

I am so pleased that H.R. 742 is before us so that people understand, Madam Speaker, that this process actually does work from time to time. This provision was added at the last minute to the Dodd-Frank bill. It was not fully vetted and not fully debated. In a very diligent way, two committees on both sides of the aisle were able to come together and really pull together this very modest, but extremely critical, important bill to make sure that there is transparency as well as fluidity in our oversight of derivatives markets.

□ 1330

I am so pleased to be a part of this remarkable consensus on the indemnification of this bill, and I urge all my colleagues to support this critically important legislation.

I yield back the balance of my time. Mr. CRAWFORD. Madam Speaker, I yield myself such time as I may consume just to simply say that by passing and enacting H.R. 742, it would send a clear message to the international community that the United States is strongly committed to global data sharing and is determined to avoid fragmenting the current global data set for over-the-counter derivatives.

I urge a "yes" vote on H.R. 742, and I continue to reserve the balance of my time.

Mr. DAVID SCOTT of Georgia. Madam Speaker, as I have no additional speakers, I would like to close by simply saying a great thanks for the work of Mr. CRAWFORD from Arkansas, Ms. MOORE from Wisconsin, Ms. SEWELL from Alabama, and Mrs. MALONEY from New York in this great show of bipartisanship that will help us to facilitate greater information sharing, which was intended by Dodd-Frank.

I urge passage on this much-needed legislation, and I yield back the balance of my time.

Mr. CRAWFORD. Madam Speaker, I thank the gentleman from Georgia.

I again urge a "yes" vote on H.R. 742 and yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arkansas (Mr. CRAWFORD) that the House suspend the rules and pass the bill, H.R. 742.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the yeas have it.

Mr. DAVID SCOTT of Georgia. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

PUBLIC POWER RISK MANAGEMENT ACT OF 2013

Mr. LAMALFA Madam Speaker, I move to suspend the rules and pass the bill (H.R. 1038) to provide equal treatment for utility special entities using

utility operations-related swaps, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1038

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Public Power Risk Management Act of 2013".

SEC. 2. TRANSACTIONS WITH UTILITY SPECIAL ENTITIES.

Section 1a(49) of the Commodity Exchange Act (7 U.S.C. 1a(49)) is amended by adding at the end the following:

"(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 exempt 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 defined 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 following:

"(D) UTILITY SPECIAL ENTITY.—For purposes of this Act, the term 'utility special entity' means a special entity, or any instrumentality, department, or corporation or established by a State or political subdivision of a State, that—

"(i) owns or operates an electric or natural gas facility or an electric or natural gas operation;

"(ii) supplies natural gas and or electric energy to another utility special entity;

"(iii) has public service obligations under Federal, State, or local law or regulation to deliver electric energy or natural gas service to customers; or

"(iv) is a Federal power marketing agency, as defined in section 3 of the Federal Power Act."

SEC. 4. UTILITY OPERATIONS-RELATED SWAP.

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

(1) by striking "and" at the end of subclause (XXI);

(2) by adding "and" at the end of subclause (XXII); and

(3) by adding at the end the following:

"(XXIII) a utility operations-related swap;"

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

"(52) UTILITY OPERATIONS-RELATED SWAP.—The term 'utility operations-related swap' means a swap that—

"(A) is entered into to hedge or mitigate a commercial risk;

"(B) is not a contract, agreement, or transaction based on, derived on, or referencing—

"(i) an interest rate, credit, equity, or currency asset class; or

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

"(C) is associated with—

"(i) the generation, production, purchase, or sale of natural gas or electric energy, the supply of natural gas or electric energy to a utility, or the delivery of natural gas or electric energy service to utility customers;

"(ii) all fuel supply for the facilities or operations of a utility;

"(iii) compliance with an electric system reliability obligation;

"(iv) compliance with an energy, energy efficiency, conservation, or renewable energy or environmental statute, regulation, or government order applicable to a utility; or

"(v) any other electric energy or natural gas swap to which a utility is a party."

SEC. 5. EFFECTIVE DATE.

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

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. LAMALFA) and the gentleman from Georgia (Mr. DAVID SCOTT) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. LAMALFA Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 1038.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. LAMALFA Madam Speaker, I yield myself as much time as I may consume.

Madam Speaker, the premise of the heavily bipartisan Public Power Risk Management Act is simple and is one that all Members of the House should support. It seeks to keep electricity and natural gas rates from increasing for over 47 million Americans. Those 47 million Americans are customers of over 2,000 publicly owned utilities who have used swaps to manage their risk for years.

Unfortunately, the Dodd-Frank Act, though well-intentioned and enacted to make reforms to our Nation's financial industry, has been used to limit who can do business with a publicly owned utility.

For example, in my district specifically, the city of Redding, California, the Redding Electric Utility has been concerned that potential limitations to hedging options in the future could increase the costs to their customers, as well as Grays Harbor Public Utility District, a community-owned nonprofit utility that serves 45,000 customers in Washington State, which previously had 20 counterparties whom they could use to help manage their risk, says Doug Streeter, its chief financial officer. Now, instead of 20, it is down to just two counterparties due to overly restrictive rules born out of, I think, an unintentional consequence of the Dodd-Frank Act.

"What we're hearing from the counterparties is it's abundantly clear that they're worth more to us than we are to them," Mr. Streeter says. "It wasn't a big book of business for them, and it's just not worth it for them to be designated as a swap dealer. They're not willing to take that on, so they've left the market," continued Mr. Streeter.

Of course, this unintended consequence is affecting utilities in congressional districts all across the

United States. The results of this limitation are fewer options for publicly owned utilities to manage their risks, which will translate into higher costs for millions of American ratepayers.

I was not yet a Member of this body when Dodd-Frank was debated, but I think it's safe to say that at no point during the debate was it contemplated that Dodd-Frank could lead to higher energy rates for millions of Americans, which is an unacceptable result during a period of tremendous economic uncertainty. This potential outcome can be prevented by sending H.R. 1038 to the Senate today with a strong bipartisan vote.

I should note that while my bill seeks to preserve a publicly owned utility's access to cost-effective and customized nonfinancial commodity swaps used to generate electricity or produce natural gas, it still requires financial swaps to be governed by the new CFTC rules issued under the Dodd-Frank Act and requires reporting of all transactions to the CFTC to ensure market integrity.

I should also note that my bill has broad bipartisan support from many Members all over the country from both sides of the aisle, for which we're very thankful, as well as broad support by key stakeholders, including the Consumer Federation of America and the United States Chamber of Commerce, of which I will include their letters in the RECORD.

Let's stick up for these utilities and their customers. They're simply trying to manage their risk so that they can keep rates low for millions of Americans.

With that, I reserve the balance of my time.

CONSUMER FEDERATION OF AMERICA,
May 17, 2013.

Hon. FRANK D. LUCAS,
Chairman, Committee on Agriculture,
Rayburn House Office Building, Washington,
DC.

Hon. COLLIN C. PETERSON,
Ranking Member, Committee on Agriculture,
Rayburn House Office Building, Washington,
DC.

DEAR CHAIRMAN LUCAS AND RANKING MEMBER PETERSON: The Consumer Federation of America encourages the House Agriculture Committee to approve H.R. 1038, the Public Power Risk Management Act. This narrowly crafted legislation would protect public utility ratepayers from increased costs and rate volatility by ensuring that these utilities have the same ability as other utilities to hedge operational risks.

CFA has long-recognized the central importance of a strong swap dealer definition to the effective oversight of the derivatives markets and, by extension, to the stability of the financial system. We believe it is essential that those entities that are genuinely acting as swap dealers remain subject to appropriate regulatory requirements and oversight.

However, we also believe it is inappropriate for non-financial counterparties—such as natural gas producers, independent generators, and other utilities—to be treated as swap dealers in their transactions with public utilities, who are essentially functioning as business units, not as governing bodies. In the past, these transactions have given no

cause for concern. Public utilities should be as free as other utilities to engage in these transactions to hedge risks.

The Commodity Futures Trading Commission has recognized this unique problem and has taken steps to try to mitigate it. But as yet, these measures have not been sufficient to persuade nonfinancial counterparties to resume normal dealings with public utilities. We believe that H.R. 1038 would provide the clarity that allows such a presumption.

Sincerely,

STEPHEN BROBECK,
Executive Director.

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,
Washington, DC, June 11, 2013.

R. BRUCE JOSTEN,
Executive Vice President, Government Affairs.

TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES. The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, strongly supports H.R. 634, H.R. 742, H.R. 1038, and H.R. 1256, bills that would provide critical relief for Main Street companies that rely on derivatives to manage their business risk, and ensure regulation reflects the global nature of the derivatives market.

H.R. 634, the "Business Risk Mitigation and Price Stabilization Act of 2013," would create an exemption for corporate "end users" that manage their business risk with derivatives. Despite the clear intent of Congress to shield end users from unnecessary cash collateral requirements, the Prudential Banking Regulators believe they do not have the flexibility under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) to provide a regulatory exemption. Federal Reserve Chairman Ben Bernanke has noted this problem on a number of occasions and has supported a legislative fix, and an identical bill passed the House in 2012 by an overwhelming bipartisan margin—370-24. Main Street companies urgently need legislative relief from cash draining government-imposed margin requirements, so they are not forced to choose between hedging risk and growing their businesses.

H.R. 742, the "Swap Data Repository and Clearinghouse Indemnification Correction Act of 2013," would eliminate an unworkable indemnification requirement in Dodd-Frank that would lead to a balkanized system for storing and accessing swaps data. Some foreign jurisdictions have laws or regulations that make indemnification impossible, and therefore prevent foreign regulators from accessing swaps information from U.S.-registered swap data repositories. This bill would repeal the indemnification requirement, but make clear that regulators have an obligation to maintain the confidentiality of the information.

H.R. 1038, the "Public Power Risk Management Act of 2013," would help ensure that public utilities' ability to hedge their risk and minimize customer costs would not be hindered by Commodity Futures Trading Commission (CFTC) regulation. CFTC's "swap dealer" definition punishes counterparties who transact with "special entities" like public utilities by increasing their compliance burden, making it more difficult and more expensive for these special entities to find willing partners in the market.

H.R. 1256, the "Swap Jurisdiction Certainty Act," would require CFTC and the Securities and Exchange Commission (SEC) to

conduct a joint rulemaking to define the territorial reach of U.S. derivatives regulation, while carefully considering the costs and benefits of regulating transactions between non-U.S. counterparties. CFTC has proposed guidance, rather than a notice and comment period for proposed rulemaking, while SEC has more faithfully followed the regulatory process. The lack of interagency coordination on even this basic procedural point is problematic, but more concerning is CFTC's substantive approach which could increase end user costs by imposing new burdens on their dealer counterparties that operate globally.

These bills would provide clarity and certainty for companies that use derivatives to hedge their business risk efficiently, allowing them to focus on growing their business and creating jobs.

Sincerely,

R. BRUCE JOSTEN.

Mr. DAVID SCOTT of Georgia. Madam Speaker, I yield myself such time as I may consume.

I rise today to offer my full support for H.R. 1038, the Public Power Risk Management Act, which is sponsored by my colleague from California (Mr. LAMALFA). And I'd like to commend Mr. LAMALFA for his outstanding leadership because, as he pointed out, this is another one of those unintended consequences that we're here to fix.

H.R. 1038 is a noncontroversial bill. It passed the House Committee on Agriculture by a voice vote. And H.R. 1038 seeks to correct an oversight in Dodd-Frank that has hindered the ability of publicly owned utilities to offset their risk in the traditional fashion. Put simply, H.R. 1038 would simply allow producers, utility companies, and other nonfinancial entities to continue entering into energy swaps with government-owned utilities without danger of being required to register with the CFTC as a swap dealer.

What this will do is it will allow these publicly owned utilities to continue using their traditional swap counterparties to help manage their risk related to the generation of electricity and the production of natural gas. This is very important, Madam Speaker, because, if the law remains as it is without this bill, the ability of utilities to manage risk would be hindered by increased costs and could lead to higher energy rates for millions of Americans. We certainly do not want this to happen.

□ 1340

This is something we want to avoid, especially during our still fragile economic recovery. So, Madam Speaker, I support this technical correction to Dodd-Frank, and I urge my colleagues to support it as well.

I reserve the balance of my time.

Mr. LAMALFA Madam Speaker, I yield 1 minute to the gentleman from Arkansas (Mr. CRAWFORD).

Mr. CRAWFORD. I thank the gentleman from California for his leadership on this issue and for the opportunity to allow me to speak in support of H.R. 1038, the Public Power Risk Management Act of 2013.

This is a good, bipartisan piece of legislation that would simply allow producers, utility companies, and other nonfinancial entities to continue entering into energy swaps with government-owned utilities, also known as utility special entities, without requiring them to register with the CFTC as a swap dealer solely because of their dealings with government-owned utilities.

As a group, public power utilities deliver electricity to one in seven of every electric customers in the United States, over 47 million people—certainly some in major metropolitan areas such as Los Angeles, San Antonio, Seattle, and Orlando—but the vast majority of public power companies serve communities with populations of 10,000 people or less.

H.R. 1038 will place utility special entities on a level-playing field with everyone else in the marketplace, allowing many of them to keep the same swap counterparties they have used to manage risk for years. Utility special entities should be allowed to keep using swaps to help manage their risk related to the generation of electricity or production of natural gas. To hinder these utilities' ability to manage risk would only increase their costs and possibly lead to higher energy rates for millions of Americans, an unacceptable result during a period of tremendous economic uncertainty.

Madam Speaker, I urge passage of H.R. 1038 and urge a "yes" vote.

Mr. DAVID SCOTT of Georgia. I have no other speakers, Madam Speaker, so I would like to close by saying that Mr. COSTA, our distinguished Congressman from California, expresses his deep concern and support for this legislation, and I certainly wanted to register that on his behalf.

And certainly to Mr. LAMALFA and to Mr. CRAWFORD, I again commend you for your outstanding work on this. Wherever we can cut costs and save money for the American people, we need to do it and do it quickly. Therefore, I urge very quick passage of this very important and timely piece of legislation.

I yield back the balance of my time.

Mr. LAMALFA Madam Speaker, I appreciate again how we have been able to come together in such a good bipartisan fashion. I greatly appreciate my colleague from Georgia's kind and helpful words in moving this legislation today on the floor.

In closing, again, H.R. 1038 seeks to keep electricity and natural gas bills affordable for over 47 million Americans. Our publicly owned utilities should have access to the risk management tools that they need to keep costs down, a goal we all share, and which prevents utility rates from rising. I ask my colleagues to support this commonsense legislation.

I yield back the balance of my time.

Mr. COSTA. Madam Speaker, I rise in support of the bi-partisan, H.R. 1038, the Public Power Risk Management Act of 2013.

This bill allows producers, utility companies, and other non-financial entities (swap counterparties) to continue entering into energy swaps with government-owned utilities (aka: utility special entities) without requiring them to register with the CFTC as a "swap dealer" solely because of their dealings with government-owned utilities.

There are over 2,000 municipal, state and locally-owned, not-for-profit electric utilities throughout the United States, which deliver electricity to one in every seven electricity customers in the United States, over 47 million people. Further, the vast majority of public power companies serve communities with populations of 10,000 people or less.

Utility special entities should be allowed to keep using traditional swap counterparties, such as natural gas producers, independent generators, and investor-owned utility companies to help manage their operational risk related to the generation of electricity or production of natural gas.

I urge my colleagues to support this commonsense, bipartisan legislation.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. LAMALFA) that the House suspend the rules and pass the bill, H.R. 1038.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. DAVID SCOTT of Georgia. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

PROVIDING FOR CONSIDERATION OF H.R. 1960, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2014; AND PROVIDING FOR CONSIDERATION OF H.R. 1256, SWAP JURISDICTION CERTAINTY ACT

Mr. NUGENT. Madam Speaker, by direction of the Committee on Rules, I call up House Resolution 256 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 256

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 1960) to authorize appropriations for fiscal year 2014 for military activities of the Department of Defense and for military construction, to prescribe military personnel strengths for such fiscal year, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chair and ranking minority member of the Committee on Armed Services. After general debate, the Committee of the Whole shall rise without motion. No further consideration of the bill shall be in order except pursuant to a subsequent order of the House.

SEC. 2. Upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 1256) to direct the Securities and Exchange Commission and the Commodity Futures Trading Commission to jointly adopt rules setting forth the application to cross-border swaps transactions of certain provisions relating to swaps that were enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. All points of order against consideration of the bill are waived. The amendments recommended by the Committee on Financial Services now printed in the bill shall be considered as adopted. The bill, as amended, shall be considered as read. All points of order against provisions in the bill, as amended, are waived. The previous question shall be considered as ordered on the bill, as amended, and on any amendment thereto to final passage without intervening motion except: (1) one hour of debate, with 40 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services and 20 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Agriculture; and (2) one motion to recommit with or without instructions.

SEC. 3. The chair of the Committee on Agriculture is authorized, on behalf of the committee, to file a supplemental report to accompany H.R. 1947.

The SPEAKER pro tempore. The gentleman from Florida is recognized for 1 hour.

Mr. NUGENT. Madam Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. MCGOVERN), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

GENERAL LEAVE

Mr. NUGENT. Madam Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. NUGENT. House Resolution 256 provides for House consideration of two separate pieces of legislation. The first of these bills is H.R. 1256, the Swap Jurisdiction Certainty Act, which will be considered for 1 hour, with time divided between the Committees on Financial Services and Agriculture, under a closed rule.

Secondly, and the reason why I am so proud to be the sponsor of this rule, H. Res. 256 provides for 1 hour of general debate for this year's National Defense Authorization Act.

The Rules Committee traditionally receives hundreds of amendments to the NDAA; and with just under 300 submitted by the end of the day yesterday, this year is no different. Therefore, as is the tradition for this bill, this first rule in the NDAA consideration process provides for general debate while a second will provide for consideration of the plethora of amendments we have before us.

As a member of the House Armed Services Committee, I have had the