EnergyCapital Partners
Short Hills San Diego

EquiPower Resources Corp.

April 16, 2014

Via Email: regs.comments@federalreserve.gov
Mr. Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

RE: Docket No. 1479 and RIN 7100 AE-10: Complementary Activities, Merchant Banking Activities, and Other Activities of Financial Holding Companies related to Physical Commodities, Advance Notice of Proposed Rulemaking

Energy Capital Partners ("***ECP***") and EquiPower Resources Corp. ("***EquiPower***") are pleased to submit the following comments to the Board of Governors of the Federal Reserve System's ("***Board***") Advance Notice of Proposed Rulemaking regarding the activities of Financial Holding Companies ("***FHCs***") related to physical commodities (the "***ANPR***"). FHCs play a number of critical roles for our companies and the broader energy sector, including lender, investment advisor and physical and financial commodity hedge counterparty. ECP and EquiPower strongly believe that the Board's existing safeguards and restrictions governing FHCs' participation in the physical commodity business are appropriate and reasonable, and that, as described in more detail below, adding further restrictions will negatively impact our businesses and the broader energy sector, and will increase the cost of energy for consumers, small businesses and others without a concomitant benefit.

As referenced in the ANPR, a few large FHCs have ceased or announced their plans to cease some or all physical commodity activities. Contrary to the Board's assertion in the ANPR that this exit "may indicate that Complementary Commodity Activities are not necessary to ensure competitive equity between FHCs and competitors conducting commodities derivative or other financial activities" or that it "suggests that the relationship between commodities derivatives and physical commodities markets (or the relationship between participants in such markets) may not be as close as previously claimed or expected," we believe that the exiting FHCs are ceasing these activities because of the onerous regulatory burdens and associated costs that have been placed on them in connection with the implementation of the Dodd-Frank Act and in anticipation of additional restrictions and capital requirements.

One of our concerns is that as regulations increase and banks exit commodities businesses they will lose critical touch with the transactional side of many sectors of the economy and the businesses to which they lend. In our business, some players outsource the commercial/commodity side of the business and we know from experience that they are less in touch with the competitive marketplace and thereby less informed and exposed to greater risk as they do not have access to timely information or an understanding of the business at a transactional level necessary to react to a complicated and changing business environment. We strongly encourage the Board to give appropriate weight to these fundamental impacts on risk management.

We are already experiencing the effects of these exits, as they increase the cost and difficulty of finding appropriate transaction parties. Therefore, we strongly urge that the Board not impose any additional restrictions on FHCs' physical commodities activities.

I. Background

ECP is a private equity firm with more than $13 billion of capital commitments, managed on behalf of many U.S. public pension plans among others, which focuses on building and improving the energy infrastructure across the United States. ECP's current platform consists of 18 portfolio companies which together employ approximately 10,000 people.

EquiPower owns, manages, and operates 11 power generation facilities across eight states in four distinct energy markets totaling more than 7,000 MWs. EquiPower maintains continuous operations and has approximately 550 employees. We take pride in running a highly reliable generation business providing power to millions of households and businesses, and powering the U.S. economy. EquiPower is a wholly-owned subsidiary of Energy Capital Partners and represents the largest portion of ECP's invested capital. It is also the ECP portfolio company that would be most impacted by any additional restrictions on the FHCs as contemplated by the ANPR.

EquiPower relies heavily on FHCs in the course of operating and managing our business on a daily basis, in particular to manage energy commodity price risk exposure. First, EquiPower is an active buyer of physical coal, natural gas and fuel oil to fuel our facilities and generate electric power. EquiPower depends on FHCs as our primary counterparty type, in large part because of the access they provide to a broad network of suppliers and marketers to source fuel for our plants. EquiPower also frequently engages FHCs in hedging activity related to the sale of our facilities' power output (including physical and financial sales), basis or location differentials impacting delivery of fuel and power to customers, and hedging fuel inputs to manage risk associated with commodity price changes. This enables EquiPower to lock in cash flow streams, providing certainty to our business and increasing our ability to fulfill expectations with lenders, equity investors, and employees. Within this context, FHCs also provide valuable market liquidity for this sourcing, selling and hedging activity. Ultimately, managing commodity price risk exposure reduces EquiPower's business risk and improves the credit quality of the business against which FHCs have lent money. Finally, FHCs provide EquiPower with a wide range of lending and financial advisory services which are much more informed and sophisticated because of the FHCs' participation in physical commodity markets. We reject the notion that involvement in physical commodities creates greater risk for the FHCs. FHCs' involvement in the physical commodity business is absolutely complementary to its core lending businesses and in our view without this involvement their core businesses will be exposed to greater risk.

The energy industry, like so many other sectors of the US economy, was strongly affected by the 2008 financial crisis. We appreciate and share the Board's desire to ensure financial soundness for financial institutions and avoid future financial collapses. In fact, we have watched with keen interest the actions of the Board and other key regulators and governmental bodies as they seek to address the root causes of the crisis, including the mortgage industry meltdown. Financial instability harms our businesses by, among other things, increasing our costs, exposing us to significant liquidity risks, reducing the creditworthiness of our customers, suppliers and counterparties and increasing customer, supplier and counterparty defaults. We do not, however, believe that curtailing the activities of FHCs in the physical commodity sector will reduce risk to the financial sector. While we are admittedly not experts in the field of banking regulation, we have difficulty seeing the threat to the financial sector that the Board attempts to articulate through descriptions of disaster in the ANPR, especially in light of the existing safeguards that the Board has imposed on FHCs transacting in the physical commodity space. In fact, the examples of natural disasters and isolated casualty events cited in the ANPR did not result in any type of financial crisis or the contagion effects that are of concern to the Board.

The ANPR appears to be seeking a reason to impose greater costs on, or to discourage FHCs from engaging in, activities that are already prudentially managed and of great importance to the real economy. As the Board notes in the ANPR, under the Board's complementary authority, FHCs "may not own, operate, or invest in facilities for the extraction, transportation, storage, or distribution of commodities, or to process, refine, or otherwise alter commodities," "have provided commitments to the Board to help ensure environmentally sensitive commodities are safely stored and transported, including age limits on vessels, approval of vessels by a major international oil company, inspection and monitoring of vessels, and backup plans for oil spill responses," must maintain insurance and capital related to these activities and generally conduct such activities through non-banking subsidiaries. If the Board imposes further restrictions and greater costs on FHCs in this space, the FHCs will either pass on those costs to us, their customers, or will discontinue operations that are extremely important to our business and in our view important to the FHCs themselves. As a result, we are concerned that the cost of energy to consumers, small businesses and others will increase without any commensurate gain in financial safety.

We believe the type and nature of the risks associated with the commodity sector are much different than the risks described in the ANPR and the risks that could spark market contagion, like the deterioration in underwriting standards in the mortgage sector that spurred the last financial crisis. More specifically, unlike the risks associated with banks' financial sector activities, which are systemic in nature, typically highly leveraged and characterized by wide spread cross-holdings by FHCs, the commodity sector activities are defined more by idiosyncratic risk, less leveraged investments where equity investors, not lenders, bear most risk, and primarily single company exposure.

II. Impact of Increased Regulation

The decreased role by FHCs in the commodity sector that would result from additional restrictions would not only negatively impact energy sector participants, but it would also be detrimental to consumers, businesses and the broader economy.

First, any further restrictions on physical commodity activities of FHCs would increase the risks and costs to EquiPower and the broad set of similarly situated energy companies. FHCs are our preferred counterparty for hedging and risk management transactions. They are well-regulated, credit-worthy and available on a daily basis to make markets, facilitating EquiPower's ability to either buy or sell commodities. Additionally, as a result of these complementary activities, FHCs have developed a large and diverse set of customers in commodities businesses that provides them the unique ability to connect entities with offsetting risks, thereby allowing these entities to manage their commodity price risk and reducing risk to the economy as a whole. FHCs have an economic interest in the long-term health and stability of their customers like us. Their complementary hedging and lending activities align interests between the FHCs and their borrowers. There is a direct link between participation in physical markets and an ability to provide financial hedging services. Further limiting the FHCs' ability to participate in physical commodity markets would force us to shift our hedging activities to less credit-worthy, less regulated, and less economically aligned entities. It would also increase the risk that we could not hedge at all because of the significant reduction in market liquidity that would result if FHC were to exit or reduce their participation in this space. All of these impacts would increase corporate risks and the cost of doing business, including harming EquiPower's ability to raise necessary financing for growth and development initiatives. Smaller and medium sized market participants would likely be even more severely affected.

Importantly, a reduction in FHC participation in the physical commodity business would also increase risks to FHCs themselves. A presence in the commodity sector makes FHCs more effective at managing and pricing their risk exposure to the commodity-based companies that they serve from a lending perspective. In addition, the commodity services that FHCs provide reduce enterprise risk, improve the reliability of corporate cash flow, and enhance the credit quality of the borrowers to which FHCs make loans. If FHCs no longer participated in the physical commodity business, they would lose the sophisticated knowledge of these complex businesses which they have gained by such participation, thereby increasing the risks associated with their lending activities. In addition, restricting commodity activities by FHC's would tilt the playing field in favor of non-FHCs, moving such activities into a sector that is less regulated, more volatile and less reliable. We believe that the role of FHCs is critical to the stability of the physical commodity business and the businesses, like us, that rely on it.

The following examples demonstrate some of the ways in which the physical commodity businesses of FHCs have supported our business consistent with their role in the financial sector:

▪ An FHC provided an end-to-end solution for EquiPower's coal sourcing needs for a large coal plant that we operate. The FHC provided essential working capital funding and physical and financial hedging for long-term coal needs. The FHC also purchased physical power from the facility as part of the overall credit arrangement. Through this transaction, EquiPower obtained necessary working capital, price certainty for its input costs, and accessed the FHC's deep knowledge base about physical coal and its broad network of coal suppliers which would not have been available with a non-FHC. Most importantly, EquiPower gained certainty of supply to ensure that it had sufficient fuel inputs to operate the plant during critical demand periods, including during the most recent winter months when the country experienced extreme weather conditions created by the polar vortex.

▪ An FHC provided physical fuel delivery services and financial hedging to EquiPower's natural gas-fired power plants. EquiPower was able to access the FHC's extensive network of fuel suppliers and obtained a robust credit package that synchronized payment timing with EquiPower's receipt of power revenues. This transaction minimized our working capital needs. We needed an FHC-type financial intermediary to structure this transaction, which would not have been practical to structure with a variety of independent fuel suppliers. Additionally, this highly-efficient, low risk structure provided us with additional credit capacity, facilitating financial hedging activity for these same power plants which minimized EquiPower's corporate risk exposures. It should be noted that the FHC in this example was also a lender to EquiPower and by providing the aforementioned services the FHC was able to enhance the credit quality of their loan to EquiPower.

Finally, an FHC exit from the commodity business would ultimately increase risks and costs to the consumer and the economy. Small companies are the growth engine of the U.S. economy and without the access to markets and risk management products provided by FHCs, growth would be stifled. It is not practical for a small company to establish credit and relationships with, for example, hundreds of natural gas and coal suppliers. FHCs provide important intermediary relationships aggregating suppliers on our behalf to physically deliver fuel (as one example) to our facilities which serve a vital function in powering the U.S economy.

III. Conclusion

For reasons stated above, we do not believe that the Board should impose additional regulations on FHCs in physical commodity businesses. ECP and EquiPower, as well as other participants in the energy sector, heavily rely on the complementary physical commodity services that FHCs provide and urge the Board not to proceed with any additional rulemaking in this area.

Yours Sincerely,

Douglas Kimmelman
Senior Partner
Energy Capital Partners

Curtis A. Morgan
President and CEO
EquiPower Resources Corp.