

## Union Calendar No. 76

113TH CONGRESS  
1ST SESSION

# H. R. 1038

[Report No. 113-107]

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

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### IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2013

Mr. LAMALFA (for himself, Mr. DENHAM, Mr. LUETKEMEYER, Mr. COSTA, and Mr. GARAMENDI) introduced the following bill; which was referred to the Committee on Agriculture

JUNE 12, 2013

Additional sponsors: Mr. MICHAUD, Mr. DAVID SCOTT of Georgia, Mr. RIBBLE, Mr. VARGAS, Mr. CONAWAY, Mr. MCNERNEY, Mr. AUSTIN SCOTT of Georgia, Mr. BENISHEK, Mr. HONDA, Mr. HASTINGS of Washington, Ms. DELBENE, Mr. YOHO, Mr. TIPTON, Mr. ROSS, Mr. GRAYSON, Mr. JONES, Mr. CRAWFORD, Mr. GRIFFIN of Arkansas, Mr. HANNA, Ms. LEE of California, Mr. SHERMAN, Mr. GIBBS, Mr. CÁRDENAS, Mr. MCCLINTOCK, Mr. DEFazio, Ms. MATSUI, Mr. GARDNER, Ms. LINDA T. SÁNCHEZ of California, Mr. HUFFMAN, Ms. BROWN of Florida, Mrs. CAPPS, Ms. ESHOO, Mr. TAKANO, Mrs. ELLMERS, Ms. CHU, Mr. SCHIFF, Mrs. HARTZLER, and Mr. HUDSON

JUNE 12, 2013

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

# **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:

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

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

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

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

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

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

11 “(i) owns or operates an electric or  
12 natural gas facility or an electric or nat-  
13 ural gas operation;

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

16 “(iii) has public service obligations  
17 under Federal, State, or local law or regu-  
18 lation to deliver electric energy or natural  
19 gas service to customers; or

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

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

24 (a) SWAP FURTHER DEFINED.—Section  
25 1a(47)(A)(iii) of the Commodity Exchange Act (7 U.S.C.  
26 1a(47)(A)(iii)) is amended—

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

3           (2) by adding “and” at the end of subclause  
4           (XXII); and

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

6                               “(XXIII) a utility operations-re-  
7                               lated swap;”.

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

11           “(52) UTILITY OPERATIONS-RELATED SWAP.—

12           The term ‘utility operations-related swap’ means a  
13           swap that—

14                               “(A) is entered into to hedge or mitigate a  
15                               commercial risk;

16                               “(B) is not a contract, agreement, or  
17                               transaction based on, derived on, or ref-  
18                               erencing—

19                                       “(i) an interest rate, credit, equity, or  
20                                       currency asset class; or

21                                       “(ii) a metal, agricultural commodity,  
22                                       or crude oil or gasoline commodity of any  
23                                       grade, except as used as fuel for electric  
24                                       energy generation; and

25                                       “(C) is associated with—

1           “(i) the generation, production, pur-  
2           chase, or sale of natural gas or electric en-  
3           ergy, the supply of natural gas or electric  
4           energy to a utility, or the delivery of nat-  
5           ural gas or electric energy service to utility  
6           customers;

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

9           “(iii) compliance with an electric sys-  
10          tem reliability obligation;

11          “(iv) compliance with an energy, en-  
12          ergy efficiency, conservation, or renewable  
13          energy or environmental statute, regula-  
14          tion, or government order applicable to a  
15          utility; or

16          “(v) any other electric energy or nat-  
17          ural gas swap to which a utility is a  
18          party.”.

19 **SEC. 5. EFFECTIVE DATE.**

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



Union Calendar No. 76

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

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