

September 24, 2012

Via Electronic Submission

Stacy Yochum, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Petition for Rulemaking to Amend CFTC Regulation 1.3(ggg)(4)

Dear Ms. Yochum:

as On May 23, 2012, the Commodities Futures Trading Commission (“CFTC” or “Commission”) issued a Final Rule and Interim Final Rule on the Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant,” and “Eligible Contract Participant” (“Final Rule”).¹ On July 12, 2012, the American Public Power Association, the Large Public Power Council, the American Public Gas Association, the Transmission Access Policy Study Group, and the Bonneville Power Administration (“BPA”) (collectively “Petitioners”) to amend CFTC Regulation 1.3(ggg)(4)² as proposed in the Final Rule. The Edison Electric Institute (“EEI”) respectfully submits these comments in support of the petition which requests that the \$25 million *de minimis* threshold not apply to “utility operations related swaps” to which the counterparty is a utility special entity.

EEI is the association of U.S. shareholder-owned electric companies. EEI’s members serve 95 percent of the ultimate customers in the shareholder-owned segment of the U.S. electricity industry, and represent approximately 70 percent of the U.S. electric power industry. EEI also has more than 65 international electric companies as Affiliate members, and more than 170 industry suppliers and related organizations as Associate members. EEI’s members are physical commodity market participants that rely on swaps and futures contracts primarily to hedge and mitigate their commercial risk.

Under the Final Rule, an entity will not be considered a “Swap Dealer” if it engages in a *de minimis* amount of \$25 Million or less in swap dealing transactions with “special entities” or a total amount of transactions, not including those with special entities, of at most \$8 Billion for the initial phase-in period. Thus, if a party engages in transactions with a “special entity” that exceeds that \$25 Million threshold, then the party must register as a “Swap Dealer.” EEI greatly

¹ Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” Major Security-Based Swap Participant,” and “Eligible Contract Participant,” 77 Fed. Reg. 30596 (May 23, 2012) (“Final Rule”).

² Petition for Rulemaking to Amend CFTC Regulation 1.3(ggg)(4), July 12, 2012. (No Docket Assigned).

appreciates the Commission's decision, in response to comments by EEI and other market participants to increase the overall *de minimis* threshold for consideration as a swap dealer to at least \$3 Billion with an initial phase-in amount of \$8 Billion from the \$100 million proposed in the notice of proposed rulemaking. However, EEI is concerned about the Commission decision to retain the *de minimis* threshold for swap-dealing transactions with special entities at \$25 Million during any 12-month period³ as this will affect the ability and willingness of EEI members to enter into transactions with such special entities. This is due to the unique nature of the physical electric and natural gas markets in which it is very possible that even one, relatively small swap contract could exceed the threshold amount of \$25 Million notional value. As the petitioners explain in their request for an amendment, "a single one-year 100 MW swap or a single three-year 10,000 mmBtu/day swap" could easily have a notional value of \$25 Million, based on projected information from the PJM Interconnection, LLC, and Henry Hub.⁴ As a result, one transaction could cause an EEI member to be classified as a Swap Dealer and subject to additional registration, capital & margin and reporting requirements. In addition, EEI members will be required to track these transactions separately in order to ensure that they do not exceed the *de minimis* limit. Therefore, it is in the interest of EEI members to refrain from entering into such transactions with special entities in order to avoid the possible designation as a "Swap Dealer."

The decision by EEI members not to incur the extra cost and risk associated with engaging in transactions with special entities will have a detrimental impact upon EEI members and special entities by reducing their available counterparties and will have a negative impact on the electric and natural gas markets by reducing the liquidity in those markets. This reduces opportunities to hedge and mitigate commercial risks associated with the physical energy markets.

Therefore, EEI supports the Petitioners' request for an amendment and requests that the Commission act to grant the requested relief. Please contact us at the number listed below if you have any questions regarding these comments.

Respectfully submitted,



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³ Final Rule at 30632.

⁴ Petition for Rulemaking to Amend CFTC Regulation 1.3(ggg)(4), July 12, 2012 at p 9.