



## U.S. COMMODITY FUTURES TRADING COMMISSION

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March 29, 2013

CFTC Letter No.13-05  
No-Action  
March 29, 2013  
Division of Clearing and Risk  
Division of Swap Dealer and Intermediary Oversight  
Division of Market Oversight

### **Extension of Staff No-Action Relief with Respect to Certain CEA Provisions That May Apply to Certain RTOs, ISOs, and/or Their Participants**

On October 11, 2012, the Division of Clearing and Risk, the Division of Swap Dealer and Intermediary Oversight and the Division of Market Oversight (collectively, the “Divisions”) granted time limited no-action relief to certain Independent System Operators and Regional Transmission Organizations (collectively, the “Requesting Parties”) and their market participants.<sup>1</sup> As discussed therein, the Commodity Futures Trading Commission (the “Commission”) had proposed to grant, in part, a request from the Requesting Parties for exemptive relief for certain transactions offered or sold pursuant to their tariffs or protocols. In a letter dated March 22, 2013, the Requesting Parties requested that the Divisions extend the time limited no-action relief.

On March 28, 2013, the Commission approved a final order pursuant to 4(c)(6) of the Commodity Exchange Act (“CEA”) (the “Final Order”)<sup>2</sup> to exempt, subject to certain conditions and limitations contained therein, contracts, agreements, and transactions for the purchase or sale of the limited electric energy-related products that are specifically described within the final order from the provisions of the CEA and Commission regulations, with the exception of the Commission’s general anti-fraud and anti-manipulation authority, and scienter-based prohibitions, under CEA 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 Act 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 (the “Enforcement Provisions”)

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<sup>1</sup> CFTC Letter No. 12-11 (October 11, 2012).

<sup>2</sup> 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 Section 4(c)(6) of the Act, *available at* <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister032813b.pdf>

To give each Requesting Party time to enact certain tariff, protocol or rate schedule changes and take other steps necessary (a) to satisfy the conditions to the exemption contained in paragraphs 4(b), and 6(a)(1) or 6(b)(1), of the Final Order and (b) to operate within the scope of that exemption, specifically as set forth in paragraph 2(b) of the Final Order, the Divisions, to the limited extent and for the limited time periods set forth below, will not recommend that the Commission commence an enforcement action for failure to comply with any provision of the CEA or the Commission's regulations against any of the Requesting Parties or persons who participate in the Requesting Parties' markets who, in either such case, otherwise fall within the scope, and comply with the conditions, of the Final Order.

- (1) Through April 30, 2013, for Requesting Parties that have not submitted and had accepted by the Commission (or its delegee pursuant to paragraph 7) a legal opinion or memorandum of outside counsel as required by paragraph 6(a)(1) (for Requesting Parties subject to the jurisdiction of the Federal Energy Regulatory Commission ["FERC"]) or paragraph 6(b)(1) (for the Electricity Reliability Council of Texas ["ERCOT"]) of the Final Order, but only with respect to the fact that they have not yet complied with that condition.
- (2) Through September 30, 2013, for Requesting Parties whose tariffs, rate schedules, protocols (each, a "Tariff"), or other governing documents include a requirement that the Requesting Party notify its members prior to providing information to the Commission in response to a subpoena or other request for information or documentation, but only with respect to the fact that they have not complied with the condition set forth in paragraph 4(b) of the Order.
- (3) Through September 30, 2013, for participants in the Requesting Parties' markets who
  - a. Are or would have been eligible to participate in the Requesting Parties markets under any Tariff that, as of October 11, 2012, had been approved or permitted to take effect by (i) in the case of ERCOT, the Public Utility Commission of Texas or (ii) in the case of all other Requesting Parties, FERC, but
  - b. are not persons described in paragraph 2(b) of the Final Order,

and for the Requesting Parties themselves, but only (in each case) with respect to the fact that such participants are excluded from the scope of the Final Order due to the limitation of paragraph 2(b) thereof.

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 extension, please contact Robert Wasserman at [rwasserman@cftc.gov](mailto:rwasserman@cftc.gov) or (202) 418-5092, or M. Laura Astrada at [lastrada@cftc.gov](mailto:lastrada@cftc.gov) or (202) 418-7622.

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