



## PROPOSED AMENDMENT TO 2013 RTO/ISO EXEMPTION ORDER (PROA)

June 15, 2016

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

**Re: Notice of Proposed Amendment to Final Order Exempting Specified RTO/ISO Transactions, 81 Fed. Reg. 30,245, May 16, 2016 (the “Proposed Amendment NOPR”)**

Dear Mr. Kirkpatrick:

The National Rural Electric Cooperative Association (“NRECA”) and the American Public Power Association (“APPA”) (collectively referred to herein as the “NFP Electric Associations”),<sup>1</sup> respectfully submit these comments to the Commodity Futures Trading Commission (the “Commission”) on the Proposed Amendment (the “Proposed Amendment”) to the Final Order in Response to a Petition from Certain Independent System Operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas from Certain Provisions of the Commodity Exchange Act Pursuant to Authority Provided in the Act (the “2013 RTO/ISO Exemption Order”).<sup>2</sup> We respectfully request that the Commission *not* adopt the Proposed Amendment, or reopen and upset the carefully-balanced and reasoned CEA 4(c)(6) “public interest” exemption in the 2013 RTO/ISO Exemption Order by adding back Section 22 private rights of action for transactions entered into under an RTO/ISO tariff.<sup>3</sup>

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<sup>1</sup> See Attachment A for a description of the members of each of the NFP Electric Associations. The comments contained in this filing represent the comments and recommendations of the NFP Electric Associations, but not necessarily the views of any particular member of any NFP Electric Association on any issue. The NFP Electric Associations are authorized to note the involvement of the following organization to the Commission, and to indicate full support of these comments and recommendations: ACES and TAPS. ACES provides commercial risk management and energy advisory and operations services for electric cooperatives and government-owned electric utilities in various RTO/ISO regions. TAPS is an association of transmission-dependent electric utilities in more than 35 states, promoting open and non-discriminatory access to the electric transmission grid and regulatory policies to facilitate the participation of smaller electric utilities in the electric markets, including RTO/ISO-tariffed transactions.

<sup>2</sup> 78 Fed. Reg. 19889 (April 2, 2013).

<sup>3</sup> The 2013 RTO/ISO Exemption Order was issued under CEA Section 4(c)(6), which was added to the CEA by Section 722(f) of the Dodd-Frank Act, concurrently with the Commission’s jurisdiction over “swaps.” In Section 722(f) and other provisions of the Dodd-Frank Act, Congress recognized generally that the Commission and FERC

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The Proposed Amendment will increase legal costs for RTOs, ISOs and their members, including the NFP Electric Associations' members, by inviting private plaintiffs to challenge these tariffed transactions in Federal court. RTOs, ISOs and their members will have to explain and defend these unique electric operations-related transactions to judges who may have no background in the regulated electric industry. The Proposed Amendment NOPR does not identify or quantify any ascertainable benefit provided by the Proposed Amendment for commercial end-users of the RTO/ISO tariffed transactions, or for any of these unique and already comprehensively-regulated markets.<sup>4</sup> Finally, the unnecessary legal costs of the Proposed Amendment will be borne directly and indirectly by members of each RTO and ISO, including hundreds of members of the NFP Electric Associations, and by the American businesses and electric consumers located in the RTO/ISO regions.

## I. Introduction.

The NFP Electric Associations have been active participants in the Commission's rulemaking to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). Among other rulemaking dockets, we submitted comments on the proposed 2013 RTO/ISO Exemption Order<sup>5</sup> and on the proposed exemption order for the Southwest Power Pool in mid-2015.<sup>6</sup>

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share jurisdiction over electricity and natural gas transactions. Specifically in CEA Section 4(c)(6)(A) and (B) Congress directed the Commission to consider the "public interest" aspects of FERC- or State-tariffed transactions, in addition to the more general, pre-Dodd Frank Act public interest considerations referenced in CEA Section 4(c)(2). RTO and ISO transactions help the electric industry (commercial end-users for purposes of the CFTC rules) provide reliable, affordable electricity to American consumers and businesses. These transactions are intrinsically linked to the reliable, efficient delivery and physical flow of electricity in a specific geographic region of the United States. In the Federal Power Act, Congress "declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest," 16 U.S.C. §824(a), and authorized FERC regulation to further a particular public interest: "the orderly production of plentiful supplies of electric energy...at just and reasonable rates," *NAACP v. FPA*, 425 U.S. 622, 670 (1976). The unique public interest standard set forth in CEA Section 4(c)(6) is additive to, not duplicative of, the more general public interest determination the Commission makes in deciding another type of CEA 4(c) exemption request for transactions that are not tariffed by another regulator. The Commission itself notes the distinction when it recognizes that CEA 4(c)(6) directs that the Commission "shall" grant an exemption if it makes the CEA 4(c)(6) "public interest" determination in respect of tariffed transactions. *See* the Proposed Amendment NOPR at 30,249.

<sup>4</sup> *See* the Proposed Amendment NOPR at 30,251.

<sup>5</sup> NRECA and APPA submitted comments along with the Large Public Power Council, the Electric Power Supply Association ("EPSA") and the Edison Electric Institute ("EEI") on the 2013 RTO/ISO Exemption Order. *See* <http://comments.Commission.gov/PublicComments/ViewComment.aspx?id=58845&SearchText=>.

<sup>6</sup> NRECA and APPA submitted comments, along with EEI and EPSA, on the Proposed SPP Exemption Order. *See* <http://comments.Commission.gov/PublicComments/ViewComment.aspx?id=60438&SearchText=>. The Commission is respectfully requested to consider those comments as part of this regulatory docket. Representatives of the NFP Electric Associations participate on the Commission's Energy and Environmental Markets Advisory Committee ("EEMAC"). Jeffrey Walker, Senior Vice President and Chief Risk Officer for ACES, presented to the February 27, 2016 EEMAC meeting on the potential negative impacts to electric utilities, including NFP Electric Entities of the Commission amending the 2013 RTO/ISO Exemption Order (and/or issuing the SPP Exemption Order), with an additional reference to CEA Section 22 added to the other 15 CEA Sections enumerated in the 2013 RTO/ISO Exemption Order, and excluded from the scope of the exemption provided therein. ACES has supported the NFP Electric Associations' comments in the Commission's post Dodd-Frank rulemaking dockets since 2010). Mr. Walker's comments can be found at approximately 00:32:48 in the video linked here: <https://www.youtube.com/watch?v=IY5BbFhh2qQ>. The Commission is respectfully requested to consider Mr. Walker's remarks as part of this regulatory docket.

Members of the NFP Electric Associations (“NFP Electric Entities”) own electric operations, and provide electric energy to power American homes and businesses, in specific regions of the United States. Some, but not all, of those regions are currently within or near the geographic “footprint” of one of the RTOs or ISOs tariffed by the Federal Energy Regulatory Commission, or within or near the geographic “footprint” of ERCOT, the RTO that operates under a tariff from the Public Utility Commission of Texas (“PUCT”). We estimate that, of the NFP Electric Association members, there are approximately 470 electric cooperatives and 950 government-owned electric entities located in or near one of the current RTO/ISO regions.<sup>7</sup>

RTO/ISO-tariffed transactions assist our members in achieving their public service mission. NFP Electric Entities provide reliable 24/7/365 electric service to local electric customers, on a not-for-profit basis as cooperatives and government-owned utilities, in the most cost-efficient way possible consistent with prudent utility practice and environmental stewardship.

The commercial risks arising from our members’ electric operations are most cost-effectively hedged using the “local” RTO/ISO’s tariffed transactions, or by entering into other types of bilateral commercial transactions that are customary for electric utilities in a particular region.<sup>8</sup> NFP Electric Entities do not enter into transactions under the tariffs of an RTO or an ISO that serves a geographic region of the United States that is remote from the region in which the particular NFP Electric Entity’s electric operations and/or electric customers are located.<sup>9</sup> NFP Electric Entities are “Commercial End-User-ONLY Entities” or “CEU-Only Entities.” All of the RTO/ISO transactions our members enter into are “CEU Hedging Transactions.”<sup>10</sup>

In this letter, we are focused strictly on the potential impact of the Proposed Amendment on the electric operations-related transactions that our members enter into under the tariff of the NFP Electric Entity’s “local” RTO or ISO in order to hedge or mitigate commercial risks of ongoing electric operations. Each of these RTO/ISO markets was created under a separate tariff and is operated and monitored by the particular RTO or ISO itself, as well as comprehensively regulated by FERC (or, in the case of ERCOT, by the PUCT). FERC or the PUCT is the principal government regulator and enforcement agency for each such RTO/ISO market under the Federal Power Act or Texas state law. Our members in each RTO/ISO region participate in the local RTO or ISO stakeholder processes, understand the local RTO/ISO rules and applicable tariff, and follow FERC or PUCT rulemakings and Commission rulemakings relevant to the local

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<sup>7</sup> As a reminder, there are regions of the United States that are not currently served by an RTO or an ISO and the regional boundaries of an RTO or an ISO can also change from time to time. Source of estimates: NRECA and APPA.

<sup>8</sup> Our members may also hedge commercial risks of electric operations, such as those associated with fuels used for generation, using financial instruments such as futures or swaps, or using commodity trade options. Our members do not trade for profit, or speculate, in the markets. Our members only transact in commodities, or in financial or commodity derivatives, to hedge commercial risks arising from ongoing electric operations.

<sup>9</sup> *E.g.*, an NFP Electric Entity with operations and/or customers located only in Massachusetts enters into transactions under the ISO New England tariff, but would not enter into transactions under the California ISO tariff.

<sup>10</sup> Those terms are defined in the NFP Electric Association comment letter on speculative position limits rules, dated August 1, 2014, at <http://comments.Commission.gov/PublicComments/ViewComment.aspx?id=59934&SearchText>.

RTO/ISO.<sup>11</sup> The regulatory certainty provided by the 2013 RTO/ISO Exemption Order as to how these tariffed transactions are regulated under the CEA has been important to NFP Electric Entities in specific RTO/ISO geographic regions of the United States.

## **II. Comments.**

In response to the Commission's request for comment on the Proposed Amendment, we respectfully request that the Commission *not* adopt the Proposed Amendment or reopen and upset its CEA 4(c)(6) "public interest" exemption in the 2013 RTO/ISO Exemption Order to add back Section 22 private rights of action for transactions entered into under an RTO/ISO tariff.

### **A. The 2013 RTO/ISO Exemption Order is Clear, and the Proposed Amendment Provides no Ascertainable Benefit to Commercial End-Users that Enter into RTO/ISO Tariffed Transactions to Hedge or Mitigate Commercial Risks Arising from Electric Operations**

The Commission made a thorough and balanced "public interest" determination under CEA 4(c)(6) when it issued the 2013 RTO/ISO Exemption Order. In that 2013 Exemption Order, the Commission clearly reserved *its own authority* to monitor fraud and market manipulation in the RTO/ISO tariffed transactions and markets, along with certain other enumerated government enforcement authorities. The NFP Electric Entities disagree strongly with the Commission's assertion that there is a need to clarify the 2013 RTO/ISO Exemption Order by means of the Proposed Amendment.

The plain language of the Commission's 2013 RTO/ISO Exemption Order says that each of the 4 transaction types described therein, when entered into under the local RTO/ISO tariff and so long as counterparties are "appropriate persons" as such term is described therein, is exempt from *all provisions* of the Commodity Exchange Act, except *the authority of the Commission* under 15 enumerated CEA sections, and Commission regulations pursuant to those sections, listed in the 2013 RTO/ISO Exemption Order.<sup>12</sup> The NFP Electric Associations welcomed these enumerated exceptions. We respect the Commission's enforcement staff and their efforts to understand the unique nature and purpose of each of the different RTO/ISO markets and to regulate these regional, tariffed, electric operations-related transactions.

### **B. The Commission and the FERC (or the PUCT) Together Provide Coordinated Government Regulation and Enforcement "in the Public Interest" for These Unique, Regional, Tariffed, Electric Operations-Related Transactions and Markets**

The NFP Electric Associations welcomed the Commission's reservation of its own authority in the 2013 RTO/ISO Exemption Order as "an additional cop on the beat" to work *alongside FERC* (and, for ERCOT, the PUCT) to ensure that the RTO- and ISO-tariffed transaction markets function without fraud, market manipulation or other market abuse. We rely on the Commission's agreement with FERC to cooperate in enforcement and other regulatory

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<sup>11</sup> NFP Electric Entities may or may not participate regularly in other Commission-regulated markets. An NFP Electric Entity's limited staff resources focus primarily on electric operations and providing safe, reliable electric service, at an affordable cost while practicing good environmental stewardship.

<sup>12</sup> See the 2013 RTO/ISO Exemption Order at 19,912.

proceedings affecting our RTO/ISO markets, as Congress intended when it directed the agencies to cooperate in Section 720 of the Dodd-Frank Act. These inter-agency agreements are important to us, because the RTO/ISO markets are fundamentally different from other Commission-regulated markets.

Each of these regional electric markets is complex, unique and customized to the electric grid reliability issues in the specific geographic region. Some principles and concepts are the same among and between the different RTOs and ISOs, but the RTO and ISO entities, the tariffs, the transactions under each RTO or ISO's tariff and the commercial end-users in each region are not identical. Moreover, particularly for CEU-Only Entities, transactions entered into under one RTO/ISO tariff are not fungible or interchangeable with transactions under another RTO/ISO tariff, or with futures contracts or swaps.<sup>13</sup>

Inter-agency regulatory cooperation is critical so as not to impose unnecessary costs or burdens on an RTO, an ISO or its commercial end-user members (including NFP Electric Entities in the local region). Because an RTO or ISO is a non-profit, "pass through" entity with no shareholders, increased costs at the RTO/ISO level means increased costs, dollar-for-dollar, for electric consumers in that RTO/ISO's particular geographic region.<sup>14</sup>

If private plaintiffs can challenge RTO/ISO-tariffed transactions in Federal courts,<sup>15</sup> NFP Electric Entities in a particular local RTO/ISO region will face increased costs. As described above, NFP Electric Entities rely on the Commission, as a Federal government agency, to work in cooperation with FERC "in the public interest" (under both agencies' statutory missions)

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<sup>13</sup> The NFP Electric Associations respectfully remind the Commission that RTO/ISO tariffed-transactions for electric operations-related commodities only in the 7 geographic regions of the United States are a *de minimis* part of the global swaps markets over which the Commission was given jurisdiction by Congress in the Dodd-Frank Act. Note, too, that in the 2013 RTO/ISO Exemption Order, the Commission has even not determined if the RTO/ISO tariffed transactions are or are not "swaps." Moreover, there is no evidence that these electric operation-related transactions had any involvement in the 2008-2009 global financial markets crisis, or have any bearing on systemic risk to the global financial markets. A diagram showing the RTO/ISO transactions in relation to other aspects of the global swaps markets is Attachment B. These transactions are important to NFP Electric Entities and other commercial end-users in the local RTO/ISO region. When Congress included the CEA 4(c)(6) public interest exemption process and other directions for inter-agency cooperation with respect to these transactions in the Dodd-Frank Act, Congress clearly did not intend the Commission to treat such tariffed transactions the same as any other nonfinancial commodity futures contract or swap. FERC and the PUCT already comprehensively regulate the RTOs and ISOs as entities, the transactions under the tariffs, and the RTO/ISO markets.

<sup>14</sup> 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>.

<sup>15</sup> A private party challenging an RTO transaction can pursue remedies through the RTO/ISO tariff's procedures, which are approved by FERC in a public proceeding under the Federal Power Act, and 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 market manipulation or other illegal behavior warranting government enforcement. See 16 U.S.C. §§ 824e, 825e (2012) (providing for complaints); 18 C.F.R. § 385.206 (2015) (same). In the Federal Power Act, Congress did not provide for a private right of action for violations of FERC's anti-market manipulation rules, see 16 U.S.C. § 824v(b)(2012), but instead provided administrative remedies, recognizing that the over-arching regulatory mission of FERC and the public interest served by 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.

when deciding if a challenge to these tariffed transactions is appropriate. By contrast, some private plaintiffs may bring claims that do not advance any “public interest.” At the same time, some plaintiffs may not understand or appreciate the importance of “prudent utility practice,” electric transmission grid reliability objectives, regulatory tariffs, the physics of the interconnected electric grid, or the public service mission of electric utility operations in a particular geographic region or a local RTO/ISO market. We rely on the Commission and the FERC, as government enforcement agencies, to understand and weigh these important electric industry “public interest” considerations in connection with the tariffed transactions.

If private plaintiffs can challenge RTO- or ISO-tariffed transactions in Federal courts across the country, the RTOs and ISOs will directly incur legal costs, and NFP Electric Entities and the consumers they serve in RTO/ISO regions will indirectly incur legal costs to educate multiple Federal courts, to respond to discovery, to prepare briefs and otherwise defend such actions. For cost reasons, an individual RTO or ISO or an individual defendant may even have to settle such private lawsuits. These unnecessary costs will be incurred whether or not a private party could ever prove in a court of law that an RTO/ISO transaction is a “swap,”<sup>16</sup> that market manipulation or other market abuse occurred in these specialized regional markets for electric operations-related transactions, or that the individual plaintiff or class of plaintiffs was damaged.

Private plaintiffs are not appropriate representatives to weigh governmental or “public interest” in fair and competitive markets or other public interest considerations in these unique and important US electric markets. FERC- or PUCT-tariffed transactions are intrinsically linked to NFP Electric Entities’ need to hedge commercial risks of ongoing electric operations in a cost-effective manner, and to keep the lights on at affordable rates for each region’s electric consumers and businesses. If the Commission’s limited resources won’t allow it to perform its typical market regulation function in these small regional electric operations-related markets, the NFP Electric Associations will rely on FERC and the PUCT to continue to use their government enforcement resources to regulate and monitor these important RTO/ISO markets, if a local RTO or ISO’s own market surveillance resources and rules prove insufficient.<sup>17</sup> In short, these tariffed transactions are comprehensively regulated and adequately, if not always perfectly, monitored by the RTOs and ISOs themselves, and by FERC and the PUCT.

In the alternative, if the Commission decides to re-open the CEA 4(c)(6) public interest determination on the 2013 RTO/ISO Exemption Order to add back private rights of action in respect of RTO/ISO transactions, we respectfully request that such private rights of action not be allowed to challenge CEU Hedging Transactions, or not be allowed against defendants that are CEU-Only Entities (in particular, against NFP Electric Entities).<sup>18</sup> The Commission has not

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<sup>16</sup> In its “public interest” determination, the Commission exempted RTO/ISO tariffed transactions without determining if such transactions are “swaps” or subject to the Commission’s jurisdiction under the CEA.

<sup>17</sup> In addition to the concern about the Proposed Amendment resulting in unnecessary additional costs for RTOs, ISOs, their members and electric consumers (without additional “public interest” benefits), we concur with the comments submitted by FERC, the RTOs and ISOs, and EEI and EPSA on the Proposed Amendment. These commenters, and other entities that own electric assets or operations or serve electric customers, understand the importance of these RTO- and ISO-tariffed transactions to local American businesses and citizens that are electric consumers in RTO/ISO regions. These commenters from jurisdictions across the country best represent the unique “public interest” perspective that the Commission is required by law to consider in CEA 4(c)(6).

<sup>18</sup> 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

articulated a public interest or other policy reason for exposing commercial end-users, especially the NFP Electric Entities, to such additional legal costs and expenses.<sup>19</sup>

**C. The NOPR Assumes Benefits and Underestimates Costs of the Proposed Amendment, and Adopting the Proposed Amendment Would Upset the CEA 4(c)(6) “Public Interest” Determination (and the Cost Benefit Analysis) Made in Respect of the 2013 RTO/ISO Exemption Order**

In the Proposed Amendment NOPR, the Commission has assumed a benefit from the Proposed Amendment to commercial end-user market participants in RTO/ISO tariffed transactions from having hundreds of additional, non-government, private plaintiff “cops on the beat” in Federal courts across the country, seeking monetary damages in connection with these specialized regional electric operations-related transactions. At the same time, the Commission has seriously underestimated the additional legal costs that will ultimately be borne by electric consumers in each RTO/ISO region.

The NFP Electric Associations are particularly conscious of the additional costs that will result from the Proposed Amendment. As discussed above, more than 1420 of the NFP Electric Associations’ members are located in or near RTO/ISO regional footprints and may enter into RTO/ISO-tariffed. As the NFP Electric Associations have noted in comments throughout the Commission’s regulatory proceedings on the Dodd-Frank Act amendments to the CEA, the vast majority of NFP Electric Entities are “small entities” within the meaning of the term in the Regulatory Flexibility Act.<sup>20</sup>

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Transactions. 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.

<sup>19</sup> To our knowledge, none of the RTOs or ISOs, and none of the entities with electric assets, operations or customers located in or near an RTO/ISO region, has petitioned the Commission or submitted comments in support of the Proposed Amendment.

<sup>20</sup> The Regulatory Flexibility Act, as amended by SBREFA (collectively, “SBREFA”), incorporates by reference the definition of “small entity” adopted by the Small Business Administration (the “SBA”). Using the SBREFA criteria for small business size regulations, the vast majority of NRECA’s 900 members (of which NRECA estimates 470 are in or near RTO/ISO regions) meet the definition of “small entity” (13 C.F.R. §121.201, as modified effective January 22, 2014. See 78 Fed. Reg. 77343 (December 23, 2013)). Only three generation and transmission cooperatives would be expected not to meet the definition. Most of APPA’s more than 2,000 members (of which APPA estimates 950 are in or near RTO/ISO regions) also meet the definition of “small entity.” In the aggregate, the NFP Electric Entities estimate that the vast majority of the 1420 NFP Electric Entities with electric operations or electric customers in or near the geographic footprint of current RTO/ISOs (and therefore impacted by the Proposed Amendment) are “small entities.” That number does not consider “small entity” investor-owned electric utilities that will also be subject to the legal costs that will result from the Proposed Amendment, even if they enter into RTO/ISO-tariffed transactions only to hedge or mitigate commercial risks of electric operations. The Commission cannot continue to ignore its responsibilities under the RFA by repeatedly citing its own dated and unsupported assertion that “eligible contract participants” are not “small entities.” See p. 30251 footnote 83. The case repeatedly cited by the Commission contains no analysis as to why the Commission made such an assertion, and provides no analysis applying the SBREFA criteria to various categories of “eligible contract participants” and other “appropriate persons” that enter into RTO/ISO tariffed transactions. In the Proposed Amendment, the Commission ignores “small entities” that it agreed are “eligible contract participants,” but instead are in the business of generating, transmitting or distributing electric energy or providing electric energy services that are necessary to support the reliable operation of the transmission grid. See the 2013 RTO/ISO Exemption Order at 19,906-19,907

In the 2013 RTO/ISO Exemption Order, the Commission expressly afforded the benefit of the CEA 4(c)(6) exemption to a category of “appropriate persons” that the Commission acknowledged may not meet the financial qualifications otherwise required to be “eligible contract participants.” These beneficiaries include the NFP Electric Entities that are in the business of generating, transmitting or distributing electric energy or providing electric energy services that are necessary to support the reliable operations of the transmission grid in the relevant RTO/ISO region. Today, these NFP Electric Entities enter into such tariffed transactions in reliance on the 2013 RTO/ISO Exemption Order. NFP Electric Associations strongly disagree with the Commission’s abbreviated and conclusory Regulatory Flexibility Act analysis of the Proposed Amendment, as discussed in the Proposed Amendment NOPR.

The Proposed Amendment will have a significant and negative economic impact (unnecessary increased costs) on the estimated 1420 members of the NFP Electric Associations (the vast majority of which are “small entities”) located in or near RTO/ISO regions and that may enter into these RTO/ISO-tariffed transactions to hedge commercial risks of electric operations. The NFP Electric Associations respectfully request the Commission to conduct a full regulatory flexibility analysis respecting the impact of the Proposed Amendment, especially in light of the questionable benefits to commercial end-users of these specialized electric operations-related transactions if the Commission adopts the Proposed Amendment and adds back Section 22 private rights of action into the 2013 RTO/ISO Exemption Order.

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Please contact any of the NFP Electric Associations’ undersigned representatives for more information or assistance.

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compared to the Proposed Amendment at 30251. The NFP Electric Associations respectfully submit that many hundreds of “small entity” NFP Electric Entities deserve the full regulatory review afforded them by the Regulatory Flexibility Act and SBREFA.



**PROPOSED AMENDMENT TO 2013 RTO/ISO  
EXEMPTION ORDER (PROA)**

Respectfully submitted,

**NATIONAL RURAL ELECTRIC  
COOPERATIVE ASSOCIATION**

*Russ Wasson*

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## **ATTACHMENT A - DESCRIPTION OF THE NFP ELECTRIC ASSOCIATIONS**

NRECA is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to more than forty-two million people in forty-seven states or twelve percent of electric customers. Kilowatt-hour sales by rural electric cooperatives account for approximately eleven percent of all electric energy sold in the United States. Because an electric cooperative's electric service customers are also members of the cooperative, the cooperative operates on a not-for-profit basis and all the costs of the cooperative are directly borne by its consumer-members.

APPA is the national service organization representing the interests of government-owned electric utilities in the United States. More than two thousand public power systems provide over fifteen percent of all kilowatt-hour sales to ultimate electric customers. APPA's member utilities are not-for-profit utility systems that were created by state or local governments to serve the public interest. Some government-owned electric utilities generate, transmit, and sell power at wholesale and retail, while others purchase power and distribute it to retail customers, and still others perform all or a combination of these functions. Government-owned utilities are accountable to elected and/or appointed officials and, ultimately, the American public. The focus of a government-owned electric utility is to provide reliable and safe electric service, keeping costs low and predictable for its customers, while practicing good environmental stewardship.

**ATTACHMENT B**

# MARKET STRUCTURE DEVELOPMENT CHARACTERISTICS BY SWAP ASSET CLASS

