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June 30, 2014

Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street NW
Washington, DC 20581

Re: Comments in Support of Rulemaking for Exclusion of Utility Operations-Related Swaps with Utility Special Entities from De Minimis Threshold for Swaps with Special Entities; RIN 3038-AE19

The City of Redding, California ("Redding") respectfully submits these comments in support of the Commodity Futures Trading Commission's ("Commission") proposed rule on the Exclusion of Utility Operations-Related Swaps with Utility Special Entities from De Minimis Threshold for Swaps with Special Entities ("Proposed Rule").

Description of Redding:

Redding is a General Law City organized under the laws of the State of California, owning and operating a municipal electric utility system engaged in the generation, transmission, distribution, purchase, and sale of electric power and energy at wholesale and retail. Redding serves its customers through a combination of energy generated and delivered on its own facilities, and energy products purchased and delivered under contractual arrangements with third parties. Access to dependable and competitively priced power supply is essential to Redding's municipal electric utility system. Redding qualifies as a "Special Entity" as defined by the Commodity Exchange Act ("CEA") and the Commission's regulations, and Redding would qualify as a "Utility Special Entity" under the proposed rule.

Background:

Section 1.3(ggg)((4) of the CEA provides an exception from the definition of a "swap dealer" for persons entering into swap positions that in the aggregate do not exceed, during the preceding twelve-month period, an aggregate gross notional amount of: (1) $3 billion, subject to a phase in level of $8 billion ("General De Minimis Threshold"); and (2) $25 million for swaps in which the counterparty is a "Special Entity" ("Special Entity De Minimis Threshold"). The CEA in section 4s(h)(2)(C) defines "Special Entities" as entities including federal agencies, states, state agencies, cities, counties, municipalities, and other political subdivisions.

On July 12, 2012, 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 ("Petitioners") filed a petition for rulemaking. The petition proposed revisions to the Commission's Regulation 1.3(ggg)(4), requesting to exclude from the Special Entity De Minimis Threshold swaps that relate to utility operations that are entered into by "Utility Special Entities." Petitioners explained this revision was necessary "to preserve uninterrupted and cost-effective access to the customized, nonfinancial commodity swaps that Petitioners and other 'utility Special Entities' use to hedge or mitigate commercial risks arising from their utility facilities, operations and public service obligations."[1]

Subsequently, on June 2, 2014, the Commission issued the Proposed Rule, adopting Petitioner's request and providing for an exclusion of utility operations-related swaps with "utility Special Entities" and new definitions implementing such revisions. In addition to this exclusion, the Proposed rule would require persons relying on the exclusion to file a "Notice of Reliance" on the exclusion and to maintain books and records substantiating eligibility to rely on the exclusion.

Comments:

Redding commends the Commission for its responsiveness to this important issue and appreciates the opportunity to provide comments. Redding supports the Proposed Rule as it eliminates the competitive disadvantage to "Special Entities" seeking utility operations-related swaps. Under the current rules, counterparties to swaps with "Special Entities," like Redding, are required to register as "swap dealers" if such swaps aggregate $25 million or more, while counterparties with investor-owned utilities only become "swap dealers" if they engage in swaps of $3 billion or more. Since investor-owned utilities and "Special Entities" both rely on utility operations-related swaps to reduce utility customer exposure, this threshold distinction arbitrarily distorts the playing field of these utility-providing competitors and limits the available counterparties that may be willing to participate in swaps with "Special Entities," like Redding.

The Proposed Rule narrowly excludes "utility operations-related swaps" from the Commission's "swap dealer" regulations, eliminating the discrepancy between the General De Minimis Threshold and the Special Entity De Minimis Threshold. Eliminating the threshold distinction for "utility operations-related swaps" will allow Redding to fairly compete for counterparties to "utility operations-related swaps," including with counterparties that do not want to be registered "swap dealers." The exclusion properly rectifies the disparate treatment of "Special Entities" and investor-owned utilities, and Redding therefore supports the Proposed Rule. In the following section, Redding responds to the Commission's specific questions contained in the Proposed Rule.

Responses to Request for Comments:

1. **Will the Proposal enable utility Special Entities to adequately hedge their operational risks in a cost-effective manner by entering into utility operations-related swaps? If not, explain why, and indicate ways in which the Proposal could be modified in order to accomplish this goal.**

[1] Petitioner's July 12, 2012 Filing at 2.

Yes, the Proposal will enable utility Special Entities to adequately hedge their operational risks in a cost-effective manner by entering into utility operations-related swaps. The Proposal should increase the available counterparties to such swaps and thereby creates price competition for these swaps.

2. **Are there factual errors or omissions in the Commission's understanding and analysis of the issues faced by utility Special Entities and the efforts to date to resolve those issues?**

   We have not identified factual errors or omissions in the Commission's understanding and analyses of these issues.

3. **Is it appropriate to treat utility operations-related swaps with utility Special Entities differently than other swaps with Special Entities for purposes of determining whether a person is a swap dealer?**

   Yes, it is appropriate to treat utility operations-related swaps with utility Special Entities differently than other swaps with Special Entities for purposes of determining whether a person is a swap dealer. This different treatment is appropriate because utility Special Entities with utility operations directly compete against investor-owned companies with utility operations, and the exclusion will level the playing field for utility operators. In addition, Utility Special Entities are experienced counterparties in energy transactions, and are familiar with hedging programs. The utility operations of Special Entities are, therefore, different from the general governmental functions of Special Entities, which may lack the expertise to engage in swap transactions, and may benefit from the Special Entity protections. Eliminating utility operations – related swaps from Special Entity De Minimis Threshold will allow Utility Special Entities to engage in hedging transactions with counterparties that are not interested in being swaps dealers.

4. **Does the definition of utility operations-related swap in proposed Regulation 1.3(ggg)(i)(4)(B)(3) adequately encompass the range of swap transactions with respect to which it is appropriate to, in effect, set a higher de minimis threshold in the context of persons dealing with utility Special Entities? If not, in what way(s) should the definition be expanded or narrowed and why? More specifically, should the scope of the swaps identified in Regulation 1.3(ggg)(i)(4)(B)(3)(iv) be expanded or narrowed? Are there swaps that would meet the requirements of Regulation 1.3(ggg)(i)(4)(B)(3)(i), (ii) and (iii), but not of Regulation 1.3(ggg)(i)(4)(B)(3)(iv) that should be included? Is Regulation 1.3(ggg)(i)(4)(B)(3)(iv) too restrictive or not restrictive enough?**

   Yes, the revised definition in Regulation 1.3(ggg)(4)(i)(B)(3) adequately encompasses the range of swap transactions necessary. The Proposal does not need further revision.

5. **One of the conditions to coming within the definition of the term "utility operations-related swap" is that the party to the swap that is a utility Special Entity is using the swap in the manner prescribed in Regulation 50.50(c) – i.e., to hedge or mitigate**

commercial risk. What issues might there be in determining whether a swap constitutes hedging activity for purposes of complying with this proposed rule? Is reference to Regulation 50.50(c) for defining hedging activities appropriate? Are there alternative definitions that should be considered (e.g., Regulation 1.3(ggg)(6)(iii))? Should the definitions for hedging activities in Regulation 50.50(c) and Regulation 1.3(ggg)(6)(iii) be harmonized? If so, how (e.g., by following Regulation 50.50(c) or Regulation 1.3(ggg)(6)(iii) or some iteration of both) and why? Please provide any estimates of costs of compliance with any proposed alternative as compared to the cost of compliance with Regulation 50.50(c).

Redding does not at this time anticipate problems with the reference to Regulation 50.50(c).

6. **Another condition to coming within the proposed definition of the term "utility operations-related swap" is that the swap be related to an exempt commodity (as defined in CEA Section 1a(20)). Is this condition appropriate? If not, why not and/or how and why should it be modified?**

   Redding is not aware of utility operations – related swaps that would involve non-exempt commodities.

7. **Should the definition of utility operations-related swap be limited to swaps in which both parties to the swap transact as part of the normal course of their physical energy businesses?**

   No, the definition of utility operations-related swap should not be limited to swaps in which both parties to the swap transact as part of the normal course of their physical energy businesses. Limiting the definition as suggested would unnecessarily eliminate counterparties, such as financial institutions, that are not engaged in utility operations. Doing so could significantly reduce the pool of potential counterparties for Utility Special Entities.

8. **The Proposal would allow persons to, in effect, treat utility operations-related swaps in which the counterparty is a utility Special Entity like swaps with a counterparty that is not a Special Entity in determining whether the person has exceeded a de minimis threshold under Regulation 1.3(ggg)(4)(i)(A). Thus, utility operations-related swaps with utility Special Entities would be subject to the General De Minimis Threshold under Regulation 1.3(ggg)(4)(i), which is currently set at the $8 billion phase in level. Is that an appropriate threshold, or should the de minimis threshold for such swaps be higher or lower? What considerations support using a different amount? Should the de minimis threshold for utility operations-related swaps be set at $3 billion, the level of the General De Minimis Threshold without application of the $8 billion phase-in level, in light of the special protections afforded to Special Entities under the CEA? Should the threshold be set at an amount equal to a percentage of the gross notional amount of the General De Minimis Threshold, such that an increase or decrease in the gross notional amount of the General De Minimis Threshold would result in a proportionate change in the de minimis threshold for utility operations-related swaps?**

The Proposal is set at the appropriate threshold. The $8 billion phase-in level is the threshold amount applicable to counterparties participating in utility operations-related swaps with investor-owned utilities to create a level playing field, the threshold amount applicable to counterparties to operations-related swaps with Special Entities should be the $8 billion phase-in.

9. **Should the nature of the person entering into swaps with a utility Special Entity determine whether the person can rely on the exclusion for utility operations-related swaps under the Proposal (e.g., by limiting the exclusion to persons who are not "financial entities," as Staff Letter 12-18 limited relief to such persons)? If so, what characteristics or factors should be considered?**

No, the Proposal should not limit the exclusion to persons who are not "financial entities" as any such limitation may decrease the amount of available counterparties to utility operations-related swaps with Special Entities.

10. **Should the Commission specify the books and records a person must maintain to substantiate that the person may rely on the (proposed) exclusion for utility operations-related swaps?**

We have no comment on this portion of the Proposal.

11. **Would the Proposal impact the Commission's ability to carry out its market oversight responsibilities with regard to the overall derivatives market? If so, how?**

Redding does not believe the Proposal will affect market oversight or transparency because the swaps reporting and recordkeeping requirements are not affected by the Proposal.

12. **To what extent, if any, would the Proposal reduce transparency with regard to utility operations-related swaps, counterparties to such transactions or the broader derivatives market?**

Redding does not believe the Proposal will affect market oversight or transparency because the swaps reporting and recordkeeping requirements are not affected by the Proposal.

13. **Does the Proposal serve the public interest? In what ways? How could the Proposal be improved to better serve the public interest?**

Redding is not aware of ways the Proposal could be improved. The Proposal serves the public interest by assisting utility Special Entities in their mission to ensure reliability of utility service, in reducing their customer's exposure to future commodity price fluctuations, and in stabilizing utility rates.

14. **How should the Commission balance the public interest in having the additional protections that a de minimis threshold for transactions with utility Special Entities that is lower than the General De Minimis Threshold would afford, versus the public**

interest in maintaining the ability for utility Special Entities to enter hedging transactions?

The proposed rule adequately balances the interests. Utility Special Entities will have improved access to hedging transactions, while the special protections will be retained for swaps entered into by Special Entities for non-utility operations purposes.

15. **As noted above, it is important that the Commission be able to know who the persons are that rely on the exclusion under the Proposal to monitor compliance with the swap dealer registration requirement, and better ensure that the exclusion under the Proposal serves the intended purpose of enabling utility Special Entities to manage operational risks in a cost-effective way. Will the notice requirement in proposed Regulation 1.3(ggg)(4)(i)(B)(4) enable the Commission to achieve these objectives? If not, why? Is there an alternative method for the Commission to obtain the relevant information and achieve the stated objectives without requiring a notice filing?**

Yes, the proposed notice requirement will provide the Commission with visibility to monitor the entities utilizing the exclusion.

16. **Are there any Special Entities (or types of Special Entities) who come within the proposed definition of "utility Special Entity" (as set forth in proposed Regulation 1.3(ggg)(4)(i)(B)(2)), but are not likely to have expertise in utility operations-related swaps? If yes, describe those entities. Should persons dealing in swaps with those entities be treated differently than persons dealing with other utility Special Entities under the Proposal?**

Redding is not aware of any category of Utility Special Entities that are not likely to have experience with utility operations-related swaps.

17. **Should the description of swap dealing activity in the swap dealer definition be more specifically described for the purposes of defining swap dealing with utility Special Entities? What specific dealing or non-dealing activities should be taken into account given the nature of utility Special Entities? Have any compliance issues arisen with respect to the description of swap dealing activity in the swap dealer definition? If so, how should the Commission clarify the description?**

No, the description of swap dealing activity in the swap dealer definition does not require further specification for the purposes of defining swap dealings with utility Special Entities.

18. **Will utility Special Entities benefit if the Commission revised its interpretation regarding forward contracts with embedded volumetric optionality as described in the swap definition adopting release? If so, how? Is the seven element interpretation appropriate for determining whether a forward contract with volumetric optionality qualifies for the forward contract exclusion from the definition of a swap? If not, should the Commission revise the interpretation or adopt an alternative standard? If so, what should the revised interpretation or standard be?**

Redding has no comment on this issue at this time.

19. Regulation 1.3(ggg)(6)(iv) provides that swaps entered into by a floor trader who meets certain conditions do not need to be counted in determining whether the floor trader is a swap dealer. Should the Commission afford similar treatment to swaps entered into with utility Special Entities by their counterparties? For purposes of the de minimis calculation under the swap dealer definition, why should the Commission hold floor traders and entities dealing with utility Special Entities to different standards?

Redding has no comment on this portion of the Proposal.

Conclusion:

The City of Redding, California respectfully submits these comments in support of the Commission's proposed rule on the Exclusion of Utility Operations-Related Swaps with Utility Special Entities from De Minimis Threshold for Swaps with Special Entities.

Respectfully submitted,

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Electric Utility Director