

**UNITED STATES OF AMERICA**  
**BEFORE THE**  
**SECURITIES AND EXCHANGE COMMISSION**

Registration of Municipal Advisors

File Number S7-45-10

**COMMENTS OF THE**  
**PLATTE RIVER POWER AUTHORITY**

**Introduction**

Platte River Power Authority (Platte River) is a political subdivision of the State of Colorado. Platte River was created through an "Organic Contract" entered into by four northern Colorado municipalities that operate electric distribution systems: Estes Park, Fort Collins, Longmont and Loveland. Platte River is an instrumentality of its four owner municipalities formed to provide wholesale power and transmission services for the benefit of these Municipalities. Municipal generation and transmission utilities, such as Platte River, are often referred to as joint action agencies.

By virtue of the Organic Contract, Platte River is governed by an eight member Board of Directors. Each owner municipality has two representatives on the Board. The Organic Contract specifies who shall serve as representatives of the owner municipalities. Section 2.3.2 (i) of the Organic Contract states:

The Mayor of each of the Municipalities is hereby designated and shall serve as a member of the Board of Directors of the Authority contemporaneously with service as Mayor; provided, however, that any Mayor may designate some other member of the governing board of such Municipality to serve as a Director of the Authority in place of the Mayor.

Section 2.3.2 (ii) states:

The governing body of each of the Municipalities shall appoint one (1) additional member to the Board of Directors. Appointed Directors shall be selected for judgment, experience, and expertise which make that person particularly qualified to serve as a Director of an electric utility.

The appointed Director is typically, but not always, a management-level employee of the owner municipality making the appointment.

The generation and transmission of electricity is a capital intensive undertaking. Platte River was formed in 1976, and since formation has issued approximately \$2.4 billion in debt through 19 separate bond issuances. Bond issuances are approved by formal resolution of the Board of Directors.

### **Comments**

Platte River is a member of the American Public Power Association and endorses the comments filed by APPA.

Public power utilities – municipal utilities and joint action agencies – provide electricity to a significant portion of the American public. Public power utilities are locally controlled by the customers they serve. Direct oversight by elected officials is common, but oversight may also be provided by appointed boards and commissions. The membership criteria and appointment process for oversight boards and commissions are intended to best meet the management and policy needs established by the locality.

Platte River urges the SEC to create a “municipal employee” exemption broad enough to cover all members of municipal utility and joint action agency oversight boards, irrespective of whether the members are elected or appointed. A narrow exemption frustrates the ability of

local governing bodies to manage and regulate public power utilities in a manner deemed appropriate by those directly affected by the actions of the public power utility, but yet furthers no discernable regulatory purpose.

There are two reasons why a broad exemption for municipal employees applying to both elected and appointed members of oversight bodies makes sense. First, there is no regulatory need to include members of local utility oversight boards within the class of “municipal advisors” – that is simply not the role these individuals perform nor is there evidence of abusive practices by members of these types of oversight bodies requiring regulation. Second, the “municipal employee” exception as presently drafted unnecessarily restricts the ability of local communities to determine the composition of local oversight bodies in a way that best meets the needs of the locality.

Comments by other parties address the first listed and central point, that being there is simply a lack of regulatory necessity for requiring appointed members of municipal utility and joint action agency oversight boards to register as municipal advisors. The Platte River comments will focus on the second of the above-listed concerns.

As examples of the restrictions the proposed rules would place on the owner municipalities in making appointments to the Platte River Power Authority Board of Directors, consider these situations:

First, if the mayor of an owner municipality sits on the Platte River Board, he/she serves in an *ex officio* capacity under the proposed rule and is thus considered to fall within the municipal employee exception to registration as a municipal advisor. However, if the Mayor exercises his/her prerogative under the Organic Contract (*see* Section 2.3.2(1) quoted above) to designate

a fellow member of the city council to serve on the Platte River Board seemingly that Board member does not qualify for the *ex officio* exemption because he/she does not serve by virtue of direct election. Does it make sense to require the designee who is a member of the city council to register as a municipal advisor when the mayor - performing the same functions - would not be required to register? The proposed rule presents a practical impediment preventing mayors from delegating the Board function to fellow members of city council. This in no way furthers the purposes of securities regulation, and ignores vital local considerations. There are a number of reasons why a mayor may designate a fellow member of city council to sit on the Platte River Board, including workload demands or scheduling considerations that may prevent the mayor from devoting adequate time to Board duties or a simple desire to ensure the most qualified elected representative of the owner municipality serves on the Board. These legitimate reasons are frustrated by a narrow definition of "municipal employee" that can impose registration responsibilities on an appointed Board member.

Second, as already noted, the appointed Director of the owner municipality (*see* Section 2.3.2(ii) of the Organic Contract quoted above) is typically an employee of the owner municipality – often this person is the local utility director or city manager.<sup>1</sup> However, the Organic Contract does not require the governing body of the owner municipality to appoint an employee to the Board. On occasions in the past city councils have appointed a councilmember to the position of appointed Director. What regulatory purpose is served in requiring the appointed councilmember to face the possibility of registration as a municipal advisor – which has the practical effect of creating an impediment to such an appointment - when the mayor or a municipal employee is not so required?

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<sup>1</sup> Assumedly these individuals escape the registration requirement because they are employees of the owner municipalities, but the proposed rule is not clear on this point.

Platte River urges the SEC to expand the definition of municipal employee to include individuals appointed to utility governing boards and commissions. The requested expansion of the exemption will not jeopardize the regulatory goals of the proposed rule, but will preserve the ability of local governments to appropriately appoint representatives for the purpose of local oversight.

Respectfully submitted,

A handwritten signature in black ink, reading "Brian H. Moeck", with a horizontal line extending to the right from the end of the signature.

Brian H. Moeck  
General Manager  
Platte River Power Authority