

their behalf.¹¹ In addition, section 306 of the FPA permits the filing of private complaints with the FERC for any violation of the FPA.¹²

Aside from the injustice of changing the scope of the RTO–ISO Order three years after it was issued, subjecting the transactions covered by the Order to private suits under the CEA undermines carefully considered policy designed to promote affordable and reliable electricity for millions of American consumers. The defendants' conduct in the *Aspire* litigation was explicitly permitted under Texas law and related PUCT regulations.¹³ Indeed, the plaintiffs in *Aspire* brought suit *only after they tried and failed* to convince the PUCT to change its rules permitting the conduct at issue.¹⁴

In my view, the *Aspire* case is a telling example of the problems with subjecting RTO–ISO transactions to private section 22 litigation. Even if a firm is only involved in the generation or transmission of electric power (and not in the derivatives markets), it may nonetheless be subject to extensive litigation—lasting years, exacting significant sums in defense costs, subjecting ratepayers to potential damages and distracting the firm from its core business—all for merely *complying* with standards crafted and enforced by its primary regulator.¹⁵ Moreover, subjecting electricity providers to private litigation will deprive them of the certainty that the RTO–ISO Order was supposed to provide; if private section 22 claims are allowed, it will be impossible for market participants to be certain which FERC or state rules governing power markets can be adhered to without incurring liability. I fail to see how permitting these kinds of suits would “promote responsible economic or financial innovation and fair competition” that the Commission’s exemptive authority is supposed to provide.¹⁶

¹¹ 7 U.S.C. 13a-1(d)(3) (2012).

¹² See Joint Trade Associations, Comment Letter on Proposed Order and Request for Comment on an Application for an Exemptive Order From Southwest Power Pool, Inc. From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in Section 4(c)(6) of the Act, at 7 n.17 (Jun. 22, 2015) (citations omitted); see also PUCT Comment Letter at 6–7 (Jun. 22, 2015) (explaining that market participants regulated by the Electric Reliability Council of Texas (“ERCOT”) aggrieved by the activities of other market participants may bring complaints for adjudication by ERCOT, whose decisions are subject to review by PUCT and the Texas state courts).

¹³ *Aspire*, 2015 WL 500482, at *1; see also 16 Tex. Admin. Code 25.504(c) (2006). I take no position on the specific PUCT Rule at issue, other to note that it appears to be backed by a broad consensus of Texas electricity stakeholders and vigorously defended by the PUCT. See *Aspire*, 2016 WL 758689, Brief for PUCT as Amicus Curiae, at 27–29.

¹⁴ *Aspire*, 2015 WL 500482, at *1.

¹⁵ See PUCT Comment Letter on Proposed Order and Request for Comment on an Application for an Exemptive Order From Southwest Power Pool, Inc. From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in Section 4(c)(6) of the Act, at 7–10 (Jun. 22, 2014) (describing the *Aspire* litigation and its potential deleterious effects on the RTO–ISO markets).

¹⁶ 7 U.S.C. 6(c); see also Feb. 25, 2016 Energy and Environmental Markets Advisory Committee

Indeed, permitting these suits is in tension with long-standing jurisprudence disallowing private litigants from collaterally attacking a rate, tariff, protocol and/or rule approved or permitted to take effect by the PUCT and/or the FERC. Courts have regularly relied on the so-called “filed rate doctrine,” which deprives them of jurisdiction to hear otherwise valid private rights of action where such action seeks to undermine or attack “any ‘filed rate’—that is, one approved by the governing regulatory agency—[because such a rate] is per se reasonable and unassailable in judicial proceedings brought by ratepayers.”¹⁷

Here, the Commission dismisses concerns that preserving the section 22 private right of action may cause regulatory uncertainty or inconsistent or duplicative regulation by arguing that the same result could occur if the CFTC were to bring enforcement actions for violations of the Reserved Provisions. This is a concern, to be sure. But the CFTC may bring suit only after an affirmative vote of a majority of Commissioners and in accordance with its Memorandum of Understanding with the FERC under which staff of the CFTC and the FERC have agreed to consult each other on matters of mutual interest and overlapping jurisdiction.¹⁸ The CFTC would therefore be far likelier than a private plaintiff to consider the impact an action for violating the CEA could have on the regulatory policy of co-equal regulators operating in their primary field. Furthermore, unlike private plaintiffs, the CFTC would have a thorough appreciation of a potential defendant’s positions in derivatives markets and access to a potential defendant’s positions in the cash markets, ensuring that only cases of true merit would be brought. One would expect the CFTC to conduct an extensive investigation and carefully consider any impact an action for CEA violations would have on electricity regulation before bringing suit. I certainly will. As commenters have pointed out, private parties—who may be interested primarily in winning a cash award and/or securing attorneys’ fees—will not consider the matter so broadly.

In conclusion, adding section 22 to the list of Reserved Provisions is a serious misstep. At a time of stagnant wage growth, today’s proposal may needlessly subject millions of American ratepayers to higher utility bills as a result of the almost certain increase in litigation, court costs and settlement damages. Permitting private rights of action in the heavily regulated RTO–ISO markets is in great tension with the congressional command that the CFTC, the FERC and

Meeting, transcript at 21–70 (discussing the consequences for consumers and rate payers that would flow from permitting private rights of action against RTO–ISO participants).

¹⁷ *Tex. Commercial Energy v. TXU Energy*, 413 F.3d 503, 508 (5th Cir. 2005) (quoting *Wegoland, Ltd. v. NYNEX Corp.*, 27 F.3d 17, 18 (2d Cir. 1994) (barring otherwise valid antitrust law claim on the basis of the filed-rate doctrine based on PUCT oversight over the relevant electricity market).

¹⁸ Memorandum of Understanding between the FERC and the CFTC (Jan. 2, 2014), <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/cftcfercmou2014.pdf>.

where applicable, state regulators, work to ensure effective, efficient regulation that provides the RTO–ISO market participants with legal certainty.

As such, I emphatically dissent from the proposal.

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BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2016–0021]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is proposing to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, “Application Process for Designation of Rural Area under Federal Consumer Financial Law.”

DATES: Written comments are encouraged and must be received on or before June 15, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *OMB:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or fax to (202) 395–5806. Mailed or faxed comments to OMB should be to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at www.reginfo.gov (this link active on the day following publication of this notice). Select “Information Collection Review,” under “Currently

under Review”, use the dropdown menu “Select Agency” and select “Consumer Financial Protection Bureau” (recent submissions to OMB will be at the top of the list). The same documentation is also available at <http://www.regulations.gov>. Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street, NW., Washington, DC 20552, (202) 435–9575, or email: CFPB_PRA@cfpb.gov. *Please do not submit comments to this email box.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Application Process for Designation of Rural Area under Federal Consumer Financial Law.
OMB Control Number: 3170–0061.
Type of Review: Extension without change of a currently approved collection.

Affected Public: Private sector (banks and credit unions).

Estimated Number of Respondents: 1.

Estimated Total Annual Burden

Hours: 5.

Abstract: Section 89002 of the HELP Rural Communities Act (Pub. L. 114–94) requires the Bureau to establish an application process under which a person may apply to have an area designated by the Bureau as a rural area for purposes of a Federal consumer financial law. On March 3, 2016, the Bureau published a Final rule in the **Federal Register** (81 FR 11099) which sets forth the procedure for making this application and requires the applicant to submit information identifying the area for which the request is made, and the justification for granting the area rural status. While the rule specifies what information is to be included, it does not specify to the form or format of the information.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on February 18, 2016 (81 FR 8179). Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau’s estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 10, 2016.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2016–11425 Filed 5–13–16; 8:45 am]

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BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2016–0022]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, “Evaluation of Financial Empowerment Training Program.”

DATES: Written comments are encouraged and must be received on or before July 15, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic:* <http://www.regulations.gov>.

Follow the instructions for submitting comments.

- *Mail:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street, NW., Washington, DC 20552.

- *Hand Delivery/Courier:* Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at www.regulations.gov. Requests for additional information should be directed to the Consumer

Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: CFPB_PRA@cfpb.gov. *Please do not submit comments to this mailbox.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Evaluation of Financial Empowerment Training Program.

OMB Control Number: 3170–0038.

Type of Review: Extension with change of a currently approved collection.

Affected Public: Individuals, government social services entities, and not-for-profit institutions.

Estimated Number of Respondents: 15,750.

Estimated Total Annual Burden Hours: 10,338.

Abstract: The Bureau’s Office of Financial Empowerment (Empowerment) is responsible for developing strategies to improve the financial capability of low-income and economically vulnerable consumers, such as consumers who are unbanked or underbanked, those with thin or no credit file, and households with limited savings. To address the needs of these consumers, Empowerment has developed the Your Money, Your Goals toolkit and training program. These resources equip frontline staff and volunteers in a range of organizations to provide relevant and effective information, tools, and technical assistance designed to improve the financial outcomes and capability of these vulnerable consumers. The Bureau seeks to renew approval of the information collection plan (ICP) to collect qualitative data related to evaluating the effectiveness of this toolkit, collateral materials, and training program. The proposed collections will focus on evaluating: (1) Your Money, Your Goals training practices, toolkit, and collateral materials in enhancing the ability of frontline staff and volunteers to inform and educate low-income consumers about managing their finances; (2) and to assess the scope of workshop participants’ use of the resources with the people they serve. The Bureau expects to collect qualitative data through paper-based and web-based surveys.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau’s estimate of the burden of the collection of information, including the validity of