

September 27, 2012

Sauntia Warfield
Assistant Secretary
Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street N.W.
Washington, D.C. 20581

**COMMENTS OF THE NEW YORK TRANSMISSION OWNERS
IN SUPPORT OF PROPOSED EXEMPTION OF SPECIFIED TRANSACTIONS
FROM CERTAIN PROVISIONS OF THE COMMODITY EXCHANGE ACT**

Dear Ms. Warfield:

Pursuant to the Commodity Futures Trading Commission's ("CFTC's" or "Commission's") August 28, 2012 Request for Comment on the petition from certain independent system operators and regional transmission organizations (California Independent System Operator Corporation ("CAISO"), Electric Reliability Council of Texas, Inc. ("ERCOT"), ISO New England Inc. ("ISO-NE"), Midwest Independent Transmission System Operator, Inc. ("MISO"), New York Independent System Operator, Inc. ("NYISO"), and PJM Interconnection, L.L.C. ("PJM")) ("petitioners") to exempt specified transactions from certain provisions of the Commodity Exchange Act ("CEA"),¹ the following companies hereby comment in support of the proposed exemption: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric &

¹ 77 Fed. Reg. 52,138 (August 28, 2012).

Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation (referred to herein as the “New York Transmission Owners” or “NYTOs”).

I. BACKGROUND

On February 7, 2012, certain regional transmission organizations and independent system operators filed a petition² with the Commission requesting that the Commission exercise its authority under section 4(c)(6) of the CEA and section 712(f) of the Dodd-Frank Wall Street Reform and Consumer Protection Act to exempt contracts, agreements, and transactions for the purchase or sale of specified electricity products offered pursuant to Federal Energy Regulatory Commission (“FERC”) or Public Utility Commission of Texas (“PUCT”) approved tariffs from most provisions of the CEA.³ The exemption would apply to contracts, agreements, or transactions for the purchase or sale of any of the following electricity-related products (including generation, demand response or convergence, or virtual bids/transactions): financial transmission rights (“FTRs”), energy transactions, forward capacity transactions, and reserve or regulation transactions.⁴

To be eligible for the proposed exemption, the contract, agreement, or transaction would be required to be offered or entered into in a market administered by a petitioner

² In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by California Independent Service Operator Corporation; In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by the Electric Reliability Council of Texas, Inc.; In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by ISO New England Inc.; In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by Midwest Independent Transmission System Operator, Inc.; In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by New York Independent System Operator, Inc.; and In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by PJM Interconnection, L.L.C. (Feb. 7, 2012, as amended June 11, 2012) (“Petition”).

³ 77 Fed. Reg. at 52,139.

⁴ Petition at 6.

pursuant to that petitioner's tariff or protocol for the purposes of allocating such petitioner's physical resources; the relevant tariff or protocol would be required to have been approved or permitted to have taken effect by either the FERC or the PUCT, as applicable; and the contract, agreement or transaction would be required to be entered into by persons who are "appropriate persons" (as defined in section 4(c)(3)(A) through (J) of the CEA) or "eligible contract participants" (as defined in section 1a(18) of the Act and Commission regulations).⁵ The exemption as proposed also would extend to any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to such transactions.⁶ Finally, the exemption would be subject to other conditions set forth therein.⁷ On August 28, the CFTC requested comments on the proposed exemption.⁸

II. COMMENTS IN SUPPORT

The NYTOs strongly support the petitioners' proposal to exempt the contracts, agreements, and transactions described above from most CEA provisions. In addition, the NYTOs understand that the petitioners have expressed two limited concerns about the Commission's proposed order and plan to file comments detailing those issues. The NYTOs support the petitioners' position on these concerns, including both the need to deem all participants in petitioners' markets "appropriate persons" and the need to clarify the treatment of new or modified products in petitioners' markets.

⁵ 77 Fed. Reg. at 52,138.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

A. All Participants in Petitioners' Markets Should Be Deemed Appropriate Persons

First, the Commission should apply the proposed exemption to all persons authorized to conduct transactions in petitioners' markets. The Commission's current proposal risks excluding a significant number of market participants from the definition of "appropriate persons" because the proposed order applies the proposed exemption only to those entities that meet the baseline capitalization amounts prescribed in the CEA. Participants in the petitioners' markets already must satisfy stringent participation criteria and are subject to comprehensive regulatory and market oversight. In particular, participants must meet a capitalization requirement by either meeting baseline capitalization amounts set forth in the petitioners' tariffs or by posting financial security in an amount based on the extent of the entity's participation in the markets and the associated risks.

A significant number of small market participants satisfy the minimum participation requirement by posting additional financial security. They also must satisfy additional credit requirements under petitioners' tariffs, and are subject to mechanisms to support and protect the financial integrity of petitioners' markets. Because of the requirement that they meet existing qualifications for participation in petitioners' markets, participants pose little risk of harm and should be considered "appropriate persons" under Section 4(c)(3)(K) of the CEA for purposes of the proposed exemption.

B. Clarification is Needed Regarding the Treatment of New or Modified Products in Petitioners' Markets

The Commission should clarify the treatment of new or modified products so that petitioners may update and modify their existing tariffs and protocols relating to the products covered by the exemption without fear that doing so will cause them to offer products and services outside the scope of the exemption. In consultation with their members, and with FERC or PUCT approval, petitioners are constantly updating and refining the operation of their markets and the products covered by the proposed order. A clarification that the proposed order applies to the purchase and sale of existing or new products, however named, that fall within the definitions of the products included in the proposed order will continue to encourage necessary market innovation without extending the exemption to products that may be materially different from those reviewed by the Commission. In conjunction with this clarification, the Commission should adopt a streamlined procedure for confirming that new products, which may not fit within the definitions, are still within the scope of the exemption because they are economically comparable to the products included in the proposed order.

III. CONCLUSION

For the reasons stated herein, the New York Transmission Owners ask the Commission to adopt the proposed exemption with the adjustments proposed by the petitioners.

Respectfully submitted,

/s/ Elias G. Farrah by EES

Elias G. Farrah
Erica E. Stauffer
Winston & Strawn LLP
1700 K St., N.W.
Washington, DC 20006-3817
Email: efarrah@winston.com
estauffer@winston.com

Counsel to the New York Transmission Owners

/s/ John Borchert by EES

John Borchert
Manager of Electric Engineering Services
Central Hudson Gas & Electric Corporation
284 South Avenue
Poughkeepsie, NY12601
Email: jborchert@cenhud.com

/s/ Neil H. Butterklee by EES

Neil H. Butterklee
Kristina Nifora
Consolidated Edison Company of New York, Inc.
Orange and Rockland Utilities, Inc.
4 Irving Place, Room 1815-s
New York, NY 10003
Email: butterkleen@coned.com
niforak@coned.com

/s/ Jacqueline Hardy by EES

Jacqueline Hardy
Assistant General Counsel
Long Island Power Authority
333 Earle Ovington Boulevard, Suite 403
Uniondale, NY 11553
Email: jhardy@lipower.org

/s/ Andrew Neuman by EES

Andrew Neuman, Esq.
New York Power Authority
123 Main Street
White Plains, NY 10601-3170
Email: andrew.neuman@nypa.gov

David Clarke
Director of Power Markets Policy
Long Island Power Authority
Alfred E. Smith Building
80 South Swan Street, 6th Floor
Albany, NY 12210
Email: dclarke@lipower.org

/s/ R. Scott Mahoney by EES

R. Scott Mahoney, Esq.
New York State Electric & Gas Corporation
Rochester Gas and Electric Corporation
Durham Hall, 52 Farm View Drive
New Gloucester, ME 04260
Email: scott.mahoney@iberdrolausa.com

/s/ Catherine P. McCarthy by EES

Catherine P. McCarthy
Bracewell & Giuliani LLP
2000 K Street, NW, Suite 500
Washington, DC 20006
Email: cathy.mccarthy@bgllp.com

/s/ Daniel Galaburda by EES

Daniel Galaburda
Assistant General Counsel and Director
Niagara Mohawk Power Corporation
d/b/a/ National Grid
National Grid USA Service Company, Inc.
40 Sylvan Road
Waltham, MA 02451-1120
Email: Daniel.Galaburda@us.ngrid.com

Dated: September 27, 2012