



March 20, 2017

**Via Electronic Submission**

Christopher Kirkpatrick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

**RE: Recordkeeping  
RIN 3038-AE36**

Dear Mr. Kirkpatrick:

The Edison Electric Institute (“EEI”) and the National Rural Electric Cooperative Association (“NRECA”) (hereafter “Joint Associations”) respectfully submit these comments in response to the Proposed Rule on Recordkeeping issued by the Commodity Futures Trading Commission (“CFTC” or “Commission”).<sup>1</sup>

EEI is the association of U.S. investor-owned electric companies. EEI’s members comprise approximately 70 percent of the U.S. electric power industry, 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 \$100 billion in annual capital expenditures, the electric power industry is responsible for one million jobs related to the generation and delivery of power.

NRECA is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to more than 42 million people in 47 states or 12 percent of electric customers. Kilowatt-hour sales by rural electric cooperatives account for approximately 11 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.

Joint Association members are not financial companies or derivatives market professionals, but instead are commercial end-users that enter into swaps or buy futures contracts to hedge and mitigate commercial risks that arise from ongoing business operations, and as such are subject to recordkeeping obligations under the Commission’s rules and regulations. The

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<sup>1</sup> Recordkeeping, Proposed Rule, 82 Fed. Reg. 6356 (January 19, 2017) (“Proposed Rule”).

Joint Associations have been active participants in the Commission's numerous rulemakings implementing the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") and, in particular, the rulemakings related to recordkeeping as such rules apply to commercial end-users, including the Joint Associations' members.<sup>2</sup>

Joint Association members have spent significant time and money understanding the Commission's rules and regulations related to recordkeeping, and making the necessary system upgrades and changes, and writing policies and training personnel, to be in compliance. 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, and additional policy amendments and personnel training, which will impose additional costs on Joint Association members. As such, Joint Association members have a vested interest in this issue. In the Proposed Rule, the Commission proposes to amend section 1.31 of the Commission's general recordkeeping requirements, to reorganize and update the provisions while maintaining the Commission's ability to examine and inspect records.<sup>3</sup> As part of the process, the Commission proposes to define a new term, "record entity to mean any person required by the Act or Commission regulations to keep regulatory records."<sup>4</sup>

Joint Associations have filed comments in response to the Commission's rulemakings on recordkeeping issues, and have received some important requested clarifications from the Commission on instances where commercial end-users can retain and maintain their records in the ordinary or normal course of business. Joint Associations have also urged the Commission to undertake a holistic evaluation of how various recordkeeping rules impact commercial end-users of swaps and other derivatives, to assure that the rules work together in a cohesive manner as they apply to commercial end-users, and do not impose unnecessary, overlapping or inconsistent requirements.<sup>5</sup>

Joint Associations appreciate the Commission's recognition that the Dodd-Frank Act and Commission regulations distinguish between different categories of "record entities," and that commercial end-users<sup>6</sup> are **not** required to comply with many of the recordkeeping requirements

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<sup>2</sup> Pub. L. No. 111-203 (2010)

<sup>3</sup> Proposed Rule at 6358.

<sup>4</sup> Id.

<sup>5</sup> *See e.g.* Letter from EEI to Melissa Jurgens, Sec'y, CFTC (May 27, 2014) (on file with the CFTC); Letter from NRECA, LPPC, APPA to Melissa Jurgens, Sec'y, CFTC (May 27, 2014) (on file with the CFTC); Letter from NRECA and APPA to Christopher Kirkpatrick, Sec'y, CFTC (January, 13, 2015) (on file with the CFTC); Letter from EEI to Christopher Kirkpatrick, Sec'y, CFTC (January, 13, 2015) (on file with the CFTC). *See also* Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017) and Presidential Executive Order on Enforcing the Regulatory Reform Agenda (February 24, 2017) urging federal agencies to reduce not increase the regulatory burden on commercial entities.

<sup>6</sup> "Commercial end-users" are the category of entities that Congress identified as not being "not responsible for the global financial markets crisis of 2008-2009," and not intended to be burdened by new regulations promulgated under the Dodd-Frank Act. The category is identified in the Commission's rules by such terms as "non-SD/MSP

applicable to market professionals, intermediaries, entities that transact for and hold funds for customers, or market utilities such as DCMs, SEFs and DCOs.<sup>7</sup>

Joint Associations respectfully request that the Commission explicitly clarify in the final rule that the proposed changes to section 1.31 of the Commission's rules do not add additional reporting requirements for entities, like Joint Association members, that have limited recordkeeping obligations under the Commission's rules, but are not registered with the Commission. Joint Associations also request that the Commission clarify that the proposed changes do not supersede any previously issued exclusions, exemptions, exceptions or guidance that limit the Commission's other recordkeeping requirements for commercial end-users.<sup>8</sup>

The Joint Associations appreciate the opportunity to submit comments in response to the Proposed Rule and would urge the Commission to provide the requested clarification to provide certainty to commercial end-users that are not registered with the Commission.

Respectfully submitted,

/s/ Richard F. McMahon, Jr.

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entities," "non-reporting counterparties," not "financial end-users," entities that are not required to register with the Commission, or "commercial market participants".

<sup>7</sup> Id. at 6361.

<sup>8</sup> See e.g. Swap Data Recordkeeping and Reporting Requirements, Final Rule, 77 Fed. Reg. 2136 (Jan. 13, 2012); Real-Time Public Reporting of Swap Transaction Data, Final Rule, 77 Fed. Reg. 1182 (Jan. 9, 2012); End User Exception to the Clearing Requirement for Swaps, Final Rule, 77 Fed. Reg. 42560 (July 19, 2012); Trade Options, Final Rule, 81 Fed. Reg. 14966 (March 21, 2016); Amendments to Swap Data Recordkeeping & Reporting Requirements for Cleared Swaps, Final Rule, 81 Fed. Reg. 41736 (June 27, 2016).