Kenneth W. Anderson, Jr.
Commissioner

Public Utility Commission of Texas

September 27, 2012

By electronic submission

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Secretary of the Commission
Commodities Future Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Re: **Proposed Order and Request for Comment on 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.**

Dear Madams and Sirs:

On behalf of and as authorized by The Public Utility Commission of Texas (Texas PUC),[1] the undersigned appreciates the opportunity to comment on the proposed order (the Proposed Order) issued by the Commodities Futures Trading Commission (Commission) in response to a consolidated petition (Petition) from certain regional transmission organizations (RTOs) and independent system operators (ISOs), including the Electric Reliability Council of Texas (ERCOT) (collectively, Petitioners) to exempt specified transactions from the provision of the Commodity Exchange Act (CEA) and Commission regulations.[2] The Proposed Order would

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[1] Chairman Donna L. Nelson, Commissioner Kenneth W. Anderson, Jr., and Commissioner Rolando Pablos.

[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

exempt four categories of transactions entered into on the markets administered by Petitioners pursuant to the Petitioners' tariffs or protocols and specifically identified in the Proposed Order, from the provisions of the CEA and Commission regulations except as specified by the Commission. These four categories of transactions, which are defined in the Proposed Order include Financial Transmission Rights (FTRs), Energy Transactions, Forward Capacity Transactions, and Reserve or Regulation Transactions.

The Texas PUC commends the Commission's efforts to date in addressing the ERCOT's request for exemptive relief. The Commission's Proposed Order represents progress towards achieving critical regulatory certainty, both for ERCOT as well as its market participants. While recognizing this progress, the Texas PUC has a number of concerns with certain aspects of the Proposed Order and offers the general comments below, as well as comments responding to the Commission's specific questions. If the Commission adopts the changes and clarifications requested below, the Texas PUC is confident that the Proposed Order will sufficiently address ERCOT's requested relief while remaining consistent with the public interest.

I. BACKGROUND

The Texas PUC is responsible protecting the public interest inherent in the rates and services of public utilities[3], which includes but is not limited to ensuring that: (1) electric rates, operations and services are just and reasonable to and for Texas consumers and Texas electric utilities[4]; (2) Texas electric utilities and electric cooperatives furnish service, instrumentalities and facilities that are safe, adequate, efficient and reasonable[5]; and (3) electric utilities and transmission and distribution utilities provide reliable electric service throughout Texas[6]. The

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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) (the Petition)

[3] Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 11.002 (Vernon 1998 & Supp. 2012) (PURA).

[4] *Id.*

[5] PURA § 38.001.

[6] PURA §§ 39.352(b) and 39.356(a).

Texas PUC also oversees ERCOT, the independent system operator for the electric grid, and the unbundled and restructured energy-only electricity market operated on that grid, that covers approximately 75% of the State's land mass and 85% of its electric load. Within the ERCOT region, the Texas PUC is also responsible for preventing market manipulation and other forms of market power abuse[7].

For purposes of the Proposed Order, it is important that the Commission recognize that ERCOT is not subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC). As a result, the Proposed Order cannot be conditioned on obligating ERCOT to comply with the requirements of an Order issued by the FERC. [8] To the extent permitted by the Texas PUC and relevant to the Proposed Order, ERCOT may agree voluntarily to implement substantially comparable requirements to those that apply to RTOs subject to FERC's jurisdiction.

II. GENERAL COMMENTS ON PROPOSED ORDER

The Texas PUC provides the following general comments with respect to the Proposed Order.

A. The Commission Should Clarify that No Jurisdictional Determinations Are Being Made.

The Texas PUC respectfully requests that the Commission affirmatively state in any final order that it makes no determination as to whether the transactions proposed for exemption fall within the Commission's jurisdiction. The Commission has broad flexibility in exercising its exemption authority under section 4(c) of the CEA. In particular, the House-Senate Conference Committee during the legislative process preceding the enactment of section 4(c) specifically noted that:

> "...the Conferees do not intend that the exercise of exemptive authority by the Commission would require *any determination* beforehand that the agreement, instrument, or transaction for which an

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[7] PURA at 39.157; *see also* P.U.C. SUBST. R. 25.93.

[8] ERCOT is subject to electric reliability standards promulgated both by the North American Electric Reliability Corporation (NERC) as overseen by FERC and the Texas PUC. Unlike the other ISO/RTOs, however, the intrastate nature of the ERCOT region gives the Texas PUC exclusive jurisdiction over the market design, credit, and other financial aspects of the ERCOT market

> exemption is sought is subject to the Act. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward. Rather than making a finding as to whether a product is or is not a futures contract, the Commission in appropriate cases may proceed directly to issuing an exemption."[9]

ERCOT sought exemptive relief in abundance of caution and to mitigate the risk of regulatory uncertainty among the affected entities (e.g., ERCOT, market participants and the Texas PUC). [10] The Texas PUC sees little utility in the Commission creating ambiguity in this instance by remaining silent on this point, especially because making a jurisdictional finding is not a pre-requisite for the exercise of the Commission's exemption authority under section 4(c). By remaining silent, the Commission could actually undermine the very regulatory certainty being requested by Petitioners, and potentially give rise to unnecessary jurisdictional disputes. Moreover, by affirmatively stating that it does not make a finding with respect to jurisdiction, the Commission would not impair its ability to exercise its jurisdictional powers in the future. For these reasons, the Texas PUC respectfully requests that the Commission, consistent with ERCOT's underlying request, state affirmatively in any final order that it is not making a jurisdictional determination with respect to the transactions proposed for exemption.

B. The Commission Should Issue a Separate Exemption Order for ERCOT.

Among the RTO/ISOs, ERCOT is in a unique jurisdictional situation. ERCOT's market rules are subject to the Texas PUC's regulatory oversight rather than FERC's oversight. While the ERCOT standards relevant to its exemption request are consistent with those of the other ISO/RTOs, the ERCOT standards have a different legal basis. These differences may create challenges if the Commission ever seeks to amend the exemption orders (on its own motion or based on a request from the ISO/RTOs). The Texas PUC urges the Commission to simplify future administration of the exemption orders by granting ERCOT's exemption pursuant to a separate order that recognizes the differences between the ERCOT regulatory regime and that applicable to the other ISO/RTOs.

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[9] *See* House Conf. Report No. 102-988 (emphasis added).

[10] *See* Petition at p. 3.

C. It Should Be Clarified That The Transactions Will Be Exempt Whether Offered Now Or In The Future.

It is critical that any final order state explicitly that ERCOT is not required to request future supplemental relief for a product that it does not currently offer, but that qualifies as one of the four types of Transactions in the Proposed Order. ERCOT requested this clarification to obviate the need for ERCOT to seek future amendments to offer or enter into contracts, agreements or transactions currently offered by any other RTO/ISO. [11] The Commission's Proposed Order appears to squarely address this request by stating:

> "In addition, for as long as the Proposed Exemption would remain in effect, each of the six named Petitioners would be able to avail themselves of the Proposed Exemption with respect to all four expressly identified groups of products, regardless of whether or not the particular Petitioner offers the particular product at the present time. That is, a Petitioner would not be required to request future supplemental relief for a product that it does not currently offer, but that qualifies as one of the four types of transactions in the Proposed Exemption."[12]

While acknowledging the Commission's apparent agreement with ERCOT on this point, the Texas PUC respectfully requests that any final order directly incorporates the above cited language or substantially similar language. The flexibility afforded ERCOT by this clarification warrants explicit inclusion to avoid any potential uncertainty. Moreover, because the Commission has considered and seemingly agrees with ERCOT's request, including this language would not hinder the Commission's ability to grant the requested exemption.

D. The Commission Should Clarify That Virtual Transactions are Exempt.

As drafted, the Proposed Order creates uncertainty with respect to whether convergence or virtual bids (Virtual Transactions) will uniformly be afforded exemptive relief. Specifically, the Commission describes that Virtual Transactions will be included in the scope of the requested exemption "if they qualify as the financial transmission rights, energy transactions,

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[11] *See* Petition at p. 6.

[12] *See* 77 Fed Reg. 52164.

forward capacity transactions or reserve or regulation transactions for which relief is explicitly provided within the exemption." [13]

Virtual Transactions are an integral part of the wholesale electricity market administered by ERCOT. To condition the exemption of these transactions on whether they "qualify" as one of the four specifically identified categories of transactions is too narrow a focus and may unwittingly lead to differing results across markets. The Commission should instead provide certainty by clarifying that Virtual Transactions that "relate" to Energy Transactions are uniformly exempt. Without this clarification, the Commission will create the very ambiguity with respect to Virtual Transactions that ERCOT seeks to avoid. Doing so would also result in multiple subjective determinations across the Petitioners' markets – which would likely result in disparate treatment of functionally identical transactions.

Like the specifically identified transactions, all Virtual Transactions are entered into pursuant to approved protocols. As such, Virtual Transactions are subject to the same level of regulatory oversight and are transacted pursuant to the same credit requirements. Moreover, Virtual Transactions have a direct relationship to the physical capabilities of an electric transmission grid. Specifically, all energy bids and offers are modeled and cleared together, without distinguishing as to whether such bids and offers are physical in nature. Accordingly, there is no reason for the Commission to qualify the exemption of Virtual Transactions.

For example, in the ERCOT market, Virtual Transactions are limited to transactions in the Day Ahead Market (DAM). [14] The DAM was instituted in the ERCOT market to provide opportunities for increased efficiency in the market for physical energy transactions. The DAM would not exist but for its direct linkage to the real-time market for energy and ancillary services necessary to operate the electric system. Participation in the DAM is voluntary, but the Texas PUC and ERCOT encourage participation because of the salutary effects a DAM vehicle has on price formation and overall efficiency in the real-time electricity markets. The ERCOT market

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[13] *See* 77 Fed Reg. 52163.

[14] The DAM is "a daily, co-optimized market in the Day-Ahead for Ancillary Service capacity, certain Congestion Revenue Rights and forward financial energy transactions." ERCOT Protocols, Section 2 (Definitions). DAM operations are detailed in Section 4 of the ERCOT Protocols.

would be ill-served by any regulatory action that created uncertainty about whether transacting in the DAM would subject participants to unexpected restrictions or transaction costs.

III. COMMENTS IN RESPONSE TO SPECIFIC COMMISSION QUESTIONS

The Texas PUC provides the following comments in response to certain of the items identified by the Commission in its Request for Comment.

A. Greater Flexibility Should be Provided for Product Innovation.

The Commission seeks comment on whether the Proposed Order sufficiently allows for innovation.[15] As drafted, the Proposed Order does not allow the necessary flexibility for ERCOT to design and implement products that fit within or are directly related to the four categories of transactions specifically identified as exempt. The Commission declined to allow the Proposed Order to apply to yet to be identified products described by Petitioners as "directly related to, and a natural outgrowth of" the four defined categories of transactions.[16] The Texas PUC considers this is too narrow an approach. First, the Texas PUC agrees with the Commission that ERCOT should be required to seek modifications to any final order in order to exempt new products that do not logically fit within the four specified categories of transactions. The Commission should have the opportunity to evaluate whether exempting these products would be consistent with the public interest. That said, the Commission should clarify that new exemptive relief is unnecessary for modifications to existing products, or for the creation of new products, so long as such modifications or newly-created products logically fit within the broad definitions comprising the identified Transactions.

It is appropriate for the Commission to provide this flexibility. First, the markets administered by ERCOT are dynamic and their respective protocols often need to be modified, including through the introduction of new products, in order to maintain efficient operation. These modifications and related protocol changes are reviewed by the Texas PUC to ensure that they satisfy the public interest standard. In fact, the Texas PUC has on its own initiative directed ERCOT to make changes to products through changes to its protocols and guides in order to

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[15] *See* 77 Fed Reg. 52172.

[16] *See* 77 Fed Reg. 52163.

improve market efficiency. Concern on the part of ERCOT and market participants alike that supplemental exemptive relief will be needed for new or modified products that logically belong within the four categories of transactions identified as exempt could have a chilling effect on innovation and overall market efficiency. In the ERCOT market, these concerns are not hypothetical: the Texas PUC is currently considering potential adjustments to ERCOT's market design that may result in change to existing products. [17] New or revised products would be designed to achieve the same goals as ERCOT's current products – namely, to ensure reliable and efficient delivery of electricity to consumers. It would send an inappropriate signal to create doubt about the regulatory treatment of innovative products at a time when they may be necessary to enhance Texas' electricity markets.

Second, the fact that all products and services provided in ERCOT's markets are subject to the same credit and risk management requirements already applicable to the identified transactions should assist the Commission in determining that exempting such new or modified products is consistent with the public interest. Moreover, market participants eligible to transact these products will remain subject to the same minimum participation requirements already considered sufficient by the Commission in reaching its public interest determination.

For these reasons, the Texas PUC respectfully requests the Commission expand the exemption scope in the Proposed Order to cover new or modified products that logically fit within the four categories of transactions as broadly defined in the Proposed Order. If not, the Commission at the very least should provide an efficient process for ERCOT to confirm the applicability of the exemptive relief to any new or modified products in a timely manner.

B. The Commission should expand the scope of "Appropriate Persons" to include authorized market participants.

The Commission seeks comment as to whether "the Commission should exercise its authority pursuant to section 4(c)(3)(K) of the CEA to extend the proposed exemption to

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[17] In Texas PUC Project No. 40000, *Commission Proceeding To Ensure Resource Adequacy in Texas*, the Texas PUC is considering various market participant proposals to ensure resource adequacy that could result in protocol changes to create or enhance existing energy market products. A review of the stakeholder proposals filed in recent months in Project No. 40000 demonstrates that while a wide variety of vehicles are being discussed, the various products they suggest are all tied to the delivery of electricity within ERCOT – the same core purpose served by the products the Commission agrees should be exempted under current market rules.

agreements, contracts or transactions that are entered into by parties other than 'appropriate persons' as defined in sections 4(c)(3)(A) through (J) of the CEA or 'eligible persons' as defined in section 1a(18)(A) or (B) of the Act and Commission Regulation 1.3(m)." [18] The Commission should find that any person authorized to participate in ERCOT's market constitutes an "Appropriate Person." Such a finding is reasonable and within the Commission's broad discretion because persons authorized to participate in ERCOT's market must meet specific financial requirements and are subject to oversight by the Texas PUC.

The Texas PUC is concerned that without expanding the scope of what constitutes an "Appropriate Person" to include all entities authorized by ERCOT and the Texas PUC to transact in ERCOT's markets, the Commission will effectively exclude certain long time and vital market participants from enjoying exemptive relief. Excluding these participants would introduce significant negative implications on the competitive (wholesale and retail) electricity markets. A review of the current status of market participants by ERCOT indicates that there are a number of small current market participants that could potentially be excluded if the CEA "Appropriate Person" standard is imposed as a condition for ERCOT's exemption without further action by the Commission under Section 4(c)(3)(K). In Texas for example, many retail electric providers (REPs) that are otherwise authorized to participate in the ERCOT market would be excluded from enjoying exemptive relief simply because these entities do not fit within the Commission's proposed "Appropriate Person" definition, even though they have operated in ERCOT for a number of years, including the very challenging years of 2008 and 2011. It is vital that these entities receive the same regulatory certainty in order to facilitate their continued participation in the ERCOT market. By not expanding the scope of the proposed "Appropriate Person" definition to include all entities authorized by ERCOT to transact in its markets, the Commission would create a limitation that may conflict with a determination by ERCOT and the Texas PUC that a particular person be permitted to participate in the ERCOT market. Moreover, this limitation would also require ERCOT to consider whether transacting with non-Appropriate Persons would impair ERCOT's ability to receive the exemptive relief provided in the Proposed Order.

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[18] *See* 77 Fed Reg. 52172.

Including authorized market participants with the scope of "Appropriate Persons" is consistent with the CEA public interest standard for two reasons. First, Texas consumers are adequately protected from risks posed by the entities involved by state regulations and by ERCOT protocol requirements. In particular, the Texas PUC has developed comprehensive rules governing the certification and associated financial standards for REPs. [19] The Texas PUC rules require that REPs provide assurances that they have sufficient assets and experience to conduct business in the ERCOT market, and also require specific financial assurances that ensure retail customers are not victimized by a REP's poor financial planning or risk management. Similarly, the ERCOT protocols include credit and collateral requirements – many of which have been bolstered as part of ERCOT's effort to obtain its CEA exemption – which keep smaller players from leaving the overall market short if they overextend themselves. These complementary regulatory regimes minimize the risk of permitting market participation by entities that would not otherwise meet the CEA "Appropriate Person" standard.

Second, the public interest would be served by enabling Texas to continue to foster a vibrant, diverse retail electricity market. ERCOT is not the only ISO/RTO region in which retail competition exists, but no other market has consistently offered the number and type of retail options as now exist in ERCOT. One of the keys to the success of retail competition in Texas has been our commitment to foster entry by both more traditional electric business players and by innovative, entrepreneurial ventures. As noted above, the Texas PUC and ERCOT have required that the appropriate capitalization and financial assurances are in place to protect consumers and other market participants. Once those protections are satisfied, however, new entrants have been allowed to permit market forces to drive their price and product offerings. This approach has delivered tangible benefits to Texas electric consumers, and to disturb it by applying unnecessary additional regulatory requirements would chill a vibrant and growing market.

The Texas PUC believes that the safeguards are in place today to head off the types of risks to consumers and the market that both the Commission and the Texas PUC are committed

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[19] *See* P.U.C. SUBST. R. 25.107, *Relating to Certification of REPs*, P.U.C. SUBST. R. 25.108, *Relating to Financial Standards for REPs Regarding the Billing and Collection of Transition Charges.*

to preventing. Notably, the ERCOT retail market has experienced challenges with REPs during periods of market volatility, and has managed them efficiently under current market rules. We have seen REPs not survive in challenging market conditions, but the PUC and ERCOT rules in place protected consumers and the market, so that REP defaults did not result in systemic disruption. Moreover, our experience with these periods of volatility increases our confidence that the REPs in the ERCOT market who survived those challenges are capable of managing their risk and protecting their customers regardless of their size.

The Texas PUC also notes that there may be some ambiguity in the Propose Order as to whether small electric cooperatives fit within the enumerated list of "appropriate persons" contained in Section 4(c)(3) of the CEA. We respectfully request that the Commission make it clear that all electric cooperatives otherwise qualified under ERCOT protocols and Texas PUC rules to participate in the ERCOT market be determined to be "appropriate persons" under Section 4(c)(3)(K) of the CEA. Adding restrictions that would inhibit market entry by REPs – and potentially removing well-run REPs and electric cooperatives from the ERCOT market – runs counter to the public interest and serves no useful regulatory purpose.

C. ERCOT Should Not Be directed to Comply with FERC Order 741

The Commission should not require ERCOT's compliance with the requirements set forth in FERC Order No. 741 as a condition to granting ERCOT's requested relief. Importantly, and as the Commission explicitly recognizes in its Proposed Order, ERCOT is subject to regulation by the Texas PUC – not FERC. ERCOT therefore is not subject to, nor can it be compelled to comply with FERC Order No. 741.[20] Setting aside the jurisdictional issues that would be raised by such a condition, ERCOT has already made significant progress towards adopting and implementing revisions to market protocols that are consistent with the requirements identified in Order No. 741, often at the independent suggestion or instruction of the Texas PUC.

For example, ERCOT currently maintains a limit on unsecured credit of $50 million (which applies at the corporate family level). ERCOT expects to implement further market

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[20] *See* 77 Fed Reg. 52174.

protocols revisions that will eliminate unsecured credit in respect of the Congestion Revenue Rights (CRR) markets and will establish ERCOT as the central counterparty for specified transactions with market participants. ERCOT also expects to implement additional minimum participation requirements by January 2013, including requirements aimed at verification of market participant risk management policies. ERCOT also has the ability to request additional collateral from a market participant if ERCOT perceives additional risk created by that participant's activities in the market.

ERCOT has also instituted a settlement cycle and related protections that are consistent with FERC's requirements under Order No. 741. ERCOT and its stakeholder committees are also developing settlement timeline changes that may result in settlements occurring more quickly in the ERCOT region than is required by Order No. 741. The Texas PUC would not want ERCOT's consideration of shorter settlement timelines to be compromised by a statement by the Commission that ERCOT may go no further than the rules in FERC Order No. 741, when the ERCOT market could otherwise adopt a settlement system even more conservative than that required by FERC in the regions where it has jurisdiction.

Given ERCOT's ongoing efforts to implement enhancements to its already robust credit policies that are consistent with or improve upon FERC Order No. 741, the Texas PUC believes that the Commission's proposal to require ERCOT's specific compliance is unnecessary. Inappropriately tying ERCOT to the Order No. 741 requirements would also prevent it from creating alternatives that would be even more consistent with the Commission's overall goal of increasing market efficiency, liquidity and safety. Moreover and as noted above, doing so could also unnecessarily exacerbate jurisdictional complexities among multiple regulators. ERCOT has already implemented substantially comparable requirements to those that apply to ISOs/RTOs subject to FERC's jurisdiction, and should not be restricted in its future improvements by the terms of Order No. 741. .

D. Execution of an Acceptable Information Sharing Arrangement between the Commission and the Texas PUC Should Not be a Condition Precedent to Granting ERCOT's Request for Exemption.

The Texas PUC fully supports executing an information sharing arrangement with the Commission, and welcomes collaboration with the Commission in areas of mutual regulatory

concern. Doing so however, should not be made a condition precedent to the issuance of a final order granting ERCOT's requested exemption. To the extent execution of this arrangement is ultimately made a condition, it should be a condition subsequent only. ERCOT has no ability to unilaterally direct or even coordinate actions to be taken by the Texas PUC. Establishing a condition precedent that requires action by two regulators over which ERCOT has no control is inefficient and risks creating unnecessary delay and uncertainty. The Texas PUC is pleased to begin work now with the Commission to develop and execute an appropriate arrangement on a timely basis. However, making the completion of this process a condition precedent to ERCOT and its market participants receiving exemptive relief is not necessary.

E. The Ability to Re-create the Day-Ahead Market and Real-Time Prices Should Not be a Requirement.

The Commission should refrain from making it a requirement that ERCOT be capable of "re-creating the Day-Ahead Market and Real-Time prices." [21] Doing so is unnecessary and would create the misimpression that such recreations can be done accurately. This proposed condition could also have the effect of undermining market participant expectations regarding market certainty.

First, as detailed in the Petition and recognized by the Commission in the Proposed Order, ERCOT has substantial tools and broad authority to obtain and analyze market data and related information – both to address potential market flaws, as well as instances of potential fraudulent market activity. The Texas PUC and ERCOT have the authority to investigate instances of potential fraud or market power abuse, as well as general anomalies that may occur in the ERCOT market. Each also has the ability to request detailed transaction information and other data directly from market participants. This data acts to supplement the already comprehensive data available to ERCOT in its role as market administrator. ERCOT's independent market monitor, which also enjoys broad investigative authority, represents yet another important information gathering and market surveillance tool. Making it a requirement that ERCOT be able to re-create the Day-Ahead market or Real-Time prices would not enhance

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[21] *See* Fed Reg. [cite].

ERCOT's already robust ability to monitor the markets it administers and to address any potential issues.

In addition, the Texas PUC has in place rules that make such actions less necessary as part of an enforcement regime. Under Texas PUC rules, any market participant who "identifies a provision in the ERCOT procedures that produces an outcome inconsistent with the efficient and reliable operation of the ERCOT-administered markets shall call the provision to the attention of" ERCOT. [22] In addition, ERCOT has the authority to order market participants not to engage in defined activities after such gaps or flaws have been identified, thus preventing potential market abuses before they occur. [23] These provisions make it incumbent on market participants to identify gaps or flaws in market systems so they may be corrected. If a market participant exploits such problems without identifying them, such actions are subject to enforcement action if the market participant did not identify the problem. This enforcement approach makes identification and resolution of potential market abuse less dependent on massive data "re-creation" efforts, and makes remediation a matter of enforcement rather than of disrupting markets by using post-hoc resettlement tools. [24]

Because adequate tools already exist to address market flaws and/or instances of potential fraudulent activity, and because the prospect of "re-creating" market outcomes can be both inaccurate and disruptive to the marketplace, the Texas PUC does not support making it a specific requirement that ERCOT or the other Petitioners have this capability.

IV. CONCLUSION

The Texas PUC appreciates the Commission's difficult work and careful deliberation that is reflected in the Proposed Order. With the modifications requested in these comments, the Texas PUC strongly supports the Commission issuing an Exemptive Order under Section 4(c) of

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[22] P.U.C. SUBST. R. 25.503(f)(12).

[23] ERCOT Protocols, Section 4.1(4): "To the extent that the ERCOT CEO or designee determines that Market Participant activities have produced an outcome inconsistent with the efficient operation of the ERCOT administered markets as defined in subsection (c)(2) of P.U.C. SUBST. R. 25.503, Oversight of Wholesale Market Participants, ERCOT may prohibit the activity by Notice for a period beginning on the date of the Notice and ending no later than 45 days after the date of the Notice."

[24] *Appeal and Complaint of Longhorn Energy LP and West Oaks Energy LLC Concerning ERCOT Decisions to Conduct Market Resettlement*, P.U.C. Docket No 39433, Order at 1 (March 7, 2012).

the Commodity Exchange Act as requested in the Petition by ERCOT and the other Petitioners Finally, we understand that ERCOT is submitting comments jointly with the other Petitioners. The Texas PUC supports those comments insofar as they apply to ERCOT. We thank the Commission in advance for its thoughtful consideration

Very truly yours,

Kenneth W. Anderson, Jr.
Commissioner