



October 15, 2012

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

Re: Comments on Agency Information Collection Activities; Proposed Collection Comment Request: Further Definition of “Swap,” “Security-Based Swap,” “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping: Book-out Agreement Confirmation

Dear Ms. Yochum:

The NFP Electric Associations¹ respectfully submit these comments in the above-captioned proceeding announced by the Commodity Futures Trading Commission (“Commission”) on the proposed estimated burden imposed by its regulatory requirement to document oral “book-outs.”² The NFP Electric Associations wish to point out that these comments are substantially identical to arguments advanced in section seven of the comment they submitted on October 12, 2012 in the Commission’s Product Definitions Release docket.³

I. Background

In Section II.B.2.(a)(i)(D) of the Product Definitions Release,⁴ the Commission introduces a new regulatory requirement for commercial market participants to document oral

¹ The National Rural Electric Cooperative Association (“NRECA”), the American Public Power Association (“APPA”), the Large Public Power Council (“LPPC”), and the Transmission Access Policy Study Group (“TAPS”) (collectively, the “NFP Electric Associations.”). See Attachment A for a description of the members of each NFP Electric Association. The comments contained in this filing represent the comments and recommendations of the NFP Electric Associations, but not necessarily the views of any particular member of any one or more of the NFP Electric Associations on any issue. The NFP Electric Associations are authorized to note the involvement of the following organizations and associated entities to the Commission, and to indicate their full support of these comments and recommendations: ACES Power Marketing and The Energy Authority.

² 77 Fed. Reg. 49,428 (August 16, 2012) (“OMB Notice”).

³ 77 Fed. Reg. 48,208 (August 13, 2012) (“Product Definitions Release”).

⁴ *Id.* at 48,230.

“book-outs” for nonfinancial commodity transactions in order to maintain the benefit of the Commission’s regulatory “safe harbor” interpreting CEA 1a(47)(B)(ii). This new regulatory requirement provides no benefit to either party to the nonfinancial commodity transaction. It is not a requirement of the Dodd-Frank Act statutory exclusion from the definition of “swap.” The Commission concedes in the Product Definitions Release that it is proposing the new documentation burden “in order to prevent abuse of the safe harbor” interpreting CEA 1a(47)(B)(ii). In doing so, the Commission is punishing all those who are operating commercial businesses within the statutory exclusion provided in CEA 1a(47)(B)(ii) for nonfinancial commodity transactions or within other exclusions, exemptions and public interest waivers, and that have historically operated their commercial businesses consistently with the Commission’s interpretation of the forward contract exclusion in the Brent Interpretation.⁵ This is a burdensome new regulatory requirement that is imposed on every commercial market participant to “prove you’re not a bad actor abusing a safe harbor.”

II. Comments

In order to comply with the Paperwork Reduction Act (“PRA”), the Commission is required to describe the specific regulatory purpose for such a new information collection requirement, and to evaluate whether the information will have practical regulatory use or utility, and finally to explain why the regulatory requirement is necessary and the least burdensome way of fulfilling the identified regulatory purpose. The NFP Electric Associations respectfully submit that the Commission has not fulfilled this predicate requirement of the PRA. Instead, in its OMB Notice, the Commission asks the public whether the proposed collection of information is necessary and whether the information will have a practical use. The NFP Electric Associations hereby respond with an emphatic “No.”

The Commission states in the OMB Notice, without providing citation or support, that “it believes that, as part of customary and usual business practices, most respondents already create and store book-out agreements in either a written or electronic format.” Such belief is unfounded and is contrary to discussions that representatives of the electric industry have had with Commission staff. The delivery of electric power, a nonfinancial commodity that cannot be stored and that must be delivered over an electric transmission grid that must be kept “balanced” within a narrow physical frequency at all times, is a highly specialized engineering operations activity, conducted by month, by day, by hour, by second to enable power to flow from generation source to “sink.” Oral book-outs, between electric power schedulers with a focus on

⁵ The new Product Definitions Release imposes this new documentation requirement on all those whose nonfinancial commodity forward contracts are “booked out” orally. Whether a commercial market participant in the Brent Oil markets, or an electric utility operating the grid to deliver electric energy to its customers, whether the electric utility is in an RTO/ISO region and engaged with the RTO/ISO in oral generation and transmission decisions/directions, or operating outside an RTO/ISO region and interacting with other transmission owners and electric industry market participants, all commercial entities will be subject to this new regulatory requirement for documenting oral book-outs of their nonfinancial commodity transactions.

reliability and efficiency and who have dealt with each other by telephone for decades, are in keeping with prudent electric utility operations protocols.

The Commission asks for comments on the accuracy of the estimates and the methodology and assumptions used. The Commission provides estimates without cited sources and seemingly without any basis in fact to explain or support its estimates. For example, the Commission estimates that 30,000 “potential respondents” will need to comply with the new requirement. But the Commission does not say whether that number includes all participants in all markets for all nonfinancial commodities, and if so, how the estimate was derived or calculated.

The Commission also estimates, without citation, that only one or two oral “book-outs” occur annually in the United States, per respondent. Based on the collective experience of the NFP Electric Associations’ members, who are actively involved in nonfinancial energy transactions, and in operationally delivering/receiving electric energy every minute of every day of every year, the “one or two oral ‘book-outs’ is a gross understatement, and inconsistent with the experience of electric operations staff operators in just this one industry.

An informal survey of electric utilities reveals that the number of oral book-outs per year for some electric utilities is not one or two annually, but hundreds per week during certain seasons, and thousands per year. For example, during peak summer months in geographic regions where transmission is constrained, or where generation and load locations make scheduling electric transmission difficult, the operators need to make frequent adjustments in power flows and transmission paths in order to assure grid reliability. In these seasons and regions in particular, oral book-outs are the common operational method for managing physical delivery without service interruption. Such oral book-outs may take place multiple times per week or multiple times per day for each “respondent” entity involved in the physical flow of power. In certain seasons of the year and certain regions of the country (outside the geographic regions served by RTOs and ISOs), the number of oral book-outs is estimated to be exponentially higher. The documentation of such oral book-outs will take a significant amount of time and coordination among electric operations staff (not contracting staff) throughout the country. For many of the smaller electric operations, that have engaged in book-outs of forward power contracts for decades over the telephone, the new regulatory requirement will require new systems, new procedures and potentially new personnel.⁶

⁶ In addition to its statement that the documentation of oral book-outs is required to prevent abuse of the “safe harbor,” the Commission hypothesizes in its cost/benefit analysis that the new regulatory requirement is consistent with prudent business practices and will promote good business practices. *See* page 48,316. The NFP Electric Associations respectfully submit that Congress did not authorize the Commission to impose its views, along with the costs and burdens associated with such views, of good and prudent business practices on electric companies that have been engaged in electric system operations and delivering/receiving energy commodities for decades.

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III. Conclusion.

The NFP Electric Associations respectfully submit that the Commission has failed to provide the information required to estimate the burdens imposed by its regulatory requirement to document oral “book-outs.” Accordingly, the NFP Electric Associations respectfully request the Commission delete or withdraw this new regulatory requirement.

Please contact any of the NFP Electric Associations’ undersigned representatives or Patricia Dondanville, Reed Smith LLP, 10 South Wacker Drive, 40th Floor, Chicago, Illinois 60606, telephone (312) 207-3911 or at pdondanville@reedsmith.com for more information or assistance.

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Respectfully submitted,

**NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION**



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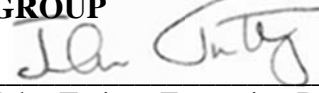
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ATTACHMENT A - DESCRIPTION OF THE NFP ELECTRIC ASSOCIATIONS

NRECA is the national service organization for more than nine hundred rural electric utilities and public power districts that provide electric energy to approximately forty-two million consumers in forty-seven states or thirteen percent of the nation's population. Kilowatt-hour sales by rural electric cooperatives account for approximately eleven percent of all electric energy sold in the United States. Because an electric cooperative's electric service customers are also members of the cooperative, the cooperative operates on a not-for-profit basis and all the costs of the cooperative are directly borne by its consumer-members.

APPA is the national service organization representing the interests of government-owned electric utilities in the United States. More than two thousand public power systems provide over fifteen percent of all kilowatt-hour sales to ultimate electric customers. APPA's member utilities are not-for-profit utility systems that were created by state or local governments to serve the public interest. Some government-owned electric utilities 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. Government-owned utilities are accountable to elected and/or appointed officials and, ultimately, the American public. The focus of a government-owned electric utility is to provide reliable and safe electricity service, keeping costs low and predictable for its customers, while practicing good environmental stewardship.

LPPC is an organization representing 26 of the largest government-owned electric utilities in the nation. LPPC members own and operate over 86,000 megawatts of generation capacity and nearly 35,000 circuit miles of high voltage transmission lines, representing nearly 90% of the transmission investment owned by non-Federal government-owned electric utilities in the United States.

TAPS is an association of transmission-dependent utilities in more than 35 states, promoting open and non-discriminatory access to the transmission grid and regulatory policies to facilitate the participation of smaller utilities in the electricity markets.