



**Via Electronic Submission**

David Stawick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

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

Dear Mr. Stawick:

The Electric Power Supply Association (“EPSA”) respectfully submits these comments in support of the petition filed on July 12, 2012, by American Public Power Association (“APPA”), the Large Public Power Council (“LPPC”), the American Public Gas Association (“APGA”), the Transmission Access Policy Study Group (“TAPS”), and the Bonneville Power Administration (“BPA”) (collectively “Petitioners”) to amend CFTC Regulation 1.3(ggg)(4).<sup>1</sup>

On April 18, 2012, the Commission issued its 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.” (“Entity Definitions Final Rule”).<sup>2</sup> The Final Rule defines the entities that are required to comply with the rules for participating in the swaps market under the Commodity Exchange Act (“CEA”) as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) and the Commission’s rules that are applicable to all “swaps.”<sup>3</sup> In the Entity Definitions Final Rule, the Commission increased 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. However, the *de minimis* threshold for swap-dealing transactions with special entities remained at \$25 Million during any 12-month period.<sup>4</sup>

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for nearly 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced

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<sup>1</sup> Petition for Rulemaking to Amend CFTC Regulation 1.3(ggg)(4), July 12, 2012. (No Docket Assigned).

<sup>2</sup> 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).

<sup>3</sup> Pub. L. No. 111-203 (2010).

<sup>4</sup> 77 Fed. Reg. 30632 (May 23, 2012).

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electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers.<sup>5</sup>

EPSA supports the Petitioners' request to amend CFTC Regulation 1.3(ggg)(4) to exclude "utility operations related swaps" with "utility special entities" from the \$25M *de minimis* threshold for swap dealer consideration. Market participants in the physical energy sector, including EPSA members, are non-financial entities that enter into swaps and other financial transactions in order to hedge or mitigate the risks associated with the physical nature of their primary business, electric and natural gas markets. Under the current Entity Definitions Final Rule, an entity will not be considered a "Swap Dealer" if it engages in a *de minimis* amount of \$25 Million in swap dealing transactions with "special entities" or a total amount of \$8 Billion for the initial phase-in period. If a party engages in transactions with a "special entity" that exceeds that \$25 Million threshold, then those transactions must be counted in the analysis of whether such party is a "Swap Dealer," and thus is subject to the more stringent capital, margin, reporting and recordkeeping requirements.

EPSA members are physical commodity market participants that rely on commodity swaps, futures, and options primarily to hedge and mitigate commercial risk and they often serve as counterparties for special entities in the electric and natural gas sectors. They are not financial entities, but commercial end-users that have a direct and significant interest in how the Commission regulates transactions in non-financial commodities, and in particular, swaps on non-financial commodities, including swaps with special entities.

As such, a limitation of \$25 Million for *de minimis* transactions with special entities, as currently exists in the Entity Definitions Final Rule, would have an adverse impact by reducing the number of counterparties available to special entities in the utility sector. Market participants that do not want to be considered "Swap Dealers," and thus subject to the increased capital, margin, reporting and recordkeeping requirements, will limit or eliminate the number of transactions they engage in with special entities. Due to the unique circumstances of the physical electric and natural gas markets, it is very possible that even one, relatively small swap contract would 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.<sup>6</sup> Under the current rules, just one contract could exceed the *de minimis* threshold for special entities and cause the counterparty to become a "Swap Dealer." Therefore, it is in the interest of EPSA members to refrain from entering into such transactions with special entities in order to avoid possible designation as a "Swap Dealer."

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<sup>5</sup> The comments contained in this correspondence represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

<sup>6</sup> Petition for Rulemaking to Amend CFTC Regulation 1.3(ggg)(4), July 12, 2012 at p 9.

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This will have a detrimental impact upon special entities by reducing opportunities for competitive pricing in the physical energy markets and greatly reducing their ability to hedge and mitigate commercial risks associated with the physical energy markets. This impact would trickle down to the populations of consumers that these such special entities serve., Reduced liquidity in electricity and natural gas contracts due to a reduction in the number of counterparties available to special entities, will lead to increased costs for the ultimate consumers. However, this adverse outcome for energy markets, special entities, and consumers can be avoided. The Commission can preserve the ability of special entities in the utility industry to hedge and mitigate price and commercial risks by amending the regulations to exclude “utility operations-related swap” entered into by a “utility special entity” as requested by the Petitioners. Therefore, EPSA supports the Petitioner’s request for an amendment and requests that the Commission act to grant the requested relief.

EPSA appreciates the Commission’s consideration of our comments supporting the Petitioners’ request to amend CFTC Regulation 1.3(ggg)(4). For the reasons stated herein, we respectfully request that the Commission grant the Petitioners request and amend CFTC Regulation 1.3(ggg)(4).

We are happy to discuss any comments further. Please feel free to contact EPSA at the number listed below if you have any questions regarding these comments.

Respectfully submitted,



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