

September 5, 2012

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

VIA ELECTRONIC MAIL

Re: *Comments in Support of Petition for Rulemaking to Amend CFTC Regulation 1.3(ggg)(4)*

Dear Mr. Stawick:

On behalf of The Commercial Energy Working Group (the “Working Group”), Sutherland Asbill & Brennan LLP hereby submits these comments in support of and to further expound upon the July 12, 2012 Petition for Rulemaking to Amend CFTC Regulation 1.3(ggg)(4) (the “Petition”) by the American Public Power Association, Large Public Power Council, American Public Gas Association, Transmission Access Policy Study Group, and Bonneville Power Administration (“BPA”) (collectively, the “Petitioners”) to amend the Commodity Futures Trading Commission’s (the “Commission” or “CFTC”) Regulation 1.3(ggg)(4), which implements the *de minimis* exception to the definition of “swap dealer.”¹

The Working Group supports the Petition. We urge the Commission to amend the *de minimis* exception to exclude from the “special entity sub-threshold”² certain swaps related to the physical delivery of energy commodities to “Utility Special Entities.”³ These entities primarily engage in swaps to hedge exposures related to the generation and delivery of electricity or natural gas to millions of customers in the United States. Their access to liquid and efficient markets directly affects their ability to deliver electricity or natural gas to such customers at a low cost and without price volatility. Such markets require a sufficient number of counterparties with whom such special entities might trade. Without such an amendment, the depth of such markets will likely lessen, as counterparties who otherwise would not be swap dealers elect not to trade with such special entities to avoid characterization as swap dealers.

¹ Petition for Rulemaking to Amend CFTC Regulation 1.3(ggg)(4) (July 12, 2012). See Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant,” *Joint Final Rule; Joint Interim Final Rule; Interpretations*, 77 Fed. Reg. 30,596 at 39,744–39,745 (May 23, 2012).

² See CFTC Regulation § 1.3(ggg)(4)(i).

³ Petition at 2–3.

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The Petition is an important step towards ensuring Utility Special Entities retain access to liquid and efficient swap markets for their hedging purposes. There are additional issues to be addressed with respect to the “special entity sub-threshold.” Many of the fundamental issues presented in the Petition exist for special entities (a) not engaged in the generation and distribution of electricity or natural gas or that (b) enter into swaps that reference non-financial commodities unassociated with electricity or natural gas. Moreover, the Commission might consider whether the “special entity sub-threshold” itself is at an appropriate level.

The Working Group supports appropriate regulation that brings transparency and stability to the swap markets in the United States. The Working Group appreciates this opportunity to comment on the Petition and offers its advice and experience to assist the Commission in implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Respectfully submitted,

/s/ David T. McIndoe

David T. McIndoe

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Working Group*