

FERC General Counsel Argues Applying Dodd-Frank Regulations to RTO/ISO Products is Potentially Harmful

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The **Federal Energy Regulatory Commission (FERC)** General Counsel recently argued to the **Commodity Futures Trading Commission (CFTC)** that “[a]pplying **Dodd-Frank** swap regulations to [regional transmission organization] RTO and [independent system operator] ISO products and services is not only unnecessary but also potentially harmful.” Transactions entered under RTO and ISO tariffs, according to the FERC General Counsel, should be exempt from the definition of “swap.”

The FERC General Counsel made these arguments in [August 21 comments](#), partially supporting the petition of the nation’s six RTO/ISOs asking the CFTC to exempt them from swaps regulation under the Commodity Exchange Act in connection with four types of electricity purchases and sales they offer pursuant to FERC- or Public Utility Commission of Texas-approved tariffs. The FERC General Counsel had to resort to comment in order to make the Commission’s views known because the FERC and CFTC have yet to enter into a memorandum of understanding for “resolv[ing] conflicts concerning overlapping jurisdiction between the [two] agencies,” as required by § 720 of [Dodd-Frank Wall Street Reform and Consumer Protection Act](#).

All RTO/ISO activities, from planning and operating transmission grids to dispatching generation resources to complying with reliability standards are governed by explicit tariffs that FERC must approve before they take effect. FERC staff also monitors RTO/ISO market operations, and ensures that they comply with FERC reporting requirements and credit practices. Consequently, according to the FERC General Counsel “[i]t makes little sense to subject organized electricity markets and transactions that are conducted pursuant to FERC-approved tariffs, subject to extensive reporting, as well as to FERC’s enforcement authority, to an entirely different regulatory model” under Dodd-Frank.

The FERC General Counsel also took issue with the scope of the exemptions that the RTO/ISOs sought, which would exempt only four categories of RTO/ISO transactions: (1) financial transmission rights, (2) energy transactions, (3) forward capacity transactions and (4) reserve or regulation transactions. The FERC General Counsel argued that all purchases and sales of products that are a logical outgrowth of the ISO or RTO’s core functions should be exempt in order to allow the ISOs/RTOs flexibility to adapt their products over time.

The CFTC is expected to make a ruling on the RTO/ISO petition and the FERC General Counsel’s

comments by the end of the year.

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