

September 6, 2013

Via Electronic Submission

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

Commissioner Scott O'Malia
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Technology Advisory Committee

Dear Commissioner O'Malia:

The Edison Electric Institute ("EEI") submits these comments in response to the August 16, 2013, *Federal Register* notice requesting comments in connection with the Technology Advisory Committee ("TAC") meeting to be held by the Commodity Futures Trading Commission ("CFTC" or "Commission") on September 12, 2013.¹

EEI is the association that represents all U.S. investor-owned electric companies. Our members provide electricity for 220 million Americans, operate in all 50 states and the District of Columbia, and directly employ more than 500,000 workers. With more than \$85 billion in annual capital expenditures, the electric power industry is responsible for millions of additional jobs. Reliable, affordable, and sustainable electricity powers the economy and enhances the lives of all Americans. EEI members are non-financial, commercial end users that use swaps to hedge and mitigate commercial risk and as such are subject to the reporting and recordkeeping obligations under the Commission's rules and regulations. EEI members have spent significant time and money understanding the Commission's rules and regulations and making the system upgrades and changes necessary to be in compliance.

The TAC meeting notice indicated that one of the issues that will be discussed at the meeting is data standardization in the context of SDR data reporting.² Any changes in the Commission's rules or regulations or interpretations of the rules and regulations going forward will likely necessitate additional system and process changes by EEI members which will impose

¹ 78 *Fed. Reg.* 50040 (August 16, 2013).

² *Id.* at 50041.

additional costs on EEI members. As such, EEI members have a vested interest in this issue and since there are limited opportunities for end users to formally participate in discussions regarding changes to the reporting requirements, EEI appreciates the TAC's taking the first step in creating a transparent process by discussing the issue in an open forum. As discussed below, the Commission should include all stakeholders in the discussion prior to making any changes to the reporting rules and requirements. Since market participants develop and maintain the data, they are in the best position to provide information that can assist the Commission in determining what data is needed and in what format. Having broad stakeholder participation will help ensure that any changes to the reporting requirements satisfies the Commission's goals of having transparent usable data while minimizing the costs imposed on market participants, especially non-financial commercial end-users, such as EEI members.

EEI members are particularly suited to be involved in these discussions as they have registered with and are using both ICE Trade Vault ("ICE") and DTCC as their swap data repositories ("SDRs"). Thus, EEI members are aware that the SDRs have different interpretations of the Commission's rules and regulations as well as different reporting requirements. For example, ICE and DTCC have implemented Commission rule 49.11 which requires SDRs to verify data accuracy differently as well as have different formats and requirements for reporting valuation data under Commission rule 45.4(c)(2)(ii). Including end users in the discussion about harmonizing and standardizing the data provided by SDRs will provide the Commission with input on market practices in the energy industry and which SDR format will provide data that best meets the Commission's needs while minimizing costs for end users. EEI supports the Commission's desire to have usable, transparent data by ensuring that data is submitted in the same manner regardless of the SDR that is used, but encourages the Commission to give careful consideration to the additional costs imposed on market participants throughout this process.

For the reasons stated above, EEI would urge the Commission to have a transparent stakeholder process before making any changes to the reporting rules and regulations, including data fields, are made. As indicated in a Coalition letter³ to the Commission's Chief Information Officer, John Rogers, on July 3, 2013, any changes to the reporting rules should be made through a rulemaking process or a stakeholder process in which all stakeholders are represented and allowed to provide input. Allowing comment on any reporting enhancements or changes through a rulemaking process will provide transparency and provide additional information, including critical information about the potential additional costs being imposed on market participants from the proposed changes. Further, the Commission should use a formal rulemaking process, rather than using SDR-specific rules to effectively make changes to the Commission's rules. This will ensure consistency among SDRs and help provide clarity as stakeholders will be able to provide comment on areas where there is uncertainty and additional Commission clarification is needed.

For example, additional clarity is needed on the non-reporting parties' obligation to verify the data submitted to a SDR by the reporting party. There is some confusion as to this requirement. For example, the Part 45 rules states that the non-reporting counterparty to a swap bears an obligation to report all data errors that are discovered, but does not require either of the

³ The letter was sent by EEI, EPSA, APPA, NRECA and NGSA.

swap counterparties to monitor data in an SDR.⁴ The Part 49 rules for SDRs, however, note that an SDR must obtain acknowledgement from both counterparties as to the accuracy of reported data.⁵ This has raised a number of questions among EEI's membership as to the scope and challenges of the requirement. The following are just a few examples of the types of questions that have been raised:

- What is the extent of the verification requirement for historical versus ongoing swaps?
- Due to the differences in the data fields required by the SDRs, there is a lack of transparency as to the fields and content and so it is difficult to know what information needs to be disputed. Providing specificity as to the 5-15 fields in which the Commission is most interested and having standard requirements for these fields may help address this issue.
- Clarification as to the types of information that should be disputed. For example, traders in some companies may set the execution time of trade with the other trader while traders in other companies may use their IT system automatic data entry date/time for the Trade Execution date/time. In this case, the date will agree but the actual times of the transaction (hour/minute/seconds) may be off by minutes (and sometimes by hours) between the recorded times for the party and counterparty. It is unclear, if this is the type of information that the non-reporting party should dispute with the reporting party?
- Some SDRs charge a fee to the non-reporting party if they are not already registered in order for them to be able to view the reported data as well as to have the SDR provide the USI data. These fees are additional unanticipated costs for end-users as they try to implement the Commission's rules and regulations. What is the non-reporting party's obligation, if any, to incur this additional charge?

Thus, EEI would request that the Commission provide clarification on the scope of the verification requirement and to clarify that non-reporting counterparties to a transaction do not have to make substantial resource commitments to verify swap transaction data reported to SDRs.

In addition, as part of the data standardization process, the Commission may want to consider developing a data dictionary which contains a list of expected or valid values for each data field. To date it appears that each SDR has developed its own approach to adapting the CFTC's requirements to the SDR's existing systems and products. This makes compliance with SDR requirements and management of the data very difficult for reporting and non-reporting entities that still have verification responsibilities with one or both of the SDRs. As the Commission moves forward with standardizing SDR data, it should consider developing a data dictionary with input from all stakeholders so that going forward all SDRs make changes according to uniform standards.

If the Commission chooses not to use a rulemaking process for future changes then, at a minimum, all stakeholders should be allowed to provide input and participate in the discussion as SDRs or large participants cannot adequately represent all market participants' views to the

⁴ Part 45 Final Rule, at 2170.

⁵ Swap Data Repositories: Registration Standards, Duties and Core Principle, 17 C.F.R. § 49.11, 76 Fed. Reg. 54528, at 54579 (September 1, 2011).

Commission. Material economic terms of particular types of swaps differ across different asset classes, thus, future enhancements can be more efficiently implemented if all stakeholders have the opportunity to provide input. The discussion can also help ensure that the Commission receives the information that it needs in a manner that reduces the burden on it and all market participants.

In conclusion, EEI appreciates the opportunity to submit these limited comments for discussion at the TAC meeting on September 12, 2013. EEI would encourage the Commission to continue to discuss these and other reporting issues in an open - transparent process that allows for stakeholder input and discussion on data standardization and other reporting issues. A clear rulemaking process and discussion will help ensure that all market participants have a clear understanding of the Commission's rules and regulations and will allow market participants to provide input to the Commission on areas in which additional clarification of the Commission's rules and regulations may be needed. Such a process would help provide clarity to market participants, help ensure that compliance obligations for non-financial commercial end users are clear and reasonable and support the Commission's goal of improving data quality and market transparency.

EEI members appreciate the Commission's consideration of these comments and look forward to participating in this conversation.

Respectfully submitted,



Richard F. McMahon, Jr.
Vice President
Lopa Parikh
Director
Edison Electric Institute
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 508-5098
Email: lparikh@eei.org

cc: Andy Menon, Counsel, Office of Commissioner Scott O'Malia
Honorable Gary Gensler, Chairman
Honorable Jill Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Mark P. Wetjen, Commissioner
Laurie Gussow, Special Counsel, Division of Market Oversight