



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Ananda Radhakrishnan
Director

CFTC letter No. 07-01
February 13, 2007
No-Action
Division of Clearing and Intermediary Oversight

Re: Section 4m(1) -- Withdrawal of CTA Registration by

Dear :

This is in response to your letter dated August 15, 2006, to the Division of Clearing and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”) on behalf of your client, (“Company”), as supplemented by telephonic and electronic communications with Division staff (the “correspondence”). By the correspondence, you request confirmation that the Company may withdraw its registration as a commodity trading advisor (“CTA”) under the Commodity Exchange Act (“Act”).¹ Your request is based on the similarities between the Company and the energy management firms to which the Division granted CTA registration relief by Staff Letters No. 04-12 and 02-59.²

Based upon the representations made in the correspondence, we understand the relevant facts to be as follows. The Company was formed as a non-profit corporation in May of 1997 as an alliance of public power utilities, *i.e.*, power utilities owned by political subdivisions (“customers”). Through the Company, these customers market and trade wholesale electricity and natural gas. The Company provides a number of energy management services to these customers to reduce their energy costs – *i.e.*, energy and natural gas trading services, portfolio optimization services, financial trading and hedging services, and energy risk management services.

The Company principally trades in the cash power and natural gas markets for customers. For example, the Company purchases power for a customer when the customer is short or when

¹ The Act is found at 7 U.S.C. §1 *et seq.* (2000) and may be accessed through the Commission’s website at <http://www.cftc.gov/cftc/cftclawreg.htm>.

² See CFTC Staff Letter No. 04-12, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,748 (April 2, 2004); CFTC Staff Letter No. 02-59, [2002-2003 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,063 (May 17, 2002).

the market price for power is below the customer's cost to generate. Similarly, the Company sells power when a customer is long or when the market price of power is above the customer's cost to generate. Consistent with the energy management services the Company offers, from time to time, the Company provides advice to the customers for trading in the commodity futures and option markets. However, the Company does not advertise or solicit any futures trading services, nor does it manage any speculative futures accounts.

In support of your request, you have represented that the Company will provide commodity interest trading advice solely to persons that qualify as an "eligible contract participant" as defined in Section 1a(12)(vii) of the Act. In addition, you have represented that none of the principals of the Company nor any employee providing commodity interest trading advice to the customers is subject to any of the statutory disqualifications from registration listed in Sections 8a(2) and 8a(3) of the Act.

As noted above, the activities of the Company in providing commodity interest trading advice to the customers are substantially similar to those of the energy management firms to which the Division granted relief from CTA registration in Staff Letters Nos. 02-59 and 04-12. Moreover, as in those prior letters, the activities at issue arose from the increased use of market-based pricing in recently deregulated wholesale and retail electricity markets, and the corresponding increase in the need for risk management strategies to hedge cash market transactions.

In view of all the facts and circumstances presented, the Division believes that your request has merit. Accordingly, the Division will not recommend that the Commission commence any enforcement action against the Company under Section 4m(1) of the Act based solely upon the Company's withdrawal from registration as a CTA in connection with providing commodity interest trading advice to the customers, as described above.

This letter is applicable to the Company solely in connection with its provision of energy management services to the customers. It does not excuse the Company from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder. For example, the Company remains a CTA and, as such, is subject to all of the antifraud provisions of the Act and the Commission's regulations, to the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations, and to all otherwise applicable provisions of Part 4 of the Commission's regulations.

This letter is based upon the representations made by the Company in the correspondence. Any different, changed, or omitted material facts or circumstances might render this letter void. You must notify us immediately in the event that the operations or activities of the Company, including the range of services offered or the type of customer served, change in any material way from those represented to the Division. Moreover, this letter represents the position of the Division only and does not necessarily represent the views of the Commission or those of any other division or office of the Commission.

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If you have any questions concerning this correspondence, please contact Andrew Chapin, an attorney on my staff, at (202) 418-5430.

Very truly yours,

Ananda Radhakrishnan
Director

cc: Regina Thoele, National Futures Association