

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D. C. 20426

09-28  
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OFFICE OF THE GENERAL COUNSEL

November 4, 2009

**COMMENT**

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

2009 NOV 9 PM 3 32  
OFFICE OF THE SECRETARIAT  
O.F.T.O.

Re: Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether Certain Financial Basis Contracts Offered for Trading on the Intercontinental Exchange, Inc., Perform Significant Price Discovery Functions (Comment Files 09-027, 09-028 and 09-031)

Received CFTC  
Records Section  
11/9/09

Comments of the Staff of the Federal Energy Regulatory Commission

Dear Mr. Stawick:

On October 14, 2009, the Commodity Futures Trading Commission (CFTC) issued three separate notices of action and request for comment on whether certain natural gas financial contracts offered for trading on the Intercontinental Exchange, Inc. (ICE), an exempt commercial market (ECM), perform significant price discovery functions.<sup>1</sup> These are the comments of the staff of the Federal Energy Regulatory Commission (FERC).

Under the CFTC's rules implementing the Reauthorization Act of 2008, an ECM with significant price discovery contracts (SPDCs) is subject to certain self-regulatory and reporting requirements, as well as certain CFTC oversight authorities, with respect to those contracts. Specifically, such regulatory authority applies to agreements, contracts or transactions in exempt commodities (which

<sup>1</sup> The contracts are: the Henry Financial Swing, Henry Financial Basis and Henry Financial Index Contracts (Comment File 09-027); the Socal Border Financial Basis Contract (Comment File 09-028); and the NWP Rockies Financial Basis Contract (Comment File 09-031).

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includes natural gas) executed on an electronic trading facility by certain eligible commercial entities on a principal-to-principal basis if the CFTC determines, in its discretion, that any such agreement, contract or transaction performs a significant price discovery function. If the CFTC determines that a particular agreement, contract or transaction performs a significant price discovery function, the ECM must demonstrate, with respect to that contract, compliance with nine "core principles" set forth in section 2(h)(7)(C) of the Commodity Exchange Act (CEA) and the CFTC's rules thereunder.

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

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

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

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

Sincerely,



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

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