



**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: Comments on the Proposal to Exempt Certain Transactions Involving Not-for-Profit Electric Utilities**

Dear Mr. Stawick:

The Electric Power Supply Association (“EPSA”) and the Edison Electric Institute (hereafter “Joint Associations”) respectfully submit these comments in support of the Proposal to Exempt Certain Transactions Involving Not-For-Profit Electric Utilities (“Proposed 201(f) Exemption”).<sup>1</sup>

On August 23, 2012, the Commission published the Proposed 201(f) Exemption in the Federal Register in response to a request filed by the National Rural Electric Cooperative Association (“NRECA”), the American Public Power Association (“APPA”), the Large Public Power Council (“LPPC”), the Transmission Access Policy Study Group (“TAPS”), and the Bonneville Power Administration (“BPA”) (collectively, “Petitioners”) requesting that the Commodity Futures Trading Commission (“Commission”) grant an exemption from certain requirements under the Commodity Exchange Act (“CEA”), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”),<sup>2</sup> for all “Electric Operations-Related Transactions between not-for-profit, or 201(f), entities.”<sup>3</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> *Proposal to Exempt Certain Transactions Involving Not-for-Profit Electric Utilities*, 77 Fed. Reg. 50998 (August 23, 2012).

<sup>2</sup> Pub. L. No. 111-203 (2010).

<sup>3</sup> 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 June 8, 2012. (“Petition”).

electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers.<sup>4</sup>

EEI is the association of U.S. shareholder-owned electric companies. EEI's members serve 95 percent of the ultimate customers in the shareholder-owned segment of the U.S. electricity industry, and represent approximately 70 percent of the U.S. electric power industry. EEI also has more than 65 international electric companies as Affiliate members, and more than 170 industry suppliers and related organizations as Associate members. EEI's members are physical commodity market participants that rely on swaps and futures contracts primarily to hedge and mitigate the commercial risk that they incur in operating their businesses. They are not financial entities

Joint Associations 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.

Joint Associations support the Commission's Proposed 201(f) Exemption and agree that the Proposed 201(f) Exemption is in the public interest. The Commission requests comment on a number of specific issues related to the entities included under not-for-profit or 201(f) entities, and the particular transactions subject to the Proposed 201(f) Exemption. Joint Associations provide general comments on how the Proposed 201(f) Exemption meets the requirements of § 4(c) of the CEA and is consistent with the public interest.

The Commission requests comments on the scope of entities included in the Proposed 201(f) Exemption. Joint Associations agree that the entities proposed to qualify for exemptive relief under the Proposed 201(f) Exemption is appropriate. The entities eligible to apply for the exemption include government-owned electric utilities as described in §201(f) of the Federal Power Act ("FPA"), electric utilities owned by Federally-recognized Indian tribes, and cooperatively-owned electric utilities that are treated as cooperative organizations under the Internal Revenue Code.<sup>5</sup> Joint Associations agree with the Commission's determination that such entities will have less financial incentive to engage in market manipulation or abusive trading practices and, as such, meet the public interest requirements for exemption under CEA § 4(c). Therefore, Joint Associations support the Commission granting the Proposed 201(f) Exemption.

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<sup>4</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>5</sup> 77 Fed. Reg. 51006 (Aug. 23, 2012).

The Commission also requested comments on the scope of the transactions included in the Proposed 201(f) Exemption. The proposed exemptive relief would apply to non-financial energy transactions, including agreements, contracts, or transactions, entered into between entities categorized as exempt in the Proposed 201(f) Exemption. These transactions would be limited to six categories of transactions including Electric Energy Delivered, Generation Capacity, Transmission Services, Fuel Delivered, Cross-Commodity Pricing, and Other Goods and Services, as defined in the Proposed 201(f) Exemption. These specific transactions facilitate the generation of electric energy by an appropriate entity under the Proposed 201(f) Exemption, the purchase or sale and transmission of electric energy between an appropriate entity under the Proposed 201(f) exemption, and compliance with electric system reliability obligations applicable to an appropriate entity under the Proposed 201(f) Exemption.<sup>6</sup> Because the Commission finds that such transactions, when undertaken by appropriate entity under the Proposed 201(f) Exemption, are unlikely to impact price discovery or the functioning of Commission-regulated markets, the Commission finds exemptive relief appropriate for such transactions under CEA § 4(c).<sup>7</sup> Joint Associations agree with the Commission's finding and support the Commission granting the Proposed 201(f) Exemption.

Joint Associations appreciate the Commission's consideration of our comments supporting the Proposed 201(f) Exemption. For the reasons stated herein, we respectfully request that the Commission grant the Proposed 201(f) Exemption.

We are happy to discuss any comments further. Please feel free to contact the undersigned if you have any questions regarding these comments.

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<sup>6</sup> 77 Fed. Reg. 51088 (Aug. 23, 2012).

<sup>7</sup> *Id.*

David Stawick, Secretary  
September 24, 2012  
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Respectfully submitted,



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