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Via Electronic Submission

October 5, 2012

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

Re: Comments in Support of Petitions for Rulemaking to (1) Amend CFTC Regulation 1.3(ggg)(4) to exclude “Utility Operations-Related Swaps”; and (2) Extend the Effective and Compliance Dates for Dodd-Frank Regulations Affecting Non-Swap Dealer/Major Swap Participant Energy Market Participants

Dear Ms. Yochum:

The New York State Municipal Power Agency (“NYMPA”) respectfully submits these Comments in Support of Petitions for Rulemaking to (1) Amend CFTC Regulation 1.3(ggg)(4) to Exclude “Utility Operations-Related Swaps”; and (2) Extend the Effective and Compliance Dates for Dodd-Frank Regulations Affecting Non-Swap Dealer/Major Swap Participant Energy Market Participants.

Following the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), the Commodity Futures Trading Commission (“CFTC” or “Commission”) issued an array of rulemakings, a number of which significantly affect the energy industry. Many of these rulemakings are still pending further comment and evaluation by the Commission. This regulatory instability has left affected parties confused about their regulatory obligations and apprehensive about their ability to ensure reliable and economical power to end users. While NYMPA commends the CFTC for its hard work in reforming the regulatory structure of the commodities markets, NYMPA is very concerned about the adverse ramifications of the special entity de minimis threshold that the CFTC has capped at a \$25 million aggregate gross notional amount.

NYMPA therefore respectfully urges the Commission to grant the relief requested in the July 12, 2012 Petition for Rulemaking to Amend CFTC Regulation 1.3(ggg)(4) (“Petition to Amend”) jointly submitted by the 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”). The Petitioners’ proposal would exclude “Utility Operations-Related Swaps” from the “special entity sub-threshold” in CFTC Regulation 1.3(ggg)(4). Additionally, in light of the regulatory flux coinciding with the quickly approaching October 12, 2012 Effective Compliance Date, NYMPA asks that the Commission grant the relief requested in the September 24, 2012 “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” (“Request for Extension”) collectively submitted by the Edison Electric Institute (“EEI”), American Gas Association (“AGA”), and the Electric Power Supply Association (“EPSA”), and supported via Comments by the APPA and LPPC on September 27, 2012.

1. Introduction

The New York Municipal Power Agency (“NYMPA”) is a Joint Action Agency comprised of 36 member municipal electric utilities that have compacted pursuant to New York State’s General Municipal Law to acquire reliable and economical power that the agency subsequently redistributes to its members. Access to a dependable and competitively priced power supply on the wholesale market is essential to the fulfillment of the energy needs of member municipalities’ end-users. In the volatile New York State electricity market, contracts to secure future prices are crucial to end-users such as NYMPA for locking in competitive, low-risk prices.

In the New York State electricity market, end-users frequently utilize the New York Independent System Operator (“NYISO”) to purchase power in the day-ahead market; they then settle the final price financially in accordance with the predetermined terms of a power swap. Because of this setup, NYMPA has been able to freely—and easily—enter into those power swap contracts that best serve the public interest both in terms of reliability and competitiveness. NYMPA uses swaps *only* to hedge its actual physical needs. Its internal policy indeed prohibits any speculation. This load hedging provides NYMPA with assurance that it has the capacity to meet the power needs of its members, and to do so in the most economical way for ratepayers. NYMPA’s counterparties include entities that do not fall within the definition of swap dealer provided by the Dodd-Frank Act. As Petitioners described in their Petition to Amend, “nonfinancial commodity markets play a central role in government-owned utilities securing electric energy, fuel for generation and natural gas supplies for delivery to consumers at reasonable and stable prices.” The convenient and cost effective use of power swaps in the New York market depends on the availability of counterparties with which NYMPA can transact.

2. Request for Amendment to CFTC Regulation 1.3(ggg)(4) to Exclude “Utility Operations-Related Swaps”

NYMPA’s access to reliable and competitively priced energy is now endangered by CFTC Rule 1.3(ggg)(4). This rule sets forth the “de minimis exception” to the swap dealer definition, excluding from both the definition and its accompanying clearing requirements those persons “not currently registered as a swap dealer” which have “an aggregate gross notional amount of no more than \$25 million (*the ‘special entity sub-threshold’*) with regard to swaps in which the counterparty is a ‘special entity’ . . .” Because of this unreasonably low threshold, entities that otherwise do not fall within the swap dealer definition are completely deterred from transacting with special entities. As described in Section D of the Petition to Amend, “[a] single one-year 100 MW swap . . . may have a notional value of \$25 million.” In other words, one swap with a special entity such as NYMPA could immediately change the status of a counterparty from non-dealer to swap dealer.

Because of this risk, several of NYMPA’s counterparties have explicitly conveyed to NYMPA that its status as a special entity prevents these counterparties from engaging in any swap transactions with NYMPA until the de minimis threshold is amended. NYMPA remains at risk of additional counterparties refusing to enter financially settled agreements with NYMPA.

3. 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

The uncertain regulatory state is problematic for entities that depend on a reliable commodities market to ensure electric needs are met. NYMPA therefore supports the September 24, 2012 Request for Extension. As those commenters aptly noted, the requirement that compliant entities track their “de minimis dealing” activity “has one of the earliest compliance dates” in October 12, 2012. It is therefore essential that “[a]bsent clarity on these outstanding issues—namely, the types of transactions and entities implicated by the *de minimis* thresholds—it is appropriate that the Commission delay the date upon which market participants’ must begin to count their swap dealing transactions toward the *de minimis* thresholds.”

4. Conclusion

The Dodd-Frank Act’s statutory protections for special entities were enacted to ensure that these public entities were indeed protected. Surely, the Commission could not have intended to place public utilities in a position that puts these end-users at a greater risk in connection with attaining a reliable and efficient power supply. If counterparties continue to disengage with NYMPA because of NYMPA’s status as a special entity, these risks will become a reality. It is with this very real concern that NYMPA respectfully urges the Commission to adopt the relief requested in both the Petition to Amend and the Request for Extension.

Stacy Yochum, Secretary
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Respectfully submitted,

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