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Proposed for Archive
Northwest Public Power Association
Resolution 40-2016
Regulation of Utility Operations-Related Swaps

Background

Public power utilities routinely engage in utility operations-related swaps to manage their commercial risks. These transactions allow utilities to control their costs in the energy marketplace and provide reliable service at stable prices. In 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act designed to increase federal oversight of financial derivatives to prevent reckless and speculative trading. The Dodd-Frank Act requires high-volume “swap dealers” to register with the Commodity Futures Trading Commission (CFTC) and meet significant new capital, margin, and reporting requirements and to comply with rigorous business conduct and documentation standards.

The CFTC finalized a set of rules that has restricted the ability of the public power community to use these transactions as a tool for mitigating risk. Those approved set of rules included a \$3 billion *de minimis* threshold for the notional volume of swaps that an entity may engage in over a twelve-month period without being regulated as a swap dealer. It also has created a sub-threshold of \$25 million annually for swaps with “special entities” including municipal utilities. The regulation caused many swaps participants to cease doing business with municipal utilities, thinking that even one swap transaction would trigger the burdensome Swap Dealer requirements.

The public power community filed a petition with the CFTC in July 2012 seeking relief. After intermediate efforts by the CFTC failed to secure the needed relief, the Commission finalized an Order in September, 2014, that effectively granted the public power petition and restored parity to utility operations-related swaps with special entities.

NWPPA's Position

- NWPPA commends the House for unanimously approving the *Public Power Risk Management Act of 2013* (H.R. 1038) sponsored by Rep. Doug LaMalfa (CA) and urges enactment of this legislation to cement Congressional intent on this issue.
- NWPPA opposes the imposition of capital and margin requirements on swaps end-users.

Origination Date: 2013. Revised in 2015.