

113TH CONGRESS
1ST SESSION

S. 1802

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 11, 2013

Mr. DONNELLY (for himself, Mr. INHOFE, Mr. LEAHY, Mr. WHITEHOUSE, Ms. HEITKAMP, Mr. COATS, Ms. COLLINS, and Mr. BLUNT) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

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

SEC. 3. UTILITY SPECIAL ENTITY DEFINED.

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

“(D) UTILITY SPECIAL ENTITY.—For pur-
poses of this Act, the term ‘utility special enti-
ty’ means a special entity, or any instrumen-
tality, department, or corporation of or estab-
lished by a State or political subdivision of a
State, that—

1 “(i) owns or operates an electric or
 2 natural gas facility or an electric or nat-
 3 ural gas operation;

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

6 “(iii) has public service obligations
 7 under Federal, State, or local law or regu-
 8 lation to deliver electric energy or natural
 9 gas service to customers; or

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

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

14 (a) SWAP FURTHER DEFINED.—Section
 15 1a(47)(A)(iii) of the Commodity Exchange Act (7 U.S.C.
 16 1a(47)(A)(iii)) is amended—

17 (1) by striking “and” at the end of subclause
 18 (XXI);

19 (2) by adding “and” at the end of subclause
 20 (XXII); and

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

22 “(XXIII) a utility operations-re-
 23 lated swap;”.

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

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

7 “(A) is entered into to hedge or mitigate a
 8 commercial risk;

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

12 “(i) an interest rate, credit, equity, or
 13 currency asset class; or

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

18 “(C) is associated with—

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

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

3 “(iii) compliance with an electric sys-
4 tem reliability obligation;

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

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

13 **SEC. 5. EFFECTIVE DATE.**

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

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