



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and Risk
Division of Market Oversight
Division of Swap Dealer and Intermediary Oversight

CFTC Letter No. 16-73
No-Action
September 15, 2016
Division of Market Oversight
Division of Swap Dealer and Intermediary Oversight
Division of Clearing and Risk

Joseph W. Ghormley
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201 Worthen Drive
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Re: Extension of Time-Limited No-Action Relief with Respect to Certain Commodity Exchange Act Provisions That May Apply to Southwest Power Pool, Inc. and/or Its Participants

Dear Mr. Ghormley:

The purpose of this letter is to inform you that the Division of Clearing and Risk, Division of Market Oversight, and the Division of Swap Dealer and Intermediary Oversight (“Divisions”) of the Commodity Futures Trading Commission (“Commission” or “CFTC”) are extending the expiration date of the no-action relief previously granted to Southwest Power Pool, Inc. (“Southwest Power Pool” or “SPP”) (“No-Action Relief”).¹

On February 20, 2014, the Divisions granted time-limited No-Action Relief to Southwest Power Pool. In CFTC Letter No. 14-18, the Divisions stated that they would not recommend that the Commission take enforcement action against Southwest Power Pool, its members, or certain market participants for failure to comply with certain provisions of the Commodity Exchange Act (“CEA”) and the implementing regulations thereunder (“Commission

¹ See CFTC Letter Nos. 14-18 (Feb. 20, 2014), 14-109 (Aug. 22, 2014), 15-05 (Feb. 27, 2015), 15-53 (Sept. 29, 2015), 15-69 (Dec. 23, 2015), 16-09 (Feb. 12, 2016), and 16-27 (March 15, 2016), available at: <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-18.pdf>, <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-109.pdf>, <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/15-05.pdf>, <http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/15-53.pdf>, <http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/15-69.pdf>, <http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/16-09.pdf>, and <http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/16-27.pdf>, respectively.

regulations”), as applicable,² with respect to: (1) contracts, agreements and transactions for the purchase or sale of certain “transmission congestion rights,” “energy transactions,” and “operating reserve transactions,” if such transactions are offered or entered into pursuant to a Federal Energy Regulatory Commission (“FERC”) approved tariff (“Subject Transactions”); and (2) certain preliminary activities related to Southwest Power Pool’s transmission congestion right market necessary to support the launch of its Integrated Marketplace.³ The initial No-Action Relief was scheduled to expire on the earlier of August 31, 2014 or the date on which the Commission took final action on Southwest Power Pool’s application for an exemption under section 4(c)(6) of the CEA and section 712(f)(4) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).⁴ Subsequently, the Divisions extended the No-Action Relief to February 28, 2015,⁵ to September 30, 2015,⁶ to December 31, 2015,⁷ to February 15, 2016,⁸ to March 16, 2016,⁹ and to September 16, 2016.¹⁰

Statement of Facts

Southwest Power Pool is a Regional Transmission Organization (“RTO”) approved by FERC. On October 1, 2013, Southwest Power Pool submitted an initial exemption application (“Initial Application”) to the Commission requesting that the Commission exercise its authority under section 4(c)(6) of the CEA and section 712(f)(4) of the Dodd-Frank Act to exempt the Subject Transactions, as each term is defined in the Initial Application, from the provisions of the CEA and Commission regulations, with the exception of the Enforcement Provisions, as well as any persons (including SPP, its members, and its market participants) offering, entering into, rendering advice, or rendering other services with respect to such transactions.¹¹ In its Initial Application, Southwest Power Pool represented that it had requested exemptive relief that was substantially similar to the exemptive relief granted by the Commission to certain RTOs and

² The No-Action Relief excluded from its scope the Commission’s general anti-fraud and anti-manipulation authority, and scienter-based prohibitions under sections 2(a)(1)(B), 4(d), 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 under these sections including, but not limited to, Commission regulations 23.410(a) and (b), 32.4, and part 180 (collectively, the “Enforcement Provisions”). The Enforcement Provisions still apply during the No-Action Relief period.

³ CFTC Letter No. 14-18.

⁴ CFTC Letter No. 14-18.

⁵ CFTC Letter No. 14-109.

⁶ CFTC Letter No. 15-05.

⁷ CFTC Letter No. 15-53.

⁸ CFTC Letter No. 15-69.

⁹ CFTC Letter No. 16-09.

¹⁰ CFTC Letter No. 16-27.

¹¹ In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by Southwest Power Pool, Inc. (filed on Oct. 17, 2013).

independent system operators (“ISOs”) in April 2013 (“RTO-ISO Final Order”).¹² Southwest Power Pool further represented that its markets and the associated Subject Transactions were substantially similar to those of the RTOs and ISOs that are subject to the RTO-ISO Final Order.¹³ SPP represented that the terms “transmission congestion right,” “energy transactions,” and “operating reserve transactions” are SPP’s equivalent of the following terms set forth in the RTO-ISO Final Order: “Financial Transmission Right,” “Energy Transactions,” and “Reserve or Regulation Transactions,” respectively.¹⁴ SPP also averred that the Subject Transactions were defined in the Initial Application in a manner consistent with the terms set forth in the RTO-ISO Final Order.¹⁵ However, SPP noted that its definition of “transmission congestion right” was narrower in scope than the definition of “Financial Transmission Right,” because it did not include transmission congestion right options whereas the RTO-ISO Final Order’s definition of “Financial Transmission Right” does include financial transmission rights in the form of options.¹⁶ Southwest Power Pool also represented that FERC had accepted its tariff revisions which require a market participant to demonstrate to Southwest Power Pool that such participant meets the Appropriate Persons Requirement in order to be eligible to participate in the Integrated Marketplace. These revisions became effective on March 1, 2014.¹⁷

Following extensive discussions with Commission staff, Southwest Power Pool filed an amended exemption application on August 1, 2014 (“Amended Application”).¹⁸ The Amended

¹² Final Order in Response to 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 Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in the Act, 78 Fed. Reg. 19,880, Apr. 2, 2013. Notably, the RTO-ISO Final Order does not provide an exemption from the Enforcement Provisions.

Under the RTO-ISO Final Order, a transaction may be exempt so long as the transaction falls within the definitions of “Financial Transmission Rights,” “Energy Transactions,” “Forward Capacity Transactions,” or “Reserve or Regulation Transactions,” is offered or sold in a market administered by one of the petitioning RTOs or ISOs pursuant to a tariff or protocol that has been approved or permitted to take effect by FERC or the Public Utility Commission of Texas, and complies with all other enumerated terms and conditions in the RTO-ISO Final Order. *Id.* For example, the RTO-ISO Final Order requires that, to be eligible for the exemption, the transactions must be entered into by persons who are: (1) “appropriate persons,” as defined in section 4(c)(3)(A) through (J) of the CEA; (2) “eligible contract participants,” as defined in section 1a(18) of the CEA and in Commission regulation 1.3(m); or (3) in the business of (i) generating, transmitting, or distributing electric energy, or (ii) providing electric energy services that are necessary to support the reliable operation of the transmission system (collectively, “Appropriate Persons Requirement”). *Id.* at 19,913.

¹³ Initial Application at 2.

¹⁴ *See* Initial Application at 4, 11-13.

¹⁵ *See* Initial Application at 11-13.

¹⁶ *See* Initial Application at 11 n. 48. SPP noted, moreover, that the RTO-ISO Final Order includes “Forward Capacity Transactions” within its scope, but such transactions are not currently offered on SPP’s Integrated Marketplace. *Id.* at 10 n. 45.

¹⁷ *See* Sw. Power Pool, Inc., FERC Letter Order, Nov. 22, 2013.

¹⁸ In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by Southwest Power Pool, Inc. (amended on Aug. 1, 2014).

Application states that the Integrated Marketplace commenced operations on March 1, 2014, and includes, among other things, information about Southwest Power Pool's Integrated Marketplace as well as the representations set forth in the Initial Application and described above.¹⁹

On May 21, 2015, the Commission published a notice of proposed order and request for comment on SPP's Amended Application ("Proposed Order").²⁰ The Proposed Order would exempt agreements, contracts and transactions for the purchase and sale of the Subject Transactions from the provisions of the CEA and Commission regulations, other than the Enforcement Provisions.²¹ In order to qualify for the exemption as set forth in the Proposed Order, the agreements, contracts and transactions for the purchase and sale of the Subject Transactions must be offered or sold pursuant to SPP's FERC-approved Tariff, and each party to the agreement, contract or transaction must be SPP, its members, or other market participants who meet the Appropriate Persons Requirement.²²

The Commission solicited comments on the Proposed Order over a 30-day comment period, which closed on June 22, 2015.

Discussion and Extension of Grant of No-Action Relief

To allow adequate time for consideration of comments on the Proposed Order, the Divisions are further extending the No-Action Relief. Moreover, the Divisions note that Southwest Power Pool has represented that its Integrated Marketplace and the transactions covered thereon will fit within the scope of the RTO-ISO Final Order. Thus, the Divisions believe it is appropriate to continue to limit this No-Action Relief, in a manner consistent with the scope of the RTO-ISO Final Order, to Southwest Power Pool and all of its members and other market participants who meet the Appropriate Persons Requirement (each an "Exempted Person").

Accordingly, effective on the date hereof (the "Effective Date"), the No-Action Relief will expire on the earlier of October 31, 2016 or the date on which the Commission issues a final order for Southwest Power Pool (the "Termination Date").

During the period between the Effective Date and the Termination Date, the Divisions will not recommend that the Commission take enforcement action against any Exempted Person, with respect to any of the Subject Transactions and associated Integrated Marketplace activities for failure to comply with any of the provisions of the CEA and Commission regulations, other than the Enforcement Provisions.

¹⁹ See Amended Application at 1, 2, 4-6, 12-15, 21.

²⁰ Notice of Proposed Order and Request for Comment on an Application for an Exemptive Order From Southwest Power Pool, Inc. From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in Section 4(c)(6) of the Act, 80 Fed. Reg. 29,490, May 21, 2015.

²¹ 80 Fed. Reg. 29,516-17.

²² 80 Fed. Reg. 29,517.

Conclusion

This letter, and the positions taken herein, represent the views of the Divisions only, and do not necessarily represent the positions or views of the Commission or of any other office or division of the Commission. The relief issued by this letter concerns enforcement action only and does not excuse persons relying on this letter from compliance with any other applicable requirements contained in the CEA or in the Commission regulations issued thereunder. Further, this letter, and the relief contained herein, is based upon the representations made to the Divisions. Any different, changed, or omitted material facts or circumstances might render this No-Action Relief void. 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. In addition, this No-Action Relief is without prejudice to any decision by the Commission to take final action on the Proposed Order that is, in any respect, the same as, narrower than, or broader than, that which was in the RTO-ISO Final Order.

Should you have any questions, please do not hesitate to contact Alicia Lewis at alewis@cftc.gov or (202) 418-5862 or Riva Spear Adriance at radriance@cftc.gov or (202) 418-5494.

Very truly yours,

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