

Received CFTC  
Records Section  
2/25/09

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D. C. 20426

08-12  
5

OFFICE OF THE GENERAL COUNSEL

February 9, 2009

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

COMMENT

Re: Comment File: 08-012. Proposed Rules on Significant Price Discovery  
Contracts on Exempt Commercial Markets

Comments of the Staff of the Federal Energy Regulatory Commission

Dear Mr. Stawick:

On December 2, 2008, the Commodity Futures Trading Commission (CFTC) issued a notice of proposed rulemaking, soliciting comments on proposed rules relating to significant price discovery contracts on exempt commercial markets (the Proposed Rules).<sup>1</sup> These are the comments of the staff of the Federal Energy Regulatory Commission (FERC) on the Proposed Rules.

The Proposed Rules would implement the CFTC Reauthorization Act of 2008, specifically the CFTC's regulatory authority over agreements, contracts or transactions in exempt commodities (including "energy products") 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. A CFTC determination that an agreement, contract or transaction performs a significant price discovery function will cause the electronic trading facility on which the agreement, contract or transaction is traded to be subject to regulation by the

---

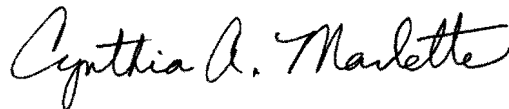
<sup>1</sup> *Significant Price Discovery Contracts on Exempt Commercial Markets*, 73 Fed. Reg. 75888 (December 12, 2008).

CFTC pursuant to nine “core principles” set forth in the Proposed Rules. On their face, the Proposed Rules appear consistent with or do not conflict with FERC’s exclusive jurisdiction over certain energy and natural gas transactions, including transactions involving the electronic trading facilities of regional transmission organizations and independent system operators regulated by the FERC. We anticipate that, in implementing the new rules, the CFTC will be cognizant of the FERC’s exclusive jurisdiction with respect to such transactions and therefore will not take actions that would conflict with such jurisdiction.

The FERC staff thanks the CFTC for soliciting comments on the Proposed Rules. 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,



Cynthia A. Marlette  
General Counsel

Cc: Jon Wellingshoff, Acting Chairman  
Joseph T. Kelliher, Commissioner  
Suedeen G. Kelly, Commissioner  
Phillip D. Moeller, Commissioner  
Marc L. Spitzer, Commissioner