



REOPENING AND EXTENSION OF COMMENT PERIODS – GLOBAL COMMENT

June 3, 2011

David Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

**Re: Comments on Notice of Reopening and Extension of Comment
Periods for Rulemakings Implementing the Dodd-Frank Wall
Street Reform and Consumer Protection Act (17 CFR Part 1)**

Dear Mr. Stawick:

The Electric Trade Associations¹ respectfully submit these comments to the Commodity Futures Trading Commission (the “Commission”) on the **Notice of Reopening and Extension**

¹ The National Rural Electric Cooperative Association, the American Public Power Association, the Large Public Power Council, the Edison Electric Institute and the Electric Power Supply Association (see Section I for a description of the members of each such Electric Trade Association). The comments contained in this filing represent the comments and recommendations of the Electric Trade Associations, but not necessarily the views of any particular member of any one or more of the Electric Trade Associations with respect to any issue. The Electric Trade Associations are grateful to the following organizations and associated entities who are active in the legislative and regulatory policy arena in support of the electric industry, and who have provided considerable assistance and support in developing these comments. We are authorized to note the involvement of these organizations and associated entities to the Commission, and to indicate their full support of these comments and

of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”)(76 Fed. Reg. 25,274, May 4, 2011, the “Comment Reopener NOPR”).

The Electric Trade Associations appreciate the Commission reopening closed comment periods. However, reopening comment periods at this juncture in the rulemaking process, and for a mere 30 days, does not address the Electric Trade Associations’ ongoing concern about the Commission’s rulemaking process. The 30-day reopening period comes at a time when the Commission has proposed 60 rules for comment over an eight month period, but has finalized only a handful of rules. The Commission has not yet responded to the hundreds, or in some dockets thousands, of comment letters filed by the public expressing serious concerns about those proposed rules and recommending dozens of alternative regulatory approaches.

Moreover, we have waited eight months for the most fundamental of the Commission’s proposed rules (the “Product Definitions”), without which we have been in the dark as to the meaning of basic defined terms used throughout the proposed rules issued to date. The “Product Definitions” were published in the Federal Register for comment just last week, on May 23, 2011.² This long-awaited notice of rulemaking was published less than two weeks (including Memorial Day) before the 30 day “reopener comment period” expires, and comments on the proposed Product Definitions (and the many questions asked in the notice) are not due to the Commission until July 22, 2011. Consequently, the reopened comment periods do not provide a meaningful opportunity for the electric industry to comment on the interplay between the proposed rules published to date.

The Electric Trade Associations have been active participants in the Commission’s rulemaking process. A list of comment letters submitted by the Electric Trade Associations, with a web link to each letter, is provided in Appendix A. In particular, we note the comment letters filed in September 2010 in respect of the Commission’s “Definitions ANOPR.” In those comment letters, the Electric Trade Associations and others in the United States electric industry first requested the Commission to define clearly the scope of its authority over transactions in which our members engage on a frequent basis as part of their commercial activities. We requested the Commission to clarify the definition of “swap,” to clarify certain exclusions and to confirm or clarify certain exemptions in the regulations (exemptions under current law and as

recommendations: the Transmission Access Policy Study Group (an association of transmission dependent electric utilities located in more than 30 states), ACES Power Marketing and The Energy Authority.

² 76 Fed. Reg. 29,818 (May 23, 2011). We intend to comment on the Product Definitions NOPR once we and our members have had time to analyze and discuss how these proposed rules, and the Commission’s many lingering questions, may affect our industry and our risk management activities.

provided for in the Act itself). We also asked the Commission to confirm certain interpretations of the regulations as they might otherwise apply to our members and their transactions.

Since September 2010, the Electric Trade Associations and individual members have met with the Commission and the staff on numerous occasions. Yet, less than 60 days before the statutory effective date of many provisions in Title VII of the Act, the Commission has still not clarified the definition of “swap” as it relates to the electric industry. The Product Definitions NOPR does not provide clear proposed rules and regulatory exemptions explaining the scope of the Commission’s jurisdiction in the nonfinancial commodity markets in which our members participate. Instead, the NOPR asks questions about the electric industry, our transactions and our markets. Many of these questions have been answered in our comment letters or discussed extensively in meetings. This ad hoc rulemaking process does not provide an adequate opportunity for potentially affected or interested electric industry market participants to be apprised of the nature of the Commission’s rulemaking.

Due to the uncertainty over the meaning of basic defined terms, and the lack of response by the Commission, as yet, to the comments filed during the rulemaking process, the Electric Trade Associations are, unfortunately, unable to determine at this time whether additional comments will need to be filed. We respectfully request that the Commission reopen the comment periods on all its rules at a point in time where we can meaningfully supplement what we have already said -- perhaps once “Phase Zero” of the implementation sequence has been completed. See Section IIC below for an explanation of “Phase Zero.”

The Electric Trade Associations have commented on the Commission’s rules proposed to date primarily from the perspective of commercial (or “nonfinancial”) entities -- entities which are given the right under the Act, as “end users”³ of non-cleared “swaps,”⁴ to except such

³ This term is not defined in the Act. The Electric Trade Associations respectfully request the Commission to define the term, and to agree with the Securities and Exchange Commission and prudential regulators on the definition. This is one of the many undefined terms used inconsistently in many of the Commission’s own proposed rules to date, and used inconsistently in the other regulators’ proposed rules as well. All the regulators are interpreting the term as it is used in the context of identical provisions of the same statute. For example, in the proposed margin rules recently issued by the prudential regulators, the proposed rules repeatedly refer to “financial end users.” But, in the Act and in legislative history, Congress clearly used the term “commercial end user” or, in shorthand “end user,” to mean an entity that is not a financial entity, and that is owed a responsibility by the regulators to protect the nonfinancial entity’s right to utilize “swaps” to hedge commercial (that is, “nonfinancial”) risk and to protect the nonfinancial entity’s commercially-sensitive information. For nonfinancial entities reviewing the proposed rules, this inconsistent use of the same defined term creates serious confusion: as to who is, and who is not, entitled to the statutory rights and benefits provided to an “end user,” and who should and should not be subject to the substantial burdens of the new regulatory regime being established under the Act.

transactions from mandatory clearing and from some or all of the Act's other requirements. To further distinguish our perspective, the ETAS are not focusing our comments on interest rate or currency swaps. Nor are we focused on the credit or equity asset classes. Nor are we focused on product types based on agricultural or metals commodities (and related swaps within the "other [or Non Financial] Commodities asset class). All of these asset classes and product types are transacted in fundamentally different market structures than the over-the-counter ("OTC") nonfinancial commodity derivatives markets in which we regularly participate.

The Electric Trade Associations define our remote corner of the global OTC derivatives markets by defining a product type within an asset class (as those terms are used by the

In these comments, we use the term "end user" to describe only an entity that is not a "financial entity," as that term is defined in CEA 2(h)(7)(A), so we use the term "nonfinancial entity." "Nonfinancial" is another term that needs a single definition and/or to be used consistently. A nonfinancial entity may except a swap to which it is a party from the clearing requirements of the Commodity Exchange Act, as amended by the Act (the "CEA") pursuant to what is called the "end-user exception," so long as that nonfinancial entity notifies the Commission how it generally meets its financial obligations associated with entering into non-cleared swaps. CEA 2(h)(7)(A). Members of the Electric Trade Associations are all nonfinancial entities, and most members anticipate utilizing the end-user exception in respect of all or a significant number of the "swaps" to which they are parties. But not all nonfinancial entities are, or always will be, end users of all "swaps."

⁴ We have footnoted this term as well, and we refer the Commission to comments filed in September 2010 by the electric industry in the Definitions ANOPR docket requesting specific clarifications in the further definition of the term "swap." The Electric Trade Associations respectfully again request the Commission to further define the term "swap" to clearly exclude or exempt by regulation the types of commercial energy and energy-related transactions in which the Electric Trade Associations' members engage every day, including forward transactions in nonfinancial commodities which by their terms settle physically (whether or not such transactions are "booked out" and however often such "book outs" occur); commercial (or "trade") options on nonfinancial commodities; capacity, transmission and transportation services contracts (whether or not such transactions occur within regional transmission organizations or are transacted bilaterally); full requirements contracts, reserve sharing agreements, tolling agreements and energy management agreements, emissions and renewable energy contracts; ancillary services agreements and "any other agreement, contract or transaction in a nonfinancial commodity [an undefined term] that has optionality as to delivery" (as referenced in question 35 the Product Definitions NOPR at p. 29,832). It seems unreasonable for the Commission to expect the electric industry to provide a detailed written analysis of each and every commercial/nonfinancial commodity and commodity-based derivative transaction that is used or ever could be used in the evolving electric industry.

Commission in certain of its rulemakings) -- “Energy Commodity Transactions.”⁵ Our comments may or may not be applicable to other asset classes considered by the Commission (credit, rates or equity), or to other “product types” within the asset class called “other commodity” by the Commission.

The Electric Trade Associations and our members have a unique perspective on the small corner of the global OTC derivatives markets, which the Commission calls “Other Commodities.” We have tried to explain our perspective to the Commission, and we appreciate the time the staff has taken with us. We have also explained to the Commission and the Commission staff our members’ ongoing regulatory obligations to energy and environmental regulators.

We appreciate the evolution we have seen in the Commission’s proposed rules over the course of the rulemaking process, reflecting the Commission and its staff’s growing understanding of the market structure differences by asset class and by product type. However, we have not yet seen whether or how the Commission intends to implement our comments to achieve an integrated set of proposed rules.

The Electric Trade Associations respectfully submit that we are not yet in a position to review an integrated “mosaic” of rules that will govern our Energy Commodity Transactions, our markets and our members’ participation in those markets. We are not yet in a position to be able to submit either final or comprehensive comments. At best, the mosaic, of which we have been shown various pieces at various times over the past eight months, is a work of modern art -- intricate and complex to behold, challenging and conceptually advanced in its theory. But the mosaic has been produced by a series of different artists working on parallel tracks, using

⁵ We use the term “Energy Commodity Transactions” to mean (a) those non-cleared derivatives transactions referencing or derived on energy commodities in which the Electric Trade Associations’ members transact in the ordinary course of their core commercial activities, such as electric energy, natural gas, and other fuels for electric generation, including coal, fuel oil, crude oil to the extent that it is used as correlated hedge for heating oil (but excluding gasoline or refined petroleum products other than fuel oil -- these commodities are not germane to our members’ core commercial activities, and the markets for these commodities and related derivatives are distinguishable from the markets in which our members participate), (b) those non-cleared derivative agreements, contracts or transactions referencing or derived on transmission, transportation, generation capacity or storage concepts or services related to the energy commodities described in (a), and (c) those non-cleared derivatives agreements, contracts or transactions referencing or derived on environmental or emissions regulations, or renewable energy or other environmental attributes, applicable to our members’ commercial activities. All of these “Energy Commodity Transactions” reference or are derived on “nonfinancial commodities,” are intrinsically related to our members’ core commercial (or nonfinancial) activities, and many are subject to the continuing jurisdiction of regulators other than the Commission.

different media and sometimes conflicting artistic concepts. The mosaic is consequently full of sharp, overlapping and sometimes jarringly inconsistent colors and materials. The mosaic also has white spaces -- gaps in the proposed regulatory scheme which may give the mosaic an interesting texture, but do not provide the observer a single, clear and easily accessible vision of what the Commission intends its new market structure to look like. Unfortunately, the mosaic is not one that fits together yet, nor can it be viewed or evaluated as an integrated whole.

We view the Commission's rulemaking process as a work in progress, and we look forward to the Commission bringing its structure, its moving parts and its vision of a new market for Energy Commodity Transactions (and swaps) into focus.

We also respectfully request a detailed roadmap of the Commission's phased schedule for issuing final rules, a process for requesting reconsideration or rehearing of the final rules when issued,⁶ extended implementation periods, and orderly transition plans. At each phase of the rulemaking, there should be adequate public notice and opportunity for comment and a logical sequencing of rulemakings, such that we and our members may understand and efficiently participate in the Commission's rulemaking proceedings under the Administrative Procedure Act in a cost-effective way.

To date, the Electric Trade Associations respectfully note our concern that any final rule or rules issued by the Commission are not likely to be a logical outgrowth of proposed rule(s) on which such final rule(s) purport to be based, due to the evolving nature of the process and, in some cases, the conflicting provisions in the proposed rules issued to date. Public comments have suggested numerous alternative regulatory approaches to each issue, and the Commission has yet to respond publicly to most of these comments.

As the Commission (along with the Securities and Exchange Commission and the prudential regulators) continues with the complex and interrelated rulemakings necessary to implement the Act, the Electric Trade Associations respectfully request that the regulators keep in mind at each step along the way how the new rules, and the sequencing of issuance and effective dates for the new rules, will impact the nonfinancial entities that are "end users" of "swaps," and "bona fide hedgers." This is especially important because these new rules will impact nonfinancial entities engaging in commodity and commodity-based derivative transactions in the ordinary course of commercial activities, often without a financial entity such as a swap dealer or major swap participant to bear the burdens and costs of the types of regulatory obligations to which such financial entities are accustomed. The Electric Trade

⁶ See the comment letter filed by NextEra Energy Resource LLC on March 11, 2011, a web link for which can be found at <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=31585&SearchText=March%2011,%202011>. We concur with the analysis provided therein on the Administrative Procedure Act ramifications of the Commission's current rulemaking process, and with NextEra's suggested process for final rulemaking.

Associations' members are not financial entities, and the OTC markets in which the members participate are comprehensively regulated by numerous governmental agencies (other than the Commission) at the Federal, state and local levels.⁷

The Act was intended by Congress to regulate the financial trading markets more effectively, to provide regulatory oversight to financial entities and to reduce risk to the global financial system. It was also intended to bring more transparency to the trading markets for standardized derivatives products. We fully support these policy objectives. However, the regulations must tell commercial enterprises whether they need to comply as entities with the Commission's new rules and what type of entity definition applies to them (swap dealer, major swap participant, eligible contract participant, financial entity or nonfinancial entity or end user), whether and which of their ongoing activities will now be regulated by the Commission, and then how to comply with the Commission's new rules. The regulations should not impose unnecessary new regulatory costs and burdens on these nonfinancial commercial enterprises.

I. THE ELECTRIC TRADE ASSOCIATIONS

The Electric Trade Associations represent the interests of electric generators and utilities in the United States. The primary business of Electric Trade Associations' members has been for well over 75 years, and still is today, to provide reliable electric energy to American consumers and businesses every hour of the day and every season of the year, keeping costs low and supply predictable, while practicing good environmental stewardship.

⁷ Energy Commodity Transactions involving the commodity "electric energy" occur throughout the United States in the following ways: (a) as transactions completed in, and pursuant to the rules of, the "organized markets" operated by the California Independent System Operator Corp, the Electric Reliability Council of Texas, ISO New England Inc., the Midwest Independent Transmission System Operator, Inc., the New York Independent System Operator, PJM Interconnection, and the Southwest Power Pool (the "RTOs"); (b) as bilateral transactions completed within the geographic footprint of the RTOs, but outside of and not pursuant to rules of the RTO markets; and (c) as bilateral transactions completed outside of the geographic footprint of the RTOs and not pursuant to rules of the RTO markets (*e.g.*, in the Pacific Northwest, the Southwest, the Southeast, the Midwest and in pockets near or surrounded by the RTOs.) FERC has a map showing the areas covered by an RTO: <http://ferc.gov/industries/electric/indus-act/rto/rto-map.asp>. Such transactions may be completed in interstate or intrastate commerce between the Electric Trade Associations' members, between an RTO and the Electric Trade Associations' members, or between residential, commercial or industrial consumers and the Electric Trade Associations' members. FERC, state utility commissions, a municipality's elected officials or a cooperative's board, or other governmental agencies or departments (*e.g.*, Bonneville Power Authority, Tennessee Valley Authority, Western Area Power Administration) oversee such geographically distinctive market activity.

A. NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION (“NRECA”)

NRECA is the national service organization for more than 900 not-for-profit rural electric utilities and public power districts that provide electric energy to approximately 42 million consumers in 47 states or 12 percent of the nation’s population. Kilowatt-hour sales by rural electric cooperatives account for approximately 11 percent of all electric energy sold in the United States. NRECA members generate approximately 50 percent of the electric energy they sell and purchase the remaining 50 percent from non-NRECA members. The vast majority of NRECA members are not-for-profit, consumer-owned cooperatives which distribute electricity to consumers. NRECA’s members also include approximately 66 generation and transmission (“G&T”) cooperatives, which generate and transmit power to 668 of the 846 distribution cooperatives. The G&T cooperatives are owned by the distribution cooperatives they serve. Remaining distribution cooperatives receive power directly from other generation sources within the electric utility sector. Both distribution and G&T cooperatives were formed to provide reliable electric service to their owner-members at the lowest reasonable cost.

Electric cooperatives own approximately 43% of the distribution lines in the U.S., reaching some of the country’s most sparsely populated areas, from Alaskan fishing villages to remote dairy farms in Vermont. In an electric cooperative, unlike most electric utilities, its owners -- called “members” of the cooperative -- are also customers, who are able to vote on policy decisions, directors and stand for election to the board of directors. Because its members are customers of the cooperative, all the costs of the cooperative are directly borne by its consumer-members.

The vast majority of NRECA’s members meet the definition of “small entities” under the Small Business Regulatory Enforcement Fairness Act (“SBREFA”). 5 U.S.C. §§ 601-612 (as amended Mar. 29, 1996). Only four distribution cooperatives and approximately 28 G&Ts do not meet the definition. SBREFA incorporates by reference the definition of “small entity” adopted by the Small Business Administration (the “SBA”). The SBA’s small business size regulations state that entities which provide electric services are “small entities” if their total electric output for the preceding fiscal year did not exceed 4 million megawatt hours. 13 C.F.R. §121.201, n.1.

B. AMERICAN PUBLIC POWER ASSOCIATION (“APPA”)

APPA is the national service organization representing the interests of publicly-owned (that is, government-owned) electric utilities in the United States. More than 2,000 public power systems provide over 15 percent of all kilowatt-hour sales to ultimate customers and serve 45 million people. APPA’s member utilities are not-for-profit utility systems that were created by state or local governments to serve the public interest. These systems take various forms, including departments of a municipality; a utility board or a public utility district formed under state or local law; a joint action agency or joint power agency formed under state law to provide wholesale power supply and transmission service to distribution entity members; a state agency, authority or instrumentality; or other type of political subdivision of a state. Like the members of NRECA, the vast majority of APPA’s members are “small entities” under SBREFA.

Public power utilities perform a variety of electric utility functions. Some generate, transmit, and sell power at wholesale and retail, while others purchase power and distribute it to retail customers, and still others perform all or a combination of these functions. All these systems work together pursuant to their common statutory and regulatory mandates. Some are “vertically integrated” electric utilities (engaging in generation, transmission, distribution and retail sales), while others are vertically integrated by contract with other “201(f) entities” (entities that are exempt from full Federal Power Act rate regulation under Section 201(f) of that statute), or by contract with third parties.

Public power utilities are accountable to elected and/or appointed officials and, ultimately, the American public. The focus of a public power utility is to provide reliable, safe electricity service, keeping costs low and predictable for its customers, while practicing good environmental stewardship.

C. LARGE PUBLIC POWER COUNCIL (“LPPC”)

The Large Public Power Council is an organization representing 24 of the largest locally owned and operated public power systems in the nation. LPPC members own and operate over 75,000 megawatts of generation capacity and nearly 34,000 circuit miles of high voltage transmission lines. Collectively, LPPC members own nearly 90% of the transmission investment owned by non-federal public power entities in the U.S. Our member utilities supply power to some of the fastest growing urban and rural residential markets in the country. Members are located in 11 states and Puerto Rico -- and provide power to some of the largest cities in the country including Los Angeles, Seattle, Omaha, Phoenix, Sacramento, Jacksonville, San Antonio, Orlando and Austin.

Members of the LPPC are also members of APPA. LPPC members are larger in size than other APPA members due to the size and population density of the communities to which they provide power. LPPC members often require larger, more complex and more diverse types of resources to serve their communities as well, and therefore LPPC members own and operate more complex generation and transmission assets than many other APPA members. However, despite being larger in size and resources, LPPC members’ public service mission remains the same -- to provide reliable, safe electricity service, keeping costs low and predictable for its customers, while practicing good environmental stewardship.

D. EDISON ELECTRIC INSTITUTE (“EEI”)

EEI is the trade association representing 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. Rather, the typical EEI member is a medium-sized electric utility with relatively low leverage and a conservative capital structure.

E. ELECTRIC POWER SUPPLY ASSOCIATION (“EPSA”)

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for nearly 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers.

F. THE MARKETS IN WHICH THE ELECTRIC TRADE ASSOCIATIONS’ MEMBERS TRANSACT ARE UNIQUE, AS ARE THE TRANSACTIONS IN WHICH THEY ENGAGE

Our markets are comprehensively regulated, and our Energy Commodity Transactions often take place without financial intermediation in regional geographic markets with highly customized commercial terms. Counterparty credit risk management is an integral and ongoing part of our market structure.

1. *Comprehensive Regulation.* The market for electric energy in North America is comprehensively regulated at the Federal, state and local level, with a focus on reliability of service and affordable regulated rates payable by the retail energy customer. In addition, the electric industry in North America is subject to extensive Federal environmental regulations and, in many regions and states, further environmental regulation and renewable energy standards. Unlike other markets for nonfinancial commodities and related OTC derivatives and/or “swaps” (as newly defined by the Act), these are not unregulated markets. Any new regulatory structure must be carefully tailored so as not to conflict with existing regulatory structures and obligations.

Some of the electric industry transactions are conducted through, “on,” or “in” the “markets” operated by various regional transmission organizations or independent system operators (collectively, “RTOs”). Each RTO operates its “market” in a defined geographic area of the United States, and all RTOs operate under a comprehensive regulatory structure established by the Federal Energy Regulatory Commission (“FERC”). The FERC-regulated markets are established by tariff in many instances, rather than by contract, and analogies between these FERC-created/FERC-regulated “markets,” and the bilateral contract markets between independent and arm’s length third parties, are inapt. Although, in some ways, the markets conducted by the various RTOs are similar in structure, no two RTO markets are exactly alike and their “products” or “transactions” are not fungible between RTOs. Each RTO also has in place credit risk mitigation policies and procedures to protect market participants from the credit risk of other market participants, and to protect the RTO markets from disruption due to a market participant default. These RTO credit risk mitigation

policies are established and maintained in accordance with the principles established by FERC.⁸

For “public utilities” as that term is defined in the Federal Power Act, wholesale electric energy and electricity transmission transactions throughout the country also are subject to extensive FERC regulation, through approval of cost-based tariffs and market-based rate authorizations, as well as regulations governing utility-affiliate transactions and utility governance, among others. Retail transactions (sales to customers that consume electricity in homes or businesses) are subject to similar scrutiny by state public utility commissions.

In addition, FERC has in place extensive regulatory requirements for recordkeeping and reporting of wholesale electric energy and electricity transmission transactions and for financing transactions involving public utilities. FERC has recently proposed a rule that would expand its transaction reporting requirements to encompass additional entities.⁹ States also have counterpart record keeping and reporting requirements applicable to retail electric energy transactions of utilities under their jurisdiction.

FERC’s mandate from Congress under the Federal Power Act is to regulate in the “public interest” -- which is interpreted as the delivery of reliable electric energy to American consumers at “just and reasonable” rates. It is under this regulatory mandate that the RTOs (overseen by FERC) have established, and currently maintain and operate, the FERC-regulated markets. The RTO markets are intrinsically tied to the physical transmission capacity, reliability, and ultimate delivery of electric energy in interstate commerce at just and reasonable rates. The same tests apply to FERC regulation of public utility rates outside the RTO context.

Most of the Energy Commodity Transactions in which the Electric Trade Associations’ members are engaged are currently conducted under exemptions or exclusions from the Commodity Exchange Act (the “CEA”), whether conducted in the bilateral OTC contract market (as most are, including RTO transactions) or on exempt commercial markets. The participants in these markets are “eligible contract participants” either by virtue of their size and

⁸ Such policies were recently updated by FERC in its Final Rule on Credit Reforms in Organized Wholesale Electric Markets, 18 CFR Part 35, Docket No. RM10-13-000, Order No. 741 (issued October 21, 2010).

⁹ 76 Fed. Reg. 24188, “Electricity Market Transparency Provisions of Section 220 of the Federal Power Act,” April 29, 2011. A web link is:
<http://www.gpo.gov/fdsys/pkg/FR-2011-04-29/pdf/2011-10113.pdf>.

financial characteristics, or by virtue of their use of underlying cash commodities relevant to their businesses (as “eligible commercial entities”). The physical and financial commodity transactions occur principal to principal, through agents and energy brokers, with a wide range of counterparties.

2. *End-User-to-End-User Transactions -- Highly Customized.* The Electric Trade Associations’ members engage in a substantial number of non-cleared, “end-user-to-end-user” Energy Commodity Transactions.¹⁰ Counterparties for these Energy Commodity Transactions may be traditional commercial (physical energy commodity) counterparties, rather than financial entities (whether financial intermediaries or financial institutions) from whom the electric companies secure financing or buy financial commodity derivatives. In the markets for Energy Commodity Transactions, an end user may be a buyer one day and a seller the next, as its seasonal commercial needs for one or more energy commodities fluctuate. And, the end user may be a buyer of one type of energy commodity or derivative, and a seller of another type of energy commodity or derivative. In the markets for Energy Commodity Transactions, a single energy company may buy natural gas swaps and sell electric energy swaps for the same month. Or it may buy natural gas swaps for one month and sell natural gas swaps for the next month. Most electric companies’ commercial risks are system-specific, geography-specific and seasonal, and risk management decisions are made based on changing long-term weather forecasts, generation or transmission availability and/or load projections, evolving environmental constraints, and the affect of constantly changing market dynamics on the most cost effective way to hedge projected electric load requirements, from among a variety of available fuels and sources, including the wholesale power market. It is not uncommon for load-serving energy companies to hedge multiple commodity risks, such as an electric utility hedging the commercial risks of its input (natural gas as fuel) and output (electric generation/deliverable electric energy). Consequently, cross-commodity hedging is also commonplace. There is no “sell-side/buy-side” dichotomy in the non-cleared Energy Commodity Swap market, and there are

¹⁰ We use the term “end-user-to-end-user swaps,” but we also intend to include in this definition swaps that are executed by two nonfinancial entities, whether or not one or both of the nonfinancial entities elects the end-user exception. There will be an even higher percentage of these end-user-to-end-user swaps if the Commission does not clarify its definition of “swap” to exclude or exempt commercial energy and energy-related commodity and derivatives transactions in which the Electric Trade Associations’ members engage every day. In particular, nonfinancial commodity options (aka “trade options”) are often executed between nonfinancial entities hedging offsetting commercial risks.

often no financial intermediaries -- many nonfinancial entities play multiple commercial end user roles.¹¹

The transactions contain customized, non-quantitative operating conditions, transmission or transportation contingencies, and operating risk allocations that one would expect between pairs of commercial enterprises. Although legal and administrative terms are standardized through the use of master agreements, the negotiated schedules to such master agreements and individual transaction confirmations are highly negotiated and differ based on the needs and preferences of each pair of counterparties. These are commercial transactions, when viewed through the traditional lens of “goods” and “services” used by American businesses. It is only when the transactions are viewed through the financial markets lens that these transactions are described using the financial market regulatory labels such as “products”, “exempt commodities,” “swap agreements,” “swaps” or “nonfinancial commodities” -- and analogized to “futures contracts” or “positions” created and traded by financial entities interacting on a transaction-by-transaction basis for profit or speculation. These commercial transactions should not be presumed to be subject to regulation that is traditionally applicable to financial market transactions.

3. Counterparty Credit Risk Management is Extensive, Continuous and Relationship-Based. Credit support arrangements in the bilateral contract world of non-cleared Energy Commodity Transactions are grounded in broad-based, continuing and reciprocal commercial credit risk analysis and credit risk management between each set of counterparties, backstopped by credit support and collateralization principles. This type of credit risk management is not analogous to the transaction-by-transaction margining (without regard to counterparty identity) that takes place in today’s CFTC-regulated futures and options markets.

Today, the Electric Trade Associations’ members have the commercial risk management choice to conduct some Energy Commodity Swap transactions on CFTC-regulated contract markets, or to clear some of these transactions through CFTC-regulated centralized clearing entities. Listed and cleared transactions are typically those delivered at “hubs,” in tradable increments and for tradable durations -- transactions or “products” that are “standardized” and “fungible” in financial market terms, and with sufficient contract trading liquidity to allow for financial markets to function. As the CFTC-regulated financial markets have evolved, some of the larger electric companies have chosen to manage certain of

¹¹ Please let us know if the Electric Trade Associations can provide the Commission with further information on this important and unique aspect of the markets for Energy Commodity Transactions.

their commercial risks using exchange-traded and cleared instruments. But the vast majority of smaller electric companies' Energy Commodity Transactions are still conducted "the old fashioned way": under tariffs, or by contract with known and reliable physical commodity suppliers and customers, and not with CFTC-regulated financial intermediaries or on exchanges or with clearing entities. Most of the smaller members of the Electric Trade Associations, especially the members of the NRECA and APPA that are SBREFA "small entities," do not either post collateral to their counterparties or require that their counterparties post collateral to them.¹²

Due to the Act's wholesale deletion of applicable exemptions in the CEA, and the potentially sweeping nature of the Act's new definitions, many of these everyday business transactions (including nonfinancial commodity trade options) are at some risk of being redefined as "swaps." Congress has repeatedly indicated that its intention was NOT to reduce risk management options for commercial end users or to impose new regulatory costs on end users hedging the risks of traditional commercial enterprises. But Congress is relying on the regulators to implement understandable rules consistent with that intent. Congress did not intend for the regulators to read the expansive language of the Act without regard to legislative intent or to regulate and impose costs on end users as if they were systemically risky financial entities or professional financial market participants.¹³

¹² For examples of the diversity of credit support arrangements and collateral (or "margin") relationships which NRECA, APPA and LPPC members have in place with their Energy Commodity Swap counterparties, as well as the diversity of assets, load (customers served within the utility's geographic service territory), energy hedging and risk management policies, and swap usage within these Electric Trade Associations' membership, see the profiles attached to the pre-NOPR comment letter filed by the "Not-for-Profit Energy End User Coalition" to the Capital and Margin Task Force, dated December 14, 2010, or the comment letter filed in respect of the Entity Definitions NOPR (75 Fed. Reg. 80,174, Dec. 21, 2010) by the EEI and EPSA. Web links to these comment letters can be found on Appendix A. None of these profiles purport to be "typical" of large, medium or small entities that are members of the Electric Trade Associations (measured by number of customers).

¹³ The Commission should not, in its rulemaking under the Act, be distracted by those commentators who intone or invoke the names "AIG" or "Enron," without analysis. In fact, neither AIG nor Enron would be a nonfinancial entity or entitled to the end-user exception under the CEA as amended by the Act, and so neither would be able to except its swaps from clearing or be exempt from margin requirements. AIG, whose substantial positions in non-cleared credit default swaps allegedly endangered the financial system, would be registered and regulated as a "major swap participant," in at least the asset class of credit swaps. Enron, with its notorious "one-to-many" electronic interface, offering to buy or sell swaps on underlyings from energy to broadband, is the poster child for the Act's definition of "swap dealer," and would be registered

II. GENERAL COMMENTS

The Electric Trade Associations and our members are eager to understand whether and how the Energy Commodity Transactions in which they engage every day are to be regulated by the Commission under the comprehensive new regulatory structure that the Commission is establishing to implement the Act. The Commission's new authority under the Act is not evolutionary, but truly revolutionary. The Electric Trade Associations and our members are relying on the Commission to propose a fully-integrated market regulatory structure for Energy Commodity Transactions that preserves the ability of nonfinancial entities to continue to hedge commercial risks, without disruption and without unnecessary new regulatory costs and burdens.

A. UNTIL THE SCOPE OF THE COMMISSION'S JURISDICTION OVER NONFINANCIAL COMMODITY TRANSACTIONS IN ELECTRIC POWER AND RELATED ENERGY PRODUCTS AND SERVICES IS CLARIFIED, THE ELECTRIC TRADE ASSOCIATIONS CONTINUE TO RESERVE THE RIGHT TO SUBMIT ADDITIONAL COMMENTS ON ALL PROPOSED RULES THAT MAY AFFECT OUR MEMBERS

The foundational issue that delineates the scope of the Commission's regulatory authority is the definition of the word "swap." The Commission began its rulemaking process in September 2010 by acknowledging this fact in its "Definitions ANOPR." Now, more than eight months and 60 proposed rules later, the Commission and the SEC have provided significantly more clarity in the Product Definitions NOPR to the securities industry and to industries that rely on the financial commodity "swap" asset classes, (such as the insurance industry), whose financial activities and "products" might otherwise inadvertently fall within the definition of either "swap" or "securities-based swap". But the electric industry, whose nonfinancial Energy Commodity Transactions do not implicate the SEC's jurisdiction or require joint rulemaking negotiations and compromises between the two financial market regulators, are still awaiting regulatory clarity.

The Electric Trade Associations have briefly reviewed the Product Definitions NOPR published last week, and we are disappointed to note that it includes more questions than answers on the electric industry's fundamental concerns. In September of 2010, the Electric Trade Associations asked the Commission to clarify a number of regulatory exclusions and exemptions from the definition of "swap," and to propose certain categorical exemptions or interpretations for electric industry transactions. The Electric Trade Associations and their members have spent countless hours meeting with the Commission and its staff, explaining and providing examples of full requirements contracts, tolling agreements, reserve sharing agreements, energy management agreements and other common electric industry contracts with embedded

and regulated as such. Nonfinancial entities hedging commercial risk with Energy Commodity Transactions, and other types of non-cleared swaps, simply do not represent the types of systemic risk that the mere mention of those entities' names implies.

optionality and “swap”-like characteristics. The Product Definitions NOPR provides commentary in the preamble offering some assurance on the nonfinancial commodity forward exclusion, although the Commission has not included these assurances in the proposed rules themselves. The Commission still asks questions that indicate it is not entirely sure about its interpretations on these important issues. On numerous other issues important to the electric industry, the Product Definitions NOPR fails to respond to the electric industry’s comments in the Definitions ANOPR docket and elsewhere, and does not provide requested regulatory certainty. Instead, the Product Definitions NOPR rhetorically asks the same questions, presumably expecting the electric industry to provide such detailed analysis again.

The electric industry has also asked for the memoranda of understanding required by the Act to be agreed between FERC and the Commission by January 2011. The electric industry seeks to understand how the two agencies intend to avoid duplicative and overlapping requirements applicable to electric companies and their Energy Commodity Transactions.

The Electric Trade Associations respectfully request the Commission to issue a comprehensive and comprehensible set of proposed rules: future defining and clarifying the term “swap,” and providing by regulation all appropriate, related and relevant exclusions, categorical exemptions and interpretations requested by the electric industry. Otherwise, the Commission’s mosaic of proposed rules has no mortar, no cohesion and no understandable structure for the electric industry. The proposed rules do not provide potential market participants with adequate notice of even the most basic framework of its new regulatory jurisdiction as applied to the markets in which the electric industry participates.

**B. THE COMMISSION SHOULD PROMPTLY CONVENE A WORKSHOP
FOCUSED ON THE ELECTRIC INDUSTRY, AND THE USE OF ELECTRIC
POWER AND RELATED COMMODITIES AND COMMODITY DERIVATIVES
BY NONFINANCIAL ELECTRIC COMPANIES TO HEDGE COMMERCIAL
RISK**

We respectfully request that the Commission to convene a workshop focused exclusively on and for the electric industry and other active participants in the OTC markets for electric power and related commodity and commodity derivatives transactions.¹⁴ Such a workshop

¹⁴ We appreciate having had the opportunity to participate in several of the Commission’s public workshops and roundtables focused generally on developing the new “swap” market framework contemplated by the Act. However, we respectfully note that nearly all the time at such workshops has been spent discussing the trading markets for standardized financial commodity “products,” and product types in the credit and rate asset classes. This is appropriate given the far greater systemic risk represented by those asset classes due to the extensive involvement of financial entities, the standardized nature of the financial trading “products” in such asset classes, and the more advanced development of market infrastructure entities like designated contract markets, trade repositories and derivatives clearing organizations for such asset classes. However, we respectfully note that, due to the unique nature of our markets, our

would be timely before or after the July 16, 2011 effective date for certain provisions of the Act,¹⁵ and could serve as a basis for (a) further defining the electricity transactions to exclude or exempt such transactions from the definition of “swap,” (b) confirming the continuing need for a commodity “trade” option exemption, an issue first raised by the Electric Trade Associations in September 2010 comments on the “Definitions ANOPR,” (c) finalizing the Memorandum of Understanding between the Commission and FERC that was due to be filed with Congress in January of 2011, (d) discussing with the industry as a whole the “public interest” exemptions contemplated by Section 722(f) of the Act and how the Commission anticipates facilitating those exemptions and ensuring that the exemptions accomplish the Congressional intent, and (e) discussing how the multiple regulators of the electric industry plan to reduce conflicting and duplicative regulation of the industry in accordance with the principles set forth in Executive Order No. 13563, 76 Fed. Reg. 3821 (January 18, 2011).

The workshop should include the Electric Trade Associations and their members, representatives of FERC and state energy regulatory commissions -- existing regulators of the electric industry with a focus on reliability and affordability of electric power delivered to American businesses and consumers. The workshop should include the Environmental Protection Agency and state environmental regulators – existing regulators of the electric industry with a focus on the environmental impact of our members’ operations. The workshop should include representatives of the electric industry infrastructure entities, including the various RTOs and the North American Electric Reliability Corporation. Overlapping and conflicting regulation is a serious operational challenge and cost issue for the electric industry. The workshop may also include market infrastructure entities and clearing entities that are experienced in electric power and related commodity and commodity derivatives transactions. Finally, the public should be invited to the workshop, as they will pay more volatile and higher costs for electricity if the electric industry cannot cost-effectively hedge its risks.

C. THE COMMISSION SHOULD FINALIZE ITS RULES IN A LOGICAL SEQUENCE, AND THEN IMPLEMENT THE FINAL RULES BY ASSET CLASS, WITHIN EACH ASSET CLASS BY PRODUCT TYPES, AND WITHIN EACH PRODUCT TYPE BY TYPE OF MARKET PARTICIPANT. THE

highly-customized Energy Commodity Transactions and the existing energy and environmental regulatory structures within which our industry operates, most of the discussion at these meetings has been inapplicable to the electric industry.

¹⁵ See the Electric Trade Associations’ Petition for Reconsideration of Section 723 Petitions, filed with the Commission on May 23, 2011. Unless the Commission provides the “grandfather relief” and other regulatory certainty requested in such Petition, on July 16, 2011, electric companies from Portland, Maine to San Diego, California and from Miami, Florida to Spokane, Washington (not to mention North Pole, Alaska and Lihue, Hawaii) are likely to see a significant change in their ability to hedge the commercial risks associated with their nonfinancial commodity-based business activities.

FUNDAMENTAL REGULATORY PRIORITY IN FINALIZING THE RULES SHOULD FOCUS ON WHICH ASSET CLASSES REPRESENT THE GREATEST SYSTEMIC RISK AND WHICH ASSET CLASSES ARE THE MOST EVOLVED TOWARD STANDARDIZATION, CLEARING AND TRANSPARENCY

We appreciate Commissioner O'Malia's request to comment on the order in which the Commission should finalize its proposed rules. We assume that this process will begin only after the Commission (and the SEC and the prudential regulators) have published all of their proposed rules implementing Title VII of the Act for public comment,¹⁶ all comment periods have closed, and the regulators have had time to thoroughly analyze all comments received, conduct comprehensive cost/benefit analyses, integrate the rules proposed over time into a consistent whole, harmonize the regulatory schemes, and formulate thoughtful responses to all the comments of market participants.

We respectfully request that the first order of the Commission's business -- "Phase Zero" if you will -- should be to finalize the product definitions, including defining "nonfinancial commodity," further defining "swap," and clarifying which Energy Commodity Transactions fall within and without the scope of the Commission's jurisdiction. This Phase Zero would include answering the questions asked by the electric industry in our comment letters to date, by proposing regulatory exclusions and exemptions for our nonfinancial Energy Commodity Transactions, as the Commission did for the insurance industry and financial institutions extending credit and credit-related products.

This sequencing would also include finalizing the exclusions and regulatory exemptions from the definition of "swap," as well as confirming in the regulations for the benefit of commercial (nonfinancial) market participants that commodity trade options will continue to be exempt from the Commission's jurisdiction.¹⁷ As Commissioner O'Malia proposes in his "Phase I," and in deference to the stated goal of "harmonizing" regulations and being consistent

¹⁶ We note that the Commission has discussed, but not yet published for comment, a portfolio margining rule. We look forward to reviewing such a proposed rule and understanding how that facet fits into the mosaic.

¹⁷ The Comment Reopener NOPR seeks comments on the costs and benefits of the proposed rulemakings. The Electric Trade Associations note that our members' compliance costs will increase significantly if the Commission's final rules are ambiguous, and may include as "swaps" such everyday transactions as trade options on nonfinancial commodities (as proposed in the Commodity Options NOPR, 76 Fed. Reg. 6095 (Feb. 3, 2011) or forward contracts with embedded options that affect the delivery term (as proposed in the Product Definitions NOPR, 76 Fed. Reg. 29,818 (May 23, 2011).

with the President's recent executive order,¹⁸ the Commission should also add to its "Phase Zero" agenda finalizing the overdue CFTC-FERC memoranda of understanding and proposing in its rules appropriate 4(c)(6) exemptions.

We also respectfully request that the Commission finalize in "Phase Zero" the entity definitions: "swap dealer," "major swap participant" and "eligible contract participant." As the Commission is aware, certain of the Electric Trade Associations' members may engage in limited energy commodity trading activities in addition to their hedging activities. These entity definitions, if applicable to any of the Electric Trade Associations' members, may subject these nonfinancial entities to extensive new regulatory requirements (from clearing to margin to business conduct rules). These new entity definitions may unexpectedly be applicable to commercial businesses that have not previously viewed themselves as financial market professionals. The Commission should also define "end user" in Phase Zero, or at least settle on a common regulatory definition within the Commission and among all the regulators implementing the Act¹⁹. Finally, as part of Phase Zero, we respectfully request the Commission to address the affiliated entity structures that are fundamentally different in the nonfinancial or commercial business world than within financial entity affiliate structures.²⁰

This regulatory sequencing is as logical as that used in learning a language or writing a book -- to speak or write without using a commonly understood vocabulary is not to communicate effectively. Moreover, if a regulator has not clearly defined the entities it intends to regulate and the transactions it intends to regulate, and has not provided a dictionary of terms, a regulator cannot have provided adequate notice and opportunity to comment to those who will, or may, fall within the scope of the new regulatory definitions.

Once nonfinancial entities are informed and on notice as to whether their transactions and their entities are within the scope of the Commission's jurisdiction, a logical sequencing of final rules can be implemented. Beginning in Phase I, we agree with Commissioner O'Malia's proposal that swap data recordkeeping and reporting and swap data repository rules should be next, taking into account all of the comments that our industry and others have provided to the

¹⁸ See Exec. Order No 13563, 76 Fed. Reg. 3821 (January 18, 2011). The Electric Trade Associations encourage the Commission to adhere to President Obama's principle that American business should not have to operate in the cross-hairs of conflicting regulatory requirements. Instead, the regulators should reach a meeting of the minds as to how to streamline and reconcile their regulatory jurisdiction and requirements.

¹⁹ See footnote 3.

²⁰ These affiliated entity issues are more specifically described for the Electric Trade Associations and our members in our comment letters on the "Entity Definitions NOPR," 75 Fed. Reg. 80, 174 (Dec. 21, 2010) and on the "End-User Exception NOPR," 75 Fed. Reg. 80,747 (Dec. 23, 2010). Web links to these comment letters can be found on Appendix A.

Commission on particular asset classes and product types. As the Electric Trade Associations and many others have commented (including at the Commission's public roundtable on May 2-3, 2011), all the following Phases should proceed by asset class and, within each asset class, by product type. Phasing should address first those product types where systemic risk is of greatest concern, and where standardization and availability of data repositories and clearing mechanisms is most advanced.

The Commission should not focus on creating a one-size-fits-all-structure with a "big bang" commencement for all global swap markets. Instead, it should focus serially on reducing significant systemic risks, achieving the most transparency and by addressing the credit, interest rate and other "financial" commodity markets first, then analyzing different product types in the nonfinancial or "other" commodity markets and addressing the most complex product types in those markets last.

In Phase I and beyond, it is important that the rules speak carefully and clearly about different commodity markets (global, national, regional or local), different asset classes, different product types, different data elements, different credit risks, different market infrastructure entities and different market participants -- and that the rules address each group of market participants in terms relevant to the particular commodity being regulated. In addition, the Commission should allow sufficient time for implementation especially if significant changes to financial, accounting, operational and energy regulatory recordkeeping and reporting systems are needed.

III. THE COMMISSION SHOULD CONSIDER THE OVERALL IMPACT OF ITS RULES PROMULGATED UNDER THE ACT ON NONFINANCIAL ENTITIES, INCLUDING ON SMALL ENTITIES, AND CONDUCT A COMPREHENSIVE ANALYSIS UNDER THE REGULATORY FLEXIBILITY ACT, THE PAPERWORK REDUCTION ACT, AND THE COST BENEFIT ANALYSIS REQUIRED BY THE COMMODITY EXCHANGE ACT AND SBREFA

The Commission cannot assume the overarching regulatory benefit of its Proposed Rules, while ignoring the regulatory costs of those same Proposed Rules. Nor can the Commission ignore the heavy regulatory burden and cost it will be imposing on nonfinancial entities, for markets about which the Commission acknowledges it has insufficient information. We urge the Commission not to ignore or underestimate these significant burdens on American business.

As discussed in Section I above, the Electric Trade Association's members include many "small entities" as that term is defined in the Regulatory Flexibility Act. 5 U.S.C. §§ 601-612 (as amended Mar. 29, 1996 by the Small Business Regulatory Enforcement Fairness Act). 13 C.F.R. §121.201, n.1. Each of the complex and interrelated regulations currently being proposed by the Commission has both an individual, and a cumulative, affect on such small entities. Whether a particular proposed regulation is required by the Act, or is proposed pursuant to the Commission's "interpretation" of the Act (such as the Real-Time Data NOPR), is proposed pursuant to "implicit" authority or "to provide guidance and clarity" for the Commission's jurisdiction under the Act (see the Second Interim Final Rule, 75 Fed. Reg.

78,892, issued December 17, 2010, at 75,893), or the Commission just views as “removing unnecessary provisions” in light of the Act (see Commodity Options NOPR at 6098), the Commission rulemakings under the Act constitute an accumulation of interrelated regulatory burdens and costs on nonfinancial small entities like some of the Electric Trade Associations’ members. The Electric Trade Associations reserve their rights to assess the full impact of the initial rulemakings being promulgated by the Commission under the Act, and to require a comprehensive analysis be conducted with respect to those regulations as a whole.

In its ongoing rulemakings, the Commission has acknowledged that it has no experience in regulating the swaps markets or nonfinancial entity market participants. Each proposed rule has addressed a different piece of the Commission’s overall rulemaking challenge under the Act. The Commission’s cost-benefit analysis in each NOPR includes assumptions about the number of non-cleared “swaps,” the number of “swap dealers” and major swap participants,” the number of “financial entities,” the number of annual transactions, the number of end-user-to-end-user transactions, the number of calculations, valuations and disclosures, and what information the Commission needs about the non-cleared swaps markets, or each non-cleared swap transaction, or each market participant. The Electric Trade Associations reserve the right to dispute all these assumptions, and request that the Commission fulfill its statutory requirements under SBREFA to provide economic data showing that the aggregate costs and cumulative regulatory burdens imposed on such small entities by the initial rulemakings to implement the Act are necessary, and that there are no alternatives to achieving the regulatory goals that would impose fewer burdens and less costs on nonfinancial entities and American energy consumers.

IV. CONCLUSION

We stand ready to help the Commission understand our members’ enterprises and their affiliates, our industry and our markets, our transactions and documentation, and how our members use Energy Commodity Transactions to hedge commercial risks. Please contact any of the Electric Trade Associations’ undersigned representatives for information or assistance.

David Stawick, Secretary
June 3, 2011
Signature Page

**REOPENING AND EXTENSION
OF COMMENT PERIODS –
GLOBAL COMMENT**

Respectfully yours,

**NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION**

By: Russ Wasson
Russell Wasson, Director, Tax,
Finance and Accounting Policy

**AMERICAN PUBLIC POWER
ASSOCIATION**

By: _____
Susan N. Kelly, Senior Vice
President of Policy Analysis and
General Counsel

LARGE PUBLIC POWER COUNCIL

By: _____
Noreen Roche-Carter, Chair, Tax and
Finance Task Force

EDISON ELECTRIC INSTITUTE

By: _____
Richard F. McMahon, Vice President

ELECTRIC POWER SUPPLY ASSOCIATION

By: _____
Daniel S.M. Dolan, Vice President,
Policy Research & Communications

cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott O'Malia, Commissioner
Daniel Berkovitz

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June 3, 2011
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/s/ Richard F. McMahon
Richard F. McMahon, Vice President

ELECTRIC POWER SUPPLY ASSOCIATION

By: _____
Daniel S.M. Dolan, Vice President,
Policy Research & Communications

cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
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Daniel Berkovitz

APPENDIX A

ELECTRIC TRADE ASSOCIATIONS - COMMENT LETTER SUMMARY

	CFTC RULE-MAKING	DATE ISSUED BY CFTC	FEDERAL REGISTER NUMBER	ELECTRIC TRADE ASSOCIATION FILING
1	Definitions ANOPR: “swap” and “swap dealer,” “major swap participant,” “eligible contract participant”	Aug. 20, 2010	75 Fed. Reg. 51,429	Sept. 20, 2010 (NFP Energy End Users) Link to Comment Sept. 20, 2010 (EEI) Link to Comment
2	Interim Final Rule on Data Recordkeeping and Reporting	Oct. 14, 2010	75 Fed. Reg. 63,080	Nov. 15, 2010 (NFP Energy End Users) Link to Comment Nov. 15, 2010 (EEI) Link to Comment
3	Pre-NOPR Comment - Data Recordkeeping and Reporting Task Force	-----	-----	Nov. 16, 2010 (NFP Electrics) Link to Comment (PDF File)
4	Pre-NOPR Comment - End User Exception Task Force	-----	-----	Nov. 22, 2010 (NFP Energy End Users) Link to Comment (PDF File)
5	Position Reports for Physical Commodity Swaps (Recordkeeping for “Reportable Positions”)	Nov. 2, 2010	75 Fed. Reg. 67,258	Dec. 2, 2010 (NFP Electrics) Link to Comment
6	Pre-NOPR Comments - Capital and Margin Task Force	-----	-----	Dec. 14, 2010 (NFP Electrics) Link to Comment (PDF File)

	CFTC RULE-MAKING	DATE ISSUED BY CFTC	FEDERAL REGISTER NUMBER	ELECTRIC TRADE ASSOCIATION FILING
7	Request for public Input for the Study Regarding the Oversight of Existing and Prospective Carbon Markets	Nov. 26, 2010	75 Fed. Reg. 72,816	Dec. 17, 2010 NFP Electrics Link to Comment Dec. 17, 2010 (EEI) Link to Comments
8	Prohibition of Market Manipulation	Nov. 3, 2010	75 Fed. Reg. 67,657	Jan. 3, 2011 (EEI) Link to Comments
9	ANOPR on Anti-Disruptive Trading Practices	Nov. 2, 2010	75 Fed. Reg. 67,301	Jan. 3, 2011 (EEI) Link to Comments
10	Interim Final Rule re: Reporting Certain Post-Enactment Swap Transactions	Dec. 17, 2010	75 Fed. Reg. 78,892	Jan. 17, 2011 (NFP Electrics) Link to Comment Jan. 17, 2011 (EEI) Link to Comment
11	Designation of Chief Compliance Officer. Required Compliance Polices; and Annual Report of a Futures Commission Merchant, Swap Dealer or Major Swap Participant	Nov. 17, 2010	75 Fed. Reg. 70,881	Jan. 18, 2011 (EEI) Link to Comment
12	Protection of Cleared Swap Customers Before and After Bankruptcy	Dec. 2, 2010	75 Fed. Reg. 75,162	Jan. 18, 2011 (EEI/ NGSa) Link to Comment
13	Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants	Nov. 23, 2010	75 Fed. Reg. 71,397	Jan. 24, 2011 (EEI) Link to Comment

	CFTC RULE-MAKING	DATE ISSUED BY CFTC	FEDERAL REGISTER NUMBER	ELECTRIC TRADE ASSOCIATION FILING
14	Implementation of Conflict of Interest Policies for Swap Dealers and Major Swap Participants	Nov. 23, 2010	75 Fed. Reg. 71,391	Jan. 24, 2011 (EEI) Link to Comment
15	Protection of Collateral of Counterparties to Uncleared Swaps	Dec. 3, 2010	75 Fed. Reg. 75,432	Feb. 1, 2011 (NFP Electrics) Link to Comment Feb. 1, 2011 (EEI) Link to Comment
16	Whistleblower Provisions (CFTC)	Dec. 6, 2010	75 Fed. Reg. 75,728	Feb. 4, 2011 (EEI/NRECA Comments) Link to Comment
17	Swap Data Recordkeeping and Reporting Requirements	Dec. 8, 2010	75 Fed. Reg. 76,573	Feb. 7, 2011 (NFP Electrics) Link to Comment Feb. 7, 2011 (EEI/EPISA) Link to Comment
18	Real Time Public Reporting of Swap Transactions and Pricing Data	Dec. 7, 2010	75 Fed. Reg. 76,139 *CORRECTION 75 Fed. Reg. 76,930	Feb. 7, 2011 (NFP Electrics) Link to Comment Feb. 7, 2011 (EEI/EPISA/AGA/NGSA) Link to Comment
19	Further Definition of SD, MSP and ECP	Dec. 21, 2010	75 Fed. Reg. 80,174	Feb. 22, 2011 (NFP Electrics) Link to Comment Feb. 22, 2011 (EEI/EPISA) Link to Comment

	CFTC RULE-MAKING	DATE ISSUED BY CFTC	FEDERAL REGISTER NUMBER	ELECTRIC TRADE ASSOCIATION FILING
20	Business Conduct Standards for SDs and MSPs with Counterparties	Dec. 22, 2010	75 Fed. Reg. 80,638	<p>Feb. 22, 2011 (APPA/LPPC) Link to Comment</p> <p>Feb. 22, 2011 (APGA) Link to Comment</p>
21	End-User Exception to Mandatory Clearing of Swaps	Dec. 23, 2010	75 Fed. Reg. 80,747	<p>Feb. 22, 2011 (NFP Electrics) Link to Comment</p> <p>Feb. 22, 2011 (EEI/EP SA) Link to Comment</p>
22	Registration and Regulation of Swap Data Repositories	Dec. 23, 2010	75 Fed. Reg. 80,898	<p>Feb. 22, 2011 (NFP Electrics) Link to Comment</p>
23	Agency Information Collection Activities: Proposed Collection, Comment Request: Reporting Pre-Enactment Swap Transactions	Jan. 11, 2011	76 Fed. Reg. 1603	<p>Mar. 14, 2011 (NFP Electrics) Link to Comment</p>
24	Position Limits for Derivatives	Jan. 26, 2011	76 Fed. Reg. 4752	<p>Mar. 28, 2011 (NFP Electrics) Link to Comment</p> <p>Mar. 28, 2011 (EEI/EP SA) Link to Comment</p>
25	Commodity Options and Agricultural Swaps	Feb. 3, 2011	76 Fed. Reg. 6095	<p>Apr. 4, 2011 (NFP Electrics) Link to Comment</p> <p>Apr. 4, 2011 (EEI/EP SA) Link to Comment</p>

	CFTC RULE-MAKING	DATE ISSUED BY CFTC	FEDERAL REGISTER NUMBER	ELECTRIC TRADE ASSOCIATION FILING
26	Orderly Liquidation Termination Provision in Swap Trading Relationship Documentation for Swap Dealers and Major Swap Participants	Feb. 8, 2011	76 Fed. Reg. 6708	Apr. 11, 2011 (NRECA with EEI) Link to Comment
27	Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants	Feb. 8, 2011	76 Fed. Reg. 6715	Apr. 11, 2011 (NFP Electrics with EEI) Link to Comment
28	Agency Information Collection Activities under OMB Review	April 4, 2011	76 Fed. Reg. 18,536	May 4, 2011 (NFP Electrics) Link to Comment
29	Roundtable on Schedule for Final Rules and Implementation of Final Rules under Dodd Frank	April 12, 2011	-----	May 4, 2011 (NFP Electrics/EEI/EPISA) Link to Comment