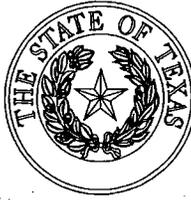


Barry T. Smitherman  
Chairman

COMMENT

Rick Perry  
Governor



Received CFTC  
Records Section  
11/30/09

09-27  
(4)

Public Utility Commission of Texas

November 16, 2009

Chairman Gary Gensler  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

2009 NOV 30 PM 2 24  
OFFICE OF THE SECRETARIAT  
C.F.T.C.

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 Contracts Offered for Trading on the Intercontinental Exchange, Inc. Perform Significant Price Discovery Functions (Comment Files 09-011, 09-012, 09-027, 09-032)

Dear Chairman Gensler:

I have been following with interest the recent actions of the Commodity Futures Trading Commission (CFTC) and the comments on whether certain electricity contracts perform significant price discovery functions. In that regard, I wanted to provide you with some background information on the electric market in Texas and the Electric Reliability Council of Texas (ERCOT), which is different from other Independent System Operators (ISOs) in the country.

ERCOT is located wholly within the State of Texas. In accordance with Texas state law, the Public Utility Commission of Texas (PUC) has certified ERCOT as the independent organization to ensure nondiscriminatory access to the transmission and distribution systems, to ensure the reliability and adequacy of the regional electrical network, and to perform other essential market functions. While ERCOT performs many of the same functions and is often grouped with other ISOs in the U.S., it is not regulated by the Federal Energy Regulatory Commission (FERC) in the same manner as the other ISOs. Instead, ERCOT is directly responsible and accountable to the PUC.<sup>1</sup>

ERCOT currently facilitates the market with respect to balancing energy, ancillary services, and transmission congestion rights. After implementation of the nodal market expected late next year, ERCOT will also facilitate a day-ahead market. With respect to these market activities, ERCOT is subject to PUC regulatory oversight and close scrutiny by the PUC's independent wholesale electric market monitor.<sup>2</sup> Just as FERC Staff commented regarding the

<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 39.151 (Vernon 1998 & Supp. 2009) (PURA) (available at <http://www.puc.state.tx.us/rules/statutes/Pura09.pdf>).

<sup>2</sup> PURA § 39.1515.



comprehensive regulation that they provide to the FERC-regulated RTOs and ISOs, the PUCT provides similar oversight and detailed regulation of ERCOT and all its market functions.

Thank you for soliciting comments on this matter, and I hope you find my clarification helpful. Feel free to contact me should you have any questions or want to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry T. Smitherman". The signature is fluid and cursive, with a large initial "B" and a long horizontal stroke at the end.

Barry T. Smitherman  
Chairman

cc: Michael Dunn, Commissioner  
Jill E. Sommers, Commissioner  
Bart Chilton, Commissioner  
Scott D. O'Malia, Commissioner  
Dan M. Berkovits, General Counsel  
Ananda K. Radhakrishnan, Director