February 15, 2013

Melissa Jurgens, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Desk Officer for CFTC
725 17th Street
Washington, DC 20503

Submitted by email to: http://comments.cftc.gov/

Re: Form TO, "Annual Notice Filing for Counterparties to Unreported Trade Options."

The American Public Power Association (APPA), the National Rural Electric Cooperative Association (NRECA), the Edison Electric Institute (EEI), and the Electric Power Supply Association (EPSA) submit these comments in response to the December 17, 2012 *Federal Register* notice requesting comments on the proposed collection of information on Commodity Futures Trading Commission (Commission) Form TO.[1]

APPA is the national service organization representing the interest of government-owned electric utilities. APPA's member utilities are not-for-profit utility systems that were created by state or local governments to serve the public interest. More than two thousand public power systems provide over fifteen percent of all kilowatt-hour sales to ultimate electric customers. NRECA is the national service organization dedicated to representing the national interests of cooperative electric utilities and the consumers they serve. This includes more than 900 not-for-profit rural electric utilities that provide electric energy to over 42 million people in 47 states, or

[1] 77 *Fed. Reg. 242* (December 17, 2012).

12 percent of electric customers. Both distribution and generation and transmission ("G&T") cooperatives were formed to provide reliable electric service to their owner-members at the lowest reasonable cost. EEI is the association of U.S. shareholder-owned electric companies. EEI's members serve 95 percent of the ultimate customers in the shareholder-owned segment of the U.S. electricity industry, and represent approximately 70 percent of the U.S. electric power industry. EEI's members are regulated at the state level by the state public service commission and at the federal level by the Federal Energy Regulatory Commission. EPSA is the national trade association representing competitive power suppliers, including generators and marketers. Competitive suppliers, which, collectively, account for 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.

The Commission published a final rule and interim final rule (IFR) governing commodity options[2] in April 2012. The final rule applies the same regulatory regime to commodity options as applies to "swaps." The IFR establishes a "trade option" exemption from most of these regulations for options on nonfinancial commodities that meet certain conditions. Under the IFR, trade options are subject to both recordkeeping and reporting requirements. If, in the twelve-month period prior to the execution of any particular trade option, one of the parties to the trade option has been a "reporting party" as described in part 45 (the Commission's regulatory recordkeeping and reporting rules), that party must report the trade option in compliance with part 45. If neither party has been such a "reporting party" in the previous twelve months, the trade option will not be reported under part 45 requirements, and instead, both parties to the trade option must file the annual Form TO. The part 45 recordkeeping requirements apply to all trade option activity, regardless of whether the transactions are reported under part 45 or on Form TO.

APPA, NRECA, EEI, and EPSA submitted joint comments on the trade option IFR in June 2012. (See, in particular, part III.B of the attached joint comments.) The joint comments argued that only swap dealers and major swap participants should be required to report trade options under Part 45 until and unless the Commission analyzes the reported information and determines that additional reporting would be useful and cost-effective. If such a determination is made, entities other than swap dealers and major swap participants should only be required to report annual information on Form TO. Concerns with the Commission's reporting regime for trade options include the increased regulatory burden, particularly for small entities; and the value of the information required to be reported under part 45, given the customized nature of physical commodity trade options. In particular, there could be numerous physical forward contracts that may not meet one or more elements of the CFTC's interpretation on forward contracts with embedded volumetric optionality, but do meet the conditions for trade options. These contracts have very different characteristics than traditional swap contracts. It will be extremely difficult – if not impossible – to report such trade option contracts under the data element structure required by part 45 reporting.

In response to this current request for comments, APPA, NRECA, EEI, and EPSA recommend that the Commission allow entities other than swap dealers and major swap participants to meet the recordkeeping requirement for trade options by relying on their existing

[2] See 77 *Fed. Reg.* 25320 (April 27, 2012).

records retention policies. APPA, NRECA, EEI, and EPSA members currently maintain records for these transactions in a manner and format that are suitable for their own business and applicable energy regulatory purposes and that are in accordance with their governance structures. While utilities may have to make some adjustments to help in compiling information necessary for the Form TO reporting requirements, there is no need to require a recordkeeping regime more suitable for financial transactions.

The Commission asks for comments on the accuracy of the estimates and the methodology and assumptions used to determine the burden of Form TO. The Commission estimates that 100 potential respondents will need to comply with the new Form TO requirement. Since the Commission does not provide any information on how this estimate was calculated, it is not possible to comment on the methodology or assumptions. This estimate seems low, given that electric utilities regularly use trade options to ensure they can meet their public service obligations to deliver electricity to customers. For example, there are over 3,000 electric utilities in the United States, and this does not cover all the market participants in the electric industry that may use trade options. This is just one of potentially many industries in which participants may be required to report information on Form TO.

The Commission also estimates that each of these 100 respondents will spend two hours annually to file Form TO. This estimate seems unreasonably low, given that most potential filers of Form TO will be unlikely to have staff familiar with the Commission and its new jurisdiction over swaps. Such filers will need to review the relevant provisions of the Commodity Exchange Act and the Commission's rules, amend relevant trade option documentation to validate that the commodity options meet the conditions in Rule 32. 3, and keep track of which trade options are unreported trade options. These tasks fall under "reviewing instructions" and "searching data sources" – items that are specifically included in the definition of "burden" in the Paperwork Reduction Act.[3]

In comments in rulemakings and other Commission proceedings, APPA, NRECA, EEI, and EPSA have consistently requested that the Commission impose only the minimum necessary regulatory burdens and costs on non-financial entities hedging commercial risk. When estimating these costs and burdens, the Commission should not assume that non-financial entities maintain the types of systems and staff comparable to those at financial institutions that have extensive experience with the Commission's regulations.

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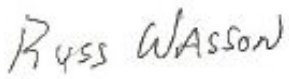
[3] The Paperwork Reduction Act's definition of "burden" is found at 44 U.S.C. §3502 (2).

Respectfully submitted,

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION



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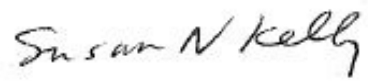

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ATTACHMENT

Joint EEI/EPSA/APPA/NRECA Comments on the Commodity Options Interim Final Rule, (RIN 3038-AD62), June 2012

Via Electronic Submission

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

Re: Comments on the Commodity Options Interim Final Rule (RIN 3038-AD62)

Dear Mr. Stawick:

The Edison Electric Institute ("EEI"), the Electric Power Supply Association ("EPSA"), the National Rural Electric Cooperative Association ("NRECA"), and the American Public Power Association (hereafter "Joint Electric Associations") respectfully submit these comments in response to the Commodity Futures Trading Commission's (the "Commission") Commodity Options Interim Final Rule (the "Interim Final Rule").[1] On April 18, 2012, the Commission issued its Final Rule and Interim Final Rule on Commodity Options. The Final Rule subjects trading in commodity options to the same requirements under the Commodity Exchange Act ("CEA") as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") and the Commission's rules that are applicable to all "swaps."[2] The Interim Final Rule provides an exemption from all but certain specified regulations for options on nonfinancial commodities that meet certain conditions identified in the Interim Final Rule (the "Trade Option Exemption").[3] The Commission requested comments on the Interim Final Rule.[4]

EEI is the association of U.S. shareholder-owned electric companies. EEI's members serve 95 percent of the ultimate customers in the shareholder-owned segment of the U.S. electricity industry, and represent approximately 70 percent of the U.S. electric power industry. EEI also has more than 65 international electric companies as Affiliate members, and more than 170 industry suppliers and related organizations as Associate members.

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.

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1 *Commodity Options Final Rule and Interim Final Rule*, 77 Fed. Reg. 25320 (Apr. 27, 2012).

2 Pub. L. No. 111-203 (2010).

3 In these comments, we refer to "nonfinancial" commodities and "physical" commodities interchangeably.

4 77 Fed. Reg. at 25329

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 publicly-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 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 publicly-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. 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 and safe electricity service, keeping costs low and predictable for its customers, while practicing good environmental stewardship.

The Joint Electric Associations' members are physical commodity market participants that rely on commodity swaps, futures, and options primarily to hedge and mitigate commercial risk. They are not financial entities. As users of commodity options to hedge commercial risk, the Joint Electric Associations' members have a direct and significant interest in how the Commission regulates transactions in nonfinancial commodities, and in particular, options on nonfinancial commodities.

I. Summary of the Joint Electric Associations' Comments on the Interim Final Rule

The Joint Electric Associations generally support the Commission's Interim Final Rule providing a Trade Option Exemption, which exempts certain options on exempt and agricultural ("nonfinancial") commodities ("Trade Options") from the general Dodd-Frank Act regulatory regime applicable to swaps. The Trade Option Exemption allows entities that are not registered with the Commission as either swap dealers or major swap participants ("non-SD/MSPs"), including the vast majority of the Joint Electric Associations' members, to continue to rely on Trade Options to hedge or mitigate commercial business risks.

The Commission issued the Interim Final Rule providing the Trade Option Exemption in response to numerous comments filed requesting such relief after the Commission initially had proposed to treat all commodity options as swaps, notwithstanding the exclusion of nonfinancial commodity forward transactions from the definition of "swap" in CEA 1a(47)(B)(ii).[5] The Joint Electric Associations appreciate and support the Commission's efforts to accommodate these concerns and provide the following limited comments on some aspects of the Interim Final Rule that would be unduly burdensome for the Joint Electric Associations' members:

- Trade Options are hedges and are intended to be physically settled. As such, they should not be treated as "swaps" for purposes of the Commission's position limits or large trader reporting rules;

- Since Trade Options are intended to be physically settled, they have not traditionally been subject to reporting obligations. As such, the Commission should only require that SD/MSPs report Trade Options to which such regulated entities are parties pursuant to the Commission's Part 45 reporting requirements. Trade Options between non-SD/MSPs should not be subject to Part 45 reporting requirements. If the Commission determines, after an interim period of reports by SD/MSPs only that reporting by non-SD/MSPs is necessary, and conducts the required cost/benefit analysis of such incremental additional reporting, then the Commission should only require annual Form TO reporting for Trade Options between non-SD/MSPs.

- The Commission should revise the Interim Final Rule to exempt Trade Options from the proposed documentation requirements of the proposed Margin Rule. No revisions to agreements used to transact in physical products should be required.

- Trade Options should not be subject to the financially oriented elements of the Internal Business Conduct Standards. The wholesale application of such standards to Trade Options can only increase costs to physical counterparties.

- The Joint Electric Associations request that Commission clarify that the parties' intent to physically settle is determined at the time the option is entered into, and that the parties' intention is evidenced by the terms of the option transaction.[6]

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[5] *See Commodity Options and Agricultural Swaps*, 76 Fed. Reg. 6095 (proposed Feb. 3, 2011).

[6] The Joint Electric Associations continue to recommend that the Commission exclude physically-settling Commodity Options from the further definition of "swap" in accordance with their comments in that rulemaking dated July 22, 2011 (*see* section V, **"**The Commission Should Interpret the Nonfinancial Commodity Forward Contract Exclusion to Apply to Options which, if Exercised, Become Nonfinancial Commodity Forward Contracts"). Additionally, the Joint Electric Associations share the statutory reasoning and concerns about

- The grandfather provision in Section 32.5 should be tied to the compliance dates provided in the Federal Register release instead of the June 26, 2012 effective date.[7]

II. Overview of the Commodity Options Interim Final Rule

The Interim Final Rule provides a Trade Option Exemption under new Part 32.3, which exempts certain nonfinancial commodity options from the general Dodd-Frank swap regime, subject to certain regulatory requirements. To qualify for the trade option exemption, the offeror (sometimes called grantor of a commodity option) must be:

- an eligible contract participant; or
- a producer, processor, or commercial user of, or merchant handling the commodity which is the subject of the commodity option transaction, or the products or by-products thereof, that is offering or entering into the commodity option transaction solely for purposes related to its business as such.

In addition, the offeror must reasonably believe that the offeree is a producer, processor, or commercial user of, or merchant handling the commodity which is the subject of the commodity option transaction, or the products or by-products thereof that is offering or entering into the commodity option transaction solely for purposes related to its business as such. Finally, both parties must intend that, if the Trade Option is exercised, the resulting nonfinancial commodity spot or forward contract be physically settled. The determination of whether the parties' intent is to physically settle will be made in the same manner as the determination for the forward contract exclusion to the definition of "swap" in the final product definition rules. As discussed further below, the Joint Electric Associations reserve the right to comment on this aspect of the Interim Final Rule pending the Commission's issuance of the final product definition rules.

Although Trade Options generally are exempt from rules and regulations applicable to "swaps," parties transacting in Trade Options must comply with the following enumerated regulatory requirements:

- Part 45: Recordkeeping.

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unintended adverse consequences of the Coalition of Physical Energy Companies (COPE) as discussed in its recent letter, "Re: Treatment of Physically Settling Commodity Options Transactions**,"** dated June 7, 2012.

[7] The compliance date for the Final Rule and the Interim Final Rule is 60 days after publication in the Federal Register of the final rule further defining "swap." For purposes of complying with regulations that also apply to options transactions under the Final Rule and Interim Final Rule, the compliance dates are the same as the compliance dates for such regulations.

- Part 45: Regulatory Reporting.
- Part 20 Large Trader Reporting.
- Part 151: Position Limits.
- Enumerated provisions of Part 23: Recordkeeping, Reporting, and Duties of SD/MSPs.
- Capital and margin requirements of Section 4s (e) of the CEA.
- Prohibition against manipulation provisions listed in new rule 32.3(d)

As the Joint Electric Associations comment below, the Commission, with the exception of Part 45 recordkeeping requirements and the provisions enumerated in new rule 32.3(d), should not subject non-SD/MSPs to the foregoing regulatory requirements applicable to swaps. Trade Options are physically-settled transactions that have traditionally been used by nonfinancial entities for hedging commercial risks, and the costs to non-SD/MSPs of imposing new and complex regulatory requirements on these transactions outweigh the benefits to the Commission of these incremental regulatory requirements.

III. Comments

A. The Commission Should Not Subject Trade Options to Position Limits

In the Interim Final Rule, the Commission provides that speculative position limits would apply to Trade Options to the same extent they apply to "swaps". And yet, to the extent that a Trade Option is a *bona fide* hedge, it would qualify for the hedge exemption from speculative position limits.[8] The Joint Electric Associations respectfully submit that this regulatory requirement should not apply to Trade Options because Trade Options, by definition, must be entered into by a non-SD/MSP "solely for purposes related to its business as such." The Commission has stated that the business purpose requirement of the Trade Option rule means that the offeree must enter into the option solely for: (1) hedging exposure to price changes; and (2) inventory management.[9] Historically, the Commission intended the trade option rule to authorize the "non-public offer and sale of a trade options to a very narrow and limited class of offerees. . . [which] enter the transaction solely for non-speculative purposes related to their business as such?"[10] In addition, the Commission emphasized that, because of the nexus

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[8] 77 Fed. Reg. at 25328.

[9] *See e.g.,* CFTC Interp. Ltr. No. 84-7, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,025 at 28,595 (1984).

[10] CFTC Interp. Ltr. No. 84-7, (CCH) ¶ 22,025 at 28,595.

between the offeree's business and the option transaction, the full protections of the CEA and the Commission's regulations generally are unnecessary in the context of such transactions.[11]

1. Applying Position Limits or Large Trader Reporting Rule to Trade Options Would Impose Significant Administrative Costs on Non-SD/MSPs with Limited Benefits

Trade options, by definition, are transactions that are intended to be physically settled. They are not speculative positions held by "traders" large or small. As a result, Trade Options ultimately should be exempt from position limits and are not the types of "large trading positions" that the Commission seeks to monitor under its large trader reporting rules. While the Commission indicates in the Interim Final Rule that large trader reporting rules apply to swap dealers and clearing organizations,[12] the Interim Final rule does not state that the large trader reporting rules would not apply to non-SD/MSP. Joint Electric Associations request that the Commission make this clarification. Including Trade Options in these two rules will subject non-SD/MSPs to the costly tracking and reporting requirements of the position limits and large trader reporting rules without any incremental regulatory benefit. From a public policy perspective, the costs to non-SD/MSPs of subjecting Trade Options to position limits and large trader reporting will greatly exceed any benefits to the Commission and the public.

Since Trade Options have never been subject to these rules, non-SD/MSPs have no systems in place to:

- identify the types of enumerated bona fide hedging transaction "buckets" within which they fall;
- monitor the number of Trade Option positions across delivery points and trading venues;
- integrate them with other position tracking systems; or
- generate reports, integrating trade option positions, for the Commission.

Building the required infrastructure and reporting systems will be expensive and time consuming. Moreover, non-SD/MSPs will incur all of this expense simply to report to the Commission Trade Option positions that generally will be exempt from position limits. The benefits to the Commission and the public of imposing such significant costs on non-SD/MSPs,

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[11] *Proposed Amendments Concerning Trade Options and Other Exempt Commodity Options*, 56 Fed. Reg. 43560, 43562 (Sep. 3, 1991).

[12] 77 Fed. Reg. 25328 at FN 49.

such as the Joint Electric Associations' members, are not considered or discussed in the adopting release to the Interim Final Rule.

For the foregoing reasons, the Joint Electric Associations respectfully submit that the Commission should not impose on non-SD/MSPs the administrative burden of tracking and reporting such Trade Options under Part 151 or Part 20.

B. The Commission Should Not Impose on Non-SD/MSPs Part 45 Reporting Obligations for Trade Options

Trade Options are transactions in nonfinancial commodities used by commercial entities to hedge commercial risk, and as such have not previously been subject to the Commission's reporting obligations. The Commission should not impose Part 45 reporting obligations on non-SD/MSPs for these transactions. The Commission should only require that SD/MSPs report Trade Options pursuant to the Commission's Part 45 reporting requirements.

Non-SD/ MPS will engage in Trade Options with SD/MSPs as well as with non-SD/MSP's. Thus, a number of the transactions will be reported by SD/MSPs, where these regulated entities are the presumed reporting parties. Requiring non-SD/MSPs to report these transactions would result in a substantial incremental reporting and regulatory burden. Proposed regulation 32.3(b)[13] states that if a non-SD/MSP enters into a transaction with another non-SD/MSP and if either of those parties has complied even once with the Part 45 reporting requirements in the 12 month period preceding the transaction then the non-SD/MSP is required to report the extant transaction and all its other Trade Options with non-SD/MSP counterparties under Part 45. This imposes a regulatory burden on the non-SD/MSP and may discourage parties from entering into any "swaps" for which it is a reporting party, and from entering into nonfinancial commodity option hedging transactions with parties that are not SD/MSPs. Joint Electric Associations would ask the Commission to clarify that this is not the intent of the proposed rule and that only SD/MSPs are required to report Trade Options pursuant to Part 45. This would provide the Commission with significant information on the transactions to which regulated entities (SDs and MSPs) are parties but would not impose a new regulatory burden on commercial counterparties that may not have the financial markets reporting infrastructure in place.

Additionally, the Joint Electric Associations understand that many non-SD/MSPs centralize the hedging activities of multiple, non-SD/MSP legal entities in a single "market-facing affiliate." Barring a further rulemaking by the Commission on inter-affiliate transactions, common risk-transfer transactions between a non-SD/MSP entity (e.g., that owns a power plant) and its non-SD/MSP market-facing affiliate might implicate the reporting requirements of Part 45. If non-SD/MSPs market-facing affiliates were to become reporting counterparties simply by

virtue of such transactions (i.e., if the market-facing affiliates entered into swaps solely with SDs and/or MSPs), such affiliates could never benefit from the reduced reporting burden for end users.

The Joint Electric Associations do not object to the recordkeeping requirements, and therefore the Commission would have the authority to examine non-SD/MSPs' records if necessary in the future. Moreover, once the Commission gains experience with analyzing the information it receives from SDs and MSPs, conducts a cost benefit analysis and determines that reporting by non-SD/MSPs is necessary, than non-SD/MSPs should only be required to report Trade Options annually on Form TO.

C. The Commission Should Not Require Revisions to Physical Trading Agreements Due To Trade Options Transactions

As proposed by the Commission in its pending margin rules, all documentation for swap transactions between swap dealers and their counterparties must contain "credit support arrangements.[14]" The Interim Final Rule makes trade options subject to the Commission's capital and margin rules.[15] As explained in the COPE Letter discussed above, physically settling trade options are often transacted using the EEI Master Power Purchase and Sale Agreement or other physical energy commodity documentation.[16] These physical energy trading agreements often do not have credit support arrangements as the Joint Electric Associations understand to be required for transactions involving swap dealers under the pending capital and margin rules.

The Joint Electric Associations request that the Commission broaden the areas of exemption for trade options to include, at a minimum, any documentation requirements resulting from the final margin rules or any other Dodd-Frank regulations.[17] The Joint Associations expect that some of their members will likely be transacting in trade options with swap dealers. It would be burdensome for non-SD/MSP if they were forced to revise their physical trading documentation for physically settled transactions.

Accordingly, Joint Electric Associations request that the Commission exempt trade options from any documentation requirements of the proposed capital and margin rules as well as any other swap documentation requirements issued by the Commission that relate to swaps.

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[14] *See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, 76 Fed. Reg. 23732 at 23744 (proposed § 23.151), (Notice of Proposed Rulemaking) (April 28, 2011).

[15] *See* 17 C.F.R. § 32.3(c)(5) (Interim Final Rule).

[16] COPE Letter at p 7.

[17] Of course, if the Commission's final margin rule diverges from the proposed rule, the Joint Associations reserve the right to seek further exemptions for trade options.

D. The Commission Should Not Impose the Blanket Application of Internal Business Conduct Standards on Trade Options

The Commission has issued Internal Business Conduct Standards for swap dealers which are largely designed to address the risks and issues related to financial transactions.[18] By imposing some swap requirements on trade options,[19] the Interim Final Rule creates uncertainty as to whether the Business Conduct Standards will be imposed on transactions between non-SD/MSPs and SD/MSPs. If these standards apply then there are likely to be increased costs for counterparties of swap dealers such as Joint Electric Association members.

As noted above, the Joint Associations anticipate that their members will be counterparties to swap dealers in trade option transactions. The Joint Associations are concerned that the blanket application of the Internal Business Conduct Standards by the Interim Final Rule will increase costs for these physical transactions as swap dealers struggle to put the square peg (physical transactions) in the round hole (rules for financial transactions).

Accordingly, the Commission should exempt trade options from the financially oriented aspects of the Internal Business Conduct Standards and if needed, only a limited and specific set of requirements (such as New Product Review) should be required.

E. The Commission Should Clarify that the "Intent to Physically-Settle" Requirement is Evidenced by the Terms of the Option

The Interim Final Rules state that the determination of whether the parties to a Trade Option intend physical settlement will be made in the same manner as the determination for the forward contract exclusion from the definition of "swap" under the product definition rules. Consequently, the Joint Electric Associations reserve the right to provide further comments on the Interim Final Rule pending the finalization of the Commission's product definitions rules.[20] Nevertheless, consistent with the Joint Electric Associations' comment letter in the product definitions rules docket, we recommend that the Commission revise the Section 32.3(a) (3) so that there is no ambiguity regarding either or both of the parties' intent and how the parties can evidence such intent. Accordingly, the Joint Electric Associations request that the Commission revise Section 32.3(a) (3) to provide:

> § 32.3 Trade options (a) . . . (3) The commodity option by its terms evidences the parties' intent to physically settle the nonfinancial commodity option, so that, if

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[18] *See* 17 C.F.R. §§ 23.600-23.607.

[19] *See id.* at § 32.3(c)(3)(Interim Final Rule).

[20] 77 Fed. Reg. at 25326.

exercised, the option results in a binding obligation to deliver and receive a nonfinancial commodity for either immediate or deferred shipment or delivery.

This revision is intended to eliminate ambiguity and inconsistency in the rules.

F. The Grandfather Provision Should Be Tied to the Compliance Dates Instead of the Effective Date

The grandfather provision in Commission regulation 32.5 provides that amended Part 32 does not apply to commodity options transactions entered into prior to the effective date of the Final Rule and the Interim Final Rule, which is June 26, 2012. However, the compliance dates for amended Part 32 are 60 days after publication in the Federal Register of the Commission's final rule further defining the term "swap."[21] Therefore, it is unclear what rules would apply to commodity options transactions entered into between the effective date and the compliance dates. The Joint Electric Associations request that the Commission's grandfather provision in Section 32.5 be tied to the compliance dates provided in the Federal Register release instead of the June 26, 2012 effective date. Such relief will prevent market uncertainty for commodity options transactions in the interim time period between June 26, 2012 and the compliance dates for such rules.

IV. Conclusion

The Joint Electric Associations appreciate the Commission's consideration of our comments on the Interim Final Rule. For the reasons stated herein, we respectfully request that the Commission not subject Trade Options to positions limits or to Part 45 reporting requirements, further clarify the delivery intent requirement of Trade Options, and extend the grandfather relief until the compliance date of the Final Rule and the Interim Final Rule.

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Please contact us at the number listed below if you have any questions regarding these comments.

[21] For purposes of complying with any swap regulations applicable to commodity options transactions under the Final Rule and the Interim Final Rule, the compliance dates are the same as the compliance dates for those swap regulations.

Respectfully submitted,

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