



January 24, 2011

Electronically Filed

David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, DC 20581

**RE: Comments of Edison Electric Institute, 17 CFR Part 23, Regulations
Establishing and Governing the Duties of Swap Dealers and Major Swap
Participants
75 Fed Reg. 71397 (November 23, 2010)
RIN No. 3038-AC96**

Dear Mr. Stawick:

The Edison Electric Institute (“EEI”) respectfully submits these comments in response to the Commodity Futures Trading Commission’s (“Commission’s” or “CFTC’s”) Notice of Proposed Rulemaking on Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants (“NOPR”) published November 23, 2010 in the *Federal Register*. In the NOPR, the Commission invited public comment on proposed rules implementing section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),¹ which adds new section 4s to the Commodities Exchange Act (“CEA”) and establishes business conduct standards and duties with which swap dealers and major swap participants must comply in order to maintain registration as a swap dealer or major swap participant.

EEI appreciates the opportunity to submit comments on this important issue. EEI is the association of U.S. shareholder-owned electric companies. EEI’s members serve 95 percent of the ultimate customers in the shareholder-owned segment of the U.S. electricity industry, and represent approximately 70 percent of the U.S. electric power industry. EEI also has more than 65 international electric companies as Affiliate members, and more than 170 industry suppliers and related organizations as Associate members. EEI’s members are not financial entities.

¹ Pub. L. No. 111-203 (2010).

Rather, the typical EEI member is a medium-sized electric utility with relatively low leverage and a conservative capital structure.² EEI members are largely end users,³ as contemplated by the Dodd-Frank Act, and they engage in swaps to hedge commercial risk. As such, EEI's members do not anticipate being required to register with the Commission as "swap dealers" or "major swap participants." However, because a final rule has not been issued on the definition of "swap," "swap dealer," or "major swap participant,"⁴ EEI believes that the proposed rules are premature and requests that parties be able to file comments and to seek clarification or relief once they are able to determine if they qualify as a swap dealer or major swap participant.

EEI generally supports the need to have policies and procedures in place to ensure compliance with the Commission's rules and regulations. EEI is concerned with some of the prescriptive aspects of the proposed rule, which fails to take into account existing governance and compliance structures and processes developed and implemented by entities for the express purpose of meeting compliance and risk management objectives of both existing laws and business functions. The mandated and prescriptive nature of the proposal could, if adopted, present entities with a difficulty in incorporating new CFTC requirements into these existing governance and compliance programs. We believe a more flexible approach would allow this integration while achieving the requirements and meeting the principles of Dodd-Frank.

In addition, EEI is concerned that the NOPR could discourage swap dealers and major swap participants from entering into swaps exempt from mandatory clearing, such as those contemplated by the end-user exception. Proposed regulation Section 23.600(c)(5) requires, in part, swap dealers and major swap participants to establish policies and procedures for "central counterparties where clearing is required pursuant to Commission regulation or order, unless the counterparty has properly invoked a clearing exemption under Commission regulations" and requires swap dealers and major swap participants to "set forth the conditions for use of central counterparties for clearing when available as a means of mitigating counterparty credit risk."⁵ Thus, the proposed regulation recognizes that clearing is not required when the counterparty invokes a clearing exception; however, the preamble to the proposed rule appears to state the contrary. The preamble states that the rule would require that swap dealers and major swap participants establish policies and procedures "... to use central clearing as a means of mitigating

² EEI members are subject to substantial state regulatory requirements in addition to oversight by the Federal Energy Regulatory Commission. EEI's diverse membership includes utilities operating in all regions, including in regions with Regional Transmission Organizations and Independent System Operators that have active market monitoring units.

³ CEA § 2(h)(7). Although the term "end user" is not defined in the CEA, the "end user clearing exception" is available to non-financial entities that use swaps to hedge or mitigate commercial risk, and that notify the Commission as to how they generally meet their financial obligations associated with entering into non-cleared swaps. Id.

⁴ As of the date of this filing, the Commission has issued a Notice of Proposed Rulemaking on the definition of "swap dealer" and "major swap participant" on which comments are due February 22, 2010. The Commission has not issued a Notice of Proposed Rulemaking on the definition of "swap."

⁵ NOPR at 71,405.

counterparty credit risk.”⁶ This language appears to require the use of central clearing to mitigate risk. EEI seeks clarification that the NOPR is not seeking to require swap dealers to use central clearing to mitigate risk if clearing is not required under a valid exemption.

Please contact me or Lopa Parikh, Director, Federal Regulatory Affairs for Energy Supply, at (202) 508-5098 if you have any questions regarding these comments.

Respectfully submitted,



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⁶ *Id.* at 71,400.