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FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

OFFICE OF THE GENERAL COUNSEL

November 2, 2009

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COMMENT

Mr. David Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Received CFTC
Records Section
11/9/09

Re: Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether Certain Financial Basis Contracts Offered for Trading on the IntercontinentalExchange, Inc., Perform Significant Price Discovery Functions (Comment Files 09-013 through 09-025)

Comments of the Staff of the Federal Energy Regulatory Commission

Dear Mr. Stawick:

On October 5, 2009, the Commodity Futures Trading Commission (CFTC) issued notices of action and request for comment on whether certain natural gas financial basis contracts offered for trading on the IntercontinentalExchange, Inc. (ICE), an exempt commercial market (ECM), perform significant price discovery functions.[1] While the comment period in these proceedings expired on October 26, 2009, I respectfully request leave to file the comments of the staff of the Federal Energy Regulatory Commission (FERC) out of time.

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[1] The contracts are: the San Juan Financial Basis Contract; the TETCO-M3Financial Basis Contract; the Zone 6-NY Financial Basis Contract; the AECO Financial Basis Contract; the Chicago Financial Basis Contract; the Dominion-South Financial Basis Contract; the HSC Financial Basis Contract; the Malin Financial Basis Contract; the NGPL TX-OK Financial Basis Contract; the Permian Financial Basis Contract; the PG&E Citygate Financial Basis Contract; the TCO Financial Basis Contract; and the Waha Financial Basis Contract.

Under the CFTC's rules implementing the Reauthorization Act of 2008, an ECM with significant price discovery contracts (SPDCs) is subject to certain self-regulatory and reporting requirements, as well as certain CFTC oversight authorities, with respect to those contracts. Specifically, such regulatory authority applies to agreements, contracts or transactions in exempt commodities (which includes natural gas) executed on an electronic trading facility by certain eligible commercial entities on a principal-to-principal basis if the CFTC determines, in its discretion, that any such agreement, contract or transaction performs a significant price discovery function. If the CFTC determines that a particular agreement, contract or transaction performs a significant price discovery function, the ECM must demonstrate, with respect to that contract, compliance with nine "core principles" set forth in section 2(h)(7)(C) of the Commodity Exchange Act (CEA) and the CFTC's rules thereunder.

FERC understands that some entities may argue that designation of certain contracts as SPDCs could affect consumers adversely. FERC's regulatory role generally is to ensure an adequate supply of energy at reasonable prices for consumers. In our view, the statutory provisions on SPDCs can and should be implemented in a way helpful to consumers, and we recognize that the CFTC will give appropriate consideration to the interests of consumers.

We also understand that the above-referenced contracts are cash-settled basis contracts and that none of them contemplates the actual physical delivery of natural gas. While a determination by the CFTC that any of these contracts performs a significant price discovery function would not appear to conflict with FERC's exclusive jurisdiction under the Natural Gas Act (NGA) over certain sales of natural gas in interstate commerce for resale or with its other regulatory responsibilities under the NGA, the FERC staff will continue to monitor for any such conflict. Moreover, the FERC staff will monitor other similar determinations that could conflict with the FERC's regulation of wholesale natural gas markets. Accordingly, the FERC staff will advise the CFTC of any potential conflicts with the FERC's exclusive jurisdiction over certain sales of gas in interstate commerce for resale.

The FERC staff thanks the CFTC for soliciting comments on its review of the ICE contracts. Any questions or comments on this submission may be directed to:

The Federal Energy Regulatory Commission
Office of the General Counsel
888 First Street, NE
Washington, DC 20426
Attention: Andrew F. MacDonald
Phone: 202-502-6541

Sincerely,

Thomas R. Sheets
General Counsel
Office of the General Counsel
Federal Energy Regulatory Commission

Cc: Jon Wellinghoff, Chairman
Suedeen G. Kelly, Commissioner
Phillip D. Moeller, Commissioner
Marc L. Spitzer, Commissioner