



June 15, 2016

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AEP.com

Via Electronic Submission

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

Re: Comments of American Electric Power Service Corporation on the Notice of Proposed Order and Request for Comment on the 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

Dear Mr. Kirkpatrick:

I. INTRODUCTION

American Electric Power Service Corporation, on behalf of the companies of the American Electric Power Company, Inc. system (“AEP”), respectfully submits these comments in opposition to the Commodity Futures Trading Commission’s (“CFTC” or “Commission”) Proposed Order and Request for Comment on the 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 (“Proposed Order”).¹ In the Proposed Order the CFTC is proposing to amend its previous order exempting specific electric energy transactions from certain provisions of the Commodity Exchange Act (“CEA”)² and commission regulation to now explicitly include private rights of action under Section 22 of the CEA, which order was issued to the following parties in April 2013: Midcontinent Independent Transmission System Operator, Inc.; ISO New England, Inc.; PJM

¹ *Proposed Order and Request for Comment on the 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*, 81 Fed. Reg. 30245 (May 16, 2016) (“Proposed Order”).

² 7 U.S.C. § 1 *et seq.*

Interconnection, L.L.C. ; California Independent System Operator Corporation; New York Independent System Operator, Inc.; and the Electric Reliability Council of Texas, Inc. (“collectively RTOs/ISOs”) (such order, the “2013 RTO-ISO Order”)³.

The RTOs/ISOs are extensively regulated by the Federal Energy Regulatory Commission (“FERC”) or the Public Utility Commission of Texas (“PUCT”) under tariff or protocol provisions. The RTOs/ISOs each have market monitors and are subject to surveillance and feature robust stakeholder processes.

AEP operates in several of RTOs/ISOs regulated by both FERC and the PUCT. They are Midcontinent Independent Transmission System Operator, Inc.; PJM Interconnection, L.L.C.; Southwest Power Pool and the Electric Reliability Council of Texas, Inc. AEP owns and operates electric generation, transmission and distribution facilities, and also offers retail electric service in certain areas that permit customer choice. AEP devotes significant resources to both participate in the stakeholder processes in such RTO/ISOs and comply with the rules of both the RTO/ISOs and the FERC and PUCT. AEP’s state regulated operations have a public service obligation to provide reliable service to customers at reasonable prices. All of AEPs operations and employees are held to the highest standards of regulatory compliance and ethical behavior.

The RTO/ISO markets are carefully structured, inter-related markets subject to comprehensive FERC regulation and oversight as well as 24/7 oversight by the RTO/ISO market monitors. Since 2013, AEP has been operating in reliance on the 2013 RTO-ISO Order with the unambiguous understanding that the energy transactions specifically identified in such order are exempt from all provisions of the CEA except for the specifically enumerated reserved sections. Inclusion of Section 22 third party rights of actions calls into question, or even undercuts, the very purpose and effectiveness of the 2013 RTO-ISO Order and creates substantial regulatory uncertainty. Market participants, including AEP, rely on the FERC- and PUCT-approved tariff and protocol provisions to make capital investments and procure energy needed to serve customers. Increasing regulatory uncertainty increases risk, which will increase our costs and the cost for our customers.

Rather than improve market oversight, allowing private rights of action will create uncertainty and increase costs. FERC and the PUCT provide substantial oversight of the markets and independent market monitors provide 24/7 supervision as well. Allowing private rights of action will work against this established oversight and allow market participants to make collateral attacks on approved market rules. Having District Courts all over the United States weigh in on issues related to these complex, capital-intensive markets will not benefit the electric markets or end-use customers. Unlike private parties operating purely for financial gain, the CFTC, FERC and the PUCT have a common goal in maintaining the integrity of the

³ *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. 19880 (April 2, 2013) (“2013 RTO-ISO Order”).

markets and seeking to punish bad actors for negative impacts on consumers or markets. Since the issuance of the 2013 RTO-ISO Order, the CFTC and FERC have entered into an information sharing MOU which further augments and solidifies the CFTC's ability to obtain information in furtherance of their market surveillance and enforcement responsibilities. As such, the Commission has the tools necessary to monitor the RTO/ISO markets without introducing private rights of action under the CEA.

As noted above, AEP expends significant resources to ensure it is compliant with the complex requirements of the four RTOs/ISOs in which it operates. If District Courts will effectively have concurrent jurisdiction with FERC and the PUCT upon the filing of an action by a third party seeking to further its own goals, AEP's compliance efforts will be made considerably more difficult, as the rules for each RTO/ISO will become subject to "regulation" by many parties, and thus lack transparency in comparison to today's process of regulatory oversight. Our corporate culture of compliance relies on clear rules for the organized power markets established by expert regulators. If such rules can be second guessed or collaterally overturned through the filing of a third party action, there can be no clear rules.

For these reasons, as well as those set forth in the EEI comments, AEP urges the Commission not to amend the 2013 RTO-ISO Order to allow for private rights of action.

Respectfully Submitted,

American Electric Power Service Corporation

By: John C. Crespo

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cc: Honorable Timothy Massad, Chairman
Honorable Sharon Bowen, Commissioner
Honorable Christopher Giancarlo, Commissioner
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