

113<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1038

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## AN ACT

To provide equal treatment for utility special entities using utility operations-related swaps, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Public Power Risk  
3 Management Act of 2013”.

4 **SEC. 2. TRANSACTIONS WITH UTILITY SPECIAL ENTITIES.**

5 Section 1a(49) of the Commodity Exchange Act (7  
6 U.S.C. 1a(49)) is amended by adding at the end the fol-  
7 lowing:

8 “(E) CERTAIN TRANSACTIONS WITH A  
9 UTILITY SPECIAL ENTITY.—

10 “(i) Transactions in utility operations-  
11 related swaps shall be reported pursuant to  
12 section 4r.

13 “(ii) In making a determination to ex-  
14 empt pursuant to subparagraph (D), the  
15 Commission shall treat a utility operations-  
16 related swap entered into with a utility  
17 special entity, as defined in section  
18 4s(h)(2)(D), as if it were entered into with  
19 an entity that is not a special entity, as de-  
20 fined in section 4s(h)(2)(C).”.

21 **SEC. 3. UTILITY SPECIAL ENTITY DEFINED.**

22 Section 4s(h)(2) of the Commodity Exchange Act (7  
23 U.S.C. 6s(h)(2)) is amended by adding at the end the fol-  
24 lowing:

25 “(D) UTILITY SPECIAL ENTITY.—For pur-  
26 poses of this Act, the term ‘utility special enti-

1           ty’ means a special entity, or any instrumen-  
 2           tality, department, or corporation of or estab-  
 3           lished by a State or political subdivision of a  
 4           State, that—

5                   “(i) owns or operates an electric or  
 6                   natural gas facility or an electric or nat-  
 7                   ural gas operation;

8                   “(ii) supplies natural gas and or elec-  
 9                   tric energy to another utility special entity;

10                   “(iii) has public service obligations  
 11                   under Federal, State, or local law or regu-  
 12                   lation to deliver electric energy or natural  
 13                   gas service to customers; or

14                   “(iv) is a Federal power marketing  
 15                   agency, as defined in section 3 of the Fed-  
 16                   eral Power Act.”.

17 **SEC. 4. UTILITY OPERATIONS-RELATED SWAP.**

18           (a)     SWAP     FURTHER     DEFINED.—Section  
 19     1a(47)(A)(iii) of the Commodity Exchange Act (7 U.S.C.  
 20     1a(47)(A)(iii)) is amended—

21                   (1) by striking “and” at the end of subclause  
 22                   (XXI);

23                   (2) by adding “and” at the end of subclause  
 24                   (XXII); and

25                   (3) by adding at the end the following:

1                   “(XXIII) a utility operations-re-  
2                   lated swap;”.

3           (b) UTILITY OPERATIONS-RELATED SWAP DE-  
4 FINED.—Section 1a of such Act (7 U.S.C. 1a) is amended  
5 by adding at the end the following:

6           “(52) UTILITY OPERATIONS-RELATED SWAP.—  
7           The term ‘utility operations-related swap’ means a  
8           swap that—

9                   “(A) is entered into to hedge or mitigate a  
10                   commercial risk;

11                   “(B) is not a contract, agreement, or  
12                   transaction based on, derived on, or ref-  
13                   erencing—

14                           “(i) an interest rate, credit, equity, or  
15                           currency asset class; or

16                           “(ii) a metal, agricultural commodity,  
17                           or crude oil or gasoline commodity of any  
18                           grade, except as used as fuel for electric  
19                           energy generation; and

20                   “(C) is associated with—

21                           “(i) the generation, production, pur-  
22                           chase, or sale of natural gas or electric en-  
23                           ergy, the supply of natural gas or electric  
24                           energy to a utility, or the delivery of nat-

1            ural gas or electric energy service to utility  
2            customers;

3            “(ii) all fuel supply for the facilities or  
4            operations of a utility;

5            “(iii) compliance with an electric sys-  
6            tem reliability obligation;

7            “(iv) compliance with an energy, en-  
8            ergy efficiency, conservation, or renewable  
9            energy or environmental statute, regula-  
10          tion, or government order applicable to a  
11          utility; or

12          “(v) any other electric energy or nat-  
13          ural gas swap to which a utility is a  
14          party.”.

15 **SEC. 5. EFFECTIVE DATE.**

16          The amendments made by this Act take effect as if  
17          enacted on July 21, 2010.

        Passed the House of Representatives June 12, 2013.

        Attest:

*Clerk.*

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