



February 07, 2011

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

Re: Comments of Dominion Resources, Inc. to Proposed Rules on (i) Real-Time Public Reporting of Swap Transaction Data (RIN 3038-AD08) and (ii) Swap Data Recordkeeping and Reporting Requirements (RIN 3038-AD19) under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Dear Mr. Stawick:

Dominion Resources, Inc. (“Dominion”) respectfully submits these comments in response to the Commodity Futures Trading Commission’s (“Commission” or “CFTC”) Notice of Proposed Rulemakings (“NOPR”) on the (i) Real-Time Public Reporting of Swap Transaction Data (“Real-Time Public Reporting NOPR”)¹; and (ii) “Swap Data Recordkeeping and Reporting Requirements” (“Swap Data Reporting NOPR”)² which implement Sections 727, 728 and 729 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act” or “Dodd-Frank”)³.

I. Introduction

Dominion is one of the nation's largest producers and transporters of energy, with a portfolio of more than 27,600 megawatts of generation, 12,000 miles of natural gas transmission, gathering and storage pipeline and 6,000 miles of electric transmission lines. Dominion operates the nation's largest natural gas storage system with 942 billion cubic feet of storage capacity and serves retail energy customers in 13 states. Dominion enters into swap agreements to reduce exposure to market shifts in prices received and paid for electricity, natural gas and other commodities. Dominion is clearly an end user contemplated under Dodd-Frank, as reflected in the legislative history and correspondence by various members of Congress.⁴

As a commercial end user, Dominion appreciates the consumer protectionism intended by Dodd Frank that includes the transparency objectives of the reporting requirements under Section 727 and relevant provisions of Section 728 of the Dodd-Frank Act, particularly as applied to

¹ 75 Fed. Reg. 76,140 (Dec. 7, 2010), Errata 75 Fed. Reg. 76,930 (Dec. 10, 2010).

² 75 Fed. Reg. 76,574 (Dec. 7, 2010).

³ Pub. L. No. 111-203 (2010).

⁴ Comments by Rep. Colin Peterson on House floor “permits the so-called end users to continue using derivatives to hedge risks associated with their underlying businesses...” 156 Cong. Rec. H5245 (daily ed. Jun 30, 2010) (statement of Rep. Peterson); *see also* Dodd-Lincoln Letter dated June 30, 2010 from Senators Dodd and Lincoln to Rep. Frank and Peterson; *see also* further statements of Sen. Lincoln, 156 Cong. Rec. S 5921 (daily ed. July 15, 2010) (and differences between the House version and Senate version that was more restrictive).

those swap markets susceptible to manipulative abuse and systemic risk. First, the dissemination of real-time price information, as contemplated under Section 727 for relevant swap markets, can address the perceived asymmetrical information failure that potentially exists in these swap markets, thereby enhancing competition and increasing liquidity. Second, reporting relevant information on all swap transactions in accordance with Section 728 will provide the quantification and structure of the swap market necessary for the Commission to perform its market oversight obligation and to protect consumers and the public generally from market manipulation and systemic market failure. For these reasons, Dominion generally supports the reporting objectives and concepts presented in both the Real-Time Public Reporting NOPR and Swap Data Reporting NOPR.

The reporting concepts framed in these NOPRs are consistent with the overall congressional finding and purpose that underlies the Commodity Exchange Act (“CEA”). Section 3 of the CEA as amended by the 2000 Amendments⁵ sets forth the Congressional finding of the need to regulate transactions that are “affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.”⁶ The CEA’s statutory purpose is to protect this “national public interest” by deterring price manipulation and disruptions to market integrity, ensuring the financial integrity of transactions vested with the national public interest, and avoiding systemic risks. . .”⁷ While the Dodd-Frank Act amended a multitude of provisions throughout the CEA in expanding its applicability to swap markets, it left unamended Section 3’s statement codifying the CEA’s congressional finding and purpose underlying its regulation of transactions that can affect the national public interest.

Inherent in CEA Section 3’s language (both pre-and post-2000 Amendment) describing the transactions subject to the CEA is a presumption of the correlation between the national public interest and liquidity of the relevant market. Price transparency contributes to the competitive and economic efficiency of a liquid market. Liquidity is associated with markets that trade homogeneous products. The timely availability of price references in a market enhances its liquidity. In contrast, the less homogenous and more customized a product, the less it informs the market and serves a price reference function. Because of the uniqueness of these transactions there is limited ability, if any, to manipulate prices or disrupt the market, let alone subject the market to systemic risks. Customized products and transactions in illiquid markets affect the national public interest minimally, if at all.

⁵ 7 USC § 5, CEA § 3 (as amended by the Commodities Futures Modernization Act of 2000 (“2000 Amendments”)). Section 3 previously stated the need to regulate futures transactions that were affected with a “national public interest” where they were “carried on in large volume by the public generally . . .”; which prices were “generally quoted and disseminated throughout the United States . . . as a basis for determining the prices to the producer and the consumer of commodities and the products and byproducts thereof . . .” and where they were “susceptible to excessive speculation and [could] be manipulated, controlled, cornered or squeezed . . . rendering regulation imperative for the protection of such commerce and the national public interest therein.”

⁶ 7 USC § 5(a); CEA § 3(a).

⁷ 7 USC § 5(b); CEA § 3(b).

There are certain legitimate trading activities by market participants, the transparency of which creates market risks, not only for the participants, but to market efficiencies contrary to the national public interest. For those transactions, public disclosure, especially real-time disclosure, could spur a market response that would reduce the market's liquidity. Congress and the Commission have recognized the possibility of this scenario for block trades. Dominion's own trading activity as an end user executing swaps tied to regional energy products to hedge its assets creates an analogous scenario where inadvertent public disclosure as a result of real-time public reporting could place Dominion in an anticompetitive position.

Consequently, in developing regulations implementing the Dodd-Frank Act, the Commission should consider the efficacy of such rules when imposing them on transactions in which the "national public interest" is de minimis. The regulations adopted under the Dodd-Frank Act should be designed to minimize their applicability to these transactions whenever possible and to mitigate the rules' impact on exempt end users who will more likely be the counterparty to such transactions. Where this consideration should have particular import is in the formation of the reporting requirements. The reporting requirements under each of the two NOPRs are designed to achieve two different ends. The objective of the Real-Time Public Reporting NOPR is to ensure public access to transactional information that assists markets in price discovery. The Swap Data Reporting NOPR addresses the Commission's need for access to timely information in order to fulfill its obligation to monitor and assess market integrity and to be able to respond quickly to deter price manipulation and market disruption in avoidance of systemic risks. Price discovery and systemic risk are relevant to liquid markets, the type of markets that are affected with a national public interest and that the CEA was intended to protect. However, where the national public interest is not advanced by a reporting requirement, Dominion urges the Commission to exercise to the fullest extent possible its discretionary authority to (i) limit and restrict the public dissemination of transactions entered into by an exempt end user for swap products that do not serve the price discovery objective of Section 727 of Dodd-Frank and (ii) to limit and minimize swap data reporting requirements that do not serve to identify and quantify the relevant markets as necessary for the Commission to fulfill its market surveillance responsibility.

II. Real-Time Public Reporting NOPR

As Congress and the Commission have recognized in the Dodd-Frank Act in general and specifically in the context of real-time reporting, the burdens imposed by Dodd-Frank should be met taking into consideration competing interests, including the goals of the particular provision, the burden on market participants, and the public interest. In the case of real-time reporting, Congress has made the purpose clear: to make "swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to *enhance price discovery*."⁸ The goal of price discovery to which the national public interest attaches is balanced with individual counterparties' interest in participating in the swap market.

⁸ CEA § 2(a)(13)(B) (emphasis added).

Consequently, Congress imposed an obligation on the Commission to protect the identity and positions of market participants and the integrity of the market as a whole.⁹

In addition to Dodd-Frank's statutory balancing between the public and market participants' interests, the Commission recognized in the Swap Data Reporting NOPR Dodd-Frank's policy goal of placing "lesser" regulatory burdens on non-regulated entities such as end users. Specifically, the Commission acknowledged the "policy choice made by Congress in Dodd-Frank to place lesser burdens on non-SD/MSP counterparties to swaps, where this can be done without damage to the fundamental systemic risk mitigation, transparency, standardization, and market integrity purposes of the legislation."¹⁰

Dominion's analysis of the impact of the Real-Time Public Reporting NOPR on its business as an exempt end user raised questions whether this balancing goal has been realized. As proposed, extending real-time public reporting obligations to swaps executed by an end user does not in all instances further the price discovery or national public interest goals inherent in Dodd-Frank and the CEA historically. On the other hand, it does place a reporting burden on end users of swaps and subjects them to increased market risks, in addition to unwarranted compliance costs. Dominion believes that consistent with the Commission's discretionary authority under the CEA to adopt rules that balance the public interest with the end users' commercial interests, the Real-Time Public Reporting NOPR can be and should be modified as it relates to end-user swaps. Accordingly, as we explain in more detail below, Dominion proposes a clear and workable alternative that will support end users' commercial interests in participating in swap markets, particularly in off-facility swaps between two end users or between an end user and a swap dealer/major swap participant (which we will refer to as "regulated entities"), while detracting in no way from the price discovery purpose of Section 727 of Dodd-Frank.

A. Dominion Generally Supports Real Time Reporting Rules Relating to Registered Entities

Section 727 of the Dodd-Frank Act contemplates two prongs to the public reporting requirement. The first prong is reporting to the registered entity. The second prong is the public dissemination of transaction and price data. Subsection (A) of CEA Section 2(a)(13) defines real-time public reporting to mean "*to report* data relating to swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed;" while subsection (B) sets out the section's purpose in authorizing the Commission "to make swap transaction and pricing data *available to the public* in such form and at such times as the Commission determines appropriate to enhance price discovery. While the timing for reporting under subsection (A) is expressed relative to the execution of a transaction, the timing for public availability is at such times as is appropriate to enhance price discovery within the discretion of the Commission. The distinction between reporting and public

⁹ See CEA § 2(a)(13)(C)(iii) (dissemination of real-time data must be done "in a manner that does not disclose the business transactions and *market positions* of any person"); CEA 2(a)(13)(E) (rules must "ensure such information does not identify the participants;" must "take into account whether the public disclosure will materially reduce market liquidity;" and must allow an appropriate time delay for reporting large notional swap transactions).

¹⁰ 75 Fed. Reg. at 76,579.

dissemination is also reflected in subsection (D) under which the Commission “*may* require registered entities to *publicly disseminate* the swap transaction and pricing data *required to be reported.*” (Emphasis added). Likewise, subsection E is stated in terms of “the *public availability* of transaction and pricing data” while the language in subsections (F) and (G) is in terms of reporting, the first requiring parties to a swap to be “responsible for *reporting* swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission; and the second requiring that “[e]ach swap shall be reported to a swap data repository.”

The Commission has proposed rules that recognize these two prongs: “For off-facility swaps, proposed § 43.3(a)(3) provides that . . . the reporting party must report . . . swap transaction and pricing data to a registered SDR as soon as technologically practicable” and that “[o]nce a reporting party has reported its swap transaction and pricing data to a registered SDR, the reporting party has satisfied its requirement to report....”¹¹ The SDR thus would be responsible to publicly disseminate the swap transaction and pricing data. While Dominion recognizes the Commission’s regulatory interests in having swap information reported to an SDR or other registered entity, it has concerns that the real-time public availability of certain of its transactions and pricing data, no matter its form for masking purposes, can harm its competitive position as a participant in the marketplace.

Consistent with CEA Sections 2(a)(13)(C)(i) through (iv) as amended by Section 727 of Dodd-Frank, the Commission proposes that its rules relating to the collection and public dissemination of swap transactions and pricing data apply to all swaps captured under subsections (i) through (iv) as follows:

- (i) swaps required to be cleared¹² and those that would have been required to be cleared but for the non-financial end-use exemption¹³;
- (ii) swaps that the Commission has not determined to require mandatory clearing but are cleared at a registered derivatives clearing organization (“DCO”);
- (iii) swaps not cleared at a DCO but are reported to a registered swap data repository (“SDR”) pursuant to section 2(h)(6) of the CEA; and
- (iv) swaps that are required to be cleared¹⁴, but are not cleared.

¹¹ 75 Fed. Reg. at 76,145.

¹² See Section 723(a)(3) of Dodd-Frank, amending 7 USC § 2(h)(1), CEA § 2(h)(1)(A), which makes it unlawful to engage in a swap if such swap is required to be cleared. CEA Section 2(h)(2) provides for the Commission to make a determination as to whether the swap or under subsection, category, type or class of swaps should be required to be cleared.

¹³ Amended CEA §2(h)(7)(A) provides that the above referenced CEA §2(h)(1)(A) does not apply to a swap if one of the counterparties to the swap is not a financial entity; uses swaps to hedge or mitigate commercial risk and notifies the Commission how it generally meets its financial obligations associated with entering into non-cleared swaps.

¹⁴ See n.12, *supra*.

Dominion fully supports both the real time reporting and real time public dissemination requirements for swaps that are cleared at registered derivatives clearing organizations under subsections (i) and (ii). Mandatory clearing for designated swaps is a cornerstone of the Dodd-Frank Act in its goal to mitigate the systemic risk of swap trading. Under CEA Section 2(h)(2) as amended by Dodd-Frank, the Commission determines which swaps must be cleared based on a multitude of factors relating to the clearing organization itself and the particular swap market. Three of the determining factors include trading liquidity of the relevant market; adequate pricing data; and the relevancy of the market's size to systemic risk. These determinants are consistent with the factors that signify transactions imbued with the national public interest under CEA Section 3, as discussed above. Consequently, Dominion agrees that swaps cleared at registered derivatives clearing organizations should be reported and publicly disseminated in real time if the price discovery objective of Section 727 of the Dodd-Frank Act is to be achieved.

However, as discussed in more detail below, Dominion continues to be concerned that the rules implementing public dissemination of information relative to all swaps under (iii) and a discrete and small number of end-user swaps under (i) (i.e., swaps subject to the mandatory clearing requirement but not cleared at registered derivatives clearing organizations) will not protect the anonymity of these end-user swap counterparties and will have a potentially negative effect on the liquidity of the relevant market to the commercial detriment of the end user.¹⁵ These anonymity and liquidity concerns are heightened relative to the public availability of swap data reported under subsection (iii) relative to transactions between two exempt end users. Dominion's proposed alternative, noted earlier and detailed below, can resolve end users' concerns consistent with the protections granted in Dodd-Frank, while the preponderance of swaps will still be reported for public availability in the real-time framework proposed in the NOPR.

B. The Commission Should Modify the Real Time Reporting and Public Dissemination Rules Relating to End User Swaps

As noted, the express purpose of Section 2(a)(13) of the CEA¹⁶ as amended by Section 727 of the Dodd-Frank Act "is to authorize the Commission to make swap transaction and pricing data available *to the public* in such form and at such times as the Commission determines appropriate to enhance *price discovery*." Congress has thus made it clear that price discovery frames the context in which real-time reporting and public dissemination requirements are to be adopted by the Commission. Price discovery has relevance only to markets that are sufficiently liquid that they are susceptible to price manipulation, disruption of market integrity, and systemic risk. The NOPR recognizes this fundamental price discovery goal. In the NOPR, the Commission expressly seeks guidance on the rule as follows: "The Commission requests comment generally on the scope of transactions covered by this part. In addition, the

¹⁵ Dominion does not object to the real-time reporting of end user-end user and end user-regulated entity swaps that are traded on registered swap trading facilities such as ICE and NYMEX provided that sufficient anonymity protections are in place. Rather, as noted, Dominion's focus on swaps subject to Section 2(a)(13)(C) is on all swaps under (iii) and end-user swaps under (i) that are clearable but not cleared at registered derivatives clearing organizations.

¹⁶ 7 USC § 2(a)(13).

Commission requests specific comment on which parties to a swap should be covered by the reporting requirements in this part *in order to enhance price discovery?*¹⁷ Furthermore, the Commission's stated goal in proposing to include price changing events in the definition of a reportable swap under proposed rule 43.2(v) is to "enhance the *transparency and price discovery* attributes of swaps trading."¹⁸

In many cases, however, swaps involving two end users, and off-facility swaps entered into between end users and regulated entities, are likely to be customized products, be designed to hedge certain specific assets, or otherwise represent specific and illiquid transactions tailored to the specific needs of the end user. This is especially the case for those entities hedging energy assets, such as Dominion. The public dissemination of information relating to these swaps does not advance the goal of transparency and price discovery precisely because the swaps are not comprised of sufficiently liquid products or located at sufficiently liquid locations to provide the market with meaningful price discovery information. As the Commission recognized in the NOPR, "the total number of end-user to end-user swaps will be small," especially compared to swaps involving at least one regulated entity or traded on an exchange.¹⁹ Likewise, in discussing anonymity concerns in the NOPR, the Commission recognized that off-facility swaps may involve trading a swap at a location where there are only two active parties.²⁰ While providing no public benefit in serving as a price reference for informing the market, the public dissemination of such swaps, even with the confidentiality protections envisioned in the rules, will in fact harm the market by increasing the risk that sophisticated market participants will be able to detect the asset being hedged or the end user doing the hedging, despite confidentiality protections. This, in turn, may make it more difficult or costlier to hedge assets. Alternatively, end users may be forced to accept increased risk if real-time reporting is mandated. Such an outcome is clearly contrary to the Commission's obligation to protect market participants and the markets in formulating public dissemination rules under Section 727.²¹

Dominion, as an end user executing swaps to hedge its assets, strategically enters its relevant swap markets in such a way to ensure that its identity and asset are not discernible by the market. Public disclosure would cause an anticompetitive shift in pricing from its swap providers and consequently reduce market liquidity in the same way that is a concern for large block trades. The proposed rules trade some loss of anonymity for the broadest availability of swap information notwithstanding Dodd-Frank's clear mandates and notwithstanding that the Commission's willing forfeiture of anonymity would not further the price discovery purpose codified in Dodd-Frank.

¹⁷ 75 Fed. Reg. at 76,143 (emphasis added).

¹⁸ *Id.* at 76,145 (emphasis added).

¹⁹ *See id.* at 76,146.

²⁰ *Id.* at 76,150.

²¹ Indeed, the Commission recognizes that access to swap data may provide "unfair advantages" to those who receive information before the public dissemination, and hence it proposes in § 43.3(b)(2)(i) to prohibit swap markets or any reporting party to from disclosing the swap transaction and pricing data before the real-time public dissemination. *Id.* at 76,147. Likewise, the proposed confidentiality rules, Sections 43.4(e)(1) and 43.4(e)(2) (prohibiting the disclosure of swap data which identifies the swap party or permits the effective disclosure of a party via description of an underlying asset of the swap), are designed to protect market participants from undue harm.

The proposed regulation that attempts to mask the identity of a counterparty is insufficient to protect the interests of end users in the context of real time public dissemination. The proposed regulation in Section 43.4(e)(2) that would require the description to be “general enough to provide anonymity, but specific enough to provide for a meaningful understanding of the economic characteristic of the swap” is an impossible standard. A description that is general enough to provide anonymity would serve no price reference purpose in informing the market. Yet, to provide sufficient details to achieve the price discovery objective of the real-time public reporting requirements would further mean that the identity of the counterparty – and the commercial interest of the counterparty for being in the swap market – is easily discernible by other market participants. This is particularly true, as acknowledged by the Commission, should the underlying asset and tenor of the swap be required to be disclosed.

Accordingly, Dominion urges the Commission to modify its real-time public dissemination rules to allow an exclusion from the public disclosure of data concerning any transactions between either two end users or an end user and a regulated entity with respect to any class of swaps that do not serve a significant price discovery function.

Specifically, Dominion proposes that the Commission should make specific findings that all swaps under 2(a)(13)(C)(iii) and end-user swaps under 2(a)(13)(C)(i) that are clearable but not cleared at registered derivatives clearing organizations perform some form of price discovery function before requiring the public dissemination of such swaps. The Commission has experience and an already established regulatory framework for making price discovery findings. Dominion therefore proposes that the Commission utilize the process that it established for findings of swaps that perform a “significant price discovery” (“SPD”) function under the now-repealed Section 2(h) of the CEA but subsequently included in Section 737 of the Dodd-Frank Act. Use of the SPD standard for determining the swap data to be made publicly available achieves the balance between the national public interest and the commercial interest of the end user envisioned by Dodd-Frank. Moreover, the SPD mechanism provides a clear and readily available means to identify the end-user swaps to be reported in real time, and satisfies the mandates of CEA Section 2(a)(13).

The analogy to SPDs is particularly apt to the issue of whether the above-referenced end-user swaps should be publicly disseminated. First, the standards set forth in Section 737 for an SPD, which are (i) price linkage, (ii) arbitrage, (iii) material price reference, (iv) material liquidity, and (v) other material factors, tie directly to the purpose in Section 727 of Dodd-Frank that reported swap data “enhance[s] price discovery.” That is, if a swap does not meet the standards of an SPD swap, it does not serve a price discovery function, and therefore public dissemination of its data does not serve to protect the broader national public interest from systemic risk, which is a core objective of the Dodd-Frank Act and a paramount driver of its enactment. Second, the entire point of the SPD framework in Section 737 is to permit the Commission to set limits for swaps “not traded on or subject to the rules of a designated contract market or a swap execution facility.”²² In this case, end-user swaps that are traded on registered swap facilities and those that are subject to mandatory clearing and cleared at registered

²² Section 737 of the Dodd-Frank Act.

derivatives clearing organizations will continue to be made publicly available in real time,²³ but other end-user swaps would not be publicly disseminated unless an SPD determination can be made.²⁴ Applying the concept of SPDs to determining which end-user swaps will be subject to being reported in the time frames proposed by the Commission for corresponding public dissemination is well within the Commission's discretion and meets the goals of the Dodd-Frank Act.

Where a SPD determination has not been made, and therefore the non-SPD swap is excluded from public dissemination, the need to report in the narrow timeframe to allow for real-time public availability no longer has purpose. Therefore, in order to meet the reporting prong of Dodd-Frank Section 727 (noted above), Dominion would ask the Commission to use its discretion under CEA Section 2(a)(13)(F) to prescribe rules under which such non-SPD end-user swaps shall be found in compliance with CEA Section 2(a)(13) if reported pursuant to the final rules adopted under Section 728 of the Dodd-Frank Act.

Alternatively, to the extent the Commission nevertheless requires public dissemination of all end-user swaps without specific findings that the above-mentioned category of such swaps performs a significant price discovery function consistent with the purpose of Section 727, it should use its discretion to permit such swaps to be publicly disseminated on a delayed basis. Promulgation of such a rule would be consistent with the discretion granted to the Commission under subsection (B) to make the transaction and pricing data available to the public "in such form and at such *times*" as determined by the Commission and is consistent with the price discovery function that the relevant transaction provides (or does not provide).²⁵ If it takes such action, the Commission would need to consider what delay is appropriate, considering, among other things, that some hedged positions are placed over a 30-day or longer period depending on the asset being hedged. However, Dominion would be agreeable to a process allowing such swaps to be reported as part of an end user's State Data Snapshot Report under Section 728 that would include some identifying attribute to trigger release of such swap data for public dissemination. This would allow the Section 728 report to serve a dual function, reducing end users' reporting burden, while providing an automatic process triggering the release of the swap data for public availability.

²³ Again, subject to sufficient anonymity protections.

²⁴ The number of end-user swaps that would otherwise come under subsection (i) of CEA §2(a)(13) but for no SPD finding would most likely be a limited number as swaps mandated to be cleared has already been evaluated for some of the same price discovery and liquidity criteria that would be used for a SPD finding. It could be presumed that swaps mandated to be cleared would therefore correspond with SPD swaps, but that may not necessarily be the fact as the criteria for mandatory clearing under CEA § 2(h)(2)(D) includes other criteria and serves differing public policy objectives.

²⁵ In fact, in the Real-Time Public Reporting NOPR, the Commission references this same section in noting its authority to set out the manner in which parties to a swap must report the transaction to the appropriate registered entity, as well as the manner in which registered entities must publicly disseminate such data. The Commission further notes that the CEA "does not provide an explicit method or *timeframe* in which swap transaction and pricing data must be reported to the public in real-time."

III. Swap Data Recordkeeping and Reporting Requirements

The Commission's charge as guardian over various markets in protection against systemic risk was expanded by the Dodd-Frank Act to include swap markets. Dominion supports the Commission's need, in order to meet this charge, to collect essential data for all swaps to allow it to quantify and measure market activity; to determine the evolving degrees of illiquidity to liquidity and to assess the interrelationship and linkages among the swap markets themselves and with other financial and commodity markets. Dominion supports regulatory reporting requirements that are rationale, cost effective and considerate of the realistic needs and capabilities of, not only market participants to report, but also the capabilities of regulators to evaluate the universe of data and to assimilate it into a reasonably accurate assessment of the swap markets as a whole and their links to other economic markets that increases the potential for systemic risks.

A. The Commission's and Market Participants' Administrative Reporting Burden Could Be Mitigated by Adopting Only Real Time Public Reporting and State Reporting to Meet the Regulatory Oversight Needs

The rules proposed to implement Dodd-Frank Sections 727 and 728 would mandate that a market participant report data concerning the same swap four different times during the day of its transaction: (i) 5 minutes after being transacted;²⁶ (ii) again 15 minutes after being transacted; (iii) then 15 minutes after confirmation;²⁷ and (iv) an end-of-day state report, with an obligation to refresh the data to capture any changes to the swap and its evaluation throughout the continuation of the swap until expiration. On their face, these requirements create a tremendous administrative burden. They impose on end users (who are not in the business of swaps for trading sake, but for whom swap transactions are only a part of their business generally for managing commercial risks associated with their core business and who were to be at least conceptually exempt from Dodd-Frank), herculean duplicative tasks to be executed in a extremely tight time frame, while resulting in a massive collection of repetitive data for regulators who are already struggling with limited budgets and constrained resources. The Commission, however, has not provided any clear rationale for the intensity of the timing and cycles for reporting under its proposed rules; there is certainly no statutory requirement for it.

Section 728 of the Dodd-Frank Act only establishes a reporting obligation with specifics left to the discretion of the Commission. Still, that discretion is to be exercised consistent with the objectives of other statutory and regulatory government checks to ensure that regulations are rational and reasonable, not unduly burdensome and justified by a cost/benefit analysis.

Dominion suggests that the rulemaking efforts in structuring the reporting requirements and creating system data requirements for reporting would be better advanced with merging those areas of rulemakings that address the Commission's reporting needs into one rulemaking

²⁶ The Commission requested comments regarding the maximum reporting timeframes, suggesting as soon as technologically practicable but no later than five minutes. *See* 75 Fed. Reg. at 76,146.

²⁷ Although a standard term in derivative trading agreements, including ISDAs, provides for a two- or three-day confirmation period, the Commission is proposing confirmation be performed the same day. *See id.* at 76,574.

that can first identify and minimize the frequency and timing of reporting that meets the statutory necessity for reporting across Dodd-Frank. Dominion advocates that a reporting structure, as set forth below, would provide the necessary swap data to serve the need for real-time public dissemination for purposes of price discovery and afford the Commission timely and sufficient market information to perform its regulatory oversight of swap markets.

Dominion recommends a reporting structure that would consist of only two components:

(1) *Real-time reporting of swap contracts that serve a significant price discovery (“SPD”) function.* As discussed above in our comments on the Real-Time Public Reporting NOPR, the purpose of real-time public dissemination under Section 727 of Dodd-Frank is to serve price discovery, which is relevant and necessary where there is significant liquidity in the market. Limiting reporting in real time to these transactions will eliminate data that is essentially irrelevant in informing the market and not useful to market participants looking for a price reference. The Commission’s reliance on this same real-time stream of data to fulfill any regulatory purpose under Section 728 would still give the Commission the critical data it needs to respond in real time to market movements indicative or symptomatic of some unlawful market behavior. While the proposed rules reflect different data elements for reporting between real-time reporting under Section 727 and the creation reporting (primary economic terms data) under Section 728, the Commission can determine the data elements required for this reporting stream that fulfills the needs of both the public for price discovery and its own regulatory oversight to establish standard reporting forms that serve both the public disclosure and its regulatory needs.

(2) *Reporting of all swap transactions for purposes of Section 728 consistent with the state or snapshot concept proposed by the Commission.*²⁸ This would provide the Commission daily reports which in the aggregate provide a daily updated national snapshot of the swap market. There is no regulatory need that additional creation and/or confirmation reporting requirements would serve that would not be met by an end-of-the-day reporting requirement. This daily state report would give the Commission all that is needed to perform its regulatory oversight in quantifying and measuring market activity; assessing the degrees of illiquidity or liquidity of the different swap markets and to assess the interrelationship and linkages among the swap markets themselves and with other financial and commodity markets.

Dominion has not proposed a requirement to report or submit confirmation data or documents to the SDR in the above structure for both substantive and administrative reasons. First, the confirmation does not provide any new, revised or additional terms that would be relevant to the Commission and not reflected on the daily state report. The daily state report can meet the same objective as the confirmation reporting requirement – “to help ensure the completeness and accuracy of the data maintained in an SDR with respect to a swap.”²⁹ Indeed,

²⁸ *Id.* at 76,583.

²⁹ *Id.* at 76,581.

the same system that would be used to create the daily state report creates the confirmation. There is no need to duplicate a confirmation record in the SDR warehouse. Confirmation documents are retained as part of most companies' best business practices, and Dominion is agreeable to retain them for the retention period under the Commission's retention rules, as ultimately adopted. The Commission has the authority to request production of any swap confirmation documentation noted in the state report.

B. Further Consideration of Data and Information Requirements Should Be Delayed Until Substantive Reporting Rules under Dodd-Frank §§ 727 and 728 Are Finalized.

Dominion recognizes that among the universe of reporting parties who will be submitting reports to a registered entity, energy end users are a relatively small constituency, and that the Commission, in attempting to define all the various data fields for use by a diverse population of swap participants, is aware of the importance of standardizing the type and form of data required for reporting. The Swap Data Reporting NOPR raises questions regarding Unique Identifiers and proposes various data fields in proposed reporting forms. While Dominion recommends a consolidation of the Real-Time Public Reporting NOPR and the Swap Data Reporting NOPR, with any other reporting aspects that are being considered in other rulemakings regarding swaps regulations, it would suggest that the substantive rulemakings in such a consolidated docket be bifurcated from the technological system requirements issues, which could then allow for a phased development of forms and fields that correlates with the finalization of the substantive requirements. Some technical requirements are already certain as there should be no debate as to certain information that the Commission must have. The stakeholders in the technical and system docket could continue the work that has begun in the two NOPRs to which Dominion's comments apply. This would allow more efficient allocation of parties' representation by policy, business and IT expertise so that those best suited to discuss the issues can participate and work with the Commission to find workable solutions that meet the needs of all stakeholders, market participants and the Commission.

That said, however, in addressing the Commission's questions in the Swap Data Reporting NOPR, Dominion has the following comments regarding certain data fields that are problematic:

- The "settlement method" and "grade" fields imply that physical products may be in scope for reporting. However, Dominion's reading of the statute would explicitly exempt these products. The Commission should clarify that physical products are not within the scope of these data fields.
- The "Collateral on Deposit" field implies that collateral is calculated at a transaction level. Collateral in OTC agreements is normally a subset of the total exposure, and cannot be discerned at a transaction level.
- The "mark-to-market" field will not be available on the same day a transaction is consummated. Relevant pricing necessary to price energy transactions become available in an overnight process, so there is no capability for same-day valuation reporting.

IV. Migration of Transition Swap Reporting to Section 728 Reporting

As discussed above, the Commission's Swap Data Reporting NOPR seeks to prescribe reporting standards for swap data and to define the obligations of various market participants in the swap data reporting process. However, the proposed rules do not apply to "Transition Swaps," which are defined as swaps executed on or after the date of enactment of the Dodd-Frank Act (i.e., July 21, 2010) and before the effective date of the final rule issued pursuant to instant rulemaking.³⁰ The Commission proposes to establish data and recordkeeping requirements for Transition Swaps through a separate rulemaking process.³¹ The exclusion of Transition Swaps from the reporting procedures established under the Swap Data Reporting NOPR results in the creation of two parallel reporting systems for swaps and unnecessarily subjects reporting counterparties to duplicative and potentially inconsistent reporting requirements.

Pursuant to Dodd-Frank Section 723, which requires the Commission to adopt rules for the reporting of Transition Swaps to a swap data repository or the Commission, on December 17, 2010, the CFTC issued an Interim Final Rule requiring specified counterparties to report certain information to a SDR or the Commission either 90 days following enactment of the Dodd-Frank Act or such other time as the Commission may prescribe.³² In the preamble to the Interim Final Rule, the Commission indicated that it "intends to establish permanent data recordkeeping and reporting requirements for transition swaps in a separate rulemaking under new CEA Section 2(h)(5)(B)."³³ However, such permanent rules for Transition Swap reporting have not yet been proposed by the Commission. Nevertheless, under the contemplated rulemaking process, it appears that Transition Swaps will be subject to a separate reporting regime for the entire lifecycle of the swap. Dominion believes that separate reporting rules for Transition Swaps are unnecessary and that the ongoing swap reporting required under the Swap Data Reporting NOPR should include the reporting of required Transition Swap data in the same data stream.

While we recognize that for Transition Swaps reporting counterparties are unlikely to possess records and information addressing all the data elements required to be maintained and reported under the Swap Data Reporting NOPR, Dominion believes that any reporting for Transition Swaps can and should be accomplished through the same procedures established for regular ongoing swap data reporting under the Swap Data Reporting NOPR. Accordingly, Dominion suggests that the Commission incorporate requirements for reporting Transition Swaps into the regime contemplated in the Swap Data Reporting NOPR. The required data fields described in the Swap Data Reporting NOPR and required for swap reporting can be provided by reporting counterparties to the extent available and applicable for a particular reportable Transition Swap. To address the potential differences in the data available for Transition Swaps, Dominion recommends that the Commission provide guidance and examples

³⁰ *Id.* at 76,580.

³¹ *Id.*

³² 75 Fed. Reg. 78,892 (Dec. 17, 2010).

³³ *Id.*

for compliance with the reporting of each data field under circumstances where particular data concerning a Transition Swap is unavailable.

The creation of two parallel reporting systems for swaps and Transition Swaps is not necessary to further the fundamental transparency, systemic risk mitigation, or market integrity goals of Dodd-Frank. Requiring reporting counterparties to maintain two separate systems creates an unnecessary burden on reporting counterparties, particularly non-swap dealer, non-major swap participant counterparties, and needlessly complicates the reporting structure.

V. *Phased-In Approach for Reporting Requirements*

Both NOPRs request comments regarding adoption of a phased-in approach for different types of reporting parties. Dominion supports a phased-in approach that would delay implementation for end users. Emphasis should be placed on implementation that captures the largest number of swaps and the most liquid swap markets, i.e., DCOs, DCMs, SEFs, SDs and MSPs. For most regulated entities, swaps constitute a part of their core business. This is not true for end users. There would be greater diversity of systems that are designed to support their specific core business that would need to be implemented or modified in order to comply with their particular reporting obligations. System problems that might arise in deployment, which experience generally proves is the case, should be worked out before end users are required to modify their core business systems in order to accommodate what is most likely a limited, albeit necessary, part of their business activities. Delaying the reporting obligation for end users is particularly important where no SDRs yet exist. SDR systems should be implemented and tested before end users are required to begin system analysis for what implementation or modifications will be required. Dominion is particularly concerned with system changes that will be necessary should the timeframe associated with reporting to an SDR to satisfy either the real-time reporting obligation under Section 727 or the swap creation reporting obligation under Section 728 be required to occur within minutes of swap execution.

VI. *Reconsideration of Reporting NOPRs Under President Obama's Regulatory Principles*

On January 18, 2011, President Obama signed an Executive Order to improve regulation and regulatory review. It charged federal agencies to:

- (1) propose or adopt regulations only upon a reasoned-determination that its benefits justify its costs;
- (2) tailor regulations to impose the least burden on society, taking into account the costs of cumulative regulations;
- (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits;
- (4) specify performance objectives, rather than specifying the behavior or manner of compliance that entities must adopt; and
- (5) identify and assess available alternatives to direct regulation.

The President underscored this executive action by publishing contemporaneously an opinion piece in the Wall Street Journal in which he promised that his administration would be “getting rid of absurd and unnecessary paperwork requirements that waste time and money” and “looking at the system as a whole to make sure we avoid excessive, inconsistent and redundant regulation.”

In comments during a public meeting on Dodd-Frank shortly following the Executive Order, several of the Commissioners voiced support of the Executive Order and spoke to the voluntary compliance of the CFTC with the Executive Order’s objectives, even though by law the CFTC, as an independent agency, would not be subject to it, presaging a later letter from Rep. Frank Lucas and Rep. K. Michael Conaway to Chairman Gensler requesting that the agency voluntarily adhere to the Executive Order.

The Commission has an opportunity to demonstrate its support for President Obama’s regulatory commitment particularly in considering the exercise of its discretion in adopting rules to implement the reporting requirements under Dodd-Frank. The two NOPRs addressed in these comments demonstrate four levels of reporting requirements that would effectively report the same data at least three times in one day. A demonstration of cumulative and redundant regulations resulting in significant costs exists in just these two NOPRs of the many NOPRs to issue out of the Dodd-Frank Act. For end users, the transactional costs of its swaps would increase as SDRs and other registered entities would seek to recover the systems costs necessary for receiving and housing the reported data, in addition to the end user’s own costs to implement new reporting systems or modified existing systems to enable reporting. Yet, as demonstrated in Dominion’s comments above, there is no benefit gained from these cycles of reporting. Neither swap market participants nor the national public interest will receive any additional benefits from such additional reporting.

Dominion’s alternative proposal presented in these Comments is consistent with the regulatory objectives set forth by President Obama in his Executive Order and echoed in his State of the Union Address. It will present the least burden on (i) exempt end users for whom Dodd-Frank’s legislative history showed concerns and an expectation of limited impact; (ii) on swap markets generally in eliminating redundant reporting; and (iii) society generally, as saved costs benefit the overall social welfare. Dominion requests that the Commission, in considering Dominion’s alternative proposal, consider the administrative efficiencies and costs savings available while at the same time meeting all of the policy objectives of Dodd-Frank and serving the national public interests goals of the CEA.

VII. Paperwork Reduction Act

A proper analysis under the Paperwork Reduction Act (“PRA”) is a critical tool for meeting the regulatory objectives under the Executive Order and fulfilling President Obama’s promise of reduced regulatory burden in his State of the Union address. The PRA defines burden to mean “time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for:

- (A) reviewing instructions;
- (B) acquiring, installing and utilizing technology and systems;

- (C) adjusting the existing ways to comply with any previously applicable instructions and requirements;
- (D) searching data sources;
- (E) completing and reviewing the collection of information; and
- (F) transmitting or otherwise disclosing the information.”

Dominion is in the process of evaluating the burden, consistent with the definition above, which would be required by it to comply with the reporting requirements proposed in the Real-Time Public Reporting NOPR. The Commission has set forth an estimate that a swap end user will have four (4) annual burden hours to maintain its reporting obligation. The proposed reporting rules do not contain the sufficient level of detail and specificity required to build a complete and accurate estimate of the IT implementation and maintenance burden that would be required to comply. However, based on Dominion’s IT experience relative to completed projects that were analogous to the type of system requirements expected should these proposed rules be adopted, Dominion anticipates an actual burden several orders of magnitude higher than the Commission’s estimate of burden. Further, the Commission has only provided burden hours, and has made no estimate of financial resources that would be imposed on the swap industry, particularly end users. Clearly, there is a necessity for the Commission’s Chief Information Officer responsible for PRA compliance to commence a much more comprehensive study of the burdens that the proposed real-time public reporting requirements, which could include a survey of end users as to estimated costs and labor, before further proceeding to finalize the proposed rules.

VIII. Conclusion

Dominion appreciates the opportunity to provide these comments to the Real-Time Public Reporting NOPR and the Swap Data Reporting NOPR. We respectfully request that the Commission consider these views before issuing final rules on real-time and general reporting of swaps. Dominion’s goal in these comments is to provide a workable, common-sense framework for swap reporting that meets the policy objectives of the statute and represents a reasonable weighing of costs versus benefits. Toward that goal, Dominion asks that the Commission propose for public comment a revised set of rules consistent with the comments reflected in this letter. For your reference, attached to this letter is a brief summary of our comments and alternative proposal.

If you have any questions, or if we may be of further assistance, Dominion is willing to discuss these issues further with the Commission or its Staff at your convenience.

Respectfully,

/S/ David C. Holden

David C. Holden
Vice President
Enterprise Risk Management

DOMINION RESOURCES, INC.
ALTERNATIVE RULE PROPOSAL

CEA § 3. Findings and Purpose.

(a) FINDINGS -- The transactions subject to this chapter . . . are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.

(b) PURPOSE -- To foster these public interests, it is further the purpose of this chapter to deter and prevent price manipulation or any other disruptions to market integrity: to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk . . .

WHEREAS: For the Real-Time Reporting of Swap Transaction Data NOPR

The finding and purpose of CEA regulation presumes a correlation between the national public interest and liquidity of the relevant market. Price transparency contributes to the competitive and economic efficiency of a liquid market. Liquidity is associated with markets that trade homogeneous products. The timely availability of price references in a market enhances its liquidity. In contrast, the less homogenous and more customized a product, the less it informs the market and serves a price reference function. Customized swaps have limited ability, if any, to manipulate prices or disrupt the market. Illiquid markets are not subject to systemic risk. Thus, customized swaps and illiquid markets affect the national public interest minimally, if at all.

WHEREAS:

The NOPR seeks guidance “on the scope of transactions covered by this part” and “on which parties to a swap should be covered by the reporting requirements in this part *in order to enhance price discovery?*” Furthermore, the Commission’s stated goal in proposing to include price changing events in the definition of a reportable swap under proposed § 43.2(v) is to “enhance the *transparency and price discovery* attributes of swaps trading.”

THEREFORE:

Dominion proposes that

- *Only those end-user swaps for which a specific price discovery finding has been made should be required to be publicly available in real time unless cleared at a registered DCO as contemplated under CEA §§2(a)(13)(i) and (ii).*
- *Commission should use the existing regulatory framework previously established to find which swaps perform a “significant price discovery” (“SPD”) function under former §2(h) of the CEA, now included in §737 of the Dodd-Frank Act.*
- *Such swaps for which no SPD finding has been made should not be required to be reported publicly in real time unless otherwise cleared on a registered DCO.*

RESULT: Use of the SPD standard for determining swap data to be made publicly available achieves the balance between the national public interest and the commercial interest of the end user envisioned by Dodd-Frank.

Executive Order & State of the Union Address

President Obama’s Charge to Federal Agencies:

take into account the costs of cumulative regulations
tailor regulations to impose the least burden on society
select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits

WHEREAS: For the Swap Data Recordkeeping & Reporting Requirements NOPR

Proposed rules require a market participant to report data concerning the same swap four different times during the day of its transaction: (i) 5 minutes after transacted; (ii) again 15 minutes after transacted; (iii) then 15 minutes after confirmation, and (iv) an end of day state report, with an obligation to refresh the data to capture any changes to the swap and its evaluation throughout the continuation of the swap until expiration. This creates tremendous administrative burden and duplicative tasks all to report essentially the same data information with no additional benefit to the CFTC, the market or the public.

THEREFORE:

Dominion proposes that the CTC accept real-time reporting under CEA § 2(a)(13) as satisfying the creation (primary economic data) requirement; eliminate the confirmation reporting; and accept and utilize the State Data Snapshot report for monitoring the swap market.

RESULT:

There is no regulatory need that additional creation and/or confirmation reporting requirements would serve that would not be met by an end-of-the-day reporting requirement. By eliminating the creation and confirmation reporting, the Commission and the public forfeits no benefits but the market and the public saves significant costs for otherwise redundant reporting.