



No-Action Request; Rule 140.99

October 5, 2012

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Stacy Yochum, Secretary
Commodity Futures Trading Commission
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Re: Request for Interim No-Action Relief until the Commission Takes Final Action on Proposal to Exempt Certain Transactions Involving Not-for-Profit Electric Utilities

Gentlemen and Ms. Yochum:

Pursuant to Commission Rule 140.99,¹ the Petitioners² respectfully request that the appropriate divisions of the Commodity Futures Trading Commission (the “Commission”) grant no-action relief to the Petitioners and all “NFP Electric Entities” regarding all “Electric Operations-Related Transactions”³ entered into between and amongst such NFP Electric Entities, from all requirements of the Commodity Exchange Act (the “CEA”) and the Commission’s regulations thereunder, other than the Commission’s general anti-fraud and anti-market manipulation provisions, for the interim period described below.

¹ 17 C.F.R. § 140.99.

² The National Rural Electric Cooperative Association, the American Public Power Association, the Large Public Power Council, the Transmission Access Policy Study Group and the Bonneville Power Administration. A copy of the Petition can be found at <http://sirt.cftc.gov/sirt/sirt.aspx?Topic=PendingFilingsandActionsAD&Key=23572>.

³ As each of the terms “NFP Electric Entities” and “Electric Operations-Related Transactions” is defined in the Application for an Exemptive Order Under Section 4(c)(6) of the Commodity Exchange Act, in Accordance with Sections 4(c)(1) and 4(c)(2), filed with the Commission on June 8, 2011 (the “Petition”).

I. Background

NRECA is the national service organization for more than nine hundred rural electric utilities and public power districts that provide electric energy to approximately forty-two million consumers in forty-seven states or thirteen percent of the nation's population. Kilowatt hour sales by rural electric cooperatives account for approximately eleven percent of all electric energy sold in the United States. Because an electric cooperative's electric service customers are also members of the cooperative, the cooperative operates on a not-for-profit basis and all the costs of the cooperative are directly borne by its consumer-members.

APPA is the national service organization representing the interests of publicly-owned electric utilities in the United States. More than two thousand public power systems provide over fifteen percent of all kilowatt-hour sales to ultimate customers. APPA's member utilities are not-for-profit utility systems that were created by state or local governments to serve the public interest. Some publicly-owned electric utilities generate, transmit, and sell power at wholesale and retail, while others purchase power and distribute it to retail customers, and still others perform all or a combination of these functions. Public power utilities are accountable to elected and/or appointed officials and, ultimately, the American public. The focus of a public power utility is to provide reliable and safe electricity service, keeping costs low and predictable for its customers, while practicing good environmental stewardship.

LPPC is an organization representing 26 of the largest government-owned electric utilities in the nation. LPPC members own and operate over 86,000 megawatts of generation capacity and nearly 35,000 circuit miles of high voltage transmission lines, representing nearly 90% of the transmission investment owned by non-Federal government-owned electric utilities in the United States.

TAPS is an association of transmission-dependent utilities in more than 35 states, promoting open and non-discriminatory access to the transmission grid and regulatory policies to facilitate the participation of smaller utilities in the electricity markets.

BPA is a self-financed, non-profit Federal agency created in 1937 by Congress that primarily markets electric power from 31 federally owned and operated projects, and supplies 35 percent of the electricity used in the Pacific Northwest. BPA also owns and operates 75 percent of the high-voltage transmission in the Pacific Northwest. BPA's primary statutory responsibility is to market its Federal system power at cost-based rates to its "preference customers."⁴ BPA also funds one of the largest wildlife protection and restoration programs in the world.

⁴ BPA has approximately 130 preference customers made up of electric utilities which are not subject to the jurisdiction of the Federal Energy Regulatory Commission, including Indian tribes, electric cooperatives, and state and municipally chartered electric utilities, and other Federal agencies located in the Pacific Northwest.

On June 8, 2012, Petitioners filed a petition with the Commission requesting relief from the requirements of the CEA and the Commission's regulations thereunder, pursuant to CEA section 4(c)(6), for electric operations-related transactions between not-for-profit electric energy utilities.

On August 23, 2012, the Commission issued a Proposal and accepted comments to be submitted by September 24, 2012.⁵ In the Proposal, the Commission stated that it intended to provide the Petitioners relief from the requirements of the CEA, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act")⁶ and to provide regulatory certainty for "Exempt Non-Financial Energy Transactions" entered into between and amongst "Exempt Entities."

On September 24, 2012, the Petitioners timely filed their comments on the Proposal seeking clarification in certain minor respects to align more closely with the Congressional intent expressed in Section 722(f) of the Dodd-Frank Act and new Section 4(c)(6) of the CEA, and providing answers to the Commission's questions (the "Comment Letter").⁷ The Petitioners also requested that, should the Commission decline to clarify the Proposal in the manner requested by the Petitioners, the Commission conduct a full analysis under the Small Business Regulatory Enforcement Fairness Act ("SBREFA").⁸

The Commission's final order in respect of the Petitioners' and other NFP Electric Entities' electric operations-related transactions has yet to be issued. During the interim period before the Commission issues a final order, the Petitioners and other NFP Electric Entities must be able to enter into the Electric Operations-Related Transactions between and among NFP Electric Entities in order to operate their electric facilities and deliver electric service to their customers, and to hedge or mitigate the commercial risks arising from electric operations, without disruption of their ongoing businesses.

The Petitioners' request for no-action relief is based on the Petitioners' original descriptions of the entities and transactions for which relief is sought in the Application submitted to the Commission on June 8, 2012, rather than on the descriptions proposed by the Commission in the Proposal because of the importance of the clarifications requested in the Petitioners' Comment Letter.

⁵ 77 Fed. Reg. 50998 (August 23, 2012) (the "Proposal").

⁶ Pub. L. No. 111-203 (2010) ("Dodd-Frank Act").

⁷ A copy of the Comment Letter can be found at <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58828&SearchText>.

⁸ 5 U.S.C. §§ 601-612 (as amended Mar. 29, 1996). Comments from other entities were also submitted.

II. The Request for No-Action Relief

Beginning October 12, 2012, the electric industry, including the Petitioners and other NFP Electric Entities, will become subject to certain of the Commission's new rules regulating "swaps," issued to implement and interpret Title VII of the Dodd-Frank Act, including the "Product Definitions Release" implementing Section 721(a)(21) of the Dodd-Frank Act.⁹ In light of the October 12, 2012 effective date, the continuing regulatory uncertainty resulting from the Commission's ongoing regulatory proceedings in respect of the definition of "swap" and the exclusions therefrom, and in order to ensure that the Commission has sufficient time to consider fully the comments submitted in response to the Proposal (and the comments due on the Product Definitions Release on October 12, 2012 as well), including conducting a full analysis under the SBREFA, the Petitioners request that the appropriate divisions of the Commission grant no-action relief. The Petitioners respectfully request that the no-action relief state that the Commission's Divisions will not recommend that the Commission commence an enforcement action against any NFP Electric Entities for failure to comply with any provisions of the CEA, or the Commission's regulations thereunder (except for the anti-fraud and anti-manipulation provisions) in respect of Electric Operations-Related Transactions between and amongst NFP Electric Entities until the Commission takes final action with respect to the Proposal, and the final order is effective.

The Petitioners and other NFP Electric Entities enter into nonfinancial (or "physical") energy and energy-related commodity transactions, and rely on energy commodity swaps, futures, forwards and options to hedge or mitigate commercial risks arising from their electric operations. They are not financial entities, but commercial "end users." The transactions between and among NFP Electric Entities represent no risk to the US financial system, and take place within a "closed loop" of entities for which Congress specifically intended the Commission to waive jurisdiction after a public interest waiver process provided for in Section 722(f) of the Dodd-Frank Act. The Petition, the Proposal and ultimately the Commission's final order constitute the public interest waiver process that Congress anticipated. Without such interim no-action relief, the NFP Electric Entities, and the Electric Operations-Related Transactions between the NFP Electric Entities, may be subject to the requirements of the CEA and the Commission's regulations during the period between October 12, 2012 and the date when the Commission's final order concerning the Proposal is effective. Such a result would be directly contrary to Congresses intent in section 722(f) of the Dodd-Frank Act.

The Petitioner's also wish to point out that on September 24, 2012, the Joint Associations¹⁰ submitted a request for comprehensive relief from the rules being promulgated by the Commission to implement the Dodd-Frank Act in the form of an extension of all applicable

⁹ Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48207 (August 13, 2012).

¹⁰ The Joint Associations include the Edison Electric Institute, the American Gas Association and the Electric Power Supply Association.

effective dates and compliance dates or, in the alternative, comprehensive “no action” relief (“Joint Associations’ Request”).¹¹ Certain of the Petitioners (NRECA, APPA, LPPC and TAPS, collectively, the “NFP Electric Trade Associations”), on September 27, 2012, submitted a letter of support of that request (“Support Letter”). Therein, the NFP Electric Trade Associations requested that the comprehensive relief extend until the beginning of a Transition Period (as such term is defined in the Joint Association’s request) that will commence only when all of the Commission’s rulemakings required to implement the Dodd-Frank Act in respect of Energy Commodity Swaps have been completed, and all applicable rulemaking decisions have been published in the Federal Register and are effective.¹² Because it is not known whether the Commission will grant that request, it is imperative that the Commission act on the Petitioners’ request for no-action relief to ensure at a minimum that the NFP Electric Entities can continue to engage in Electric Operations-Related Transactions between and among NFP Electric Entities in order to operate their electric facilities and service their customers without serious disruption.

For all of the aforementioned reasons, the Petitioners respectfully request that the appropriate divisions of the Commission grant the no-action relief requested. Please contact any of the individuals below or Patricia Dondanville, Reed Smith LLP, 10 South Wacker Drive, 40th Floor, Chicago Illinois 60606, telephone (312) 207-3911, or e-mail (pdondanville@reedsmith.com), if you have questions regarding this request for no-action relief.

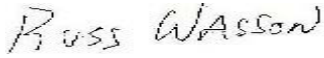
¹¹ *Request for an Extension of the Effective and Compliance Dates for Dodd-Frank Regulations Affecting Non-SD/MSP Energy Market Participants, or, in the Alternative, for No-Action Relief*, filed September 24, 2012.

¹² Support letter at pages 4-5.

REQUEST FOR NO-ACTION RELIEF

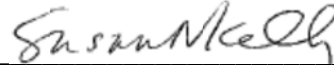
Respectfully submitted,

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION



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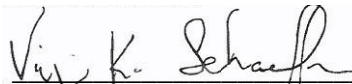
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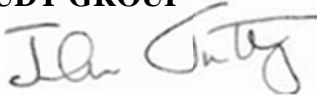
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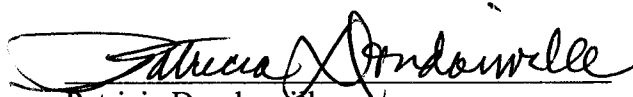
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I hereby certify that the material facts upon which the Petitioners no-action request are based are true and complete to the best of my knowledge, information and belief.¹³



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Counsel for the Petitioners

cc: Honorable Gary Gensler, Chairman
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Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott O'Malia, Commissioner
Dan Berkovitz, General Counsel
Graham McCall, Attorney Advisor
David Van Wagner, Chief Counsel

¹³ In addition, I hereby agree that, if any time prior to issuance of a no-action letter, any material statement made in this letter ceases to be true and complete, I will ensure that the Commission Staff is informed promptly in writing of all materially changed facts and circumstances.