

**UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION**

**PETITION BY THE ELECTRIC TRADE ASSOCIATIONS¹
FOR PROMPT RECONSIDERATION OF PENDING PETITIONS UNDER
SECTION 723(c)(1) OF THE DODD-FRANK ACT**

I. Requested Commission Action

The “Electric Trade Associations” respectfully submit this petition (this “Petition”) to the U.S. Commodity Futures Trading Commission (the “Commission”). The Electric Trade Associations urgently request the Commission to reconsider the petitions submitted by the Electric Trade Associations in September of 2010 pursuant to Section 723(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”) (the “Section 723(c)(1) Petitions”). The Section 723(c)(1) Petitions requested the Commission to allow the Electric Trade Association’s members to continue to rely on the exemptions set forth in Section 2(h) of the Commodity Exchange Act (the “CEA”) for a period of one year after the Effective Date² of Title VII of the Dodd-Frank Act.

¹ The Electric Trade Associations include the National Rural Electric Cooperative Association (“NRECA”), the American Public Power Association (“APPA”), the Large Public Power Council (“LPPC”), the Edison Electric Institute (“EEI”) and the Electric Power Supply Association (“EPSA”). This Petition is submitted by the Electric Trade Associations, and may not represent the views of any particular member of any one or more of the Electric Trade Associations with respect to any issue. The Electric Trade Associations are grateful to the following organizations who have provided assistance and support in developing this Petition. We are authorized to note the involvement of these organizations and associated entities to the Commission, and to indicate their full support of this petition: the Transmission Access Policy Study Group (an association of transmission dependent electric utilities located in more than 30 states), ACES Power Marketing and The Energy Authority.

² The date of enactment is July 21, 2010 (the “Enactment Date”) and the date of effectiveness is 360 days after the Enactment Date, or July 16, 2011 (the “Effective Date”).

The Electric Trade Associations request the Commission to reconsider such Section 723(c)(1) Petitions in a prompt manner (as required by Section 723(c)(2)(A)). Concurrently, we request that the Commission promptly use its available exemptive authority under the CEA to prevent unnecessary disruptions to our members' ordinary business practices. The Commission is requested to assure that our members and all participants (our members' counterparties, without which the markets would not exist) in the over-the-counter ("OTC") derivatives markets for all "electric power and related commodity and commodity derivatives transactions"³ can continue to operate under the existing exemptions and interpretations applicable to such transactions. The Commission should continue the existing market structure until such time as the Commission's rules establishing and regulating new "swap" markets in electric power and related commodity and commodity derivatives transactions are finalized, tested, and all implementation and transition periods have expired.⁴

The Electric Trade Associations' members regularly engage in electric power and related commodity and commodity derivatives transactions to manage the commercial risks associated

³ We use this term to mean (a) all non-cleared derivatives transactions referencing or derived on electric power or related commodities in which the Electric Trade Associations' members transact in the ordinary course of their core commercial activities, such as electric energy, natural gas, other fuels for electric generation (including coal and fuel oil, but excluding crude oil, gasoline or refined petroleum products other than fuel oil -- these commodities are not germane to our members' core commercial activities, and the markets for these commodities and related derivatives are distinguishable from the markets in which our members participate), (b) those non-cleared derivative agreements, contracts or transactions referencing or derived on transmission, transportation, generation capacity or storage concepts or services related to the energy commodities described in (a), and (c) those non-cleared derivatives agreements, contracts or transactions referencing or derived on environmental or emissions regulations, or renewable energy or other environmental attributes, applicable to our members' commercial activities. All of these agreements, contracts and transactions reference or are derived on what the Electric Trade Associations consider "nonfinancial commodities," are intrinsically related to our members' core commercial (or nonfinancial) activities, and many are subject to the continuing jurisdiction of regulators other than the Commission.

⁴ The Commission committed to ensure a smooth and seamless transition to the Dodd-Frank Act's regulatory scheme in its Notice Regarding the Treatment of Petitions Seeking Grandfather Relief for Trading Activity Done in Reliance Upon Sections 2(h)(1)-(2) of the Commodity Exchange Act, 75 Fed. Reg. 56,512, on September 16, 2010 (the "Grandfather Notice") and in its response(s) to the Electric Trade Association's Petitions under Section 723(c)(1) in early December of 2010.

with their nonfinancial enterprise activities. These contracts, agreements and transactions in electric power and related “exempt commodities” may include, under the pre-Dodd-Frank Act regulatory scheme, “forward contracts,” “trade options,” “swaps,” transactions executed on “exempt commercial markets.” Our members may be “eligible contract participants,” and all are “eligible commercial entities” in respect of the commodities related to the electric industry. Our members also engage in a wide variety of commercial contracts, agreements and transactions involving goods and services related to the electric industry in the various geographic regions of the United States. These transactions take place between nonfinancial entities and, in some cases, with financial entities as well. Some of these transactions have embedded optionality or “swap-like” economic terms.⁵

Many of our members’ contracts, agreements and transactions are executed bilaterally in the OTC markets. Some are executed “in,” “on” or “through” the regional transmission “markets” established in various geographic regions of the United States under the jurisdiction of the Federal Energy Regulatory Commission (“FERC”), rather than being executed on a designated contract market or on an exempt commercial market regulated by the Commission. Since September of 2010, the Electric Trade Associations and our members have filed comments in the Commission’s rulemakings, and have met with the Commission and the staff on numerous occasions, to explain the unique aspects of our transactions and our markets.

II. Urgency of the Request for Reconsideration

In September of 2010, the Electric Trade Associations and our members, and other market participants in the OTC energy derivatives markets, submitted hundreds of petitions to the

⁵ Since September 2010, the Electric Trade Associations have requested the Commission to further define the term “swap,” as used in the Dodd-Frank Act, to clearly exclude or exempt by regulation the types of commercial energy and energy-related transactions in which the Electric Trade Associations’ members engage every day: including forward transactions in nonfinancial commodities which by their terms settle physically, commercial (or “trade”) options on nonfinancial commodities, generation capacity, transmission and transportation services contracts, full requirements contracts, tolling agreements and energy management agreements, emissions and renewable energy contracts, and many “other specified electricity transactions.” To date, the Commission has declined to do so. In fact, in the proposed rules on “Product Definitions,” the Commission again asks questions about electric industry transactions, rather than providing by regulation the certainty the electric industry has been requesting since September 2010.

Commission asking for “grandfather relief” pursuant to Section 723(c)(1) of the Act. In December of 2010, the Commission responded to the petitioners and declined to grant the relief requested. The Commission indicated that it had not foreclosed the possibility of granting relief in the future and assured the electric industry and other petitioners of its commitment to ensure a smooth and seamless transition to the new regulatory scheme. Since it is now clear that final rules will not be in place by the July 16, 2011 Dodd-Frank effective date, the Electric Trade Associations request the Commission to promptly grant their Section 723(c)(1) Petitions to provide needed regulatory certainty as outlined below.

A. THE COMMISSION SHOULD IMMEDIATELY RECONSIDER THE SECTION 723(c)(1) PETITIONS AND GRANT THE REQUESTED EXTENSION, AND USE ITS EXEMPTIVE AUTHORITY UNDER THE COMMODITY EXCHANGE ACT TO ALLOW THE OTC MARKETS FOR ELECTRIC POWER AND RELATED COMMODITY AND COMMODITY DERIVATIVES TO CONTINUE WITHOUT DISRUPTION.

When the Act was enacted in July of 2010, Congress assumed that the Commission (and other regulators) could have an entirely new market structure for all “swaps” in all asset classes up and running within 360-365 days. In reliance on this unrealistic assumption, the Act automatically deletes the exclusions and exemptions from the CEA under which the current OTC derivatives markets operate as of July 16, 2011, the general effective date of Title VII of the Act (the “Effective Date”). As of July 16, 2011, the Act will simply label certain of the transactions in which our members engage for commercial risk management purposes as “unlawful.”

Notwithstanding the efforts of regulators, their staffs, market infrastructure entities and financial and nonfinancial market participants, the comprehensive new market regulatory regime is not yet in place and will not be in place by July 16, 2011. However, the self-executing Effective Date deadline looms less than 60 days from today, and is creating serious regulatory uncertainty.

The Electric Trade Associations, on behalf of our members and all market participants in the OTC markets for electric power and related commodity and commodity derivatives, respectfully request that the Commission promptly grant the grandfather relief requested in the Section 723(c)(1) Petitions, and “use its available exemptive authorities to address such a [now

imminent] situation.” Grandfather Notice, 75 Fed. Reg. at 56,513.⁶ This will allow members of the Electric Trade Associations to continue their existing business practices which are focused on providing reliable, affordable power supply and which also take into account concerns related to price stability and predictability until such time as new rules are finalized and implemented. These practices are conducted in accordance with the requirements and expectations of Federal and state energy regulatory authorities, as well as existing law.

B. GRANTING THIS PETITION DOES NOT CONFLICT WITH THE INTENT OF THE DODD-FRANK ACT

Allowing the one-year extension for electric power and related commodity and commodity derivatives transactions does not contravene the intent of the Dodd-Frank Act. Rather, the extension is consistent with the Congressional intent to reduce systemic risk and increase market transparency for standardized “swaps” while preserving access to cost-effective risk management transactions for nonfinancial end users. The Commission and other regulators still face a monumental challenge to sequence the final rulemakings, and construct and implement its brand new “swap” markets in a manner that does not sacrifice the legitimate interests of nonfinancial “end users.”

Section 723(c) of the Dodd-Frank Act, the “grandfather provision,” is a mechanism that offers market participants legal certainty during the period of implementation and transition to the new regulatory regime. Granting this petition for relatively miniscule portion of the global “swap” markets that may be represented by electric power and related commodity and commodity derivatives transactions will not impede the laudable goals of providing transparency and reducing risk to the financial system in the global derivatives markets.

III. Conclusion

The Electric Trade Associations respectfully request that the Commission promptly reconsider and grant the pending Section 723(c)(1) Petitions for the period of one year following the Effective Date, and use its available exemptive authority to prevent disruption in the OTC

⁶ The Act requires the Commission to act “in a prompt manner” to address the Section 723(c)(1) Petitions. See Section 723(c)(2)(A) of the Act. We respectfully note that the Petitions have now been pending for over 8 months.

markets for electric power and related commodity and commodity derivatives transactions. The Electric Trade Associations submit that the Commission should do so to carry out the intent of Section 723(c) of the Dodd-Frank Act, and to provide legal and regulatory certainty to our members and American businesses and consumers who rely on our members to deliver reliable and affordable electric power.

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RECONSIDERATION OF
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Respectfully yours,

**NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION**

By: Russ Wasson
Russell Wasson, Director, Tax,
Finance and Accounting Policy

**AMERICAN PUBLIC POWER
ASSOCIATION**

By: _____
Susan N. Kelly, Senior Vice
President of Policy Analysis and
General Counsel

LARGE PUBLIC POWER COUNCIL

By: _____
Noreen Roche-Carter, Chair, Tax and
Finance Task Force

EDISON ELECTRIC INSTITUTE

By: _____
Richard F. McMahon, Executive
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**ELECTRIC POWER SUPPLY
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Daniel S.M. Dolan, Vice President,
Policy Research & Communications

cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott O'Malia, Commissioner
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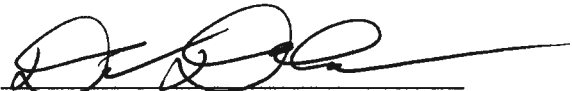
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