WASHINGTON PUBLIC UTILITY DISTRICTS ASSOCIATION
WPUDA
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April 30, 2013

The Honorable Debbie Stabenow, Chair
Committee on Agriculture, Nutrition & Forestry
United States Senate
328A Russell Senate Office Building
Washington, DC 20510

The Honorable Thad Cochran, Ranking Member
Committee on Agriculture, Nutrition and Forestry
United States Senate
328A Russell Senate Office Building
Washington, D.C. 20510

Dear Chair Stabenow and Ranking Member Cochran:

On behalf of the Washington Public Utility Districts Association I would like to thank you for the opportunity to provide comments as the Senate Agriculture Committee begins considering reauthorization of the Commodities Exchange Act. As part of your work, we encourage you to address damaging inconsistencies in the Commodity Futures Trading Commission's (CFTC) implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding swap dealing activity with "special entities." These inconsistencies present costly barriers to public utility districts' hedging programs and could be remedied with a legislative fix in the reauthorization legislation.

The Washington Public Utility Districts Association (WPUDA) represents 27 not-for-profit, community-owned public utility districts that serve approximately one-million residential, business and industrial customers in 26 counties across the State of Washington. Municipal utilities, including WPUDA members, depend on nonfinancial commodity transactions, trade options, and "swaps," as well as the futures markets, to hedge commercial risks that arise from their utility facilities, operations, and public service obligations. In hedging, mitigating or managing operational risks, we are engaged in commercial risk management activities that are no different from the operations-related hedging of an investor-owned utility or an electric cooperative located in the same geographic region.

Rules regulating derivatives under Dodd-Frank have impacted PUDs' ability to hedge against price volatility, resulting in cost increases. Dodd-Frank directed the CFTC to require swap dealers and major swap participants to register and meet strict capital, margin, and reporting and recordkeeping requirements, as well as comply with rigorous

business conduct and documentation standards. Congress was concerned that there be a distinction between these market-making entities and end-users that use swaps to hedge commercial risk.

To address those concerns, the Dodd-Frank Act included a "*de minimis* exception" to the definition of a swap dealer, to ensure that the definition captured only those entities engaged in a significant amount of dealing activity. In the proposed rule to define these entities, the CFTC set two separate *de minimis* thresholds relating to the dollar quantity of swaps; $100 million annually for an entity's total swap-dealing activity and $25 million annually for an entity's swap-dealing activity with special entities, which include government owned utilities.

The Not-For-Profit Electric End User Group (NFP EEU) filed comments recommending that the CFTC substantially increase both thresholds. Nevertheless, the final rule greatly increased the overall *de minimis* threshold from the proposed rule, raising it from $100 million to $3 billion, while leaving unchanged the $25 million sub-threshold for swap-dealing activities with special entities. The result is counterparties continue to fear that transacting with municipal utilities, including PUDs, will force them into the swap dealer regime. This has reduced the number of vendors willing to transact with PUDs thereby raising the cost of these transactions.

Our members are already seeing the impact. Benton County PUD, located in southeast Washington, had International Swaps and Derivatives Agreements (ISDAs) with 14 counterparties prior to Dodd-Frank. The PUD is now down to two counterparties. Another member, Grays Harbor County PUD, has also seen a dramatic decrease in the number of counterparties decrease from 28 to two. Fewer counterparties means less market liquidity and less favorable prices.

Unfortunately, efforts to obtain regulatory relief have been exhausted. On July 12, 2012, the American Public Power Association (APPA), the Large Public Power Council (LPPC), the American Public Gas Association (APGA), the Transmission Access Policy Study Group (TAPS), and the Bonneville Power Administration (BPA) filed a petition requesting that the CFTC amend its swap-dealer rule to exclude utility operations-related swap transactions from counting towards the special entity threshold.

Instead, the CFTC released a "no-action" letter allowing a counterparty to deal in up to $800 million in swaps with government-owned utilities without being required to register as a swap dealer. However, the no-action letter also included a number of additional limitations and has failed to provide nonfinancial counterparties with the assurances they need to enter into swap transactions with municipal utilities. Our traditional counterparties are unwilling to spend the time and money to create a separate compliance process, and adjust their policies and procedures, to facilitate transactions with the small segment of any particular regional market that utility special entities represent.

Several CFTC commissioners have indicated that they believe that relief is appropriate and, absent action by the CFTC, legislation to address this issue directly would be appropriate.

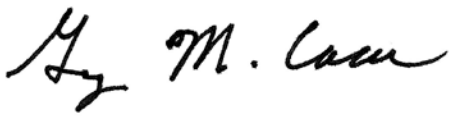
On March 11, 2013, Rep. Doug LaMalfa introduced the "*Public Power Risk Management Act of 2013*" (H.R. 1038). The legislation largely mirrors the intent and effect of the NFP EEU petition, providing narrowly targeted relief for operations-related swaps for government-owned utilities. Specifically, the legislation would provide that the CFTC, in making a determination to exempt a swap dealer under the *de minimis* exception, shall treat a utility operations-related swap with a utility special entity the same as a utility operations-related swaps with any entity that is not a special entity.

The legislation carefully defines which entities would qualify as a "utility special entity." It also specifically defines the types of swaps that could and could not be considered a "utility operations-related swap." For example, the legislation specifically prohibits interest, credit, equity, and currency swaps from being considered as a utility operations-related swap. Likewise, except in relation to their use as a fuel, commodity swaps in metal, agricultural, crude oil, or gasoline would not qualify either. Finally, the legislation also confirms that utility operations-related swaps are fully subject to swap reporting requirements.

When implemented, this legislation should provide certainty to nonfinancial entities that they can enter into swap transactions with community-owned utilities without fear of being deemed a swap dealer. **We strongly request that you support inclusion of this legislation as part of a CFTC reauthorization**.

Thank you again for the opportunity to submit comments. Please feel free to contact me if you require any additional information.

Sincerely,



George Caan, Executive Director
Washington Public Utility Districts Association