



June 15, 2016

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

Re: Notice of Proposed Amendment to Final Order Exempting Specified RTO/ISO Transactions, 81 Fed. Reg. 30,245, May 16, 2016 (the “Proposed Amendment”)

Dear Mr. Kirkpatrick:

The Missouri Joint Municipal Electric Utility Commission (“MJMEUC”) respectfully submits these comments to the Commodity Futures Trading Commission (the “Commission”) on the Proposed Amendment to 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 Authority Provided in the Act (the “2013 RTO/ISO Exemption Order”).¹

MJMEUC is a Joint Action Agency of the State of Missouri specifically authorized by state law to operate as an electric utility for the benefit of the combined requirements of the members. Established by six charter members, MJMEUC has grown to a membership of 67 municipally owned retail electric systems ranging in size from approximately 230 to 109,700 meters. These municipal and cooperative electric systems serve 347,000 retail customers, and have a combined peak load of over 2,639 MW. MJMEUC members have load in both the SPP and MISO RTOs/ISOs and participate in both Southwest Power Pool’s (“SPP’s”) and Midcontinent Independent System Operator’s (“MISO’s”) energy markets. MJMEUC may construct, operate and maintain jointly owned generation and transmission facilities for the benefit of members. MJMEUC has the authority to enter into contracts for power supply, transmission service, and other services necessary for the operation of an electric utility.

Background

Congress recognized the unique nature of electricity products regulated by FERC in the Dodd Frank Act, and designed that Act to ensure that any potential jurisdictional overlap between the Commission and the Federal Energy Regulatory Commission (“FERC”) was effectively managed,

¹ 78 Fed. Reg. 19889 (April 2, 2013).

respecting each agency’s jurisdiction, but also applying that jurisdiction relative to need and expertise. This well thought out approach led to the approval of the existing ISO/RTO exemption orders, which preserve FERC’s overall jurisdiction for ISO/RTO markets, subject only to complementary behavioral oversight jurisdiction by the Commission.

The Commission actively engaged with the ISOs/RTOs and FERC (and the Public Utility Commission of Texas for ERCOT) in the development of the ISO/RTO proposals to ensure they met the public interest standard that is required for the issuance of a 4(c) exemption order. Ultimately, the Commission found that ISO/RTO proposals met the public interest standard, as those markets are comprehensively and effectively regulated and, as such, mitigate financial risks to consumers. This was the basis for granting the effective ISO/RTO orders.²

MJMEUC Opposition to the Commission’s Proposed Amendment

MJMEUC specifically supports the comments of the ISO-RTO Council and the NFP Electric Associations filed in this proceeding, and supports all comments filed in opposition to the proposal to reopen the carefully balanced and reasoned CEA 4(c)(6) “public interest” exemption in the 2013 RTO/ISO Exemption Order to “add back” Section 22 private rights of action for transactions entered into under an RTO/ISO tariff. MJMEUC also supports the issuance of SPP’s final exemption order consistent with the currently existing exemptions for all other RTOs and ISOs. The preservation of private rights of action under Section 22 of the CEA will undermine the jurisdictional balance that Congress established and the Commission effectuated via the existing ISO/RTO orders. It will cause potentially significant regulatory disruption and/or divestiture issues that could result in significant negative impacts to ISO/RTO markets. This could also affect the scope and effectiveness of both FERC and the Commission’s regulatory authority.

Adoption of the Commission’s proposal would open the door to federal courts making threshold decisions on the jurisdictional venue for RTO/ISO market issues, as well as the policies,

² 78 Fed. Reg. 19889 (April 2, 2013). The 2013 RTO/ISO Exemption Order was issued under CEA Section 4(c)(6), which was added to the CEA by Section 722(f) of the Dodd-Frank Act, concurrently with the Commission’s jurisdiction over “swaps,” and the other provisions of the Dodd-Frank Act that recognized that the Commission and the FERC share jurisdiction over electricity and natural gas transactions. CEA Section 4(c)(6)(A) and (B) specifically recognize that FERC- or State-tariffed transactions involve unique “public interest” considerations, not just the general Commission public interest considerations referenced in CEA Section 4(c)(2). RTO and ISO transactions help the electric industry (commercial end-users for purposes of the CEA) provide reliable, affordable electricity to American consumers and businesses. These transactions are intrinsically linked to the reliable, efficient delivery and physical flow of electricity in a specific geographic region of the United States. In the Federal Power Act, Congress “declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest,” 16 U.S.C. § 824(a), and authorized FERC regulation to further a particular public interest: “the orderly production of plentiful supplies of electric energy ... at just and reasonable rates,” *NAACP v. FPC*, 425 U.S. 662, 670 (1976). The unique public interest standard set forth in CEA Section 4(c)(6) is additive to, not duplicative of, the more general public interest determination the Commission makes in deciding another type of CEA 4(c) exemption request. Congress clearly recognized these FERC and state-tariffed RTO/ISO transactions as a distinct and important type of transaction, different from other Commission-regulated financial products transacted on trading platforms. The Commission itself notes the distinction when it recognizes that CEA 4(c)(6) directs that the Commission “shall” grant an exemption if it makes the CEA 4(c)(6) “public interest” determination. See 30,249

rules, and regulations of the RTOs/ISOs themselves. These courts do not have the level of expertise in the unique and specialized ISO/RTO markets found at the FERC and Commission. Therefore, the ISOs/RTOs and utilities such as MJMEUC, will incur additional costs to educate the courts and defend their positions and actions through discovery, briefs and other filings, and to cover the costs of any settlements or adverse rulings and appeals. All of these costs ultimately flow down to electricity consumers. Since RTOs/ISOs are non-profit entities serving their members, there are no shareholders or owners from which to extract judgments; all judgments would have to be paid by consumers, which is not likely to result in justice being served.

The FERC and the Commission already have an established regulatory framework for the regulation of RTOs/ISOs and their respective markets. The adoption of the proposed amendment to preserve the private rights of action in ISO/RTO 4(c) exemptions will create confusion and inefficiencies in the RTO/ISO markets and processes and could result in conflicting directives and rules. The bottom line is adding this judicial avenue to the currently existing regulatory framework will result in increased costs for RTOs/ISOs and utilities in the form of increased compliance, regulatory, and legal costs, all of which flow through to electricity consumers without providing any offsetting benefits.

If you have questions or need more information or assistance, please don't hesitate to contact me.

Respectfully Submitted,

/s/ Floyd Gilzow

Floyd Gilzow

Vice President of Member Relations and Governmental &
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