

CFTC Letter No. 12-11
No-Action
October 11, 2012
Division of Market Oversight
Division of Swap Dealer and Intermediary Oversight
Division of Clearing and Risk

**Staff No-Action Relief: Preservation of the Regulatory Status Quo
with Respect to Certain CEA Provisions That May Apply to
RTOs, ISOs, and/or Their Participants**

On August 28, 2012 the Commodity Futures Trading Commission (the “Commission”) published a Notice of Proposed Order and Request for Comment on a Petition From Certain Independent System Operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in Section 4(c)(6) of the Act (the “Proposed Order”).¹ The Proposed Order would exempt certain contracts, agreements and transactions for the purchase or sale of certain electricity-related products defined in the Proposed Order (the “Subject Transactions”) from the provisions of the Commodity Exchange Act (“CEA”) and Commission regulations (the “Exempted Provisions”), with the exception of sections 2(a)(1)(B), 4b, 4c(b), 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9 and 13 of the CEA and any implementing regulations promulgated thereunder including, but not limited to Commission regulations 23.410(a) and (b), 32.4 and part 180 (the “Enforcement Provisions”). Each of Subject Transactions is offered or sold pursuant to a Petitioner’s Tariff² that has been approved or permitted to take effect by: (1) in the case of the Electricity Reliability Council of Texas, the Public Utility Commission of Texas or (2) in the case of all other Petitioners, the Federal Energy Regulatory Commission (each such Tariff, an “Approved Tariff”).

The Commission solicited comments on the Proposed Order over a thirty day comment period, which closed on September 27, 2012. However, upon the effective date of the product definitions rule, certain provisions of the Commission’s regulations under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) will become effective, prior to the issuance of a final version of the Proposed Order.³ In light of the pendency of this Section 4(c)(6) petition, as discussed in further detail below, the Divisions are granting this no action relief to preserve the regulatory status quo as of the Effective Date and through the Termination Date, as those terms are defined below.

¹ 77 FR 52137. The Proposed Order was issued in response to petitions filed on February 7, 2012, and amended on June 11, 2012, by California Independent Service Operator Corporation, the 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 (collectively, the “Petitioners.”)

² As defined in the Proposed Order, the term Tariff includes a tariff, rate schedule or protocol. *See* 77 FR at 52167.

³ On August 13, 2012, the Commission and the Securities and Exchange Commission published a joint final rule further defining the products subject to definition under sections 712(d) and 721(c) of the Dodd-Frank Act. This final rule becomes effective on October 12, 2012, at which point market participants will be obligated to comply with certain other of the Commission’s Dodd-Frank Act regulations. *See* Second Amendment to July 14, 2011 Order for Swap Regulation, 77 FR 41260 (July 13, 2012).

Discussion

As mentioned previously, the Commission is currently considering comments on the Proposed Order that was published on August 28, 2012. A number of Petitioners and other market participants have expressed concern regarding the applicability of Dodd-Frank provisions on and after October 12, 2012 and pending final action on the Proposed Order.

In light of these facts and circumstances, the Divisions believe that it is appropriate to maintain the regulatory status quo with respect to the Petitioners' relevant activities pending final action on the Proposed Order. To implement this goal, the Divisions are taking a no-action position with respect to any of the contracts, agreements or transactions entered into pursuant to a currently (*i.e.*, as of the Effective Date) Approved Tariff, and any other Subject Transactions that would fall within the scope of the Proposed Order (collectively, the "No-Action Transactions"). This no-action position applies to the Petitioners and to any person who is or would be eligible to participate in the Petitioners' markets under any currently Approved Tariff (collectively, the "Exempted Persons").

This no-action position will be effective on the earlier of the date that this letter is issued or October 11, 2012 (the "Effective Date"). This no-action position will expire on March 31, 2013, or such earlier date as the Commission may establish in taking final action on the Proposed Order (the "Termination Date").

Accordingly, the Divisions will not recommend that the Commission commence an enforcement action against any Exempted Person, with respect to any of the Subject Transactions, for failure to comply with any of the Exempted Provisions, other than the Enforcement Provisions, during the period between the Effective Date and the Termination Date.

Other Matters

As noted above, the no-action relief provided by this letter is intended to preserve the regulatory status quo with respect to the No-Action Transactions. The relief provided by this no-action letter does not otherwise affect any Dodd-Frank Act implementing regulations that the Commission promulgates, including any implementation dates therein. In addition, this no-action relief is without prejudice to any decision by the Commission, following consideration of the comments to the Proposed Order, to take final action on the Proposed Order that is, in any respect, the same as, narrower than, or broader than, that which was proposed.

Nothing in this staff no-action letter in any way limits the Commission's authority with respect to any person, entity or transaction pursuant to the Enforcement Provisions. Further, the no-action position taken herein is taken by the Divisions only and does not bind the Commission or any other Division or Office of the Commission's staff. As with all no-action letters, the Divisions retain the authority to condition further, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein, in their discretion.

If you have any questions regarding this staff no action relief, please contact Robert Wasserman at rwasserman@cftc.gov or (202) 418-5092, or M. Laura Astrada at lastrada@cftc.gov or (202) 418-7622.

Very truly yours,

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