Final

National Rural Electric Cooperative Association

August 27, 2012

Submitted By Email

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

Re: Support for Petition for Proposed Amendment to Rule 1.3(ggg)(4)

Dear Mr. Stawick:

The National Rural Electric Cooperative Association ("NRECA") appreciates the opportunity to express our support for the amendment of Rule 1.3(ggg)(4) to exclude from the "special entity sub-threshold" "utility operations-related swaps" as proposed by the petition of 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 (collectively, the Petitioners) filed on July 12, 2012.[1]

NRECA is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to approximately 42 million people in 47 states or 12 percent of electric customers. Kilowatt-hour sales by rural electric cooperatives account for approximately 11 percent of all electric energy sold in the United States. The vast majority of NRECA members are not-for-profit, consumer-owned cooperatives. NRECA's members also include approximately 65 generation and

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[1] Petition for Rulemaking to Amend the Commodity Futures Trading Commission's ("CFTC" or "Commission") regulation 1.3(ggg)(4) (July 12. 2012) (No Docket Assigned) ("Petition"). Regulation 1.3(ggg)(4) implements the *de minimis* exception to the definition of "swap dealer." See, 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).

transmission ("G&T") cooperatives, which generate and transmit power to 668 of the 841 distribution cooperatives. The G&Ts are owned by the distribution cooperatives they serve. Both distribution and G&T cooperatives were formed to provide reliable electric service to their owner-members at the lowest reasonable cost.

NRECA's electric cooperative members are *not* "special entities,"[2] as such term is defined in Section 4s(h)(2)(C) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), 7 U.S.C. 6s(h)(2)(C) and Section 23.401(c) of the CFTC's regulations, and so would not directly benefit from the proposed rule amendment. Nonetheless, many of our electric cooperative members throughout the United States engage in utility operations-related swaps, as such term is defined in the proposed rule amendment, in many of the same regional markets in which the utility special entities, as such term is defined in the proposed rule amendment, transact to hedge or mitigate commercial risks.

NRECA agrees with the Petitioners' statements that commercial risk management policies in the physical gas and electric industries require diversification of suppliers and swap counterparties, and limit concentration of counterparty credit risk in order to manage the commercial risks inherent in utility operations.[3] In our experience, the continued participation of as many current and new entrant counterparties as possible (whether or not such counterparties are registered "swap dealers") in such illiquid regional markets is vital to price competition, and to electric cooperatives' ability to keep electricity rates reasonable and predictable for our electricity customers, who are cooperative members.[4]

As explained by the Petition, "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 due to the unique circumstances of the physical electric and natural gas markets.[5] If a counterparty engages in

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2 NRECA has a few members that are not electric cooperatives, but instead are government-owned electric utilities. Those few NRECA members are "special entities" and would be directly benefited by the rule amendment sought by the Petitioners. On behalf of those NRECA members, NRECA respectfully requests that the Commission take immediate action to adopt the rule amendment proposed by the Petitioners on July 12, 2012.

3 Petition at p. 7.

4 For further information about electric cooperatives and government-owned electric utilities, and the diverse and illiquid regional "markets" in which these entities execute utility operations-related transactions to hedge or mitigate the commercial risks arising from such operations, see the proposed exemptive order at 77 Fed. Reg. 50998 (August 23, 2012).

5 Petition at 9.

"swap dealing activity" with counterparties that are special entities, and the gross notional amount of such swaps exceed that $25 million sub-threshold, then the counterparty is required to register with the Commission as a "swap dealer," and thus is thereafter subject to the stringent regulatory capital, margin, reporting, recordkeeping and business conduct standards required of such a regulated entity.

Nonfinancial entities engaged in commercial energy operations, who only engage in swap dealing activities in regional markets for purposes ancillary to their primary commercial energy businesses are unlikely to register as swap dealers. In order not to "trip" over the comparatively miniscule $25 million sub-threshold, they will likely cease any swap dealing activity with utility special entities in these regional markets for utility-operations related swaps. In particular regions where there are a significant number of utility special entities, such as some areas in the Southeast United States and California, losing one or a few of these potential counterparties for these customized utility operations-related swaps will result in a significant drop in market liquidity.

To the extent the special entity sub-threshold drives nonfinancial counterparties out of the smaller regional markets for utility operations related swaps, electric cooperatives located in such regions will be negatively affected. In our experience and as we have discussed with the Commission, these nonfinancial entity counterparties provide needed liquidity in such markets by providing price competition for the large financial institutions. Although large financial institutions may act as "swap dealers" in numerous global markets for many types of financial and nonfinancial commodity swaps, they will have little interest in understanding and executing these customized swaps or participating in these illiquid markets unless the premium price paid for their swap dealing services by utility special entities and electric cooperatives with operations in the region is substantial.[6]

The special entity sub-threshold will have a serious and negative affect on all regional markets for utility operations-related swaps, unless the proposed rule amendment is adopted or other effective relief is promptly provided by the Commission. For the aforementioned reasons, the NRECA supports the Petitioners' request to amend Rule 1.3(ggg)(4), and respectfully request that the Commission act on the Petitioners' request as soon as

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[6] If these nonfinancial counterparties decided to continue these transactions at all, they will likely transact under the *de minimis* exception to the "swap dealer" definition. However, until the Commission finalizes the "interim Final Rule" in the "swap dealer" docket (77 Fed. Reg. 30596 (May 23, 2012)), nonfinancial entities will likely take a conservative compliance approach – that any utility operations related swaps may be deemed "swap dealing activity." Therefore any utility operations related swaps with Utility Special Entities may be "counted" against the Special Entity sub-threshold.

possible to avoid disruption of the regional markets for utility operations-related swaps as of October 12, 2012.

Thank you for considering our comments.

Sincerely,

NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION

By: Ross Wasson

Russell D. Wasson
Director, Tax, Finance and
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