



Serving Public Power Communities Since 1965

February 18, 2011

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

RE: File Number S7-45-10

Dear Ms. Murphy:

This letter is written in response to the request of the Securities and Exchange Commission (the "SEC") for comments on the SEC's proposed Rule 15Ba1 regarding a permanent registration requirement with the SEC for municipal advisors and record keeping requirements on such advisors (the "Proposed Rule") and, in particular, the interpretations of the SEC set forth in Release No. 34-63576 (the "Release").

The letter is submitted on behalf of North Carolina Eastern Municipal Power Agency ("NCEMPA") and North Carolina Municipal Power Agency Number One ("NCMPA 1", and together with NCEMPA, the "Power Agencies") and is submitted by the undersigned in his capacity as Chief Legal and Ethics Officer to the Power Agencies.

I. Background

Each of the Power Agencies is a public body and body corporate and politic organized under Article 2 of Chapter 159B of the General Statutes of North Carolina ("Chapter 159B"). As such, each of the Power Agencies is a political subdivision of the State of North Carolina. The powers of each of the Power Agencies are exercised by or under the authority of, and the business and affairs of each Power Agency are managed under the direction of, a Board of Commissioners. However, all or a portion of the powers of the Boards of Commissioners and the management of all or any part of the business and affairs of each of the Power Agencies may be exercised by an executive committee created pursuant to Chapter 159B. In fact, each of the Power Agencies has created such an executive committee and the Board of Commissioners of each Power Agency has delegated to that executive committee essentially all of its powers and duties. The executive committee, known as the Board of Directors, by virtue of the Boards of Commissioners delegation, presently manages the business and affairs of each Power Agency.

NCEMPA was organized by and is comprised of thirty-two cities and towns located in the eastern portion of the state of North Carolina (the "NCEMPA Members"), each of whom owns and operates its own electric distribution system from which it provides retail electric service to its citizens.

ElectriCities of North Carolina, Inc.

North Carolina Municipal Power Agency Number 1 • North Carolina Eastern Municipal Power Agency
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NCEMPA's Board of Commissioners is comprised of thirty-two members ("Commissioners"), one appointed by the governing body of each of the NCEMPA Members. NCMPA 1 was organized by and is comprised of nineteen cities and towns located in the western portion of the state of North Carolina (the "NCMPA 1 Members"), each of whom owns and operates its own electric distribution system from which it provides retail electric service to its citizens. NCMPA 1's Board of Commissioners is comprised of nineteen members ("Commissioners"), one appointed by the governing body of each of the NCMPA 1 Members. Each Power Agency serves as its respective Members' all requirements wholesale power supplier and each fulfills such obligations to its respective members with power and energy derived from its undivided ownership interests in generating facilities owned by Progress Energy Carolinas, Inc. ("PEC"), in the case of NCEMPA, and Duke Energy, in the case of NCMPA 1, and through purchases of power pursuant to bilateral power purchase agreements. NCEMPA owns approximately 13%-18% interests in each of five of PEC's generating facilities, Brunswick Unit No. 1, Brunswick Unit No. 2, Harris Unit No. 1, Roxboro Unit No. 4 and Mayo Unit No. 1., and NCMPA 1 owns a 75% interest in Duke's Catawba Unit No. 2. Each of the Power Agencies has issued tax-exempt and taxable bonds over the past 30 years, pursuant to authority granted in Chapter 159B, to finance its original ownership acquisition costs and other capital requirements and for refunding purposes. Currently, the two Power Agencies have approximately \$3.8 billion in outstanding bonds.

The Board of Directors of the Power Agencies consists of fourteen members, six of whom are elected by the Board of Commissioners of each Power Agency and two of whom are elected by those members of ElectriCities of North Carolina, Inc. ("ElectriCities") who are not members of either Power Agency. ElectriCities is a joint municipal assistance agency organized under Article 3 of Chapter 159B and is authorized to provide an assistance to its members in connection with their respective electric distribution systems. Each of the NCEMPA Members and NCMPA 1 Members are members of ElectriCities, as are additional cities and towns in North Carolina, South Carolina and Virginia, and constituent institutions of the University of North Carolina, in each case that own and operate their own electric distributions systems serving retail customers, who are not members of either Power Agency. ElectriCities, however, does not have the authority to issue bonds and, therefore, has no outstanding debt.

II. Members of the Board of Commissioners and Board of Directors should not be treated as "municipal advisors".

The Proposed Rule defines "municipal advisor" in part as "a person (who is not a municipal entity or an employee of a municipal entity) that (i) provides advice to or on behalf of a municipal entity" While this definition does not appear to be problematic, it is the SEC's interpretation of the Proposed Rule that is of extreme concern. The Proposed Rule excludes a municipal entity and employees of a municipal entity from the definition of municipal advisor. The Proposed Rule contains a definition for a municipal entity but it does not contain a definition for employee. In the Release, the SEC states that "employee" should include any person serving as an elected member of the governing body of a municipal entity, to the extent such person is acting within the scope of his or her role as an elected member of that governing body, but should not include appointed members of a governing body (except those serving *ex officio*), presumably because non-elected members are not accountable to the electorate for their actions.

We believe that the SEC's interpretation, as set forth above, is incorrect. First, the exclusion of a municipal entity must include the members of its governing body, whether they are elected or appointed, because a municipal entity cannot act but through its governing body. Therefore, by

definition, a municipal entity must include the members of its governing body. Furthermore, if members of a governing body are considered to be advisors to the municipal entity, they would be giving advice to themselves, clearly a paradoxical situation. Second, the idea that non-elected members are not accountable to the electorate for their actions ignores the facts that these officials swear to an oath of office that obligates them to uphold the laws and Constitutions of the State of North Carolina and the United States of America and that they are subject to fiduciary duties when serving as members of the governing body. The idea also ignores the fact that these officials may be removed from a governing body for violating their oath or their fiduciary duties of office.

Finally, the underlying purpose of Section 975 of Dodd-Frank Act, which amended SEC Rule 15B, was to establish a mechanism for regulating persons giving financial advice to municipal entities without regard to whether such persons were registered as brokers, dealers or investment advisers with the SEC. Typically, these are persons who are engaged in the business of giving financial advice and are compensated for giving financial advice. Heretofore, these two components have been essential characteristics in the current SEC regulatory scheme of brokers, dealers and investment advisors. Such persons do not include public citizens providing a service to their communities who do not give financial advice and do not purport to give financial advice. Including such persons in the definition of "municipal advisor" goes far past the underlying purpose, does little, if anything, to further the underlying purpose, and can only serve to discourage public servants from serving on the governing bodies of municipal entities.

For all of the foregoing reasons, we respectfully request that the SEC adopt an interpretation of the definition of "municipal advisor" that does not include non-elected members of a municipal entity's governing body who are public servants and not engaged in the business of providing financial advice to municipal entities for compensation.

III. Closing

Thank you for the opportunity to present the foregoing opinions.

Sincerely,



W. Mark Griffith
Chief Legal & Ethics Officer

cc: Michael S. Colo, Esq.