

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

Registration of Municipal Advisors )

File Number S7-45-10

**COMMENTS OF THE CITY OF LINCOLN, NEBRASKA  
d/b/a LINCOLN ELECTRIC SYSTEM**

The City of Lincoln, Nebraska, d/b/a/ Lincoln Electric System (“LES”) 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. LINCOLN ELECTRIC SYSTEM’S INTERESTS**

LES is a not-for-profit, municipal electric utility serving approximately 131,000 customers in and around the City of Lincoln, Nebraska. LES is a vertically-integrated utility engaged in the generation, transmission and distribution of electricity. LES is governed by a nine-member Administrative Board comprised of citizens appointed by the Mayor of Lincoln and confirmed by the Lincoln City Council. Board members are eligible to serve three consecutive three-year terms.

The ordinances creating the LES Administrative Board vest in the Board the general control and responsibility for the property, personnel, facilities, equipment and finances of LES.<sup>2</sup> The Lincoln City Council, however, reserved for itself the authority to set electric rates<sup>3</sup>, approve LES’ annual operating and capital budget<sup>4</sup>, and approve any long-term financing of the utility<sup>5</sup>.

---

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

<sup>2</sup> Lincoln Municipal Code, Section 4.24.060.

<sup>3</sup> Lincoln Municipal Code, Section 4.24.070(d)(1).

<sup>4</sup> Lincoln Municipal Code, Section 4.24.090.

<sup>5</sup> Lincoln Municipal Code, Section 4.24.070(d)(2).

LES is very concerned that the SEC's proposed rule will put its Administrative Board members in jeopardy of being considered "municipal advisors" and, therefore, subject to the law's registration and regulatory requirements.

LES supports the comments submitted by the American Public Power Association and offers its own, additional comments below.

## 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. The Dodd-Frank Act also gives the Municipal Securities Rulemaking Board (MSRB) regulatory authority over municipal advisors and imposes a fiduciary duty on municipal advisors when providing advice to municipal entities. Section 975 of the Dodd-Frank Act defines "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>6</sup>

In its proposed rule, the SEC provides interpretation on who is an employee of a municipal entity. The proposed rule defines "municipal employees" to include members of a municipal entity's elected governing body and to exclude members of an appointed governing body. Under this interpretation, members of an appointed utility board, such as the LES Administrative Board, could be considered municipal advisors and, therefore, required to register with the SEC and subject to MSRB regulation, while their counterparts serving on a board that is

---

<sup>6</sup> Section 15B(e)(4)(A) of the Securities and Exchange Act.

elected rather than appointed would not be. The reason given for differentiating between elected and appointed boards is that appointed board members “are not directly accountable for their performance to the citizens of the municipal entity.”<sup>7</sup>

It is true that the LES Administrative Board is not directly elected by the citizens of Lincoln, Nebraska. However, the Administrative Board is a governmental entity that must operate in accordance with the same openness and transparency requirements of an elected body, namely the Nebraska Open Meetings Act<sup>8</sup> and the Nebraska Public Records Act<sup>9</sup>. Moreover, as previously noted the members of the Administrative Board are appointed by Mayor of Lincoln and confirmed by the Lincoln City Council, all of whom are elected and directly accountable to the citizens of Lincoln. Moreover, the most critical matters of the utility’s budget, rates, and long-term financings must be approved by the Lincoln City Council which is an elected body that is accountable to the citizens for the most significant financial matters of LES. In addition, all actions of the LES Administrative Board, except those involving expenditures of funds which have previously been allocated in the budget submitted and approved by the City Council, are subject to a mayoral veto within seven days of the board’s action.<sup>10</sup>

The members of the LES Administrative Board are citizens of our community and are required to be a customer of LES to serve on the board. They live and work in our community and interact with their fellow citizens on a daily basis. The Administrative Board members are very accessible to our customers. LES holds numerous open, public meetings that allow the Administrative Board to meet with customers and gain an awareness of our customers’ concerns. Appointed board members are just as accountable as elected board members. It is unfair to make

---

<sup>7</sup> 76 *Fed. Reg.* 834 (January 6, 2011).

<sup>8</sup> Neb. Rev. Stat. §84-1407 et seq. (Reissue of 2008, Supp. 2009)

<sup>9</sup> Neb. Rev. Stat. §84-712 et seq. (Reissue of 2008)

<sup>10</sup> Lincoln Municipal Code, Section 4.24.010.

a distinction with regard to the “municipal advisor” rule. This proposed rule and its requirements are clearly not relevant to the professional lives of the citizens that serve on public power utility boards, such as the LES Administrative Board. In the case of the LES Administrative Board, past and present board members have been employed in a number of fields including manufacturing, education, insurance, banking, accounting, legal services, social services, and small and large business owners, while some board members are community volunteers and retirees.

LES engages a professional financial advisor to advise both staff and the Administrative Board in a variety of financial matters. Clearly, these representatives should be required to be registered as a “municipal advisor.” The requirement should not be imposed on appointed board members who make decisions based on the advice they receive from “municipal advisors.”

The proposed rule would impose significant and onerous requirements on LES and its Administrative Board members. If the appointed LES board members were required to register as municipal advisors, they would most logically be required to complete Form MA-1. The form requires registrants to provide information about the filer’s municipal advisory firm, 5-year residential history, and 10-year employment history, and to respond to a number of “disclosure” sections that are aimed at identifying the filer’s municipal-advisor-related or investment-related activities. This process is clearly not relevant to the activities of citizens serving on a public utility board. There would also be required training which would provide additional unnecessary cost to the utility and take the appointed board members away from their regular full-time jobs. LES is significantly concerned that this proposed rule could have the effect of deterring citizens in our community from being willing to serve on the Administrative Board which could result in

less effective governance of the utility. Why would a person agree to undergo such a registration process only to serve as a volunteer on an uncompensated board?

The governing bodies of elected and appointed municipal boards both provide oversight and policy-setting functions. They 'receive' advice regarding financial matters upon which they make their policy decisions, but the board members are not 'providing' the advice. While structured differently, they both serve similar roles and are both accountable to the constituencies they represent. Therefore, LES respectfully urges the SEC to include both appointed and elected boards in the definition of municipal employee to preclude them from registering as a "municipal advisor" which they clearly are not.

WHEREFORE, LES submits these comments for the SEC's consideration in this docket.

Respectfully submitted,

CITY OF LINCOLN,  
d/b/a LINCOLN ELECTRIC SYSTEM

By:  \_\_\_\_\_

Shelley Sahling-Zart  
Vice President & Assistant Counsel  
Lincoln Electric System  
1040 O St.  
Lincoln, NE 68508-0869  
Ph. (402) 473-3204  
Fax (402) 475-9759  
Email: [ssahling@les.com](mailto:ssahling@les.com)