CALPINE

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February 22, 2011

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

Re: Further Definitions of "Swap Dealer" and "Major Swap Participant" (RIN 3038-AD06)

Dear Mr. Stawick:

Calpine Corporation hereby submits these comments in response to the Commodity Futures Trading Commission's ("CFTC") and the Securities and Exchange Commission's December 21, 2010 joint proposed rule ("Proposed Rule") further defining key terms contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). Under the Proposed Rule, the CFTC proposes rules and interpretative guidance on the definitions of several key terms, including the terms "swap dealer" and "major swap participant" as part of its implementation of Section 712(d)(1) of Title VII of the Dodd-Frank Act.

Calpine is a Delaware corporation engaged through subsidiaries in the development, financing, acquisition, ownership, and operation of independent power production facilities and the wholesale marketing of electricity in the United States and Canada. Through various subsidiaries, Calpine owns, leases, and operates natural gas-fired and renewable geothermal power plants in 20 states and Canada with an aggregate capacity of approximately 27,500 megawatts.

Calpine is a member of the Electric Power Supply Association ("EPSA"). EPSA and the Edison Electric Institute (collectively "Joint Associations") are filing today detailed comments on the CFTC's proposed definition of "swap dealer" and "major swap participant." As a member of EPSA, Calpine adopts the Joint Associations' comments and urges the CFTC to revise its proposed definitions of swap dealer and major swap participant consistent with the Joint Associations' comments.

The Joint Associations believe that the Proposed Rule is generally effective in implementing Congress' intent to exclude commercial entities from the definition of swap dealer and major swap participant. Their comments are intended to clarify the proposed regulatory text and to provide examples of electric industry hedging and swap activities. The purpose of Calpine's comments is to provide the CFTC with a deeper understanding of independent power producers ("IPP"), such as Calpine, how IPPs generally conduct their business, and how IPPs, such as Calpine, engage in hedging and swap activities.

Calpine's Business Model

Calpine's portfolio is primarily comprised of two types of power generation technologies: natural gas-fired combustion turbines, which are primarily combined-cycle plants, and renewable geothermal conventional steam turbines. Calpine's regular business is the generation of electricity and its ancillary by-products via the procurement of fuels such as natural gas and fuel oil. Calpine sells wholesale power, steam, capacity, renewable energy credits and ancillary services to its customers, including utilities, independent electric system operators, industrial and agricultural companies, retail power providers, municipalities and power marketers. Calpine purchases natural gas and fuel oil as fuel for its power plants and engages in related natural gas transportation and storage transactions. Calpine also purchases electric transmission rights to deliver power to its customers. Calpine also enters into natural gas and power contracts that are both physical and financial to hedge certain business risks and optimize its portfolio of power plants.

Calpine's Marketing, Hedging and Optimization Activities

The majority of Calpine's power and fuel marketing, hedging and optimization activities are related to risk exposures that arise from ownership and operation of our power plants. As the largest IPP and one of the largest consumers of natural gas in the U.S., Calpine is naturally long power and short gas, but more importantly, our position is naturally long the economic spread between the relationship of power and fuel prices as compared to the production efficiency of our generation units. Calpine's physical and financial marketing, hedging and optimization activities serve to protect and enhance our commodity margin.

Calpine's hedging strategy focuses first on protecting our balance sheet, with particular focus on our debt obligations, committed capital expenditures and other obligations. Secondly, Calpine's hedging efforts attempt to maximize our risk adjusted commodity margin by leveraging the unique operating and production capabilities of our power generation facilities, plus our knowledge, experience and fundamental views on gas and power. Calpine actively manages commodity price risk with a variety of tools, including long and short-term power purchase agreements, power swaps, power options and other contracts for the sale of power and steam, and fuel procurement contracts, natural gas swaps and natural gas options.

Calpine enters into power and fuel positions that often act as hedges to our asset portfolio. While Calpine's selling and purchasing of power and fuel is mostly physical in nature, we also engage in activities, particularly in natural gas, that are financial in nature. Calpine uses derivative instruments, which include physical commodity contracts and financial commodity instruments such as OTC and exchange traded swaps, futures, options, forward agreements and instruments that settle on the power price to natural gas price relationships (Heat Rate swaps and options) for the purchase and sale of power, natural gas, fuel oil, renewable energy credits and emission allowances to manage commodity price risk and to maximize the risk-adjusted returns from our power and fuel assets. These positions are included in and subject to Calpine's consolidated risk management portfolio position limits and controls structure.

Calpine conducts its hedging and optimization activities within a structured risk management framework based on controls, policies and procedures. Calpine's Chief Risk Officer's organization monitors these activities through active and ongoing management and oversight, defined roles and responsibilities, and daily risk measurement and reporting. Additionally, we seek to manage the associated risks through diversification, by controlling position sizes, by using portfolio position limits and by entering into offsetting positions that lock in a margin. The Chief Risk Officer's organization is segregated from the commercial operations unit and reports directly to Calpine's Audit Committee and Chief Executive Officer. Calpine's risk management policies limit our hedging activities to protect and optimize the value of our physical assets. While this policy limits Calpine's potential upside from hedging activities, it is primarily intended to provide us with a degree of protection from significant downside energy commodity price exposure to our cash flows.

Calpine's Marketing, Hedging and Optimization Activities Should Not Qualify it as a Swap Dealer or Major Swap Participant

Calpine's marketing, hedging and optimization activities are consistent with two examples provided by the Joint Associations in Section IV of their letter. The first is as Company A in the Company No. 1 – Commercial Firm example and the second is Company No. 2 – Power Generator. As explained by the Joint Associations:

Company No. 1 – Commercial Firm

> Company A owns an electric generating plant that sells in the electricity spot market. Company B is a retail seller of electricity that sells electricity to its

customers at fixed prices, but purchases the electricity it sells in the spot market.

Company A desires to hedge its spot sales exposure by entering into a swap in which it pays a floating price and receives a fixed price payment. Company B desires to hedge its spot purchase exposure by entering into a swap where it pays a fixed price and receives a floating price payment.

Company A and Company B have bilateral trading documents and agreed credit terms in place. They are aware of each others' business needs and periodically communicate regarding the possibility of mutually beneficial trades to hedge their respective commercial risks.

Company A and Company B enter into a swap where Company A is the floating price payer and Company B is the fixed price payer. The swap is priced such that Company B makes a margin between the fixed price it receives from its retail customers and the fixed price it pays to Company A. The floating price is the spot electricity price.

Company A and Company B would not be characterized as swap dealers. They each are entering into a swap to hedge their respective commercial risks. Company A has fixed its output price. Company B has locked-in its margin and hedged its purchase price. While the companies could achieve the same result by using an intermediary, such as a swap dealer, their transaction is more economic because it does not involve an intermediary.

Company No. 2 – Power Generator

Company No. 2 is an electricity generating company that owns a fleet of power plants. The company enters into swaps to hedge the price risk of the collective output of the generating fleet by entering into longer-term transactions that fix the price it receives for that output, thereby avoiding the risk associated with volatility and market forces during the term of those transactions, and, to a lesser extent, to hedge price risk associated with some of the fuel supply it uses to generate the electricity. Company No. 2 adjusts its swap position over shorter time frames to address changes in expected output by buying back swaps if it expects output to be lower, or entering into new swaps if it expects output to be higher, whether due to changing macroeconomic market fundamentals such as fuel price changes, changes in expected demand, or plant-specific events such as an extended forced outage.

> Principally to discover prices, Company No. 2 enters into a small number of swaps, subject to low VaR (value at risk) limits, that are not for hedging.
>
> Company No. 2 would not be characterized as a swap dealer. Its swaps are primarily for the purpose of hedging or mitigating the commercial risk arising from its physical generation business. As such, Company No. 2 does not accommodate demand by entering into swaps in response to interest expressed by other parties. The only swaps Company No. 2 enters into, other than for the purpose of hedging, are primarily for the purpose of price discovery. Its portfolio or book of these types of trades, however, is a very small percentage of its total book of swaps to ensure that any losses are insignificant. [1]

As explained by the Joint Associations, generators such as Calpine enter into marketing, hedging and optimization activities, which include swap transactions, to hedge risks associated with their business. The financial transactions entered into by generators are done in the ordinary course of business. These activities do not increase risk or undermine the financial integrity of the generator's business or introduce any systemic risk into the U.S. economy. As the largest IPP and one of the country's largest natural gas consumers, it is imperative that Calpine be permitted to manage its substantial portfolio of risks with its hedging activities, including entering into swaps, without being classified as a swap dealer or major swap participant. Such a designation would have a chilling effect on our business model and would significantly impact our ability to adequately manage risk in the future.

Also, it is important that the CFTC understands that a physical commodity company such as Calpine owns unique and specialized instruments as a consequence of its regular business of owning and operating power generation facilities. As such, we should be able to actively hedge all of the various unique and specialized instruments that are naturally embedded within our portfolio of physical assets without being classified as a swap dealer under the Dodd-Frank Act simply because we are transacting in a product or instrument that only Calpine can actually own or transact in.

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[1] Joint Associations' February 22, 2011 comments, *Definitions of Swap Dealer and Major Swap Participant, RIN 3038-AD06.*

Conclusion

Calpine appreciates the opportunity to provide these comments in this proceeding. Calpine urges the CFTC to issue a final rule consistent with these comments and those of the Joint Associations.

Respectfully Submitted,

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