

Before the Commodity Futures Trading Commission

March 21, 2014

In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by ISO New England Inc.

Request for Supplemental Order; Withdrawal

I. Background

Each of six independent system operators or regional transmission organizations (“ISO/RTOs”) on February 7, 2012, applied to the Commission in a consolidated request for an Order under section 722 of the Dodd-Frank Act (section 4(c)(6) of the Act) and pursuant to the general exemptive authority of section 712(f)(4) of the Dodd-Frank Act, (“Consolidated Request for Relief”)¹ exempting the contracts, agreements and transactions defined therein and any persons, including the requesting ISO/RTOs and their members or other market participants offering, entering into, rendering advice, or rendering other services with respect to such contracts, agreements, or transactions from the Act and Commission rules thereunder, with certain exceptions.²

ISO New England Inc. (the “ISO” or “ISO NE”) on March 30, 2012, filed a Request for a Supplemental Order (“Supplemental Request”) under section 722 of the Dodd-Frank Act (section 4(c)(6) of the Act) and pursuant to section 712(f)(4) of the Dodd-Frank Act, to supplement and amend the Order requested in the Consolidated Request for Relief. The requested amendment would have clarified that certain contracts, agreements and transactions identified in the Supplemental Request as “Internal Bilateral Transactions” (“IBTs”), a class of contract, agreement or transaction authorized under the ISO’s FERC approved tariff, also was included within the request for exemptive relief by ISO NE from the Act and Commodity Futures Trading Commission (“Commission”) regulations thereunder to the same degree and extent as the relief prayed-for in the Consolidated Request for Relief.

On March 28, 2013, the Commission issued a final order under Section 4(c) of the Commodity Exchange Act, 7 U.S.C. §1 et seq. exempting from many of the provisions of the Act certain transactions on markets administered by ISO NE and five other Independent System Operators (“ISOs”) and Regional Transmission Organizations (“RTOs”)³ In issuing the Order,

¹ See “In the Matter of the Application for a Exemptive Order Under Section 4(c) of the Commodity Exchange Act by California Independent Service Operator Corporation, *et al.*,” filed on February 7, 2012 with the Commodity Futures Trading Commission.

² The Consolidated Request for Relief did not request exception from sections 4b, 4o, 6(c) and 9(a)(2) of the Act to the extent that those sections prohibit fraud or manipulation of the price of any swap, contract for the sale of a commodity in interstate commerce, or for future delivery on or subject to the rules of any contract market.

³ See, “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; Notice,” 78 Fed. Reg. 19880 (April 2, 2013) (“Order”).

the Commission, citing a joint supplemental comment letter submitted by ISO NE and California ISO (“CAISO”) on March 14, 2013, explained that:

CAISO and ISO NE requested that the proposed definition of “Energy Transactions” be amended to allow for cash settlement based upon the Day-Ahead Market price (in addition to the Real-Time Market price), due to the fact that for both CAISO and ISO NE, the Day-Ahead Market may be preferable to the Real-Time Market as a source of settlement prices for certain energy transactions. CAISO and ISO NE requested such a change to account for certain energy transactions in their markets that otherwise might not be included within the scope of the Energy Transactions definition, but nonetheless are settled “under tariff provisions which have been approved by the FERC” and that “[o]nce entered into the settlement system * * *, are operationally treated the same as any other Energy Transaction included in the Commission’s Proposed Order.” Accordingly, the Commission has amended the definition to provide that the requisite performance of an energy transaction may occur in the Real-Time Market through “[a] cash payment or receipt at the price established in the Day-Ahead Market or Real-Time Market (as permitted by each Requesting Party in its Tariff).” The Commission stresses that any Energy Transaction settling based upon the Day-Ahead Market price must be inextricably linked to the physical delivery of electric energy.

Order at 19888.

ISO NE made clear in the supplemental comment letter of March 14, 2013, that the transactions which were the subject of the requested amendment to the Order were the same transactions which were the subject of the Supplemental Request. ISO NE therefore concluded that the text of the Order, through the amended definition of “Energy Transaction,” rendered the relief requested in the Supplemental Petition unnecessary. However, ISO NE did not withdraw its Supplemental Request at that time in light of the suggestion by some participants on ISO NE that Footnote 93 of the Order created an ambiguity with respect to the applicability of the Order to IBTs.⁴

Recently, the Division of Market Oversight (“DMO”) and the Division of Clearing and Risk (“DCR”) in CFTC Advisory No. 14-20 (February 25, 2014), made clear that:

nothing in this statement [Footnote 93] should be read to imply that the scope of the Order’s Covered Transactions does or does not include the transactions referenced by the statement. Any transaction may qualify as a Covered Transaction, regardless of its title or status as an item under consideration by the Commission, so long as it falls within the definitions in the Order of “Financial Transmission Rights,” “Energy Transactions,” “Forward Capacity Transactions,” or “Reserve or Regulation Transactions,” is offered or

⁴ Footnote 93 states that:

The Commercial Working Group noted that, in addition to virtual transactions, “financial schedules” and “internal bilateral transactions” can appropriately be placed in one of the four enumerated categories of transactions defined in the Proposed Order, and as such, should be explicitly included in the Final Order as Covered Transactions. See Commercial Working Group at 2. The Commission notes that financial schedules and internal bilateral transactions are the subject of a separate request for supplemental relief filed by CAISO and ISO NE and, therefore, the Commission is taking no position in this Final Order with respect to those products.

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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 PUCT, and complies with all other enumerated terms and conditions in the Order.

II. Withdrawal

In light of the amendment made to the definition of “Energy Transaction” in the Order and the recent clarification in Advisory No. 14-20, ISO NE is of the opinion that no further action by the Commission on the Supplemental Request is necessary. Based upon the foregoing conclusion, ISO NE respectfully withdraws its Request for Supplemental Order, filed with the Commission on March 30, 2012.

Respectfully submitted,



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