

are now reopening the application period to solicit additional applications. This notice supplements the notice of September 10, 2009. Interested parties who have already applied do not need to re-apply.

Candidates are currently being sought for membership on the U.S. Section of the Forum. Each candidate must be Chief Executive Officer or President (or have a comparable level of responsibility) of a U.S.-owned or controlled company that is incorporated in and has its main headquarters located in the United States and is currently doing business in both India and the United States. Each candidate also must be a U.S. citizen or otherwise legally authorized to work in the United States and be able to travel to India and locations in the United States to attend official Forum meetings as well as Section meetings on the U.S. side. In addition, the candidate may not be a lobbyist registered under the Lobbying Disclosure Act of 1995, as amended, or a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Evaluation of applications for membership in the U.S. Section by eligible individuals will be based on the following criteria:

- A demonstrated commitment by the individual's company to the Indian market either through exports or investment.
- A demonstrated strong interest in India and its economic development.
- The ability to offer a broad perspective and business experience to the discussions.
- The ability to address cross-cutting issues that affect the entire business community.
- The ability to initiate and be responsible for activities in which the Forum will be active.

Members will be selected on the basis of who best will carry out the objectives of the Forum. The U.S. Section of the Forum should also include members who represent a diversity of business sectors and geographic locations. To the extent possible, Section members also should represent a cross-section of small, medium, and large firms.

U.S. members will receive no compensation for their participation in Forum-related activities. Individual members will be responsible for all travel and related expenses associated with their participation in the Forum, including attendance at Committee and Section meetings. It is anticipated that the first meeting will be held on November 23 in Washington, DC, in conjunction with senior level government exchanges. The U.S. and

Indian Sections should be prepared to work together ahead of that time to prepare recommendations to the U.S. and Indian governments. Only appointed members may participate in official Forum meetings; substitutes and alternates will not be designated. U.S. members will normally serve for two-year terms but may be reappointed.

To be considered for membership, please submit the following information as instructed in the **ADDRESSES** and **DATES** captions above: Name and title of the individual requesting consideration; name and address of company's headquarters; location of incorporation; size of the company; size of company's export trade, investment, and nature of operations or interest in India; and a brief statement of why the candidate should be considered, including information about the candidate's ability to initiate and be responsible for activities in which the Forum will be active. Interested parties who have already applied pursuant to the September 10, 2009, **Federal Register** notice do not need to re-apply. All candidates will be notified of whether they have been selected.

Dated: October 20, 2009.

**Linda S. Droker,**

*Director of the Office of South Asia and Oceania.*

[FR Doc. E9-25710 Filed 10-21-09; 4:15 pm]

**BILLING CODE 3510-DA-P**

## COMMODITY FUTURES TRADING COMMISSION

**Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the PJM WH Real Time Peak Daily Contract; PJM WH Real Time Peak Contract; PJM WH Real Time Off-Peak Contract; PJM WH Day Ahead LMP Peak Daily Contract; and PJM WH Real Time Off-Peak Daily Contract, Offered for Trading on the IntercontinentalExchange, Inc., Perform Significant Price Discovery Functions**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of action and request for comment.

**SUMMARY:** The Commodity Futures Trading Commission ("CFTC" or "Commission") is undertaking a review

to determine whether the PJM<sup>1</sup> WH<sup>2</sup> Real Time Peak Daily ("PDP") contract; PJM WH Real Time Peak ("PJM") contract; PJM WH Real Time Off-Peak ("OPJ") contract; PJM WH Day Ahead LMP<sup>3</sup> Peak Daily ("PDA") contract; and PJM WH Real Time Off-Peak Daily ("ODP") contract, offered for trading on the IntercontinentalExchange, Inc. ("ICE"), an exempt commercial market ("ECM") under Sections 2(h)(3)–(5) of the Commodity Exchange Act ("CEA" or the "Act"), perform significant price discovery functions. Authority for this action is found in Section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

**DATES:** Comments must be received on or before November 10, 2009.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- Follow the instructions for submitting comments: *Federal eRulemaking Portal*: <http://www.regulations.gov>.
- *E-mail*: [secretary@cftc.gov](mailto:secretary@cftc.gov). Include PJM WH Real Time Peak Daily (PDP) Contract; PJM WH Real Time Peak (PJM) Contract; PJM WH Real Time Off-Peak (OPJ) Contract; PJM WH Day Ahead LMP Peak Daily (PDA) Contract; and/or PJM WH Real Time Off-Peak Daily (ODP) Contract in the subject line of the message, depending on the subject contract(s) to which the comments apply.

- *Fax*: (202) 418-5521.
- *Mail*: Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

- *Courier*: Same as mail above.

All comments received will be posted without change to <http://www.CFTC.gov/>.

### FOR FURTHER INFORMATION CONTACT:

Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC

<sup>1</sup> The acronym "PJM" stands for Pennsylvania New Jersey Maryland Interconnection, LLC ("PJM Interconnection"), and signifies the regional electricity transmission organization that coordinates the generation and distribution of electricity in all or parts of 13 states and the District of Columbia.

<sup>2</sup> The acronym WH signifies the PJM's Western Hub.

<sup>3</sup> The term "LMP" stands for "locational marginal price" and represents the additional cost associated with producing an incremental amount of electricity. LMPs account for generation costs, congestion along the transmission lines, and electricity loss.

20581. Telephone: (202) 418-5515. E-mail: [gprice@cftc.gov](mailto:gprice@cftc.gov); or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418-5133. E-mail: [snathan@cftc.gov](mailto:snathan@cftc.gov).

## SUPPLEMENTARY INFORMATION:

### I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 ("Reauthorization Act")<sup>4</sup> which subjects ECMs with significant price discovery contracts ("SPDCs") to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not a SPDC, the Commission will consider the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) That averaged five trades per day or more over the most recent calendar quarter; and (ii)(A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

### II. Determination of a SPDC

#### A. The SPDC Determination Process

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.<sup>5</sup> After prompt consideration of all relevant information,<sup>6</sup> the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA<sup>7</sup> and the applicable provisions of Part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

<sup>5</sup> The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

<sup>6</sup> Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* ("ECM Study"). [http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403-07\\_ecmreport.pdf](http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403-07_ecmreport.pdf).

<sup>7</sup> 7 U.S.C. 2(h)(7)(C).

#### B. PJM WH Real Time Peak Daily Contract

The PDP contract is a daily contract that is cash settled based on the arithmetic average of hourly, real-time LMPs during the specified calendar day for the Western Hub, which are published by the PJM Interconnection for all peak hours during a particular date of production. The LMPs are published by PJM Interconnection on its Web site under the heading, "Daily Real-Time LMP Files." The LMPs are derived from power trades that result in physical delivery. The size of the PDP contract is 800 megawatt hours ("MWh"), and the unit of trading is any multiple of 800 MWh. The PDP contract is listed for up to 38 consecutive calendar days. Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its PDP contract, 48,072 separate trades occurred in the second quarter of 2009, resulting in a daily average of 751.1 trades. During the same period, the PDP contract had a total trading volume of 68,586 contracts (which was an average of 1,071.7 contracts per day). As of June 30, 2009, open interest in the PDP contract was 1,856 contracts. It appears that the ICE PDP contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, trading in the PDP contract averaged over 1,000 contracts on a daily basis with more than 750 separate transactions each day. In regard to material price reference, while it did not specifically address the power contracts under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain electricity contracts. Power contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers "PJM Power End of Day" and "OTC Power End of Day" data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

#### C. PJM WH Real Time Peak Contract

The PJM contract is a monthly contract that is cash settled based on the arithmetic average of hourly, real-time LMPs during the specified calendar

<sup>4</sup> 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

month for the Western Hub, which are published by the PJM Interconnection for all peak hours during the month of production. The LMPs are published by PJM Interconnection on its Web site under the heading, "Daily Real-Time LMP Files." The LMPs are derived from power trades that result in physical delivery. The size of the PJM contract is 800 MWh, and the unit of trading is the contract size multiplied by the number of peak days in the calendar month. The PJM contract is listed for up to 110 consecutive calendar months.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its PJM contract, 7,990 separate trades occurred in the second quarter of 2009, resulting in a daily average of 124.8 trades. During the same period, the PJM contract had a total trading volume of 268,489 (which was an average of 4,195.1 contracts per day). As of June 30, 2009, open interest in the PJM contract was 318,788 contracts.

It appears that the ICE PJM contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, trading in the PJM contract averaged 4,200 contracts on a daily basis with more than 120 separate transactions each day. In addition, the open interest in the subject contract was significant. In regard to material price reference, while it did not specifically address the power contracts under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain electricity contracts. Power contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers "PJM Power End of Day" and "OTC Power End of Day" data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

#### *D. PJM WH Real-Time Off-Peak Contract*

The OPJ contract is a monthly contract that is cash settled based on the arithmetic average of hourly, real-time LMPs during the specified calendar month for the Western Hub, which are published by the PJM Interconnection for all off-peak hours during the month of production. The LMPs are published

by PJM Interconnection on its Web site under the heading, "Daily Real-Time LMP Files." The LMPs are derived from power trades that result in physical delivery. The size of the OPJ contract is 50 MWh, and the unit of trading is determined by multiplying the contract size by the number of off-peak days in the calendar month traded. The OPJ contract is listed for up to 86 calendar months with four complete calendar years. Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its OPJ contract, 437 separate trades occurred in the second quarter of 2009, resulting in a daily average of 6.8 trades. During the same period, the OPJ contract had a total trading volume of 325,799 contracts (which was an average of 5,090.6 contracts per day). As of June 30, 2009, open interest in the OPJ contract was 2,976,492 contracts.

It appears that the ICE OPJ contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, trading in the OPJ contract averaged over 5,000 contracts on a daily basis with more than six separate transactions each day. In addition, the open interest in the subject contract was extremely large. In regard to material price reference, while it did not specifically address the power contracts under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain electricity contracts. Power contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers "PJM Power End of Day" and "OTC Power End of Day" data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

#### *E. PJM WH Day-Ahead LMP Peak Daily Contract*

The PDA contract is a daily contract that is cash settled based on the arithmetic average of hourly, day-ahead LMPs during the specified day for the Western Hub, which are published by the PJM Interconnection for all peak hours during a particular date of production. The LMPs are published by PJM Interconnection on its Web site under the heading, "Day-Ahead LMP

Data." The LMPs are derived from power trades that result in physical delivery. The size of the PDA contract is 800 MWh. The PDA contract is listed for up to 38 consecutive calendar days.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its PDA contract, 1,063 separate trades occurred in the second quarter of 2009, resulting in a daily average of 16.6 trades. During the same period, the PDA contract had a total trading volume of 1,435 contracts (which was an average of 22.4 contracts per day). As of June 30, 2009, open interest in the PDA contract was 75 contracts.

It appears that the ICE PDA contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, trading in the PDA contract averaged over 20 contracts on a daily basis with more than 15 separate transactions each day. In regard to material price reference, while it did not specifically address the power contracts under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain electricity contracts. Power contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers "PJM Power End of Day" and "OTC Power End of Day" data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

#### *F. PJM WH Real-Time Off-Peak Daily Contract*

The ODP contract is a daily contract that is cash settled based on the arithmetic average of hourly, real-time LMPs during the specified calendar day for the Western Hub, which are published by the PJM Interconnection for all off-peak hours during the particular date of production. The LMPs are published by PJM Interconnection on its Web site under the heading, "Daily Real-Time LMP Files." The LMPs are derived from power trades that result in physical delivery. The size of the ODP contract is 50 MWh, and the unit of trading is any multiple of 50 MWh. The ODP contract is listed for up to 38 consecutive calendar days. Based upon a required quarterly notification

filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its ODP contract, 723 separate trades occurred in the second quarter of 2009, resulting in a daily average of 11.3 trades. During the same period, the ODP contract had a total trading volume of 7,448 contracts (which was an average of 116.4 contracts per day). As of June 30, 2009, open interest in the ODP contract was 256 contracts.

It appears that the ICE ODP contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, trading in the ODP contract averaged over 110 contracts on a daily basis with more than 10 separate transactions each day. In regard to material price reference, while it did not specifically address the power contracts under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain electricity contracts. Power contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers "PJM Power End of Day" and "OTC Power End of Day" data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

### III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: Price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the Part 36 rules,<sup>8</sup> the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the PDP, PJM, OPJ, PDA, and/or ODP contracts perform significant price discovery

functions. Commenters' attention is directed particularly to Appendix A of the Commission's Part 36 rules for a detailed discussion of the factors relevant to a SPDC determination. The Commission notes that comments which analyze the contracts in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about the subject contracts. Moreover, because five contracts are included in this notice, it is important that commenters identify to which contract(s) their comments apply.

### IV. Related Matters

#### A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")<sup>9</sup> imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038-0060 to this collection of information.

#### B. Cost-Benefit Analysis

Section 15(a) of the CEA<sup>10</sup> requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by

ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC on October 14, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Charter for the Defense Advisory Board for Employer Support of the Guard and Reserve

**AGENCY:** Department of Defense.

**ACTION:** Federal advisory committee charter.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.65, the Department of Defense gives notice that it intends to renew the charter for the Defense Advisory Board for Employer Support of the Guard and Reserve.

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, DoD Committee Management Office, 703-601-6128.

**SUPPLEMENTARY INFORMATION:** The Defense Advisory Board for Employer Support of the Guard and Reserve, pursuant to 41 CFR 102-3.50(d), is a discretionary Federal advisory committee established to provide the Secretary of Defense through the Under Secretary of Defense (Personnel and Readiness) and the Assistant Secretary of Defense (Reserve Affairs), with independent advice concerning matters arising from the military service obligations of members of the National Guard and Reserve and the impact on their civilian employment.

Pursuant to DoD policy, the Assistant Secretary of Defense (Reserve Affairs) is authorized to act upon the Board's advice and recommendations.

<sup>8</sup> 17 CFR 36, Appendix A.

<sup>9</sup> 44 U.S.C. 3507(d).

<sup>10</sup> 7 U.S.C. 19(a).