

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,⁸ 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")⁹ 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 CEA¹⁰ 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.

⁸ 17 CFR 36, Appendix A.

⁹ 44 U.S.C. 3507(d).

¹⁰ 7 U.S.C. 19(a).

The Board shall be comprised of no more than fifteen members appointed by the Secretary of Defense for three-year terms, and their appointments shall be renewed by the Secretary of Defense on an annual basis. No Board member shall serve more than six years on the Board.

The Assistant Secretary of Defense (Reserve Affairs) shall select the Board's Chairperson from the Board membership at large.

Those members who are not full-time or permanent part-time Federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and serve as Special Government Employees.

Board members, with the exception of travel and per diem for official travel, shall serve without compensation.

The Board shall meet at the call of the Designated Federal Officer, in consultation with the Chairperson and the Assistant Secretary of Defense (Reserve Affairs). The estimated number of Board meetings is two per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer and/or Alternate Designated Federal Officer shall attend all Panel and subcommittee meetings.

With DoD approval, the Board shall be authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and other appropriate Federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Board nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Pursuant to 41 CFR 102-3.105(j) and 102-3.140, the public or interested organizations may submit written statements to the Defense Advisory Board for Employer Support of the Guard and Reserve membership about the committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the

Defense Advisory Board for Employer Support of the Guard and Reserve.

All written statements shall be submitted to the Designated Federal Officer for the Defense Advisory Board for Employer Support of the Guard and Reserve, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—<https://www.fido.gov/facadatabase/public.asp>.

The Designated Federal Officer, pursuant to 41 CFR 102-3.150, will announce planned meetings of the Defense Advisory Board for Employer Support of the Guard and Reserve. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: October 16, 2009.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

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DEPARTMENT OF DEFENSE

Office of the Secretary

Charter for the Secretary of the Navy Advisory Panel

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 Secretary of the Navy Advisory Panel.

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

SUPPLEMENTARY INFORMATION: The Secretary of the Navy Advisory Panel, pursuant to 41 CFR 102-3.50(d), is a discretionary Federal advisory committee established to provide the Secretary of Defense through the Secretary of the Navy, independent advice and recommendations on critical matters concerning the Department of the Navy.

The Panel's focus will include acquisition reform, the shipbuilding defense industrial base, intelligence

organization, and related maritime issues.

Pursuant to DoD policy, the Secretary of the Navy or designee is authorized to act upon the Panel's advice and recommendations.

The Panel shall be composed of no more than 20 members, who are eminent authorities in the fields of national security policy, intelligence, science, engineering, or business and industry.

Panel members appointed by the Secretary of Defense, who are not full-time or permanent part-time Federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109 and serve as Special Government Employees. Panel members shall be appointed on an annual basis by the Secretary of Defense and with the exception of travel and per diem for official travel, Panel members shall serve without compensation.

The Secretary of the Navy shall select the Panel's chairperson from the total membership.

The Panel shall meet at the call of the Designated Federal Officer, in consultation with the Chairperson and the Secretary of the Navy and the Chairperson, and the estimated number of Panel meetings is 3 per year. The Designated Federal Officer shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer and/or Alternate Designated Federal Officer shall attend all Panel and subcommittee meetings.

With DoD approval, the Panel shall be authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate 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 other appropriate Federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Panel, and shall report all their recommendations and advice to the Secretary of the Navy Advisory Panel for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Panel nor can they report directly to the Department of Defense or any Federal officers or employees who are not Panel members.

Pursuant to 41 CFR 102-3.105(j) and 102-3.140, the public or interested