



## U.S. COMMODITY FUTURES TRADING COMMISSION

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CFTC Letter No. 12-12  
No-Action  
October 11, 2012  
Division of Market Oversight  
Division of Clearing and Risk  
Division of Swap Dealer and Intermediary Oversight

### **Staff No-Action Relief: Preservation of the Regulatory Status Quo with Respect to Certain CEA Provisions That May Apply to FPA Section 201(f) Entities and Other Electric Cooperatives**

On August 23, 2012, the Commodity Futures Trading Commission (“Commission”) published a Notice of Proposed Order and Request for Comment on a Proposal To Exempt Certain Transactions Involving Not-for-Profit Electric Utilities (“Proposed Order”).<sup>1</sup> The Proposed Order would provide relief from the provisions of the Commodity Exchange Act (“CEA”) and Commission regulations (collectively, “Exempted Provisions”) to any Exempt Non-Financial Energy Transaction entered into solely between Exempt Entities, subject to the Commission’s general anti-fraud, anti-manipulation and enforcement authority under, among others, sections 2(a)(1)(B), 4b, 4c(b), 4o, 6(c), 6(d), 6(e), 6c, 6d, 8, 9 and 13 of the CEA, and Commission regulations 32.4 and part 180 (collectively, “Enforcement Provisions”).

The Commission solicited comments on the Proposed Order over a thirty-day comment period, which closed on September 24, 2012. However, on October 12, 2012, certain provisions of the Commission’s regulations under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) will become effective, prior to the Commission taking final action on the Proposed Order.<sup>2</sup> In light of the pendency of the Commission’s continued consideration of Petitioners’ request for relief pursuant to section 4(c)(6) of the CEA, as discussed in further detail below, the Division of Market Oversight (“DMO”), Division of Clearing and Risk (“DCR”), and Division of Swap Dealer and Intermediary Oversight (“DSIO”)

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<sup>1</sup> 77 FR 50998. The Proposed Order was issued in response to a petition (“Petition”) filed on June 8, 2012 by the National Rural Electric Cooperative Association, the American Public Power Association, the Large Public Power Council, the Transmission Access Policy Study Group, and the Bonneville Power Administration (collectively, the “Petitioners”). The Petition is available on the Commission’s website at <http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/nrecaetalltr060812.pdf>.

<sup>2</sup> On August 13, 2012, the Commission and the Securities and Exchange Commission published a joint final rule further defining the products subject to definition under sections 712(d) and 721(c) of the Dodd-Frank Act. See 77 FR 48208. This final rule becomes effective on October 12, 2012, at which point market participants will be obligated to comply with certain other of the Commission’s Dodd-Frank Act regulations. See Second Amendment to July 14, 2011 Order for Swap Regulation, 77 FR 41260 (July 13, 2012).

(collectively, “Divisions”) are granting this no-action relief to preserve the regulatory status quo as of the Effective Date and through the Termination Date, as those terms are defined below.

### ***Discussion***

Petitioners expressed concern regarding the applicability of Dodd-Frank provisions beginning on October 12, 2012 and pending final action on the Proposed Order, and asked for no-action relief during the interim pursuant to Commission regulation 140.99.<sup>3</sup> As mentioned previously, the Commission is currently considering comments on the Proposed Order that was published on August 23, 2012.

In light of these facts and circumstances, the Divisions believe that it is appropriate to maintain the regulatory status quo with respect to the Petitioners’ relevant activities pending final action on the Proposed Order. To implement this goal, the Divisions are taking a no-action position with respect to any “Electric Operations-Related Transaction” entered into solely between “NFP Electric Entities,” as those terms are defined in the Petition,<sup>4</sup> subject to the Enforcement Provisions.

This no-action position will be effective on the earlier of the date that this letter is issued or October 11, 2012 (“Effective Date”). This no-action position will expire on the earlier of March 31, 2013, or the effective date as published in the *Federal Register* of any final action taken by the Commission with respect to the Proposed Order (“Termination Date”).

Accordingly, the Divisions will not recommend that the Commission commence an enforcement action against any NFP Electric Entity for failure to comply with any of the Exempted Provisions, subject to the Enforcement Provisions, when entering into Electric Operations-Related Transactions solely with other NFP Electric Entities during the period between the Effective Date and the Termination Date.

### ***Other Matters***

As noted above, the no-action relief provided by this letter is intended to preserve the regulatory status quo with respect to the Electric Operations-Related Transactions entered into solely between NFP Electric Entities. The relief provided by this no-action letter does not otherwise affect any Dodd-Frank Act implementing regulations that the Commission promulgates, including any effective or compliance dates therein. In addition, this no-action relief is without prejudice to any decision by the Commission, following consideration of the comments to the Proposed Order, to take final action on the Proposed Order that is, in any respect, the same as, narrower than, or broader than that which was proposed.

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<sup>3</sup> Request for Interim No-Action Relief until the Commission Takes Final Action on Proposal to Exempt Certain Transactions Involving Not-for-Profit Electric Utilities (October 5, 2012), available at <http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/nfpltr100512.pdf>.

<sup>4</sup> Petition at 4-5, 14.

Nothing in this staff no-action letter in any way limits the Commission's authority with respect to any person, entity or transaction pursuant to the Enforcement Provisions. Further, the no-action position taken herein is taken by the Divisions only and does not bind the Commission or any other Division or Office of the Commission's staff. As with all no-action letters, the Divisions retain the authority to condition further, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein, in their discretion.

Please direct questions regarding this staff no-action relief to David Van Wagner at [dvanwagner@cftc.gov](mailto:dvanwagner@cftc.gov) or (202) 418-5481, or Graham McCall at [gmccall@cftc.gov](mailto:gmccall@cftc.gov) or (202) 418-6150.

Very truly yours,

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