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COMMENT

Office of the Secretariat  
Commodities Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, Northwest  
Washington, DC 20581

**CINERGY**

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TRADING COMMISSION  
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Via Fax: 202-418-5527  
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Re: Proposed Chicago Board of Trade (CBT) ComEd and TVA Electricity Futures Contracts

Cinergy Services, Inc. offers the following comments on behalf of its two operating companies, PSI Energy, Inc. and the Cincinnati Gas & Electric Company, which are active wholesale market participants, regarding the proposed contract terms and conditions of the ComEd and TVA Electricity futures contracts, submitted to the CFTC under 45 Day Fast Track Review on March 24, 1998.

Cinergy services comments will highlight the deficiencies that Cinergy Services sees in the contracts as currently drafted. Cinergy Services requests that the Commission resolve the concerns presented herein prior to approval of the contracts for trading. The principal focus of Cinergy's comments relates to the mechanism of delivery, and the language that describes these functions in the two proposed CBT contracts.

However, in addition to specific issues of delivery, it is our opinion that there exist structural impediments in the functioning of the TVA wholesale cash market that should

be evaluated and analyzed by Commission staff before approval is granted. These impediments directly effect both the formation of trading liquidity in the cash market, as well as the availability of deliverable supply to meet bilateral trade obligations.

The major impediment in the development of trading liquidity to date relates to the "Fence Rule" (16 U.S.C. §831n - 4 (1994)). Under the 1959 Amendment to the TVA Act, TVA is restricted from selling power at wholesale to all entities outside the fence, other than fourteen principal interconnected trading parties designated in 1959. The "Fence Rule" has been interpreted to mean that the fourteen special counterparties can only purchase TVA power for the purpose of serving load within their systems. From a commercial standpoint the Fence blocks the free re-sale of power purchased from TVA outside the TVA control area. This effectively removes TVA's control area from the marketplace as a source of supply for meeting cash and futures market delivery commitments elsewhere.

Because of the existence of the "Fence", no claim can be made by the CBT that the proposed futures contract is consistent with an "Into" utility system delivered product. Thus the question must be raised as to the economic justification for the TVA contract, particularly as it applies to the contract's price discovery and risk shifting functions.

## Contract Specific Issues

An analysis of the rules of the ComEd futures contract posted on the CFTC Internet site ([www.cftc.gov/dea/pending/ComEd%20Rules.htm](http://www.cftc.gov/dea/pending/ComEd%20Rules.htm)) reveals several material deficiencies in the structure of the contract. These deficiencies are also applicable to the TVA contract, to the extent that the language, terms, and conditions of the TVA contract is structurally identical to the ComEd contract. Cinergy's specific concerns involve the following CBT contract rules:

- 5304.01, "Unit of Trading". On the assumption that the unit of trading is the same as the delivery unit, the 1,680 MWh unit presents a series of problems. From a ratable standpoint, the CBT designed the hourly unit of trade to be 5 MWh of energy scheduled during 16 on-peak hours over a 21 day delivery period. The problem with this structure occurs in months that have more than 21 business days. What happens in a month that has 23 on-peak days? Does the ratable unit change, or does the delivery unit change to 1,840 MWh (5x16x23). In either case, unless there is a concise description of the ratable delivery unit consistent with the number of on-peak days in a given delivery month, neither the long nor the short will know how much hourly energy to schedule, and for which number of days. The convention in the cash market is to quote, deal, book transfer, and/or deliver the ratable unit. Thus a 50 MW transaction for February 1999 references 50 MW for every on-peak hour in February or 15,200 MWh.

A 50 MW deal for March 1999 is 50 MW for every on-peak hour in March, or 18,400 MWh.

- 5336.01 "Standards". The explanation "seller's choice of interconnection point" contained in this section is both incomplete, and inconsistent with cash market practice. The last sentence of the section states, "The seller is not responsible for transmission service inside the ComEd control area." If the proposed delivery mechanism for the contract referenced herein is "Into" the ComEd control area, then the language must clearly assign transmission responsibility to the long. This in fact is what defines the "Into" mechanism. The cash market short designates either an internal or external interface, which has sufficient available transmission capacity for the long to (i) bring the short's energy into the control area, and (ii), purchase transmission. The energy component of the transaction is distinct from the bundled energy and capacity component of the transaction. At the title transfer point, the short is responsible for delivering energy, and the long is responsible for receiving the short's energy, contingent on his ability to acquire and utilize transmission service inside the control area. Without an amendment to the ComEd contract specifying the long's unambiguous transmission responsibility, a commercial seller could justifiably argue that the contract is really an "At-the-Border" product, and thereby cause the long to become stranded, particularly if the long has a downstream sale or delivery commitment.

• 5343.06 “Time of Delivery, Payment, Delivery Procedures” Part (B), (1). Although in all probability the CBT meant to address the issue of transmission availability in this section, the terms of the contract as written in this section are misleading. The second sentence in the section currently reads, “The long’s confirmed transmission request recorded on ComEd’s Open Access Sametime Information System (OASIS) shall be the determination of transmission service reliability.” (Emphasis added). The issue is transmission service availability, and not transmission service reliability. Use of the word “reliability” in this case has several inferences which are wholly inconsistent with the “Into” transaction. These include (i), the inference that a transmission service purchase on the ComEd Transmission System is both firm and not subject to curtailment, since the service is deemed “reliable”, and (ii), the inference that the long is required to purchase a certain transmission type or quality, which in all likelihood is meant to be firm transmission service. The basic underpinning of the “Into” transaction in the wholesale power market is transmission availability. If a seller designates a border interface as the buyer’s point of receipt, and there is insufficient transmission availability at that interface to bring the seller’s energy into the control area, the seller is obligated to switch interface designations, until transmission is available to the buyer. This defines the transaction, and “reliability” as used in this context has no meaning. In addition, no requirement is placed on an “Into” buyer regarding the quality of transmission service utilized by the buyer in the transaction. As mentioned in the previous paragraph, a ComEd futures contract short could interpret the CBT contract as an “At-the-Border” product, rather than an “Into” utility system product, as intended.

Again, it is suggested that this section be amended by the CBT to reflect commercial practice, and resolve any ambiguities which may arise on the part of market participants.

We request that the issues outlined in this comment letter be addressed to the CFTC's satisfaction prior to approval of the two proposed CBT electricity futures contracts.

Please direct any questions regarding this letter to the undersigned at 317-838-1345, or Richard Seide at 606-372-5434.

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