



Via Electronic Submission

July 29, 2016

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

Re: Letter of Support, ICE Amendments to Block Trade FAQ - Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6

Dear Mr. Kirkpatrick,

The Electric Power Supply Association (“EPSA”)¹ appreciates the opportunity to support the comments filed by the Commercial Energy Working Group (the “Working Group”)² on the rule amendment filing of ICE Futures U.S. (“ICE”) to revise its Block Trade Frequently Asked Questions (“FAQ Amendments”). EPSA supports the request of the Working Group urging the Commodity Futures Trading Commission (the “Commission” or “CFTC”) to permit the FAQ Amendments to take effective as filed by ICE.³

Cost-effective access to futures and swaps is a critical piece of the commercial risk management framework which EPSA members rely on to hedge and mitigate risk and support their underlying businesses— both as competitive sellers in the major U.S. electric power wholesale markets, as well as major retail electricity providers in states where consumers can choose their electricity providers. The competitive model underlying these businesses is not supported by a guaranteed rate of return from investors or customers, as is the business model of a traditional cost-of-service, investor-owned utility. Rather, competitive suppliers rely on project

¹ EPSA is the national trade association representing leading competitive power suppliers, including generators and marketers. These suppliers, who account for nearly 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. EPSA’s members are not financial entities. Rather, they are physical commodity market participants that rely on futures and swaps to hedge and mitigate their commercial risk. This letter represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

² See Commercial Energy Working Group Comments, ICE Amendments to Block Trade FAQ - Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6 (filed July 29, 2016).

³ See Amendments to Block Trade FAQ - Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6. Available at: <http://www.cftc.gov/filings/orgrules/rule060116iceusdcm001.pdf>.

financing through the open market and look solely to the market for a return. In the course of selling power through this business model, competitive power suppliers also bolster the ability of the U.S. electric markets to send more accurate and transparent price signals which in turn provides reliable investment signals to support the necessary buildout of infrastructure and technologies that ensure long-term resource adequacy, grid reliability, and fuel/resource diversity. EPSA's membership, and competitive power suppliers more broadly, are a unique constituency of CFTC-regulated market participants that necessarily relies on cost-effective access to physical and financing risk mitigation tools.

EPSA thus supports the creation of more certainty around the rules of the Intercontinental Exchange that would facilitate more liquidity, competition, and accessibility to the futures markets, specifically by providing regulatory certainty for commercial entities such that they may engage in bona fide pre-hedging of positions which they believe in good faith would result from consummation of a block trade. The CFTC should broadly encourage bona fide futures trade execution across futures platforms: approving the FAQ Amendments is a step in the right direction to provide a more reliable, clear path forward for commercial energy companies to confidently utilize the central limit order book market concurrently with the block trade market and enhance their participation in the block trade market.

EPSA further agrees with the Working Group's comments that the FAQ Amendments create helpful and necessary clarity around the circumstances under which futures block trade solicitations can be shared and acted upon – specifically, by reducing the risk that the legitimate pre-hedging of positions, which counterparties expect would result from consummation of a block trade, could be perceived as impermissible. EPSA also supports the Working Group's position that the rule amendments would ensure that information widely distributed by brokers in the ordinary course of soliciting interest in a potential block trade is not unduly restricted from being shared by being treated as material, nonpublic information. Overall, EPSA views the FAQ Amendments to be favorable changes that maintain an appropriate balance between permitting hedging strategies that lead to efficient execution of block trades, without presenting harm or competitive disadvantage to other market participants.

In addition to our support for CFTC action approving the FAQ Amendments as filed by ICE, EPSA urges the CFTC to continue taking steps that enhance the competitive power industry's ability to access the futures markets. Since the futurization of the swaps markets in 2012, EPSA's members and the commercial energy industry more broadly have transitioned to a virtually exclusive reliance on futures for their hedging needs. In light of this industry-wide shift, commercial energy companies are relying on futures products to support their risk mitigation activities company-wide and across commodities. EPSA emphasizes that the use of futures by electricity power providers is not a profit center. By example, futures are a critical risk mitigation tool to protect necessary new build from open market risk (*e.g.* a facility that supports reliability or is built to meet clean energy targets), and ultimately ensure that such new

build does not sustain low revenue performance such that long-term net operating losses jeopardize its viability.

Finally, EPSA reiterates that the Commission should provide appropriate recognition in this proceeding and more broadly in its regulatory framework for futures and swaps that anticipatory hedging practices are a regular, necessary, and inherent part of the average commercial end-user's business model – especially in the commercial power industry. EPSA believes that the ICE FAQ Amendments support commercial firms' anticipatory hedging and pre-hedging needs with respect to achieving better price discovery, tighter spreads, lower prices, and ultimately as a result of the requested changes, more market participation in block trades. The amendments also provide greater regulatory certainty and safeguards against chilling impacts to legitimate bona fide pre-hedging of positions that would result from such trades.

For the aforementioned reasons, EPSA supports the comments of the Commercial Energy Working Group urging that the CFTC approve the FAQ Amendments submitted by ICE Futures U.S., as filed with the Commission.

Please do not hesitate to contact the undersigned for more information.

Sincerely,

/s/

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