

UNITED STATES OF AMERICA  
BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION

Registration of Municipal Advisors

File Number S7-45-10

**COMMENTS OF NMPP ENERGY**

NMPP ENERGY submits its comment in response to the Securities and Exchange Commission's ("SEC") proposed rule, "Registration of Municipal Advisors," published in the *Federal Register* on January 6, 2011.<sup>1</sup>

**I. NMPP ENERGY INTERESTS**

NMPP ENERGY is a trade name for our joint action agency consisting of four entities, which serve nearly 200 member communities across six midwestern and mountain states. The Nebraska Municipal Power Pool ("NMPP"), formed in 1975, is the service organization of NMPP ENERGY while the Municipal Energy Agency of Nebraska ("MEAN"), created in 1981, is the wholesale electricity supply organization of NMPP ENERGY. Formed in 1991, the National Public Gas Agency ("NPGA") is the wholesale natural gas organization of NMPP Energy working with individual participants, small communities, members and nonmembers to develop a gas supply plan. NMPP works together with MEAN and NPGA to provide utility and energy related services to its members on a not-for-profit basis.

NMPP ENERGY is concerned with whether any one of our entities is considered a "municipal advisor" and, therefore, subject to the registration and regulatory requirements.

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<sup>1</sup> 76 *Fed.Reg.* 824 (January 6, 2011).

## II. COMMENTS

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Securities and Exchange Act to make it unlawful for a municipal advisor to provide advice to a municipal entity with respect to municipal financial products or the issuance of municipal securities unless the advisor is registered with the SEC. Section 975 of the Dodd-Frank Act gives a broad definition of the term “municipal advisor” as: (A)...a person (who is not a municipal entity or an employee of a municipal entity)

- (i) that provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, or
- (ii) that undertakes a solicitation of a municipal entity.<sup>2</sup>

The proposed rule defines “municipal employees” as members of a municipal entity’s elected governing body and excludes members of an appointed governing body. NMPP ENERGY has at least two concerns.

First, employees of NMPP, a non-profit organization, provide advice and work full-time on public power and public natural gas issues with MEAN and NPGA, which are both political bodies as MEAN is a Nebraska political subdivision and NPGA an Interlocal Agency. NMPP employees are “agents” for MEAN and NPGA by contract. In addition, the governing body of NMPP consists of a Members Council, wherein each member community appoints a representative by resolution or ordinance, which then elects its Board of Directors. MEAN and NPGA are governed by a Board of Directors appointed by each member community.

Second, our member communities also have “utility boards” appointed by the governing body of the City, which assist the municipal entities. The governing bodies of elected and appointed municipal boards provide oversight and policy-setting functions. While they “receive”

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<sup>2</sup> Section 15B(e)(4)(A) of the Securities and Exchange Act.

advice regarding financial matters upon which they make their policy decisions, the board members do not “provide” advice.

NMPP ENERGY organizations engage a professional financial advisor to advise both staff and its boards in a variety of financial matters. Our board members make decisions based on the advice they receive from these professional financial advisors; they should not be required to register as a “municipal advisor”. The governing bodies of NMPP, MEAN and NPGA, as well as the utility boards of our member communities do not provide any financial advice; they merely assist in the operational function of our entities.

Therefore, NMPP ENERGY respectfully asks for more clarification on the definition of a “municipal employee”.

WHEREFORE, NMPP ENERGY submits these comments for the SEC’s consideration in this docket.

Respectfully submitted,

NEBRASKA MUNICIPAL POWER POOL

By: Chris M. Dibbern

Chris Dibbern  
General Counsel  
NMPP Energy  
1111 O Street  
Lincoln, NE 68508-3614  
402-474-4759  
402-474-0473 (fax)  
Cdibbern@nmppenergy.org