

CFTC issued a draft order on the SPP request that introduced the preservation of private rights of action under CEA Section 22 in the SPP order. The preamble language also noted that CFTC never intended to exempt the other ISOs/RTOs from private rights of action.

All the ISOs/RTOs and numerous interested parties filed comments in response to this issue being raised in the SPP draft order preamble language – all opposed the preservation of private rights of action in ISO/RTO 4c exemptions.

The concerns with the preservation of private rights of action in the ISO/RTO orders include litigation and regulatory disruption and/or divestiture concerns.

As an initial matter, there is no need/value to preserving private rights of action in ISO/RTO exemption orders – ISO/RTO market products are, and have been, subject to a comprehensive structural and behavioral regulatory framework that has been developed over more than two decades with input from all interested parties – this framework includes oversight by the ISO/RTO, the independent ISO/RTO market monitors, FERC and the CFTC, which preserved its oversight authority in the ISO/RTO exemption orders.

The comprehensive framework described above was recognized by CFTC and served as the basis for the ISO/RTO exemption orders.

Introduction of CEA Section 22 private rights of action is problematic for the following reasons. It opens the door to litigation in all of the more than 100 of the district courts in the US for issues that are effectively managed via well thought-out procedures that begin at the ISO/RTO level (including established ADR procedures) and logically proceed through FERC (or TX PUCT for ERCOT) and only end up in court if FERC (TX PUCT for ERCOT) action is appealed – this is an effective process because it vets the issues through procedures that involve entities with intimate knowledge of the issues and ultimately focuses actions at the district court level on FERC decisions related to their comprehensive oversight.

It could result in penalties against the ISOs/RTOs that would have to be collected from electricity customers because ISOs/RTOs are non-profits.

It could result in penalties against market participants for issues that have not been vetted through the comprehensive and effective compliant processes established and administered by FERC (and TX PUCT for ERCOT) – it puts the issues in a less effective forum and potentially subjects the market participant defendants at risk of unjustified penalties.

It could result in effective regulation of ISO/RTO markets if such orders direct the ISO/RTO to make changes to their markets, either directly or indirectly.

It could cause chilling effects on otherwise appropriate market behavior as a result of the court findings/orders that could affect the efficient and effective operation of ISO/RTO markets.

It could result in regulatory disruption/divestiture if a court makes an affirmative determination that an ISO/RTO product is jurisdictional under the CEA, which introduces CFTC exclusive jurisdiction – this could result in regulatory disruption or regulatory divestiture issues between CFTC and FERC, which would be contrary to the effective balance intended by Congress when it drafted Dodd-Frank.

Any and all of the above-described scenarios would impact the ISO/RTO, market participants, and, as noted, potentially CFTC and FERC, if a court action affected the jurisdiction/regulatory authority of those agencies.

All of the above-described potential impacts would be extremely disruptive to the effective and comprehensive regulatory framework historically administered solely by FERC and would undermine the economic and reliability benefits that ISOs/RTOs have provided to approximately two-thirds of electricity consumers in the US.

OMPA urges the Commission to acknowledge the clear intent of Congress as expressed in Section 721(a)(1)(A) of the Dodd-Frank law and retain the current structure and scope of the ISO/RTO exemption. Thank you for your consideration of this request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randy Elliott". The signature is fluid and cursive, with a large initial "R" and "E".

Randy Elliott
General Counsel