



June 14, 2016

Christopher Kirkpatrick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

**Re: Notice of Proposed Order and Request for Comment,  
81 Fed. Reg. 30245, May 16, 2016 (the "Proposed Amendment")**

Dear Mr. Kirkpatrick:

Old Dominion Electric Cooperative ("ODEC") is an electric cooperative that owns electric generation and/or electric transmission assets<sup>1</sup> in the state(s) of Virginia, and Maryland, and enters into transactions under the tariff(s) of the following regional transmission organizations ("RTOs") or independent system operators ("ISOs"):

PJM Interconnection, LLC (collectively, the "RTO").

We do not enter into transactions under the tariffs of RTOs or ISOs that serve other geographic regions of the United States. The commercial risks arising from our electric operations

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<sup>1</sup> As an entity, an electric cooperative that owns generation and transmission assets (a "G&T Cooperative") is owned by its members. The member/owner customers of the G&T Cooperative are also electric cooperatives (the "Distribution Cooperatives"), or other not-for-profit electric utilities such as government-owned (e.g. municipal) electric utilities that distribute electricity to homes and businesses.. Electric cooperatives operate on a not-for-profit basis and are treated as "cooperatives" under Internal Revenue Code section 501(c)(12) or 1381(a)(2)(C), 26 U.S.C. 501(c)(12), 1381(a)(2)(C). A G&T Cooperative exists for the primary purpose of providing electric energy service to its member/owner customers. The members of the Distribution Cooperative are all consumers and businesses to which the Distribution Cooperative distributes electricity as a public service. The American not-for-profit electric cooperative business model is unique, and serves the vast majority of the nation's persistent poverty counties (327 out of 353, or 93%). These counties have deeply entrenched poverty with rates consistently 20% or above for the last three decades. In all, one-in-six of the 42 million Americans served by cooperatives live below the poverty line, many of them in these counties. See, for example, <http://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/geography-of-poverty.aspx>. Our trade association, NRECA, is one of the NFP Electric Associations, and we are a "not-for-profit electric entity" or NFP Electric Entity" as that term is used in the comment letters filed in various CFTC Dodd-Frank Act rulemaking dockets.

are most cost-effectively hedged using the RTO's tariffed transactions, or other commercial transactions that are customary for electric utilities in our region.<sup>2</sup> In this letter, we are focused strictly on the electric operations-related transactions that we enter into under the tariff of the RTO(s) designated above in order to hedge commercial risks.

We understand that each transaction we enter into under the RTO's tariff is exempt from all provisions of the Commodity Exchange Act, except the authority of the Commodity Futures Trading Commission (the "CFTC") under 15 enumerated CEA sections and CFTC regulations pursuant to those sections, under the 2013 RTO/ISO Exemption Order.<sup>3</sup> The regulatory certainty provided by the 2013 RTO/ISO Exemption Order is important to us. The RTO market was created by and is comprehensively regulated by FERC, which is the principal regulator of such market under the Federal Power Act. We participate in the RTO's stakeholder process.

The RTO's tariffed transactions assist us in achieving our public service mission -- to provide reliable 24/7/365 electric service to our members, in the most cost-efficient way possible consistent with good utility practice and environmental stewardship. We only enter into the RTO transactions to hedge commercial risks arising from our electric operations. As such, we are a "Commercial End-User-ONLY" or "CEU-Only Entity," and all of the RTO transactions we enter into are "CEU Hedging Transactions."<sup>4</sup>

In the "public interest" determination that the CFTC made in granting the 2013 RTO/ISO Exemption Order, the CFTC reserved *its own authority* to monitor fraud and market manipulation in the RTO market, along with certain other government enforcement authorities. As CEU-Only Entities, we welcomed these enumerated exceptions. We respect the CFTC's staff and their efforts to understand the unique nature of the 7 different RTO/ISO markets for regional electric operations-related transactions. We want the CFTC's enforcement staff as "an additional cop on the beat" to make sure the RTO markets function without fraud or market manipulation.

We also rely on the CFTC's agreement with FERC to cooperate in enforcement and other regulatory proceedings affecting our RTO market, as Congress intended. This inter-agency agreement is important to us, because our RTO market is different from other CFTC-regulated markets. It is complex, unique and customized to the electric grid reliability issues in our region. Inter-agency regulatory cooperation is critical so as not to unnecessarily burden or impose unnecessary costs on the RTO or its members (including us). Because the RTO's costs are ultimately borne by the RTO's member companies, increased costs at the RTO level means increased costs, dollar-for-dollar, for electric consumers in our region.

In response to the CFTC's request for comment on the Proposed Amendment, which proposes to amend the 2013 RTO/ISO Exemption Order, we respectfully request that the CFTC

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<sup>2</sup> We may also hedge commercial risks of electric operations, such as those associated with fuels we use for generation, using financial instruments such as futures or swaps, or commercial transactions such as trade options. We do not trade for profit, or speculate, in the financial markets. We only transact in commodities, or in financial or commodity derivatives, to hedge commercial risks arising from ongoing electric operations.

<sup>3</sup> Issued by the CFTC on March 28, 2013 (the "2013 RTO/ISO Exemption Order")

<sup>4</sup> Those terms are defined in the NFP Electric Association comment letter on speculative position limits rules, dated August 1, 2014, at <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59934&SearchText>.

not upset the carefully-balanced “public interest” exemption in the 2013 RTO/ISO Exemption Order by allowing private rights of action for transactions entered into under the RTO tariff.<sup>5</sup>

If private parties, represented by the plaintiffs’ trial bar, can challenge the RTO-tariffed transactions in Federal court,<sup>6</sup> electric cooperatives located in this region and other locally-based electric utilities will face increased costs. Unlike the CFTC, which we rely on to work in cooperation with FERC, some private plaintiffs may bring claims that are based on a misunderstanding of “prudent utility practice,” grid reliability objectives, or the public service mission of electric utility operations. We rely on the CFTC and the FERC to understand those important electric industry concepts. Our RTO, and we as RTO market participants, may have to pay to defend and, for cost reasons, settle such private lawsuits, whether or not a private party could ever prove in a court of law that an RTO transaction is a “swap”<sup>7</sup> or that market manipulation existed in these specialized regional markets for electric operations-related transactions.

Private parties, and the nationwide plaintiffs’ bar, are not appropriate representatives to enforce the CFTC’s government interest in fair and competitive electric markets. This is especially true in these FERC-tariffed transactions that are intrinsically linked to our need to hedge commercial risks of ongoing electric operations in a cost-effective manner, and keep the lights on at affordable rates for our region’s electric consumers and businesses.

In the alternative, if the CFTC decides to allow private rights of action in respect of RTO transactions by adopting the Proposed Amendment, we respectfully request that such actions not be allowed to challenge CEU Hedging Transactions, and not be allowed against CEU-Only Entities (in particular, against NFP Electric Entities). NFP Electric Entities are not traders or speculators. We do not have the incentive (as not-for-profit operating entities) to profit from or participate in fraud or manipulation. Our RTO transactions are all CEU Hedging Transactions.

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<sup>5</sup> The 2013 RTO/ISO Exemption Order was issued under CEA Section 4(c)(6), which was added to the CEA in the Dodd-Frank Act, concurrently with the CFTC’s jurisdiction over “swaps.” CEA Section 4(c)(6) recognizes that FERC- or State-tariffed transactions involve unique “public interest” considerations. RTO and ISO transactions exist to help the electric industry provide reliable, affordable electricity to American consumers and businesses. They are intrinsically linked to the reliable, efficient and cost-effective physical flow of electricity in a specific geographic region of the United States.

<sup>6</sup> A private party challenging an RTO transaction can pursue remedies through the RTO process, which are constructed with input from all stakeholders in the RTO. While not perfect, the RTO’s rules and processes are accessible to all entities that choose to participate in this RTO. In addition, a private party challenging an RTO transaction has recourse through the FERC should it suspect entities transacting in our RTO market of market manipulation or other illegal behavior warranting government enforcement. In the Federal Power Act, Congress did not provide for a private right of action for violations, but instead provided administrative remedies, recognizing that the over-arching regulatory mission of FERC and the electric utility industry to provide reliable electric power to the American public at “just and reasonable” rates should not be subject to challenge by entities without the same public service obligations.

<sup>7</sup> In its “public interest” determination, the CFTC exempted RTO/ISO tariffed transactions without determining if such transactions are “swaps” or subject to the CFTC’s jurisdiction under the CEA.

The burdens and costs that we would incur to defend against private rights of action will fall directly on electric cooperative consumer member/owners. Such a narrow carve out to a broad CEA Section 22 private right of action would clearly be in the “public interest” of keeping these important electric operations-related, commercial risk hedging transactions available for NFP Electric Entities.

Please contact the undersigned for more information or assistance.

Old Dominion Electric Cooperative

By: 

Its: Senior Vice-President and CFO