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McDERMOTT, WILL & EMERY

August 7, 2000

VIA EMAIL AND REGULAR MAIL

Ms. Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission
1155 21ST Street NW
Washington DC 20581

COMMENT

Re: A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries, and Clearing Organizations; 65 *Fed. Reg.* 38986; (June 22, 2000)

Dear Ms. Webb:

It is our pleasure to submit the following comments on the Commodity Futures Trading Commission's ("Commission's") proposed regulations, "A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries, and Clearing Organizations" (hereafter, collectively the "Proposed Rules") on behalf of our client, Virginia Electric & Power Company ("Virginia Power"). Virginia Power is the wholly-owned subsidiary of Dominion Resources, Inc., a holding company based in Richmond, Virginia that is primarily involved with energy products, gas utilities, and electric utilities. Virginia Power provides electricity to more than 2 million homes and businesses across a 30,000 square mile area covering parts of two states. Virginia Power and its affiliated companies buy and sell energy commodities on the wholesale market to both procure and sell energy and to hedge price risk.

Virginia Power commends the Commission for this effort to replace prescriptive regulation with regulation designed to increase legal certainty and based upon core principles. However, we are concerned that the Commission may be replacing one form of "one-size-fits-all" regulation with a similar form of regulation that fails to take into account the unique needs of the power, natural gas and fuel oil ("energy commodities") industry. [1]

First, Virginia Power believes that energy commodities should be included in the category of contracts that can be traded on an Exempt Multilateral Transaction Execution Facility (an "Exempt MTEF") under Proposed Rule §36.2 (b). We generally agree with the Commission that the "level of oversight applied to exchanges or trading facilities [should] be based on the nature of the participants allowed to trade on the facility and [the] characteristics of the commodity being traded." Proposed Rules, 65 Fed. Reg. 38988. In the case of energy commodities, the market "is characterized by principal to principal transactions between large sophisticated commercial

[1] See Supplementary Information to Proposed Rules at 65 Fed. Reg. 38986.

entities."[2] The participants are primarily electric utilities and power marketers, which are experienced and sophisticated in the trading of energy commodities. The need for regulatory oversight is greatly diminished in such markets, because of the nature of the participants and the fact that the markets are very liquid and deep.

Second, Virginia Power believes that the Commission should be careful not to discriminate against markets, like energy commodities, where a great deal of price discovery and liquidity is provided by brokers and agents. Although brokers and agents, if they qualify as "eligible commercial participants," may trade for the accounts of their clients on an Exempt MTEF, that is not the case for trades made through a DTF.[3] Proposed Rule 37.2(a)(1) does not permit eligible commercial participants to trade on DTFs through intermediaries, unless, under Proposed Rule 37.2(a)(2)(ii), they are traded through registered futures commission merchants ("FCMs"). In the power market, not only are there many traditional brokers, but there are also other entities, such as aggregators, which act as an agent for power customers for the purpose of aggregating their load and procuring the best possible price. These entities, although they are acting as agents, will want to hedge the price risk of their customers by entering into derivatives transactions, either on an Exempt MTEF or a DTF. In addition, utilities, such as Virginia Power, may want to offer certain larger commercial customers various products to hedge their price risk for power. These efforts would be hampered by prohibiting agency transactions or requiring the agent to qualify as a futures commission merchant, under current Commission regulations. Virginia Power believes that there is no need to limit trading on DTFs to eligible participants trading for their own accounts.

Finally, Virginia Power supports the proposed Exemption for Bilateral Transactions. 65 Fed. Reg. 39033. Compared to the current Swaps Exemption in Part 35, the Exemption for Bilateral Transactions would increase legal certainty for contracts that fall within its requirements. It also would prevent economically disappointed counterparties from bringing a private cause of action seeking to void the contract on the theory that it is illegal. Virginia Power urges the Commission to adopt the final Exemption for Bilateral Transactions in substantially the same form as published in the Proposed Rules.

[2] Concurring Opinion of Acting Chairman William P. Albrecht, Exemption for Certain Contracts Involving Energy Markets, 58 Fed. Reg. 21286, 21294 (April 20, 1993) (referring to liquid fuels and natural gas markets).
[3] See Proposed Rule § 36.2 (a); Proposed Rule § 37.2(a)(1).

Conclusion

Virginia Power appreciates the opportunity to submit these comments on the Commission's regulatory reform proposal. If you have any questions regarding our comments, please contact me at (312) 984-6480.

Sincerely,

Andrea Kramer /JLr

Andrea S. Kramer

cc: Honorable William J. Rainer
Honorable Barbara Pederson Holum
Honorable David D. Spears
Honorable James E. Newsome
Honorable Thomas J. Erickson
C. Robert Paul, General Counsel
John C. Lawton, Acting Director, Division of Trading and Markets
John Mielke, Acting Director, Division of Economic Analysis
Phyllis J. Cela, Acting Director, Division of Enforcement