Commodity Futures Trading Commission

Office of Public Affairs

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
www.cftc.gov

Q & A – Relief for Certain Non-Financial Energy Derivative Transactions between Government and/or Cooperatively-Owned Electric Utilities

Under what authority is the proposed relief being provided?

The Dodd-Frank Act added new section 4(c)(6)(C) to the Commodity Exchange Act (CEA), which directs the Commission to exempt any transactions entered into between entities described by Federal Power Act (FPA) section 201(f) where the Commission finds that such an exemption would be consistent with the public interest and purposes of the CEA. FPA section 201(f) exempts certain government and cooperatively-owned electric utilities from the plenary jurisdiction of the Federal Energy Regulatory Commission (FERC).

What is the purpose of the proposed relief?

The relief is in response to a petition from several organizations on behalf of their electric utility members, most of which are described by FPA section 201(f). The relief provides government and cooperatively-owned electric utilities with regulatory certainty to continue entering into certain non-financial energy derivative transactions with one another in order to fulfill their unique public service mission to provide customers with reliable, affordable electric energy.

Who is eligible for the proposed relief?

Any entity described by FPA section 201(f) is eligible for the relief, which includes government-owned electric utilities and electric cooperatives that receive financing from the Rural Utilities Service or that sell less than 4,000,000 megawatt hours of electric energy per year. Additionally, the relief applies to electric facilities owned by Federally-recognized Indian tribes, which are treated as FPA section 201(f) entities by the Federal Energy Regulatory Commission, and the small number of not-for-profit electric cooperatives that do not qualify under the FPA section 201(f) criteria in a given year (either because they sell too much electricity, do not receive federal financing, or both).

Which types of transactions are eligible for the proposed relief?

In order for a transaction to qualify for the relief, it cannot be entered into, but for the need parties to the transaction to manage supply and/or price risks arising from their existing or anticipated public service obligations to physically generate, transmit, and/or deliver electric energy service to customers. Just as the entities eligible for relief cannot be financial entities, the transactions eligible for the relief cannot reference any financial asset class of a commodity. The relief is limited to only those categories of exempted transactions specifically enumerated and described in the order—electric energy delivered, generation capacity, transmission services, fuel delivered, cross-commodity pricing, and other goods and services.