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July 22, 2011

By Electronic Mail

David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington DC 20581

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**RE: File No. S7-16-11, Product Definitions: Further Definition of “Swap,”
“Security-Based Swap,” and “Security-Based Swap Agreement;” Mixed Swaps;
Security-Based Swap Agreement Recordkeeping, CFTC RIN 3038-AD46; SEC RIN
3235-AL14.**

Dear Mr. Stawick and Ms. Murphy:

On behalf of its members, the Southern California Public Power Authority (“SCPPA”)¹ respectfully comments on the Commodity Futures Trading Commission and Securities and Exchange Commission (jointly, “Commissions”) definition of “swap” in the Commissions’ proposed Product Definitions Rule² under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). SCPPA joins the request by Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas and Electric Company (jointly, “California Utilities”)³ that the Commissions adopt a definition of “swap” that excludes emission

¹ SCPPA is a California joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water and Power, Imperial Irrigation District, Pasadena, Riverside, and Vernon. This comment is sponsored by Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Imperial Irrigation District, Pasadena, Riverside, and Vernon.

² 76 Fed. Reg. 29,818 (May 23, 2011).

³ California Utilities Comment, File No. S7-16-11 (July 22, 2011).

allowances, carbon offsets, and renewable energy certificates (jointly, “Environmental Commodities”) from being a “swap.”

SCPPA’s members provide electric power to approximately 4.6 million residential and business customers located in Southern California. SCPPA members use or will use the Environmental Commodities in complying with applicable statutes and various regulatory requirements of the South Coast Air Quality Management District, the California Air Resources Board, and the United States Environmental Protection Agency.

The Commissions’ Question 32 asks: “Should the forward contract exclusion from the swap definition apply to environmental commodities such as emissions allowances, carbon offsets/credits, or renewable energy certificates?”⁴ As explained in greater detail by the California Utilities,⁵ the Environmental Commodities should be found to be intangible commodities, not swaps, for several reasons:

- The Environmental Commodities are not the type of products that should fall within the purview of the Dodd-Frank Act. They do not represent a risk to the stability of the United States financial system.
- The Environmental Commodities are physically settled. Compliance requires delivery of the environmental commodity to the regulator. Mere cash, which is the output of a swap, will not suffice.
- Declaring that Environmental Commodities are “swaps” would result in CFTC preempting the state and federal environmental regulatory programs that involve the use of the Environmental Commodities.
- The Dodd-Frank Interagency Working Group concluded that carbon allowances are not swaps and are goods.⁶

⁴ 76 Fed. Reg. 29,818, 29832 (May 23, 2011).

⁵ California Utilities Comment, *id.* at 3, 7-9.

⁶ “Report on the Oversight of Existing and Prospective Carbon Markets,” Interagency Working Group for the Study on Oversight of Carbon Markets, http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/dfstudy_carbon_011811.pdf (January 18, 2011).

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Accordingly, SCPPA urges the Commissions to exclude the Environmental Commodities from the definition of “swap.” SCPPA appreciates this opportunity to comment on the proposed Product Definition Rule.

Respectfully submitted,

/s/ Norman A. Pedersen

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