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April 19, 2011

The Honorable Mary Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

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CHAMBERS
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Dear Chairman Schapiro,

I appreciate your leadership at the Securities and Exchange Commission (SEC) and understand the challenges you face in implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. However, I am concerned about the way a recent SEC proposed rule could affect some of my constituent municipal electric utilities.

As you are aware, the Act makes 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 Act excludes from the definition of "municipal advisor" a municipal entity or an employee of a municipal entity.

However, a recent proposed rule by the SEC would include members of a municipal entity's elected governing body as "municipal employees," but proposes not to include members of an appointed governing body as "municipal employees." Thus, if an appointed utility board were considering a public power utility's proposed bond issuance or swap transaction or investment strategy, members of the board could be considered "municipal advisors" and therefore be required to register with the SEC and be subject to additional regulation.

I request that the SEC modify the proposed rules so that the definition of "municipal advisor" does not include any board member of a municipal entity. Though these board members are appointed, they are largely appointed by elected city councils or other elected officials and are members of their communities. These appointed board members in most cases live and work among the citizens of the community and hear from citizens on a regular basis through open meetings and regular communication.

The forms that the appointed board members would be required to fill out would include questions largely applicable to a person's municipal-advisor-related or investment-related activities. The form's questions are clearly not relevant to the professional lives of the citizens serving on public power utility boards who are employed in the fields of healthcare, real estate, legal services, telecommunications, and education or who are community volunteers or retirees. Most of these individuals receive little to no compensation for their services but serve on these boards as part of an effort to give back to and improve their local communities. They are doing so largely out of a desire to serve their community.

Requiring appointed board members to register as municipal advisors will only add to the costs of serving on the board or limit important discussion of a utility's financial plans. The requirement would likely cripple recruitment of committed volunteers to serve on such boards, undermining a utility's governance and what is in the best interest of the community. The SEC should treat both elected and appointed boards in the same way and include appointed boards in the definition of "municipal employee."

Again I appreciate your consideration of these concerns.

Sincerely,

A handwritten signature in cursive script that reads "Bill Posey". The signature is written in black ink and is positioned above the typed name and title.

Bill Posey
Member of Congress