



**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE FEDERAL ENERGY REGULATORY COMMISSION
AND
THE COMMODITY FUTURES TRADING COMMISSION**

I. PURPOSE

Pursuant to Section 720(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), the Federal Energy Regulatory Commission (“FERC”) and the Commodity Futures Trading Commission (“CFTC”) (jointly, the “Participating Agencies”) enter into this Memorandum of Understanding (“MOU”) to establish procedures for: (1) applying the Participating Agencies’ respective authorities in a manner so as to ensure effective and efficient regulation in the public interest; (2) resolving conflicts concerning overlapping jurisdiction between the Participating Agencies; and (3) avoiding, to the extent possible, conflicting or duplicative regulation.

II. COMMITMENTS OF THE PARTICIPATING AGENCIES

The Participating Agencies agree to the following procedures--

A. Notification of Activities That May Involve Overlapping Jurisdictions:

1. When the staff of either agency (the “Notifying Agency”) becomes aware that (i) an entity regulated or proposed to be regulated by that agency has filed a request for authorization or an exemption permitting such entity to engage in activities, or (ii) the agency is *sua sponte* considering such an authorization or exemption, which, in either case, may arguably fall within the overlapping jurisdiction of the other agency (the “Notified Agency”), staff of the Notifying Agency will promptly notify the staff contact of the Notified Agency of the matter.
2. Notification pursuant to Section II(A)(1) above will not constitute an acknowledgement by the Notifying Agency that the Notified Agency has, in fact, jurisdiction in the matter.
3. Staff contacts of the Participating Agencies will consult informally to aid the staff of the Notified Agency to determine whether that agency has any interest in the matter. Staff of the Notifying Agency will make good faith efforts to assist staff of the

Notified Agency in obtaining information the latter needs to determine whether it has any interest in the matter.

- i. The Participating Agencies agree to treat as confidential, to the extent permitted by applicable laws, any non-public information provided pursuant to this MOU.
 - ii. Nothing in this MOU, or in providing information pursuant to this MOU, waives or alters any provision of any applicable law or privilege relating to non-public information.
4. Promptly after receipt of the notification or of additional information pursuant to this MOU, whichever is later, staff of the Notified Agency shall advise staff of the Notifying Agency of one of the following conclusions:
- i. The Notified Agency has no interest in the matter.
 - ii. The Notified Agency is interested in the matter, and wishes to commence the processes of Section II(B) below.
 - iii. The Notified Agency wishes to wait until an entity regulated or proposed to be regulated by the Notifying Agency engages in a specified procedural step (*e.g.*, submits a specified type of application) before deciding whether it has an interest in the matter.
 1. In such a case, the staff of the Notifying Agency shall notify the staff contact of the Notified Agency when any such procedural step is completed, in which event the Notified Agency will promptly notify the staff contact of the Notifying Agency whether it wishes to follow subsection (i) or (ii) above.

B. Procedures for resolving overlapping jurisdiction:

1. When notice is provided pursuant to Section II(A) above, staff of the Participating Agencies will meet and begin discussions with respect to the matter.
2. On matters of mutual interest that arise under Section II(A), staff of the Participating Agencies will diligently and cooperatively communicate to coordinate and develop an approach that meets both agencies' regulatory concerns. Each agency shall, by Commission action, whether pursuant to a petition or *sua sponte*, issue such public orders as are necessary to address such overlap.
 - i. The CFTC may conclude that an activity, or an aspect of such activity: (1) is not subject to the CFTC's authority as provided in the Commodity Exchange Act, 7 U.S.C. § 1, *et seq.* ("CEA"); or (2) may be eligible for a public interest waiver exemption, whether conditional or unconditional, pursuant to Section 722 of Dodd-Frank and Section 4(c) of the CEA.
 - ii. The FERC may conclude that an activity, or aspect of such activity, is not subject to the FERC's authority as provided in the Federal Power Act, 16

U.S.C. § 824, *et seq.* (“FPA”), the Natural Gas Act, 15 U.S.C. § 717, *et seq.* (“NGA”), or the Natural Gas Policy Act, 15 U.S.C. § 3301, *et seq.* (“NGPA”).

3. The CFTC and the FERC each agree to provide information as requested by the other agency to inform its determination pursuant to paragraph II(B)(2).

C. Dispute Resolution:

If a dispute arises among the Participating Agencies regarding the terms or the implementation of this MOU, the following steps will be taken:

1. The agency asserting the dispute (through its initial contact(s)) will, within 15 working days) provide a written statement of the dispute, along with any rationale or supporting documents, to the other agency in an attempt to resolve the dispute.
2. If no resolution is reached between the initial contacts within 10 working days of notification of the dispute, it will be elevated in writing, along with any rationale or supporting documents, to the Director-level contacts for each agency.
3. If resolution is not reached by the Director-level officials within 10 working days of their receipt of the written statement of the dispute, the Participating Agencies will promptly elevate the matter to their Commissions, as appropriate, to resolve the matter.

The time limits specified in this Part II(C) may be extended or reduced by email or other written agreement of the designated staff of the Participating Agencies.

III. MISCELLANEOUS

1. This MOU is strictly for internal management purposes, and does not expand, alter or limit the scope of the Participating Agencies’ respective authorities pursuant to applicable statutes and regulations.
2. This MOU shall not be construed to create any legal obligation on the part of either agency or any private right or cause of action for or by any person or entity against the Participating Agencies or any of their members, officers or employees.
3. This MOU is to be construed in a manner consistent with Dodd-Frank and all other applicable laws, including all laws applicable to the CFTC or to the FERC, and neither expands nor is in derogation of those authorities vested in the parties by applicable law.
4. Nothing in this MOU shall be construed to require the CFTC to issue an exemption pursuant to Section 722(f) of Dodd-Frank or Section 4(c) of the CEA.
5. Nothing in this MOU shall be construed to require the FERC to waive requirements imposed by or under the FPA, the NGA, or the NGPA.
6. Nothing herein shall preclude any person from approaching either Participating Agency or the staff thereof to request any action, nor shall this MOU preclude either agency from making any inquiry of any person. Neither Participating Agency, nor the

staff thereof, shall take any action to discourage any person from approaching the other agency or the staff thereof, or from responding to such inquiry.

IV. CONTACTS

Each party hereby designates the following individuals as the initial staff and Director-level contacts for the agency. These contacts may be changed at the Participating Agency's discretion upon written notice to the other Participating Agency.

FERC: Staff Contact: Carla Urquhart, Senior Attorney

Director-level Contact: David Morenoff, Acting General Counsel

CFTC: Staff Contact: George Wilder, Acting Deputy General Counsel

Director-level Contact: Jonathan Marcus, General Counsel

V. TERM OF THE AGREEMENT

This MOU shall take effect on the date of the last approving signature specified in Section VI, below.

The MOU may be modified only upon the written agreement of the Participating Agencies.

VI. SIGNATORIES

Federal Energy Regulatory Commission by:



Cheryl A. LaFleur
Acting Chairman

Date: 1-2-14

Commodity Futures Trading Commission by:



Gary Gensler
Chairman

Date: 1/2/14