

**United States Senate**  
WASHINGTON, DC 20510

September 1, 2016

The Honorable Timothy G. Massad  
Chairman  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, D.C. 20581

Dear Chairman Massad:

We understand that on May 16, 2016, the Commodity Futures Trading Commission (CFTC) issued a Notice of Proposed Amendment (Proposed Amendment) to an existing agency order issued on March 28, 2013. If adopted, the Proposed Amendment would subject several types of transactions occurring in wholesale electric markets administered by Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) to private rights of action pursuant to Section 22 of the Commodity Exchange Act (CEA).

The Proposed Amendment may impact the ability of the Federal Energy Regulatory Commission (FERC) to continue to ensure that RTO and ISO transactions do not adversely impact consumers. It also could create uncertainty for utilities and other entities participating in these markets. Congress, pursuant to Public Law 111-203, the Dodd-Frank Wall Street Reform and Consumer Protection Act, required FERC and the CFTC to work together to avoid “conflicting or duplicative regulation.”<sup>1</sup> The 2013 CFTC order exempted four types of transactions from the CEA, which occur within RTO and ISO markets that are regulated by FERC: (1) Energy, (2) Financial Transmission Rights, (3) Forward Capacity, and (4) Reserve or Regulation transactions.

RTOs and ISOs establish rules for these transactions, which are then reviewed by FERC to ensure that the rules will produce just and reasonable electricity rates. In addition, FERC has authority under the Federal Power Act (FPA) to take action in order to protect consumers if a party attempts to manipulate or otherwise distort the market. In the FPA, Congress specifically prohibited private suits against market participants in order to enforce its anti-manipulation provision. Some consumer organizations have expressed concerns that subjecting the exempted transactions to a private right of action pursuant to the CEA will negatively impact FERC’s authority to prohibit and remedy actions that violate the FPA.

As you consider the Proposed Amendment, we request that you carefully examine the potential consequences and limitations a CEA authorized private right of action associated with a transaction occurring in a FERC regulated RTO or ISO may have on FERC’s existing regulatory authority. It is important that FERC retain the ability to adequately protect consumers from activities occurring in RTO and ISO markets.

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<sup>1</sup> 15 U.S.C. §8308.

We appreciate your consideration of our request and recognition of the importance of both FERC and CFTC maintaining authority to preserve and protect the integrity of the markets they regulate.

We look forward to your response.

Sincerely,



Lisa Murkowski  
Chairman  
United States Senate  
Committee on Energy and Natural Resources



Pat Roberts  
Chairman  
United States Senate  
Committee on Agriculture, Nutrition and Forestry



Maria Cantwell  
Ranking Member  
United States Senate  
Committee on Energy and Natural Resources



Debbie Stabenow  
Ranking Member  
United States Senate  
Committee on Agriculture, Nutrition and Forestry

Cc:

The Honorable Sharon Y. Bowen  
Commissioner, U.S. Commodity Futures Trading Commission

The Honorable J. Christopher Giancarlo  
Commissioner, U.S. Commodity Futures Trading Commission