

Before the Commodity Futures Trading Commission

February 7, 2012 (Updated copy, as of June 11, 2012)

In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by California Independent System Operator Corporation

In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by Electric Reliability Council of Texas, Inc.

In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by ISO New England Inc.

In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by Midwest Independent Transmission System Operator, Inc.

In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by New York Independent System Operator, Inc.

In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by PJM Interconnection, L.L.C.

I. Introduction

Section 722 of the of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)¹ added section 2(a)(1)(I)(i) to the Commodity Exchange Act, 7 U.S.C. §1 et seq. (the “Act”), providing that nothing in the Act shall limit the authority of the Federal Energy Regulatory Commission (“FERC”) or a State regulatory authority under the Federal Power Act, 16 U.S.C. § 796 et seq. (“FPA”), with respect to an agreement, contract, or transaction that is entered into pursuant to a tariff or rate schedule approved by FERC or a State regulatory authority that is not executed, traded, or cleared on a CFTC-registered entity or trading facility; or is executed, traded, or cleared on a registered entity or trading facility owned or operated by a

¹ Public Law 111–203, 124 Stat. 1376 (2010).

regional transmission organization (“RTO”) or an independent system operator (“ISO”).² In addition, nothing in Section 722 of the Dodd-Frank Act limits or affects any statutory authority of the Commission with respect to such agreements, contracts or transactions.

Section 722 of the Dodd-Frank Act also added section 4(c)(6) to the Act, providing that if the Commission determines that the exemption would be consistent with the public interest and the purposes of the Act, the Commission shall, in accordance with sections 4(c)(1) and 4(c)(2) of the Act, exempt from the requirements of the Act an agreement, contract, or transaction that is entered into pursuant to a tariff or rate schedule approved or permitted to take effect by FERC or by the applicable State authority.³

Each of California Independent System Operator Corporation, Electric Reliability Council of Texas, Inc., ISO New England Inc., Midwest Independent Transmission System Operator, Inc., New York Independent System Operator, Inc, and PJM Interconnection, L.L.C. (the “Requestors”) hereby applies to the Commission under section 4(c)(6) of the Act and pursuant to Section 712(f)(4) of the Dodd-Frank Act, for a separate Order⁴ exempting the transactions defined in this request, each of which is a class of contract, agreement or transaction authorized under a FERC- or Public Utility Commission of Texas (“PUCT”)-approved tariff,

² FERC has recognized the New York Independent System Operator and the California Independent System Operator as ISOs, whereas FERC has recognized ISO New England Inc., Midwest Independent Transmission System Operator, Inc., and PJM Interconnection, L.L.C. as RTOs. FERC proposed the concept of ISOs in 1996, in response to the Energy Policy Act of 1992. FERC’s Order No. 888 allowed for the creation of ISOs to consolidate and manage the operation of transmission facilities to provide open, non discriminatory transmission service for all generators and transmission customers. In Order No. 2000, FERC formalized the concept of RTOs to oversee electric transmission and operate wholesale markets across a broad territory. The roles, responsibilities, and services of ISOs and RTOs under Order No. 888, Order No. 2000, and other applicable FERC orders and requirements, are substantially similar. Therefore, for ease of reference, they are collectively referenced herein as “ISOs/RTOs.”

³ Section 4(c)(6) as added to the Act by Section 722 of the Dodd-Frank Act reads as follows:

(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this Act an agreement, contract, or transaction that is entered into—

(A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;

(B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or

(C) between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).

⁴ In consultation with the Commission’s Staff, the Requestors are filing these consolidated applications for the convenience of the Commission, Requestors and their members and any persons who may support or comment upon the applications. It is critically important to the Requestors that they each receive separate exemptive Orders. For example, should one Requestor later seek an amendment to any exemptive Order granted by the Commission, the other Requestors do not want to incur the expense of participating in future process related to that application. Accordingly, if the Commission decides for any reason to issue a single Order, rather than separate Orders as requested herein, the Requestors respectfully ask that the Commission provide them each with advance notice so they may elect to withdraw their respective applications.

protocol or other relevant governing document, and any persons, including Requestors and their members or other market participants offering, entering into, rendering advice, or rendering other services with respect to the aforementioned contracts, agreements, or transactions, from all provisions of the Act and CFTC rules thereunder, except sections 4b, 4o, 6(c) and 9(a)(2) of the Act to the extent that those sections prohibit fraud or manipulation of the price of any swap, contract for the sale of a commodity in interstate commerce, or for future delivery on or subject to the rules of any contract market.

In making this application, the Requestors do not presume that the Transactions (defined below at pages 6 - 9) are subject to the regulatory oversight of the CFTC. Indeed, as specifically authorized by section 4(c) of the Act and discussed below (at page 11), the Requestors ask the Commission not to determine whether the Transactions fall within its jurisdiction. Nor should this application be read to suggest that the Transactions fall beyond the regulatory jurisdiction of the FERC or the PUCT. On the contrary, as explained in detail below, the Transactions are subject to pervasive regulatory oversight by the FERC and the PUCT. The Requestors make this application, in an abundance of caution, to address those Transactions and services provided by RTOs and ISOs with respect to which someone might attempt to assert that all or some aspect of the Transactions implicates law or regulations administered and enforced by the CFTC. The Requestors make this request for exemptive relief, for the benefit of themselves and their market participants, to avoid the uncertainty that would arise from such an assertion and that would otherwise threaten the orderly operation of the organized wholesale electricity markets administered by each of the Requestors.

For the reasons discussed below, the requested exemptive Orders fulfill the conditions of sections 4(c)(1), 4(c)(2) and 4(c)(6) of the Act and are consistent with the public interest and the purposes of the Act.

II. Requestors

Each entity applying for an exemptive Order under section 4(c)(6) of the Act is an ISO or RTO.

A. ISOs/RTOs

In Order No. 888, FERC encouraged the formation of ISOs as one means of promoting non-discriminatory open access to transmission of electrical power.⁵ To further that goal, in Order No. 2000, FERC encouraged the voluntary formation of RTOs to administer the transmission grid on a regional basis.⁶ The Texas Public Utility Regulatory Act (“PURA”) implemented electric deregulation and restructuring and established the role of an independent organization and its functions in that construct.⁷ The independent organization can be an ISO or

⁵ “Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Facilities,” Order No. 888 (Apr. 24, 1996) (“FERC Order No. 888”), available at <http://www.ferc.gov/legal/maj-ord-reg/land-docs/order888.asp>.

⁶ “Regional Transmission Organizations,” Order No. 2000, 65 FR 809 (Jan. 6, 2000) (“FERC Order No. 2000”), available at <http://www.ferc.gov/legal/maj-ord-reg/land-docs/RM99-2A.pdf>.

⁷ PURA § 39.151.

other entity. ERCOT performs the role of the independent organization as an ISO, and the PUCT implements and further defines ERCOT's role through the PUCT substantive rules.⁸ FERC and the PUCT concluded that RTOs could improve, among other things, efficiencies in transmission grid management and reliability and facilitate efficient electricity market performance, and thereby benefit consumers.⁹

Today, ISOs/RTOs serve roughly two-thirds of all electricity customers in the United States "by providing transmission service, interconnecting new resources to the transmission grid, and operating organized wholesale electric markets."¹⁰ Each of the ISOs/RTOs is comprehensively regulated by FERC, with the exception of ERCOT, which is comprehensively regulated by the PUCT.

B. The Requestors

The Requestors for exemptive Orders under section 4(c)(6) of the Act are:

1. California Independent System Operator Corporation ("California ISO" or "CAISO"). The California ISO is a nonprofit public benefit corporation organized under the laws of California. The California ISO was established in 1997 pursuant to California Assembly Bill 1890. It was authorized by FERC as an Independent System Operator in 1997 and began operations on April 1, 1998. The California ISO is responsible for the reliable operation of the bulk of the electricity grid in the State of California, comprising the transmission systems of several entities.
2. Electric Reliability Council of Texas ("ERCOT"). ERCOT is the ISO managing the flow of electric power to approximately 23 million Texas customers, representing 85 percent of the state's electric load. ERCOT is a membership-based 501(c)(4) nonprofit corporation, governed by a board of directors and subject to oversight by the PUCT and the Texas Legislature. It began operations on September 11, 1996.
3. ISO New England Inc. ("ISO-NE"). ISO-NE is a nonstock corporation organized under the laws of Delaware and recognized as a 501(c)(3) tax-exempt organization by the Internal Revenue Service. ISO-NE was

⁸ PUC SUBST. R. §25.361 ("ERCOT shall perform the functions of an independent organization under the PURA § 39.151 to ensure access to the transmission and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms; ensure the reliability and adequacy of the regional electrical network; ensure that information relating to a customer's choice of retail electric provider is conveyed in a timely manner to the persons who need that information; and ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in the region.").

⁹ "Regional Transmission Organizations," FERC Docket No. RM99-2-00 I; Order No. 2000-A (Feb. 25, 2000). ERCOT is an independent system operator that serves as the independent organization charged with similar functions pursuant to Section 39.151 of PURA.

¹⁰ The Federal Energy Regulatory Commission "The Strategic Plan; FY 2009-2014," p. 14, *available at* <http://www.ferc.gov/about/strat-docs/FY-09-14-strat-plan-print.pdf>.

recognized by FERC as an ISO in 1997 and as an RTO in 2005. ISO-NE is responsible for: ensuring the day-to-day reliable operation of New England's bulk power generation and transmission system; overseeing and ensuring the fair administration of the region's wholesale electricity markets; and managing comprehensive, regional planning processes.

4. Midwest Independent Transmission System Operator, Inc. (“MISO”). The MISO is a non-stock, nonprofit corporation organized under the laws of the state of Delaware that supports the constant availability of electricity in all or parts of 13 states and the Canadian province of Manitoba. The MISO was founded in 1998 and was approved as the Nation’s first RTO by FERC in 2001.
5. New York Independent System Operator, Inc. (“NYISO”). The NYISO is a not-for-profit corporation organized under the laws of New York. The NYISO began operations at the end of 1999. The NYISO’s core responsibilities include the reliable operation of the New York State bulk electricity grid, the administration of New York State’s wholesale electricity markets, the administration of the planning process for the New York State electric power system, and the advancement of the technological infrastructure of the electric power system. The NYISO is responsible for the reliable operation of New York’s nearly 11,000 miles of high-voltage transmission and the dispatch of over 500 electric power generators. The NYISO administers bulk power markets in accordance with FERC regulation.
6. PJM Interconnection, L.L.C. (“PJM”). PJM is an RTO that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia. PJM began the transition to an independent organization in 1993 when the PJM Interconnection Association was formed to administer the power pool. In 1997, PJM became a fully independent organization. In 1997 FERC approved PJM as an ISO. Later, FERC encouraged the formation of RTOs to operate the transmission system in multi-state areas and to advance the development of competitive wholesale power markets. PJM became the nation’s first fully functioning RTO in 2001.

III. Transactions, Persons and Services Covered by the Requests

The Requestors seek these exemptions under section 4(c) of the Act to provide greater certainty with respect to the regulatory requirements that apply to each class of contracts, agreements or transactions currently offered or entered into under a FERC- or PUCT-approved tariff, and any person or class of persons offering, entering into, rendering advice, or rendering other services with respect thereto.¹¹ The Requestors seek legal clarity that such contracts will

¹¹ With respect to ERCOT, “FERC- or PUCT-approved tariffs” refers to the ERCOT Protocols approved by the PUCT, which are equivalent to the FERC-approved tariffs of other ISOs/RTOs.

be subject only to the Act's anti-fraud and anti-manipulation authorities as reserved under the terms of the requested exemptive Orders.

The Requestors respectfully ask that these Orders apply to each relevant class of contracts, agreements or transactions that is currently offered or entered into under any FERC- or PUCT-approved tariff under which an ISO/RTO operates. Each ISO/RTO operates distinct markets under FERC- or PUCT-approved tariffs that apply specifically to each ISO/RTO market. While the ISOs/RTOs operate pursuant to individual tariffs, they share many commonalities in their markets and operations. Although the current market structures of the individual ISOs/RTOs may vary, it is reasonable to expect that each ISO/RTO will, over time, consider offering under its own individual tariff one or more classes of contract, agreement or transaction that is currently offered under any other ISO/RTO tariff. We thus request that each individual exemptive Order apply collectively to each class of contract, agreement or transaction provided by the ISOs/RTOs. This will provide the appropriate breadth to the exemptive Order so that an individual Requestor will not be required to seek future amendments to offer or enter into contracts, agreements or transactions that are currently offered by any other Requestor.

The classes of contracts, agreements or transactions offered under a FERC- or PUCT-approved tariff within the scope of the Request are for the purchase or sale of any of the following electricity-related products (including generation, demand response or convergence or virtual bids/transactions):

A. Financial Transmission Rights:

1. A "Financial Transmission Right" is a transaction, however named, that entitles one party to receive, and obligates another party to pay, an amount based solely on the difference between the price for electricity, established on an electricity market administered by a Requesting Party, at a specified source (*i.e.*, where electricity is deemed injected into the grid of a Requesting Party) and a specified sink (*i.e.*, where electricity is deemed withdrawn from the grid of a Requesting Party). The term "FTR" includes Financial Transmission Rights, and Financial Transmission Rights in the form of options (*i.e.*, where one party has only the obligation to pay, and the other party only the right to receive, an amount as described above).
2. The FTRs for which the Requestors are seeking exemptive Orders are those where:
 - a) Each FTR is linked to, and the aggregate volume of FTRs for any period of time is limited by, the physical capability (after accounting for counterflow) of the electricity transmission system operated by a Requestor offering the contract, for such period;
 - b) The Requestor serves as the market administrator for the market on which the FTRs are transacted;

- c) Each party to the transaction is a member of the Requestor (or is the Requestor itself) and the transaction is executed on a market administered by that Requestor; and
 - d) The transaction does not require any party to make or take physical delivery of electricity.
- B. Energy Transactions: “Energy Transactions” are transactions in a Day-Ahead Market or Real-Time Market for the purchase or sale of a specified quantity of electricity at a specified location (including Demand Response as described below) where:
 - 1. The price of the electricity is established at the time the transaction is executed;
 - 2. Performance occurs in the Real-Time Market by either
 - a) Delivery or receipt of the specified electricity, or
 - b) A cash payment or receipt at the price established in the Real-Time Market; and
 - 3. The aggregate cleared volume of both physical and cash-settled energy transactions for any period of time is limited by the physical capability of the electricity transmission system operated by a Requestor for that period of time.
- C. Forward Capacity Transactions: “Forward Capacity Transactions” are transactions in which a Requestor, for the benefit of load-serving entities, purchases any of the following rights:
 - 1. Generation Capacity: the right of a Requestor to:
 - a) Require certain sellers to maintain the interconnection of electric generation facilities to specific physical locations in the electric-power transmission system during a future period of time as specified in the Requestor’s Tariff;
 - b) Require such sellers to offer specified amounts of electric energy into the Day-Ahead or Real-Time markets for electricity transactions as specified in the Requestor’s Tariff; and
 - c) Require, subject to the terms and conditions of a Requestor’s Tariff, such sellers to inject electric energy into the electric power transmission system operated by the Requestor;
 - 2. Demand Response: the right of a Requestor to require that certain sellers of such rights curtail consumption of electric energy from the electric power transmission system operated by a Requestor during a future period of time as specified in the Requestor’s Tariff; or

3. Energy Efficiency: the right of a Requestor to require specific performance of an action or actions that will reduce the need for generation capacity or demand response capacity over the duration of a future period of time as specified in the Requestor's Tariff.

In each case, the aggregate cleared volume of all such transactions for any period of time shall be limited to the physical capability of the electricity transmission system operated by a Requestor for that period of time.

D. Reserve or Regulation Transactions: Reserve or Regulation Transactions are transactions:

1. In which a Requestor, for the benefit of load-serving entities and resources, purchases, through auction, or otherwise as permitted in its Tariff, the right, during a period of time as specified in the Requestor's Tariff, to require the seller of such right to operate electric facilities in a physical state such that the facilities can increase or decrease the rate of injection or withdrawal of a specified quantity of electricity into or from the electric power transmission system operated by the Requestor with:
 - a) Reserve Transaction: physical performance by the seller's facilities within a response time interval specified in a Requestor's Tariff; or
 - b) Area Control Error Regulation Transaction: prompt physical performance by the seller's facilities as specified in the Requestor's Tariff;
2. For which the seller receives, in consideration, one or more of the following:
 - a) Payment at the price established in the Requestor's Day-Ahead or Real-Time Market price for electricity applicable whenever the Requestor exercises its right that electric energy be delivered (including Demand Response as described above);
 - b) Compensation for the opportunity cost of not supplying or consuming electricity or other services during any period during which the Requestor requires that the seller not supply energy or other services;
 - c) An upfront payment determined through the auction administered by the Requestor for this service;
 - d) An additional amount indexed to the frequency, duration, or other attributes of physical performance as specified in the Requestor's Tariff; and
3. In which the value, quantity, and specifications of such transactions for a Requestor for any period of time shall be limited to the physical capability

of the electricity transmission system operated by the Requestor for that period of time.

Together, these classes of contracts, agreements or transactions for the purchase and sale of a product or service that is directly related to, and a logical outgrowth of, any Requestor's core functions as an ISO/RTO as provided in the three part test described above, and all services related thereto ("Transactions") are the subject of the Request.

IV. Exemption Criteria of Section 4(c)(6) of the Act

Section 4(c)(6) of the Act, as amended by the Dodd-Frank Act, provides that the Commission shall exempt contracts, agreements or transactions entered into pursuant to a tariff or rate schedule approved or permitted to take effect by FERC, or the regulatory authority of a State if it determines such exemption is consistent with the public interest and the purposes of the Act.¹² Specifically, section 4(c)(6) of the Act provides that:

If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with paragraphs (1) and (2) [of section 4(c) of the Act], exempt from the requirements of this Act an agreement, contract, or transaction that is entered into—

(A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;

(B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or

(C) between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).

Paragraphs (1) and (2) of section 4(c) are incorporated by reference in section 4(c)(6). Paragraph (1) provides that the Commission, after notice and opportunity for hearing, may upon application of any person, exempt any agreement, contract, or transaction and any persons or class of person offering, entering into, rendering advice or rendering other services with respect to that agreement, contract or transaction from any of the requirements of the Act. Paragraph (2) provides that the Commission shall not grant an exemption unless it determines that:

1. the exemption would be consistent with the public interest and the purposes of this Act;

¹²

The Dodd-Frank Act amendments to Section 4(c) are effective on July 16, 2011.

2. the agreement, contract or transaction will be entered into solely between appropriate persons; and
3. the agreement, contract or transaction will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.¹³

The Commission has considerable flexibility in exercising its section 4(c) exemptive authority. In order to provide legal certainty, we request that the Commission issue each separate exemptive Order without first making a determination as to the status or classification under the Act of the Transactions. During the legislative process leading to the enactment of Section 4(c) of the Act, the House-Senate Conference Committee noted that “the Conferees do not intend that the exercise of exemptive authority by the Commission would require any determination beforehand that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. *Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward.* Rather than making a finding as to whether a product is or is not a futures contract, the Commission in appropriate cases may proceed directly to issuing an exemption.”¹⁴ Specifically, we request that the Commission issue the exemptive Orders without making a determination whether: the (1) Transactions are swaps, futures or option contracts within the meaning of section 1a of the Act; (2) Requestors operate Swap Execution Facilities, or provide clearing services that require registration as a Derivatives Clearing Organization in connection

¹³ § 4(c) of the Act provides in part:

(1) In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act

(2) The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) unless the Commission determines that—

(A) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and

(B) the agreement, contract, or transaction—

(i) will be entered into solely between appropriate persons; and

(ii) will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under this Act.

¹⁴ See House Conf. Report No. 102–978 (emphasis added).

with the Transactions; or (3) Participants are subject to any requirements under the Act with respect to the Transactions.

V. The Requested Exemptions Are Consistent With the Public Interest and Purposes of the Commodity Exchange Act

The Transactions have been, and are, subject to a long-standing, comprehensive regulatory framework for the offer and sale of the Transactions established by FERC, or in the case of ERCOT, the PUCT. Each of the Transactions is part of, and inextricably linked to, the organized wholesale electricity markets that are subject to FERC's (and the PUCT's) regulation and oversight. The regulatory frameworks that FERC and the PUCT administer and that apply to the Transactions, the Requestors and the Participants are consistent with the public interest, as defined by Congress in the FPA and by the Texas legislature in the PURA.¹⁵

The requested exemptions are consistent with the public interest as defined by the Act. Section 3 of the Act describes the public interests served by the Act as ensuring that the benefits of providing a means for managing or assuming price risk and discovering prices occurs through trading in liquid, fair and financially secure trading facilities. Section 3 describes as the purposes of the Act to foster these public interests by, among other things, deterring and preventing price manipulation or any other disruptions to market integrity; ensuring the financial integrity of all transactions subject to the Act; and protecting market participants from fraudulent or abusive sales practices.

Below we describe the comprehensive nature of the existing regulation of ISOs and RTOs and then measure this regulatory framework against the three purposes specified in Section 3 of the Act.

A. FERC and PUCT Regulation is Comprehensive

The comprehensive regulatory framework adopted, administered and enforced by FERC, by regulating the ISO/RTO markets through which the Transactions are offered and sold, is consistent with the purposes of the Act. As discussed in greater detail below, the regulatory framework established by FERC, like the Commission's, is established through the adoption of broad principles that the individual ISOs/RTOs must meet. Each individual ISO/RTO establishes the exact terms for its operation through a tariff, the terms of which must be approved by FERC.

With respect to ERCOT, PURA and the PUCT establish the requirements that underlie the ERCOT market design. Again, like the Commission's principles, neither PURA nor the PUCT substantive rules prescribe specific requirements of the ERCOT market design; instead, they mandate particular market principles that apply to energy markets and ancillary services. The ERCOT Protocols establish detailed rules to implement the overarching PURA and PUCT mandates. The Protocols must be reviewed and approved by the PUCT and are subject to PUCT oversight. Both the broad principles established by FERC and the PUCT, as well as the individual tariffs and ERCOT protocols approved by FERC and the PUCT should be considered

¹⁵ See discussion of declarations of public interest in the FPA and PURA, *infra*, pp. 12-13.

together in determining that the FERC/PUCT regulatory framework is consistent with the public interests and purposes of the Act.

FERC and PUCT regulation of the organized wholesale electricity markets is in the public interest, as provided by Section 201 of the FPA and Section 39.001 of PURA. The FPA became law in 1935 in order to “provide effective federal regulation of the expanding business of transmitting and selling electric power in interstate commerce.”¹⁶ Section 201(a) of the FPA provides that:

It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to . . . that part of such [electric] business which consists of the transmission of electric energy in interstate commerce . . . is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.¹⁷

PURA § 39.001 similarly provides that:

The legislature finds that . . . the public interest in competitive electric markets requires that . . . electric services and their prices should be determined by customer choices and the normal forces of competition. As a result, this chapter is enacted to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry.

Under Section 201(b)(1) of the FPA, FERC’s jurisdiction is comprehensive:

[T]he Commission shall have jurisdiction over all facilities for such transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce¹⁸

PURA § 39.151(d) similarly provides the PUCT with comprehensive jurisdiction, requiring that:

An independent organization certified by the commission [*i.e.*, ERCOT] is directly responsible and accountable to the commission. The commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that the organization adequately performs the organization's functions and duties. The organization shall fully cooperate with the commission in the commission's oversight and investigatory functions. The commission may take appropriate action against an organization that does not adequately perform the organization's functions or duties or does not comply with this section, including

¹⁶ *Gulf States Utility Co. v. FPC*, 411 U.S. 747 (1973).

¹⁷ 16 U.S.C. § 824(a).

¹⁸ 16 U.S.C. § 824(b)(1).

decertifying the organization or assessing an administrative penalty against the organization. The commission by rule shall adopt procedures governing decertification of an independent organization, selecting and certifying a successor organization, and transferring assets to the successor organization to ensure continuity of operations in the region.

Moreover, FERC regulates transmission rights pursuant to explicit direction from Congress. Section 217 of the Energy Policy Act of 2005 directed FERC to:

exercise the authority of the Commission under this Act in a manner that . . . enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial transmission rights) on a long term basis for long term power supply arrangements made, or planned, to meet such needs.¹⁹

As referenced above, in establishing ISOs/RTOs, FERC set out broad principles that these organizations must meet. FERC Order No. 2000²⁰ encouraged the formation of ISOs/RTOs to operate the electric transmission grid and to create organized wholesale electric markets.²¹ FERC Order No. 2000 established twelve characteristics and functions that an entity must satisfy in order to become an ISO/RTO. These are the “Core Functions” of an ISO/RTO. FERC Order No. 2000 requires an ISO/RTO to demonstrate that it has four minimum characteristics:

- (1) independence from any market participant;
- (2) having a scope and regional configuration which enables the ISO/RTO to maintain reliability and effectively perform its required functions;
- (3) having operational authority for its activities, including being the security coordinator for the facilities that it controls; and
- (4) ensuring short-term reliability.

In addition to these characteristics, an ISO/RTO must demonstrate that it performs the following functions:

- (1) *Tariff administration and design.* The ISO/RTO must employ a transmission pricing system that promotes efficient use and expansion of transmission and generation facilities.

¹⁹ Energy Policy Act of 2005, Pub. Law 109-58, § 1233 (Aug. 8, 2005). Available at <http://www.doi.gov/pam/EnergyPolicyAct2005.pdf>.

²⁰ FERC Order No. 2000 at 4.

²¹ ISOs actually emerged as a means to comply with FERC Order No. 888, which required open access and required ISOs to have certain features. These features were refined in FERC Order No. 2000 for RTOs but the Order No. 2000 requirements are substantially similar to those set forth in FERC Order No. 888. As a result, we focus our discussion on FERC Order No. 2000.

(2) *Congestion management.* The ISO/RTO must ensure the development and operation of market mechanisms to manage transmission congestion which accommodate broad participation by all market participants, and provide all transmission customers with efficient price signals that show the consequences of their transmission usage decisions.

(3) *Parallel path flow.* The ISO/RTO must develop and implement procedures to address parallel path flow issues within its region and with other regions.

(4) *Ancillary services.* The ISO/RTO must serve as a provider of last resort of all ancillary services required by FERC Order No. 888²² including ensuring that its transmission customers have access to a real-time balancing market.

(5) *OASIS and Total Transmission Capability (TTC) and Available Transmission Capability (ATC).* The ISO/RTO must be the single OASIS (Open-Access Same-Time Information System) site administrator for all transmission facilities under its control and independently calculate Total Transmission Capacity and Available Transmission Capability.

(6) *Market monitoring.* To ensure that the ISO/RTO provides reliable, efficient and not unduly discriminatory transmission service, it must provide for objective monitoring of markets it operates or administers to identify market design flaws, market power abuses and opportunities for efficiency improvements.

(7) *Planning and expansion.* The ISO/RTO must be responsible for planning, and for directing or arranging, necessary transmission expansions, additions, and upgrades.

(8) *Interregional coordination.* The ISO/RTO must ensure the integration of reliability practices within an interconnection and market interface practices among regions.

ERCOT's core functions are similar to those of its FERC-jurisdictional counterparts.

PURA § 39.151(a) sets forth the principles underlying ERCOT's roles and duties to:

(1) provide access to the transmission and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms;

(2) ensure the reliability and adequacy of the regional electrical network;

²² FERC Order No. 888 requires "open access," which means that a transmission owner who procures transmission service must offer nondiscriminatory, similar transmission service to those in search of like services over the transmission owner's own facilities. The order also encourages the formation of a separate Price Exchange to expose electricity market-clearing prices.

(3) ensure that information relating to a customer's choice of retail electric provider is conveyed in a timely manner to the persons who need that information; and

(4) ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in the region.

B. FERC and PUCT Regulation is Consistent With the Purposes of the Act

FERC Order No. 2000 and regulation by the PUCT under PURA directly address a number of goals of the Act, including: (a) the operation of fair and liquid markets; (b) ensuring financial integrity of transactions and the avoidance of systemic risk; and (c) the protection of market participants from fraudulent or other abusive practices.²³

Below we explain how the FERC and PUCT mandates are consistent with the purposes of the Act. The Attachments hereto demonstrate for each of the Requestors, the Transactions and Participants how the FERC- or PUCT-approved tariffs are consistent with the public interest and purposes of the Act as evidenced by the core principles in sections 5b (registration of derivatives clearing organization (“DCO”)) and 5h (registration of swap execution facilities (“SEF”)), which apply to the clearing and execution of contracts and transactions subject to the Commission’s jurisdiction under the Act.

1. Operation of fair and liquid markets

a) Market Rules

Each ISO/RTO codifies rules governing its markets in FERC-approved tariffs or PUCT-approved protocols. FERC-approved tariffs have the force and effect of federal law, while the protocols approved by PUCT have the force and effect of Texas law. Such rules are subject to review by FERC or PUCT, which actively exercise their authority to require that the rules be revised when necessary to achieve the goal of ensuring the ISO/RTO functions are administered consistent with the public interest. In addition, as discussed below, FERC and PUCT have independent rules governing market participant conduct.

FERC and PUCT requirements apply to all aspects of the creation, auction, and wholesale sale for resale of ISO/RTO products, as well as participant requirements, risk management, and supporting financial arrangements relating to the Transactions. FERC and PUCT have exercised comprehensive regulatory oversight over these aspects of Transactions through a long history of orders, which are detailed in Addendum A.

b) Market Monitoring

FERC Order No. 2000 includes the requirement that ISOs/RTOs provide for a market monitoring function. The requirement to provide for market monitoring directly parallels the goal of the Act to “deter and prevent price manipulation or any other disruptions to market

²³ See Section 3 of the Act, 7 U.S.C. §5.

integrity.” Like the FPA, PURA gives the PUCT express authority to address market power through a variety of means including actions against individual entities for market abuse or ordering the construction of additional transmission to remove system constraints that may facilitate the exercise of market power. PURA establishes an independent market monitor to facilitate achievement of the market efficiencies intended by the establishment of an ISO.

FERC Order No. 2000 requires that an RTO provide a market monitoring function that at a minimum:

(i) must include monitoring the behavior of market participants in the region, including transmission owners other than the RTO, if any, to determine if their actions hinder the RTO in providing reliable, efficient and not unduly discriminatory transmission service;

(ii) with respect to markets the RTO operates or administers, there must be a periodic assessment of how behavior in markets operated by others (e.g., bilateral power sales markets and power markets operated by unaffiliated power exchanges) affects ISO/RTO operations and how ISO/RTO operations affect the efficiency of power markets operated by others; and

(iii) reports on opportunities for efficiency improvement, market power abuses and market design flaws must be filed with FERC and affected regulatory authorities.²⁴

In adopting Order No. 2000, FERC explained that it “has the primary responsibility to ensure that regional wholesale electricity markets served by [ISOs/RTOs] operate without market power.” It noted that the minimum components of a market monitoring plan include “examin[ing] the structure of the market, compliance with market rules, behavior of individual market participants and the market as a whole, and market power and market power abuses.”²⁵ FERC also explained that “sanctions and penalties may be appropriate for certain actions such as noncompliance with ISO/RTO rules. However, the monitoring plan should clearly identify any proposed sanctions or penalties and the specific conduct to which they would be applied, provide the rationale to support any sanctions, penalties or remedies (financial or otherwise) and explain how they would be implemented.”²⁶ FERC indicated that market monitoring should include reporting requirements. PURA similarly establishes an independent market monitor whose primary functions are detecting and preventing market manipulation and market design assessment with the goal of enhancing market efficiency,²⁷ while PUCT rules implement the market monitor’s functions.²⁸

²⁴ FERC Order No. 2000 at 716.

²⁵ *Id.* at 464.

²⁶ *Id.*

²⁷ PURA § 39.1515.

²⁸ PUC SUBST. R. § 25.365.

More recently, in Order No. 719, FERC amended its regulation “to improve the operation of organized wholesale electric markets” in several areas, including market monitoring.²⁹ Specifically, FERC required ISOs/RTOs to provide their Market Monitoring Units with access to market data, resources and personnel sufficient to carry out their duties, and that the Market Monitoring Unit report directly to the ISO/RTO board of directors.³⁰ In addition, FERC required that the Market Monitoring Unit’s functions include: (1) identifying ineffective market rules and recommending proposed rules and tariff changes; (2) reviewing and reporting on the performance of the wholesale markets to the RTO or ISO, FERC, and other interested entities; and (3) notifying appropriate FERC staff of instances in which a market participant’s behavior may require investigation.³¹ FERC also expanded the list of recipients of Market Monitoring Unit recommendations regarding rule and tariff changes, and broadened the scope of behavior to be reported to FERC.³²

To comply with FERC and PUCT requirements, all ISOs/RTOs have market monitoring programs. The market monitors operate independently of management for the ISOs/RTOs and interact directly with the FERC or the PUCT. In general, the ISOs/RTOs monitor market activity, compliance with the tariff or protocol of the ISO/RTO and compliance with rules that prohibit false or misleading information and market manipulation. The market monitors do so by reviewing a variety of metrics to detect potential manipulative conduct. These include, for example, reviewing market activity to detect excessive or sustained losses or profits arising from virtual bidding or other transactions by an individual participant not consistent with more general market trends or the participant’s usual market conduct. In particular, monitors will scrutinize transactions that have a significant impact on an individual transmission constraint so as to increase the participant’s revenues from financial transmission rights.

Some of the ISOs/RTOs have both internal market monitoring departments and an external market monitor. Market monitors conduct their market surveillance using sophisticated electronic systems and data from the markets.

When anomalous behavior is detected it is reviewed in more detail. Market monitors may contact a market participant for an explanation of any behavior that appears anomalous or manipulative. If, based on this investigation, the market monitor believes a participant may have violated rules prohibiting false or misleading information and market manipulation, the matter is referred to FERC or the PUCT. The monitors discuss market performance with FERC and PUCT staff on an ongoing basis. The PUCT has full authority to take action to address market power and has an internal enforcement division that works with the independent market monitor and ERCOT, as necessary, to detect and address market power. ERCOT is obligated by law to support and cooperate with the independent market monitor, including providing access to all ERCOT systems, data, and information. These programs are consistent with the goals of the Act

²⁹ “Wholesale Competition in Regions with Organized Electric Markets,” Order No. 719, 125 FERC ¶ 61,071 (Oct. 17, 2008) (“FERC Order No. 719”), available at <http://www.ferc.gov/whats-new/comm-meet/2008/101608/E-1.pdf>.

³⁰ *Id.* at P5, P326 – 476.

³¹ *Id.*

³² *Id.*

to “deter or prevent price manipulation or any other disruptions.” In addition to reviewing potentially manipulative activity, market monitors also review overall market results and behavior that may not violate the market rules of the ISO/RTO, but may be detrimental to market efficiency or may indicate flaws in market rules or processes.

Each Requestor, in compliance with FERC and PUCT requirements, has in place a program of market surveillance. Greater detail regarding how the market monitoring program of each Requestor satisfies the related CFTC Core Principles is provided in the Attachment hereto.

2. Ensure financial integrity

Parallel to the goal of the Act “to ensure financial integrity of all transactions subject to the Act and the avoidance of systemic risk,” FERC is obliged under the FPA to “ensure that all rates charged for the transmission or sale of electric energy in interstate commerce are just, reasonable, and not unduly discriminatory or preferential.”³³ FERC has determined that “clear and consistent credit policies are an important element in ensuring rates that are just, reasonable, and not unduly discriminatory or preferential. The management of risk and credit requires a balance between protecting the markets from costly defaults and ensuring that barriers to entry for market participants are not prohibitive.”³⁴ In furtherance of this goal, FERC provided guidance to the ISOs/RTOs on credit-related issues in its Policy Statement on Electric Creditworthiness.³⁵ With respect to ERCOT, PURA charges ERCOT with ensuring that transactions are accurately accounted for between buyers and sellers.³⁶ In addition, PUC Rule 25.501(a) requires ERCOT to administer its markets consistent with economic principles to promote economic efficiency. Specific requirements to accomplish this goal include the establishment of appropriate credit rules.³⁷ ERCOT implements these mandates through its protocols, which, in practice, results in financial responsibility that facilitates financial integrity of the market.

As a result of FERC and PUCT oversight, the ISOs/RTOs have established comprehensive and integrated credit policies to manage the credit risk and protect the financial integrity of the organized wholesale energy markets. These credit policies consider the creditworthiness of market participants, update exposure calculations on a regular basis and establish credit limits for market activity. Further, the ISOs/RTOs review credit rules on a regular basis and update them when needed.

³³ FPA §§ 205, 206; 16 U.S.C. §§ 824d, 824e.

³⁴ “Credit Reforms in Organized Wholesale Electric Markets,” Order No. 741-A at 102 (Feb. 17, 2011), available at <http://www.ferc.gov/whats-new/comm-meet/2011/021711/E-6.pdf>.

³⁵ 109 FERC ¶ 61,186 (2004).

³⁶ Section 39.151 of PURA. *See also* PUC Rule 25.361(b).

³⁷ PUC Rule 25.361(b).

In addition, FERC recently issued Orders No. 741 and 741-A, “Credit Reforms in Organized Wholesale Electric Markets” (“Credit Reform Orders”). These Orders add a new Subpart J to Part 35 of FERC’s Regulations.³⁸ The rules require ISOs/RTOs to:

- (1) limit the amount of unsecured credit extended to any market participant or aggregate corporate family to no more than \$50 million;
- (2) adopt a settlement period of no more than seven days with an additional seven days to receive payment;
- (3) eliminate unsecured credit in the financial transmission rights market;
- (4) reinforce the ability of the ISO/RTO to offset market obligations owed to market participants against market obligations owed by market participants;
- (5) limit the time period by which a market participant must cure a collateral call to no more than two days;
- (6) provide minimum participation criteria;
- (7) specify when a market administrator may invoke the “material adverse change” to justify requiring additional collateral; and
- (8) provide for consistent applicability of rules to all types of participants.

FERC adopted these changes after determining that shortening the settlement cycle would further reduce risk, as would limiting the use of unsecured credit and eliminating unsecured credit risk in the markets for financial transmission rights. In addition, FERC addressed the issue of mitigating any legal ambiguity as to the ability of ISOs/RTOs to manage defaults and to offset market obligations.

As a result, the ISOs/RTOs either have reexamined or are reexamining issues relating to default and offsetting market obligations. At least one ISO/RTO, PJM, has already formed a separate legal entity to act as the central counter party (“CCP”) to each transaction made by market participants in the PJM markets. A number of additional ISOs/RTOs are in the process of assessing the tax and other legal implications were they to form a CCP. For these ISOs/RTOs, forming or becoming a CCP is the preferred course of action assuming that there are no legal or other obstacles. These ISOs are making every effort to expedite resolution of the outstanding legal issues. If, as expected, the legal issues are resolved satisfactorily, forming or becoming a CCP is the likely means by which these ISOs will mitigate issues relating to default and setoff rights, assuming concurrence by their stakeholders. Each ISO/RTO has provided an explanation in the Attachments and Memoranda of Counsel detailing its response to this issue.

³⁸

19 C.F.R. Part 35.

FERC also required the ISOs/RTOs to adopt minimum participation standards for their market participants. In doing so, however, it noted that the criteria “should allow most traditional market participants – including small load-serving entities, municipalities, cooperatives, and other similar participants in organized wholesale electric markets – to participate.”³⁹ As detailed in the Attachments, each of the ISOs/RTOs subject to FERC regulation has taken steps to come into compliance with the Credit Reform Orders. Although ERCOT is not subject to the requirements in FERC’s Credit Reform Orders, ERCOT has, or is in the process of, implementing through its stakeholder process a number of revisions to its credit and financial security risk management protocols that will bring ERCOT market participation standards in substantial agreement with those of the FERC-regulated ISOs/RTOs.

The ISOs/RTOs ensure financial integrity, in part, through the risk management requirements that apply to their market participants. In accordance with the Credit Reform Orders, and in addition to the minimum capitalization criteria that each ISO/RTO applies, discussed in greater detail in the Attachments, all of the ISOs/RTOs have included or are in the process of implementing the requirement that all market participants meet minimum capitalization requirements and have in place risk management policies, procedures and internal controls appropriate to their trading activities in the ISO/RTO markets in which they participate.⁴⁰ All of the ISOs/RTOs require an annual certification by a responsible officer of the market participant that the market participant has in place risk management policies, procedures and internal controls appropriate to the nature of its trading activities.

In addition, the ISOs/RTOs subject to FERC regulation submitted supplemental compliance filings addressing their proposed verification programs. Many of the ISOs/RTOs have proposed programs, described broadly below, to verify that market participants that pose significant risks in their markets have such risk management policies and internal controls in place.

The verification programs developed by the ISOs/RTOs require certain market participants to submit their risk management policies and internal controls to the ISO/RTO for review. Such market participants may include all new applicants, may be selected randomly, and/or may be selected based upon certain risk factors. Risk factors include, the markets in which a participant transacts, the magnitude of the market participant’s transactions, the volume of the participant’s open positions, amount of collateral at risk, and other factors that are indicative of the risk the participant poses to the ISO/RTO (such as whether the participant is hedging or speculating).⁴¹

³⁹ “Credit Reforms in the Wholesale Electricity Markets; Notice of Proposed Rulemaking,” at 16 (Jan. 21, 2010).

⁴⁰ These risk management policies and controls may be specifically required for particular Transactions, such as FTRs.

⁴¹ As detailed in the Attachments hereto, the details of the certification and verification regimes may differ somewhat among the various ISOs/RTOs, including differences in determining which market participants may be subject to verification, when such market participants must submit their risk management policies, and the time periods for curing any deficiencies in a market participant’s risk management policies.

The ISOs/RTOs (or a designated third party) will review and confirm that a market participant's risk management policies, procedures, and controls reflect certain criteria. These criteria generally are the same criteria as those suggested by the Committee of Chief Risk Officers ("CCRO") and include:

- (1) addressing market, credit, and operational risk;
- (2) segregating roles, responsibilities, and functions in the organization;
- (3) establishing delegations of authority that specify which transactions traders are authorized to enter into;
- (4) ensuring that traders have sufficient training in systems and the markets in which they transact;
- (5) placing risk limits to control exposure;
- (6) requiring reports to ensure that risks are adequately communicated throughout the organization;
- (7) establishing processes for independent confirmation and/or review of trading activities and executed transactions; and
- (8) establishing periodic valuation or mark-to-market of risk positions as appropriate.

3. Customer Protection

A third goal of Section 3 of the Act is the protection of market participants from fraudulent or other abusive practices.⁴² The protections that have been required by FERC with respect to the Transactions and related services are tailored to the wholesale nature of the markets. The FPA and the implementing regulations prohibit deceptive practices in language similar to Section 6(c)(1) of the Act, added by Dodd-Frank.⁴³ Section 25.503 of the PUCT

⁴² See Section 3 of the Act, 7 U.S.C. § 5.

⁴³ FPA § 222, 16 U.S.C. § 824v; 18 C.F.R. § 1c.2(a) (implementing FPA Section 222). FPA Section 222 provides:

It shall be unlawful for any entity...directly or indirectly, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission,

To use or employ any device, scheme, or artifice to defraud,

To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

To engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity.

substantive rules establishes standards that the PUCT applies in monitoring the activities of entities participating in the ERCOT markets, including standards that protect customers from “unfair, misleading, and deceptive” practices.⁴⁴ Moreover, under Section 824e of the FPA, FERC has unique rate regulation powers to ensure that wholesale electricity prices are just and reasonable. This jurisdiction provides FERC with an additional tool in protecting market participants from abusive practices.

The PUCT rules prohibit activities that cause prices that are not reflective of competitive market forces or that adversely affect the reliability of the electric network. The prohibited activities include, *inter alia*, executing pre-arranged offsetting trades, conducting trades that result in a misrepresentation of the financial condition of the organization, engaging in fraudulent behavior related to participation in the wholesale market, colluding with other market participants to manipulate the price or supply of power, allocate territories, customers or products, or otherwise unlawfully restrain competition, engaging in market power abuse such as economic or physical withholding.

As part of the comprehensive regulatory oversight that FERC exercises over the ISO/RTO markets, FERC has the power to impose remedies, including significant civil penalties, for violations such as fraud and other abusive practices. Similarly, PURA authorizes the PUCT to impose civil penalties as necessary to address or eliminate market power abuse and other violations.⁴⁵

VI. Enforcement.

A. Enforcement Oversight

The Requestors, Transactions and Participants are subject to comprehensive enforcement regimes pursuant to their tariffs/protocols and FERC/PUCT oversight. Nevertheless, as noted above, the Requestors are not seeking exemptions from sections 4b, 4o, 6(c) or 9(a)(2) of the Act to the extent that those sections prohibit fraud in connection with transactions subject to the Act, or manipulation of the price of any swap or contract for the sale of a commodity in interstate commerce or for future delivery on or subject to the rules of any registered entity.

In addition to the market monitoring function required by FERC, the FERC-regulated Requestors, Transactions and Participants are subject to oversight by FERC’s Office of Enforcement, Division of Energy Market Oversight, which conducts real-time monitoring of all markets subject to FERC’s jurisdiction in its Market Monitoring Center. Daily information for each electricity market is posted at <http://www.ferc.gov/market-oversight/mkt-electric/overview.asp>. Moreover, the Division of Energy Market Oversight maintains regular communication with the independent ISO/RTO market monitors and analyzes all reports from the market monitors. FERC’s Office of Energy Market Regulation also maintains regular communication with the ISOs/RTOs.

⁴⁴ PUC SUBST. R. § 25.503(a).

⁴⁵ PURA § 39.157.

With respect to ERCOT, to facilitate the PUCT's oversight of ERCOT and its Transactions and Participants, PURA provides the PUCT with a broad array of administrative tools to monitor ERCOT, including the imposition of reports, system of accounts, audits and inspections.⁴⁶ In overseeing the ERCOT region, the PUCT is tasked with assessing and correcting any market power issues that arise within the state.⁴⁷

FERC and the PUCT also have broad investigative authority under FPA Section 307⁴⁸ and PURA Section 39.157, respectively. For instance, while conducting an inquiry, FERC not only has the power to require that testimony be taken in a deposition but also to "administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records" relevant to its inquiry.⁴⁹ If an individual refuses to appear, testify or produce documents in compliance with a FERC subpoena, FERC is able to resort to the courts in order to enforce its subpoena power.⁵⁰ Further, any person who refuses to comply with FERC's subpoena authority can be found guilty of a misdemeanor requiring a fine of not more than \$1,000 and/or imprisonment up to one year.⁵¹ The PUCT has similarly broad investigatory authority. Either based on a complaint or upon its own initiative, the PUCT has investigatory authority to perform a fact-finding review. In doing so, the PUCT staff may contact a market participant and request an explanation of the activities in question. If after the initial review, the PUCT staff determine that there is evidence of a violation, the PUCT may conduct a formal investigation pursuant to Section 22.261 of the PUCT substantive rules.⁵²

Since 2005, FERC has had civil penalty authority of up to \$1 million per day, per violation for violations of the FPA, FERC regulations, or Orders (which includes violations of ISO/RTO tariff provisions).⁵³ FERC also can exercise its equitable authority to require disgorgement of profits as the minimum remedy for violations.⁵⁴ In addition, the FPA provides for criminal liability of up to \$1 million and imprisonment of up to 5 years for individuals who

⁴⁶ See PURA § 39.151(d-1).

⁴⁷ PURA §§ 39.155 & 39.157. PURA § 39.157 provides:

On a finding that market power abuses or other violations of this section are occurring, the commission shall require reasonable mitigation of the market power by ordering the construction of additional transmission or distribution facilities, by seeking an injunction or civil penalties as necessary to eliminate or to remedy the market power abuse or violation . . . , by imposing an administrative penalty . . . , or by suspending, revoking, or amending a certificate or registration as authorized by Section 39.356.

⁴⁸ FPA § 307, 16 U.S.C. § 825f.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See PUC SUBST. R. § 25.503.

⁵³ FPA § 316A, 16 U.S.C. § 825o-1.

⁵⁴ *Policy Statement On Enforcement*, Issued October 20, 2005, Docket No. PL06-1-000.

willfully violate the statute.⁵⁵ Moreover, individuals who willfully violate FERC's rules and regulations can be fined up to \$25,000 for every day that the violation occurs.⁵⁶ The FPA also empowers courts to permanently or temporarily prohibit violators from engaging in the business of purchasing or selling electric energy or transmission services.⁵⁷

Upon a finding of market power abuse and/or other violations, the PUCT may impose civil penalties as necessary to eliminate or remedy the market power abuse and/or violation.⁵⁸ Each day a violation occurs is a separate violation, and the PUCT may impose up to \$25,000 in penalties per violation, per day.⁵⁹

B. FERC and PUCT Authority to Address Fraud, Manipulation and False Information.

Although the Requestors are not seeking exemptions from the CFTC's anti-fraud or anti-manipulation authorities, it is important to note that the Requestors, Transactions and Participants are also subject to pervasive oversight by FERC and the PUCT for such prohibited conduct. As discussed above, the FPA and the implementing regulations, and PURA and the

⁵⁵ FPA § 316, 16 U.S.C. § 825o.

⁵⁶ *Id.*

⁵⁷ FPA § 314, 16 U.S.C. § 825m.

⁵⁸ PURA § 39.157. PURA § 39.157(a) provides:

For purposes of this subchapter, market power abuses are practices by persons possessing market power that are unreasonably discriminatory or tend to unreasonably restrict, impair, or reduce the level of competition, including practices that tie unregulated products or services to regulated products or services or unreasonably discriminate in the provision of regulated services. For purposes of this section, "market power abuses" include predatory pricing, withholding of production, precluding entry, and collusion. A violation of the code of conduct provided by Subsection (d) that materially impairs the ability of a person to compete in a competitive market shall be deemed to be an abuse of market power.

⁵⁹ In determining the amount of penalty, Section 22.246(c) of the PUCT substantive rules provides for consideration of the following factors:

- (A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (B) the economic harm to property or the environment caused by the violation;
- (C) the history of previous violations;
- (D) the amount necessary to deter future violations;
- (E) efforts to correct the violation; and
- (F) any other matter that justice may require, including, but not limited to, the respondent's timely compliance with requests for information, completeness of responses, and the manner in which the respondent has cooperated with the commission during the investigation of the alleged violation.

PUC SUBST. R. § 22.246(c).

PUCT substantive rules prohibit manipulative or deceptive practices in language similar to Section 6(c)(1) of the Act. FPA Section 221 prohibits the willful filing of false information relating to the price of electricity or the availability of transmission capacity.⁶⁰ PUC Rule 25.503 also protects consumers from unfair, misleading and deceptive practices and market power. These protections are effectuated by several means, including, but not limited to, specific prohibitions on fraud, misrepresentations, collusion or market power abuse.⁶¹ The PUCT has specific authority to prevent market power abuse and to investigate any such behavior.⁶²

FERC regulations applicable to electric markets prohibit, among other things, false or misleading information in any communications with FERC-approved market monitors, RTOs, or ISOs, and false or misleading reporting to publishers of price indices.⁶³ In addition to the prohibited activities described above, the PUCT substantive rules provide that Participants must provide accurate and factual information and “shall not submit false or misleading information, or omit material information, in any communication with ERCOT or with the [PUCT].”⁶⁴ Furthermore, Participants must provide “true, accurate, and reasonably complete” data and information to market publications and publishers of surveys and market indices and exercise due diligence to prevent the release of materially inaccurate or misleading information.⁶⁵

C. Cooperation in Enforcing the Prohibitions on Fraud and Market Manipulation

The ISOs/RTOs and associated IMMs devote substantial resources to market surveillance and oversight, as do FERC, the PUCT and the CFTC. The FERC-regulated ISOs/RTOs refer to FERC’s Division of Enforcement information that is developed in the course of their oversight of the markets regarding market anomalies or other indications that a possible violation has occurred. ERCOT and the ERCOT independent market monitor, established by the PUCT, reports directly to the PUCT and communicates any concerns it has regarding market design flaws or other issues it may observe in ERCOT’s operations.⁶⁶

In this regard, the ISOs/RTOs note that certain of the processes that they must follow in providing information relating to oversight of their markets and trading thereon are mandated to a large degree by the applicable statutory and regulatory authority, tariffs or protocols. Accordingly, although the intent of the ISOs/RTOs is to be responsive to the CFTC’s requests for information and to assist the Commission as necessary in fulfilling its mission under the Act, the ISOs/RTOs must do so in accordance with the processes established by their tariffs or protocols. For example, certain of the tariffs may require that an ISO/RTO notify its members prior to providing information in response to a subpoena. Because the processes for responding

⁶⁰ FPA § 221, 16 U.S.C. § 824u.

⁶¹ PUC SUBST. R. § 25.503(g).

⁶² PURA § 39.157 and PUC Rule 25.503(l).

⁶³ 18 C.F.R. § 35.41.

⁶⁴ PUC SUBST. R. § 25.503(f).

⁶⁵ PUC SUBST. R. § 25.503(f).

⁶⁶ PURA § 39.1515.

to requests for information from regulatory authorities is subject to FERC or PUCT oversight, the ISOs/RTOs note that insofar as the Commission may have needs for information from the ISOs/RTOs to fulfill its mission under the Act, such information would be available to the Commission under the procedures agreed upon by the agencies.

In response to provisions of the Energy Policy Act of 2005, the Commission and FERC entered into a memorandum of understanding (MOU) regarding the sharing of information and the confidential treatment of proprietary energy trading data on October 12, 2005.⁶⁷ As noted by the Commission's then-Chairman Reuben Jeffery, "[t]his MOU will result in a more effective and efficient working relationship with FERC. It will enable both agencies to work actively to assure the price integrity of the markets for natural gas and other energy products."⁶⁸

Moreover, under section 720 of the Dodd-Frank Act,⁶⁹ the Commission and the FERC have been instructed by Congress to enter into a MOU to "share information that may be requested where either Commission is conducting an investigation into potential manipulation, fraud, or market power abuse in markets subject to each Commission's regulation or oversight." By adopting section 720 of the Dodd-Frank Act, Congress has provided a mechanism under which information relating to the markets operated by the ISOs/RTOs may be made available to the Commission. The ISOs/RTOs stand ready to cooperate in the arrangements for sharing such information under existing procedures and any new procedures that may be established under a future MOU. Similarly, we understand that the PUCT is prepared to work with the Commission to establish an appropriate information sharing process. By providing such information under arrangements agreed to jointly by the Commission and FERC or PUCT, the regulators will be able to ensure that they do not place conflicting legal obligations on the ISOs/RTOs.

VII. The Appropriate Person Requirement

Section 4(c)(2)(B)(i) of the Act requires that, in order to grant the exemptions requested herein, the Commission must determine that the agreements, contracts, or transactions that will be subject to the exemptions will be "entered into solely between appropriate persons." The term "appropriate persons," is defined for these purposes to include, *inter alia*, corporations or other business entities with net worth exceeding \$1,000,000 or total assets exceeding \$5,000,000.⁷⁰ "Appropriate persons," also includes "[s]uch other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections."⁷¹

In Order No. 741, FERC directed each of the ISOs/RTOs to establish minimum criteria for market participants.⁷² FERC did not specify the criteria the ISOs/RTOs should apply, but

⁶⁷ <http://www.cftc.gov/opa/press05/opa5127-05.htm>.

⁶⁸ *Id.*

⁶⁹ Public Law No. 111-203, 124 Stat. 1376 (2010).

⁷⁰ Section 4(c)(3)(F) of the Act.

⁷¹ *Id.* § 4(c)(3)(K).

⁷² FERC Order No. 741 at 131.

rather directed them to establish criteria through their stakeholder processes.⁷³ Accordingly, each of the FERC jurisdictional ISOs/RTOs submitted to FERC proposals to establish minimum criteria for participation in their markets. Although ERCOT is not subject to the requirements FERC's Credit Reform Orders, ERCOT is reviewing its participant eligibility standards to ensure that they are consistent with the requirements of Section 4(c). These proposals were accepted by FERC subject to a supplemental compliance filing to provide for verification of risk management policies and procedures.

Although there is some variation among the minimum participation criteria adopted by each ISO/RTO, included in each is a baseline capitalization requirement that participants have net worth of at least \$1 million or total assets of at least \$10 million.⁷⁴ Each ISO/RTO requires those entities not meeting the baseline capitalization requirement to post financial security.

The criteria of some ISOs/RTOs also reduce the financial security posting requirement for certain entities that maintain only small positions on the markets of the ISO/RTO and therefore expose the ISOs/RTOs to minimal risk. These entities are instead required to post additional financial security with the ISO/RTO in an amount that would depend on the size of their positions. In this regard, a notable number of participants in the markets of some ISOs/RTOs include cooperatives, municipalities or other forms of public corporate entities which are authorized to own, lease and operate electric generation, transmission or distribution facilities. Such entities' participation in the ISO/RTO may be necessary to make electricity available within the entire grid for a region. Nevertheless, they are "appropriate persons" because of their active participation in the generation, transmission or distribution of electricity and the knowledge of the wholesale energy market that they have as a consequence of their participation in the physical markets. Moreover, the municipal entities are entitled to recover their costs for native load service through governmentally established retail rates and, accordingly, are able to provide a form of financial security (*i.e.*, the ability to request a retail rate increase to cover increased costs) that is unavailable to other participants in the energy markets. As such, the risk of default by such entities is materially lower than it is for other Market Participants. As acknowledged by the CFTC Staff in comments on FERC Order No. 741, reducing the capitalization requirements for entities with small positions is necessary to ensure that traditional market participants, such as municipalities and cooperatives, continue to have access to the ISO/RTO markets.⁷⁵

The minimum participation standards set by the ISOs/RTOs will enhance their efforts to ensure that all participants in their markets are "appropriate persons." All ISO/RTO market participants that do not meet the financial requirements of Section 4(c)(3)(F) of the Act should be determined by the Commission to be "appropriate persons" in light of their other

⁷³ *Id.* at 132.

⁷⁴ ISO NE's proposal, for example, would exempt from this capitalization requirement entities that have a credit rating of BBB-/Baa3 or higher.

⁷⁵ March 29, 2010 letter from Ananda K. Radhakrishnan, Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission regarding Credit Reforms in Organized Wholesale Electric Markets, Federal Energy Regulatory Commission Docket Number RM10-13-000, n. 19, available at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12304687>.

qualifications, including their traditional participation in the wholesale markets for electricity and the minimal degree of risk that they pose to the ISO/RTO markets.⁷⁶

VIII. The Exemptions Will not Have a Material Adverse Effect on the Ability of the CFTC or any Contract Market to Discharge its Regulatory Function

The Commission's ability to discharge its statutory mandates will not be adversely affected by the requested exemptions. Under Section 4(d) of the Act, the Commission will retain authority to conduct investigations to determine whether Requestors are in compliance with any exemption granted in response to this request. As noted above, the requested exemptions would also preserve the Commission's existing enforcement jurisdiction over fraud and manipulation. This is consistent with section 722 of the Dodd-Frank Act, the existing MOU between the FERC and the Commission and other protocols for inter-agency cooperation. The Requestors will continue to retain records related to the Transactions, consistent with existing obligations under FERC and PUCT regulations.

The regulation of exchange-traded futures contracts and significant price discovery contracts ("SPDCs") will be unaffected by the requested exemptions. Futures contracts based on electricity prices set in the Requestors' markets that are traded on a designated contract market and SPDCs will continue to be regulated by and subject to the requirements of the Commission. No current requirement or practice of the ISOs/RTOs or of a contract market will be affected by the Commission's granting the requested exemptions.

IX. Conclusion and Proposed Exemptive Orders

As demonstrated above and set out in more detail in the Attachments hereto, FERC and PUCT impose on the Requestors, Transactions and Participants comprehensive regulation that is comparable to that of the Commission's Core Principles. Accordingly, this aspect of the regulatory framework applicable to the ISOs/RTOs is consistent with the public interest and the purposes of the Act as evidenced by the Core Principles with respect to markets and clearing organizations.

Despite this general comparability, there are, nevertheless, differences in the regulatory schemes administered by the Commission and FERC or PUCT that reflect the different missions with which they have been charged by Congress and the Texas legislature. In contrast to the Commission's role as a price neutral regulator, FERC's regulations and the rates, terms and conditions in ISO/RTO tariffs must satisfy the statutory standards of the FPA. Under the FPA, wholesale power rates of public utilities, including all charges under ISO/RTO tariffs, must be just and reasonable and not unduly discriminatory or preferential.⁷⁷ The FPA imposes an obligation on FERC to ensure that the markets administered by ISOs/RTOs meet this standard and do not result in rates or market charges that are unjust, unreasonable, unduly discriminatory or preferential.⁷⁸ Although FERC has significant discretion to determine how best to regulate

⁷⁶ Section 4(c)(3)(K) of the Act.

⁷⁷ FPA §§ 201, 205, 206; 16 U.S.C. §§ 824, 824d(a), 824(e).

⁷⁸ *Id.*, § 824e(a).

ISO/RTO markets, the FPA requires that FERC only approve rates within a zone of reasonableness; FERC cannot approve market rules which could produce prices outside of such a zone.⁷⁹ FERC's approach to oversight of ISO/RTO markets reflects this statutory mandate. ERCOT is not subject to the FPA, but it is subject to the PURA and PUCT substantive rules, which impose comparable standards on the operation of the ERCOT market, including ensuring efficient markets and nondiscriminatory access for all buyers and sellers of electricity.

The exemptive Orders are being requested because, while FERC and the PUCT regulation is essentially comparable to that of the Act's Core Principles, there are differences in the details, as illustrated in the Attachments. The requested exemptive relief would ensure that the public interest in regulating these markets is met "in a manner so as to ensure effective and efficient regulation."⁸⁰ For these reasons, the proposed exemptions would be consistent with the public interest. Moreover, the Transactions would only be entered into between appropriate persons, and the Transactions will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.

Accordingly, the Requestors ask that the Commission issue Orders under section 4(c)(6) of the Act, in order to provide greater certainty with respect to the regulatory requirements that will apply to the Requestors, Transactions and Participants. The Requestors ask that the Commission grant the exemptions without determining whether: (1) the Transactions are swap, futures or option contracts within the meaning of section 1a of the Act; and (2) Requestors operate SEFs, DCMs or provide clearing services in connection with the Transactions.

The text of the Requested Orders is as follows:

⁷⁹ See, e.g., *Farmers Union Cent. Exchange, Inc. v. FERC*, 734 F.2d 1486, 1509 (D.C. Cir. 1984).

⁸⁰ See section 720 of the Dodd-Frank Act.

**Order of the Commodity Futures Trading Commission Exempting Specified Instruments
Under Section 4(c)(6) of the Commodity Exchange Act**

(a) Scope.

This Order of Exemption shall apply to any contract, agreement or transaction:

- (1) offered or entered into in a market pursuant to a Requesting Party's Tariff, such Tariff having been approved or permitted to take effect by:
 - (i) the Federal Energy Regulatory Commission, or
 - (ii) with respect to ERCOT, the Public Utility Commission of Texas; and
- (2) which is for the purchase or sale of one of the following electricity-related products;
 - (i) FTRs, as defined in paragraph (b)(2);
 - (ii) Energy Transactions, as defined in paragraph (b)(3);
 - (iii) Forward Capacity Transactions, as defined in paragraph (b)(4); or
 - (iii) Reserve or Regulation Transactions, as defined in paragraph (b)(5).

(b) Definitions.

- (1) "Tariff" means a Requesting Party's "tariff," "rate schedule," "protocol" or "other governing document."
- (2) "Financial Transmission Right" (FTR) means:
 - (i) A transaction, however named, that entitles one party to receive, and obligates another party to pay, an amount based solely on the difference between the price⁸¹ for electricity, established on an electricity market administered by a Requesting Party, at a specified source (*i.e.*, where electricity is deemed injected into the grid of a Requesting Party) and a specified sink (*i.e.*, where electricity is deemed withdrawn from the grid of a Requesting Party). The term "FTR" includes Financial Transmission Rights, and Financial Transmission Rights in the form of options (*i.e.*, where one party has only the obligation to pay, and the other party only the right to receive, an amount as described above).

⁸¹ "Price" can mean one or more components of a locational marginal price – e.g, energy, congestion, and losses, if and as applicable.

- (ii) The FTRs to which this Order applies are those where:
 - (A) Each FTR is linked to, and the aggregate volume of FTRs for any period of time is limited by, the physical capability (after accounting for counterflow) of the electricity transmission system operated by a Requesting Party offering the FTR, for such period;
 - (B) The Requesting Party serves as the market administrator for the market on which the FTRs are transacted;
 - (C) Each party to the transaction is a member of the Requesting Party (or is the Requesting Party itself) and the transaction is executed on a market administered by that Requesting Party; and
 - (D) The transaction does not require any party to make or take physical delivery of electricity.

- (3) “Energy Transaction” means transactions in a Day-Ahead Market or Real-Time Market for the purchase or sale of a specified quantity of electricity at a specified location (including Demand Response as described in paragraph 1(c)(ii)) where:
 - (i) The price of the electricity is established at the time the transaction is executed;
 - (ii) Performance occurs in the Real-Time Market by either,
 - (A) Delivery or receipt of the specified electricity, or
 - (B) A cash payment or receipt at the price established in the Real-Time Market; and
 - (iii) The aggregate cleared volume of both physical and cash-settled energy transactions for any period of time is limited by the physical capability of the electricity transmission system operated by a Requesting Party for that period of time.

- (4) “Forward Capacity Transactions” means transactions in which a Requesting Party, for the benefit of load-serving entities, purchases any of the following rights:
 - (i) Generation Capacity: the right of a Requesting Party to require:
 - (A) Certain sellers to maintain the interconnection of electric generation facilities to specific physical locations in the electric-power transmission system during a future period of time as

specified in the Requesting Party's Tariff (which includes a tariff, rate schedule or protocol);

(B) Such sellers to offer specified amounts of electric energy into the Day-Ahead or Real-Time markets for electricity transactions; and

(C) Subject to the terms and conditions of a Requesting Party's Tariff, such sellers to inject electric energy into the electric power transmission system operated by the Requesting Party;

(ii) Demand Response: the right of a Requesting Party to require that certain sellers of such rights curtail consumption of electric energy from the electric power transmission system operated by a Requesting Party during a future period of time as specified in the Requesting Party's Tariff; or

(iii) Energy Efficiency: the right of a Requesting Party to require specific performance of an action or actions that will reduce the need for generation capacity or demand response capacity over the duration of a future period of time as specified in the Requesting Party's Tariff.

In each case, the aggregate cleared volume of all such transactions for any period of time shall be limited to the physical capability of the electricity transmission system operated by a Requesting Party for that period of time.

(5) "Reserve or Regulation Transactions" means transactions:

(i) In which a Requesting Party, for the benefit of load-serving entities and resources, purchases through auction or as otherwise permitted by its Tariff, obtains the right, during a period of time as specified in the Requesting Party's Tariff, to require the seller of such right to operate electric facilities in a physical state such that the facilities can increase or decrease the rate of injection or withdrawal of a specified quantity of electricity into or from the electric power transmission system operated by the Requesting Party with:

(A) Reserve Transaction: physical performance by the seller's facilities within a response time interval specified in a Requesting Party's Tariff; or

(B) Area Control Error Regulation Transaction: prompt physical performance by the seller's facilities;

(ii) For which the seller receives, in consideration, one or more of the following:

- (A) Payment at the price established in the Requesting Party's Day-Ahead or Real-Time Market price for electricity applicable whenever the Requesting Party exercises its right that electric energy be delivered (including Demand Response as described in 1(c)(ii));
 - (B) Compensation for the opportunity cost of not supplying or consuming electricity or other services during any period during which the Requesting Party requires that the seller not supply energy or other services;
 - (C) An upfront payment determined through the auction administered by the Requesting Party for this service;
 - (D) An additional amount indexed to the frequency, duration, or other attributes of physical performance as specified in the Requesting Party's Tariff; and
- (iii) In which the value, quantity, and specifications of such transactions for a Requesting Party for any period of time shall be limited to the physical capability of the electricity transmission system operated by the Requesting Party for that period of time.
- (6) "Day-Ahead Market" means an electricity market administered by a Requesting Party on which the price of electricity at a specified location is determined, in accordance with the Requesting Party's Tariff, for specified time periods, none of which is later than the second operating day following the day on which the Day-Ahead Market clears.
- (7) "Real-Time Market" means an electricity market administered by a Requesting Party on which the price of electricity at a specified location is determined, in accordance with the Requesting Party's Tariff, for specified time periods within the same 24-hour period.
- (8) "Requesting Party" means each of those Regional Transmission Organizations and/or Independent System Operators that submitted, on [Date] a request for exemption under Section 4(c)(6) of the Commodity Exchange Act.

(c) Exemption.

The Commission, pursuant to section 4(c)(6) of the Commodity Exchange Act, as amended (the "Act"), hereby exempts, subject to the conditions specified herein, the offer and sale of agreements, contracts, and transactions as specified in paragraph (b) of this Order and any person or class of persons offering, entering into, rendering advice, or rendering other services with respect thereto from all provisions of the Act and Commission regulations, except in each case sections 4b, 4o, 6(c) and 9(a)(2) of the Act to the extent that these sections prohibit fraud in

connection with transactions subject to the Act, or manipulation of the price of any swap or contract for the sale of a commodity in interstate commerce or for future delivery on or subject to the rules of any registered entity, and from the requirement to provide information to the Commission as expressly permitted by their respective tariffs or protocols or as provided for under section 720 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 15 U.S.C. 8308.

Respectfully submitted,



Paul J. Pantano, Jr.
Jonathan H. Flynn
Sohair Ahmadi

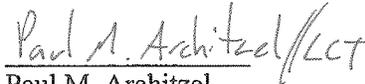
CADAWALADER WICKERSHAM & TAFT LLP
700 SIXTH STREET, N.W.
WASHINGTON, D.C. 20001
TEL: (202) 862.2410
paul.pantano@cwt.com

*Counsel for
Electric Reliability Council of Texas, Inc. and
PJM Interconnection, L.L.C.*



Stephen G. Kozey
Matthew R. Dorsett

MIDWEST INDEPENDENT TRANSMISSION
SYSTEM OPERATOR, INC.
720 CITY CENTER DRIVE
CARMEL, IN 46032
TEL: (317) 249-5400
mdorsett@misoenergy.org
stevekozey@misoenergy.org



Paul M. Architzel
Leigh Thompson

WILMERHALE
1875 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006
TEL: (202) 663.6240
paul.architzel@wilmerhale.com

*Counsel for
California Independent System Operator
Corporation and ISO New England Inc.*



Robert E. Fernandez
Sara B. Keegan

NEW YORK INDEPENDENT SYSTEM OPERATOR,
INC.
10 KREY BOULEVARD
RENSSELAER, NY 12144
Tel: (518) 356.7504
RFernandez@nyiso.com

Addendum A

List of FERC Orders Regulating the ISOs/RTOs:

Pennsylvania-New Jersey-Maryland Interconnection, et al., 81 FERC ¶ 61,257 (1997) – order accepting proposals to restructure the PJM power pool as an Independent System Operator, including the implementation of locational marginal pricing and a proposal to establish Fixed Transmission Rights⁸² (November 25, 1997)

Pacific Gas & Elec. Co., et al., 81 FERC 61,122 (1997) – order conditionally authorizing the California ISO to begin operations (October 30, 1997)

Central Hudson Gas & Electric Corp., et al., 86 FERC ¶ 61,062 (1999) – order accepting proposals to comprehensively restructure the wholesale electric market in New York and establish the NYISO, including proposals for Transmission Congestion Contracts, financial instruments that protect the holder from congestion costs when the system is constrained (January 27, 1999)

PJM Interconnection LLC, 87 FERC ¶ 61,054 (1999) – order accepting PJM proposal to auction Fixed Transmission Rights (April 13, 1999)

California Independent System Operator Corp., 87 FERC ¶ 61,143 (1999) – order accepting California ISO proposal for Firm Transmission Rights (May 3, 1999)

PJM Interconnection LLC, 91 FERC ¶ 61,148 (2000) – letter order accepting PJM procedures for a two-settlement system, which includes both day-ahead and real-time markets and the ability of market participants to submit increment and decrement bids for virtual supply and demand as a hedging tool (May 18, 2000)

ISO New England, Inc., et al., 91 FERC ¶ 61,311 (2000) – order accepting ISO-NE proposals for congestion management and multi-settlement systems, including explicit virtual demand bidding (June 28, 2000)

New York Independent System Operator, Inc., et al., 97 FERC ¶ 61,091 (2001) – order accepting virtual bidding proposal and related market mitigation measures (October 25, 2001)

New England Power Pool and ISO New England Inc., 100 FERC ¶ 61,287 (2002) – order accepting ISO-NE proposal for standard market design based on locational marginal

⁸² Different ISOs and RTOs use different terms to identify their respective financial transmission rights (“FTRs”) including fixed transmission rights, transmission congestion contracts, financial transmission rights, and congestion revenue rights.

pricing, including Financial Transmission Rights and both virtual supply and demand bidding (September 20, 2002)

Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,196 (2003) – order accepting MISO petition seeking approval of the principal components of market rules based on locational marginal pricing, including Financial Transmission Rights and virtual bidding in the day-ahead market (February 24, 2003)

Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,280 (2003) – order accepting market mitigation measures for virtual bidding (March 13, 2003)

PJM Interconnection, LLC, 104 FERC ¶ 61,309 (2003) – order accepting PJM credit requirements applicable to virtual bidding (September 22, 2003)

Long-Term Firm Transmission Rights in Organized Electricity Markets, Order No. 681, 116 FERC ¶ 61,077 (2006) – final rule requiring Independent System Operators and Regional Transmission Organizations to make available long-term firm transmission rights, issued pursuant to section 1233(b) of the Energy Policy Act of 2005 (July 20, 2006)

California Independent System Operator, Inc., 116 FERC ¶ 61,274 (2006) – order accepting California ISO proposed tariff to implement a wholesale electric market design based on locational marginal pricing, including proposed terms for Congestion Revenue Rights (September 21, 2006)

Long-Term Firm Transmission Rights in Organized Electricity Markets, Order No. 681-A, 117 FERC ¶ 61,201 (2006) – order clarifying certain aspects of Order No. 681 (November 16, 2006)

PJM Interconnection, LLC, 117 FERC ¶ 61,220 (2006) – order accepting PJM proposal to establish Long-Term Transmission Rights (November 22, 2006)

Midwest Independent Transmission System Operator, Inc., 119 FERC ¶ 61,143 (2007) – order accepting MISO Order No. 681 compliance proposal for long-term firm transmission rights and modified rules to allocate short-term transmission rights (May 17, 2007)

California Independent System Operator, Inc., 120 FERC ¶ 61,023 (2007) – order accepting California ISO long-term firm transmission right proposal to comply with Order No. 681 (July 6, 2007)

ISO New England Inc. and New England Power Pool, 122 FERC ¶ 61,173 (2008) – order accepting ISO-NE long-term firm transmission right proposal to comply with Order No. 681 (February 25, 2008)

New York Independent System Operator, Inc., 123 FERC ¶ 61,044 (2008) – order accepting NYISO long-term firm transmission right proposal to comply with Order No. 681 (April 16, 2008)

Wholesale Competition in Regions with Organized Electric Markets, Order No. 719, 73 Fed. Reg. 64100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008)

Long-Term Firm Transmission Rights in Organized Electricity Markets, Order No. 681-B, 126 FERC ¶ 61,254 (2009) – final rule affirming and clarifying certain aspects of Order Nos. 681 and 681-A (March 20, 2009)

PJM Interconnection, LLC, 126 FERC ¶ 61,280 (2009) – order accepting PJM proposal to allocate Auction Revenue Rights in connection with Long-Term Transmission Rights to comply with Order No. 681 (March 27, 2009)

New York Independent System Operator, Inc., 129 FERC ¶ 61,164 (November 20, 2009) - order accepting NYISO filing in compliance with Order 719

California Independent System Operator, Inc., 130 FERC ¶ 61,122 (2010) – order accepting California ISO's conceptual convergence bidding (*i.e.*, virtual bidding) design policy filing (February 18, 2010)

California Independent System Operator, Inc., 133 FERC ¶ 61,039 (2010) – order accepting California ISO tariff provisions to implement convergence bidding (October 15, 2010)

List of PUCT Orders Regulating ERCOT:

Application of the ERCOT ISO for Certification as an Independent Organization to Perform Transmission and Distribution Access, Reliability, Information Exchange, and Settlement Functions, Docket No. 22061, Final Order (January 31, 2001).

Proceeding to Approve a Program Administrator for the Renewable Energy Trading Program and to Develop Procedures for Registration and Certification of Renewable Energy Facilities, Project No. 22200, Final Order (May 10, 2000).

Petition of the Electric Reliability Council of Texas (ERCOT) for Approval of the ERCOT Protocols, Docket No. 23220, Final Order (March 14, 2001).

Rulemaking Proceeding on Wholesale Market Design Issues in the Electric Reliability Council of Texas, Project No. 26376, Final Order (September 22, 2003).

Rulemaking Proceeding Concerning Implementation of a Nodal Market Design for the Electric Reliability Council of Texas, Project No. 30160, Order Adopting Amendments to SUBST. R. 25.501 (October 29, 2004).

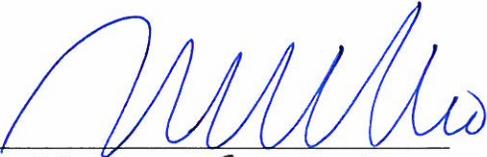
Proceeding to Consider Protocols to Implement a Nodal Market in the Electric Reliability Council of Texas Pursuant to SUBST. R. 25.501, Docket No. 31540, Final Order (April 5, 2006).

Rulemaking Relating to the Accountability and Performance of the Electric Reliability Council of Texas, Project No. 38338, Order Adopting Amendments to PUC SUBST. R. §§25.361, 25.362, and 25.363 (March 2, 2011).

CERTIFICATION PURSUANT TO 17 C.F.R. § 140.99(c)(3)(i) and (ii)

The undersigned hereby certifies that the material facts set forth in the attached Application for an Exemptive Order, dated as of February 7, 2012, and updated on June 11, 2012, are true and complete to the best of my knowledge.

Pursuant to Commodity Futures Trading Commission Rule 140.99(c)(3)(ii), California Independent Service Operator Corporation hereby undertakes that, if at any time prior to issuance of such order, any material representation made in this application by California Independent Service Operator Corporation ceases to be true and complete, it will promptly inform the Commission staff in writing of any change in facts and circumstances.

By: 
Name: Nancy Saracino
Title: VP and General Counsel
For California Independent Service Operator Corporation

Dated: June 11, 2012

CERTIFICATION PURSUANT TO 17 C.F.R. § 140.99(c)(3)(i) and (ii)

The undersigned hereby certifies that the material facts set forth in the attached Application for an Exemptive Order, dated as of February 7, 2012, and updated on June 11, 2012, are true and complete to the best of my knowledge.

Pursuant to Commodity Futures Trading Commission Rule 140.99(c)(3)(ii), Electric Reliability Council of Texas, Inc. hereby undertakes that, if at any time prior to issuance of such order, any material representation made in this application by Electric Reliability Council of Texas, Inc. ceases to be true and complete, it will promptly inform the Commission staff in writing of any change in facts and circumstances.

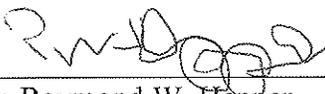
By: William Magness
Name: Bill Magness
Title: Vice President & General Counsel
For Electric Reliability Council of Texas, Inc.

Dated: June 11, 2012

CERTIFICATION PURSUANT TO 17 C.F.R. § 140.99(c)(3)(i) and (ii)

The undersigned hereby certifies that the material facts set forth in the attached Application for an Exemptive Order, dated as of February 7, 2012, and updated on June 11, 2012, are true and complete to the best of my knowledge.

Pursuant to Commodity Futures Trading Commission Rule 140.99(c)(3)(ii), ISO New England Inc. hereby undertakes that, if at any time prior to issuance of such order, any material representation made in this application by ISO New England Inc. ceases to be true and complete, it will promptly inform the Commission staff in writing of any change in facts and circumstances.

By: 
Name: Raymond W. Hepper
Title: Vice President, General Counsel &
Corporate Secretary
For ISO New England Inc.

Dated: June 11, 2012

CERTIFICATION PURSUANT TO 17 C.F.R. § 140.99(c)(3)(i) and (ii)

The undersigned hereby certifies that the material facts set forth in the attached Application for an Exemptive Order, dated as of February 7, 2012, and updated on June 11, 2012, are true and complete to the best of my knowledge.

Pursuant to Commodity Futures Trading Commission Rule 140.99(c)(3)(ii), Midwest Independent Transmission System Operator, Inc. hereby undertakes that, if at any time prior to issuance of such order, any material representation made in this application by Midwest Independent Transmission System Operator, Inc. ceases to be true and complete, it will promptly inform the Commission staff in writing of any change in facts and circumstances.

By: 

Name: Matthew R. Dorsett

Title: Attorney

For Midwest Independent Transmission System Operator, Inc.

Dated: June 11, 2012

CERTIFICATION PURSUANT TO 17 C.F.R. § 140.99(c)(3)(i) and (ii)

The undersigned hereby certifies that the material facts set forth in the attached Application for an Exemptive Order, dated as of February 7, 2012, and updated on June 11, 2012, are true and complete to the best of my knowledge.

Pursuant to Commodity Futures Trading Commission Rule 140.99(c)(3)(ii), New York Independent System Operator, Inc. Corporation hereby undertakes that, if at any time prior to issuance of such order, any material representation made in this application by New York Independent System Operator, Inc. ceases to be true and complete, it will promptly inform the Commission staff in writing of any change in facts and circumstances.

By:

Name: Robert E. Fernández

Title: General Counsel

For New York Independent System Operator, Inc.

Dated: June 11, 2012

CERTIFICATION PURSUANT TO 17 C.F.R. § 140.99(c)(3)(i) and (ii)

The undersigned hereby certifies that the material facts set forth in the attached Application for an Exemptive Order, dated as of February 7, 2012, and updated on June 11, 2012, are true and complete to the best of my knowledge.

Pursuant to Commodity Futures Trading Commission Rule 140.99(c)(3)(ii), PJM Interconnection, L.L.C. hereby undertakes that, if at any time prior to issuance of such order, any material representation made in this application by PJM Interconnection, L.L.C. ceases to be true and complete, it will promptly inform the Commission staff in writing of any change in facts and circumstances.



By:
Name: Vince Duane
Title: Vice President and General Counsel
For PJM Interconnection, L.L.C.

Dated: June 11, 2012