



August 18, 2017

**2017 DIVISION OF MARKET OVERSIGHT
REVIEW OF SWAP DATA REPORTING RULES**

Via Electronic Submission

Division of Market Oversight
c/o Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

RE: Comments on Division of Market Oversight Review of Swap Data Reporting Rules in Parts 43, 45 and 49 (CFTC Letter 17-33 dated July 10, 2017)(the “Review”), and Requests for No-Action Relief

To the Division of Market Oversight (c/o Mr. Kirkpatrick):

The National Rural Electric Cooperative Association (“NRECA”) and the American Public Power Association (“APPA”) (collectively referred to as the not-for-profit or “NFP Electric Associations,” whose members are customer-owned electric utilities),¹ respectfully submit these comments and requests for no-action relief in response to CFTC Letter 17-33 issued by the Division of Market Oversight (“DMO”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”) announcing a comprehensive review of the certain swap transaction data reporting regulations found in Parts 43, 45 and 49 of the Commission’s regulations (the “Review”) and seeking comments on the “Roadmap to Achieve High Quality Swaps Data,” dated July 10, 2017 (the “Roadmap”).

The NFP Electric Associations have been active participants in rulemakings implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)². The NFP Electric Associations have filed comments, in some cases in collaboration with

¹ See Attachment A for a description of the members of each of the NFP Electric Associations. 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 NFP Electric Association on any issue. The NFP Electric Associations are authorized to note to the Commission the involvement of ACES in preparing these comments, and to indicate its full support of these comments and recommendations. ACES provides commercial risk management and energy advisory and operations services for electric cooperatives and government-owned electric utilities in various RTO/ISO regions.

² Pub.L. No.111-203 (2010)

other energy industry trade associations,³ in response to all proposals and requests for comment related to transaction-by-transaction swap data reporting rules (“DFA Swap Transaction Data Reporting Rules”), and on other Dodd-Frank Act proposed rules and interpretations requiring counterparties to report transaction and position data related to swaps. For a list of prior NFP Electric Association comment letters relevant to swap data reporting (the “Prior Comments”), see Attachment B.⁴

In the Prior Comments, the NFP Electric Associations have made recommendations consistent with those included herein as to how the Commission could harmonize its various DFA Swap Transaction Data Reporting Rules (and other rules and interpretations that require swap data reporting), streamline reporting for bilaterally-executed, uncleared nonfinancial commodity swaps, and reduce the regulatory burdens of such reporting for NFP Electric Association members and other “commercial end-users”⁵ that enter into such bilateral swaps as contract counterparties.⁶

³ The NFP Electric Associations have often filed comments with the Large Public Power Council (“LPPC”). Just as APPA’s members are not-for-profit government-owned electric utilities, LPPC’s members are 26 of the largest not-for-profit government-owned electric utilities in the United States. See <http://www.lppc.org/who-we-are/our-members>. In other Dodd-Frank Act rulemaking dockets, the NFP Electric Associations joined the Edison Electric Institute, the Electric Power Supply Association, the American Gas Association, or the Natural Gas Supply Association (in various combinations referred to as the “Joint Electric Associations” or the “Joint Associations”).

⁴ In addition to the DFA Swap Transaction Data Reporting Rules, the Commission’s rules promulgated to implement the Dodd-Frank Act contain other swap transaction data reporting requirements. For example, the rules for the “end-user exception” to clearing require counterparties to report additional data elements (about the transaction and swap counterparties) when each swap transaction is executed. In addition to the DFA Swap ***Transaction*** Data Reporting Rules, the CFTC’s “DFA Ownership and Control Reporting Rules” require swap counterparties to report certain entity data and certain data with respect to outstanding swap “positions” from time to time. Still other proposed Dodd-Frank Act rules and exemptions, including with regard to swap dealer registration and Federal speculative position limits, anticipate the Commission using data elements relative to counterparty identity/characteristics, or measuring swaps outstanding at a point in time to evaluate an entity’s *position* in certain nonfinancial commodity swaps. For swaps to which “covered swap entities” or “financial end-users” are parties, the CFTC and bank regulators’ rules on margin for uncleared swaps require data elements on valuation or collateralization of a swap, or a portfolio of uncleared swaps. The NFP Electric Associations urge the Staff and the Commission to focus holistically, and from the perspective of “commercial end-users,” (see footnote 5 below) on all reporting obligations and burdens relative to entering into bilaterally-executed, uncleared nonfinancial commodity swap transactions.

⁵ The term “commercial end-user” is used herein to mean the category of entities that Congress identified as being “not responsible for the global financial markets crisis of 2008-2009,” and not intended to be burdened by new swap regulations promulgated under the Dodd-Frank Act. In the DFA Swap Transaction Data Reporting Rules, these entities are defined as “non-SD/MSPs” or “non-SD/MSP counterparties.” It is also important for purposes of some DFA Swap Transaction Data Reporting Rules to clarify that commercial end-users are not “financial entities” (a term used in the end-user exception to clearing). Commercial end-users are not “financial end-users” (a term used in the margin rules for uncleared swaps). In the 2014 Commission staff request for comments on its Review of Swap Data Recordkeeping and Reporting Requirements (79 Fed. Reg. 16689, RIN 3038-AE12) (the “2014 Staff Review,” see Section II below), the term used was “non-registrant,” meaning that commercial end-users are not registered with or regulated as entities by the Commission. In the Commission staff’s request for comments on draft technical specifications for certain swap data elements, issued December 22, 2015 (the “2015 Tech Spec Request,” see Section II below) commercial end-users were designated “unregistered swap counterparties” to distinguish them from the swap data reporting parties otherwise registered under the CFTC rules, including registered swap dealers (“SDs”), major swap participants (“MSPs”), derivatives clearing organizations (“DCOs”), designated contract markets (“DCMs”) and swap execution facilities (“SEFs”). See the 2015 Tech Spec Request, in footnote 5, at page

The NFP Electric Associations welcome the stated goal of the Review to streamline swap data reporting, reduce the messages that must be reported, and right-size the number of data elements that are reported to meet the Commission's regulatory priority needs for swap data. In particular, the NFP Electric Associations applaud the "Focus on Key Data Fields," to "reduce the number of fields currently reported," and "focus on the minimum number of fields that allow the CFTC to perform its oversight functions, rather than capturing every data point on a swap" on page 8 of the Roadmap.⁷

As DMO conducts the Review and the Commission considers amendments to its rules, the NFP Electric Associations agree with the Tranche 1/ Tranche 2 sequencing described in the Roadmap. DMO should work first with the SDRs to standardize and align their respective processes, before engaging further with other regulated market utilities and market participants, and with commercial end-users (entities that are otherwise unregulated by the Commission, even if some of their transactions are), that may participate infrequently in a limited number of swaps. As the Roadmap Tranche 1 activities progress, the NFP Electric Associations respectfully note their concern that DMO and the SDRs should not expect or anticipate that commercial end-users will assume any regulatory obligations in addition to those that the current rules require.⁸

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4. The NFP Electric Associations' members are all commercial end-users (and fall within each of these other defined terms in the CFTC's rules). The NFP Electric Associations respectfully reiterate prior requests for consistent use of a single defined term to harmonize the various Commission rules applicable to swaps, swap counterparties and swap reporting obligations.

⁶ The NFP Electric Association comments address only the regulatory burdens imposed by the DFA Swap Transaction Data Reporting Rules on commercial end-users that are counterparties to nonfinancial commodity swaps, not on the regulatory burdens associated with reporting financial commodity swaps or the burdens borne by registered SDs or MSPs, DCMs, SEFs, DCOs, swap data repositories ("SDRs"), financial intermediaries or financial market professionals, or financial institutions or financial entities. For example, for that reason, the Roadmap's note that the Commission may "expand [its reporting requirements] to cover margin movements" is not of concern to the NFP Electric Associations, as their members are not financial end-users or are otherwise not covered by the margin rules for uncleared swaps.

⁷ The Review and Roadmap reflects the Commission's commitment to achieving the goals of the 2009 Pittsburgh G-20 Summit and the G-20 focus on reducing systemic risks to the global financial markets attributable to swaps. The Review and Roadmap is also consistent with President Trump's executive orders on reducing unnecessary regulatory burdens on American businesses, including 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 and not increase the regulatory burden on commercial entities.

⁸ The NFP Electric Associations have raised this concern consistently in Prior Comments. Financial market reporting is not part of the core business operations for a commercial end-user (for example, an electric utility). Any new regulatory requirement, or any change in existing regulatory requirements, will involve systems changes, personnel training and related unbudgeted costs, which provide no benefit to the commercial end-user's business. For example, the second paragraph of CFTC Letter 17-33, and page 6 of the Roadmap, could be read to assume or imply that a commercial end-user that is a "non-reporting party" to a bilateral swap might be required to confirm or reconcile swap data that has been reported to an SDR by the other swap counterparty (the "reporting counterparty"). The DFA Swap Transaction Data Reporting Rules do not currently require this and commercial end-users do not have the necessary staff or systems in place to do so. Moreover, some SDRs require a commercial end-user to pay an annual fee merely to access data about a swap to which it is a party, even if the commercial end-user is not the reporting party for that swap or any other swap reported to that particular SDR.

In addition, the NFP Electric Associations respectfully submit the following:

- The NFP Electric Associations recommend a holistic consideration of all the new Dodd-Frank Act swap data reporting rules to streamline reporting obligations on commercial end-user counterparties to bilateral nonfinancial commodity swaps.
- The NFP Electric Associations recommend that DMO and the Commission further sequence efforts within Tranche 1 and Tranche 2 of the Roadmap, to prioritize and focus first on financial commodity swap asset classes.
- Within the “Other Commodity Swap” asset class and for each type of nonfinancial commodity swap, the NFP Electric Associations recommend that DMO identify a limited number of key data elements necessary to monitor the priority regulatory risks for each type of nonfinancial commodity market structure.
- The NFP Electric Associations reiterate prior requests that DMO and the Commission consider narrowly-tailored, interim no-action relief to suspend swap data reporting obligations for, or limit the swap transaction data elements that must be reported by, commercial end-users that are parties to bilateral nonfinancial commodity swaps.

I. BACKGROUND

A. Overview of unique commercial risks arising from electric utility operations, and the “utility operations-related swaps” used to hedge such commercial risks.

For an overview of the diverse commercial risks arising from individual NFP Electric Association members’ electric utility operations, and the types of nonfinancial commodity swap transactions which NFP Electric Association members and other utilities enter into to hedge or mitigate such commercial risks (“Utility Operations-Related Swaps”),⁹ please see Attachment C.

B. Prior comments on DFA Swap Transaction Data Reporting Rule proposals and requests for comment.

Beginning as early as October 2010, the NFP Electric Associations’ Prior Comments focused on the way Dodd-Frank Act rule proposals would apply to bilateral Utility Operations-Related Swaps, where at least one of the counterparties is an NFP Electric Association member

⁹ “Utility Operations-Related Swaps” is a term defined in the Commission’s Rule 1.3(ggg)(iv) for purposes of excluding such swaps to which a Utility Special Entity is a party from the special entity *de minimis* sub-threshold in the definition of “swap dealer”. APPA’s members, as government-owned utilities, are Utility Special Entities. NRECA’s members are predominantly electric cooperatives and therefore are “not-for-profit electric” utilities, but NRECA’s members are not “special entities” as that term is defined in the Dodd-Frank Act and the CFTC rules promulgated thereunder. Nonetheless, the same definition of “Utility Operations-Related Swaps” describes the category of swaps which are the focus of APPA and NRECA’s comments regarding swap data reporting issues.

or another energy industry commercial end-user or “commercial risk hedger-only” entity. The NFP Electric Associations recommended that the Commission focus on a limited number of standardized data elements in respect of such Utility Operations-Related Swaps, explain those data elements in terminology more understandable for commercial end-users, correlate the data elements to its regulatory objectives, and collect each data element once, from the data source most likely to have the data as well as the ability, expertise and systems to timely and accurately report the data to a financial markets regulator.¹⁰

Since such rules were initially published in early 2012, the Commission has acknowledged the need to harmonize and align its DFA Swap Transaction Data Reporting Rules.¹¹ Transaction-by-transaction reporting for nonfinancial commodity swaps, including Utility Operations-Related Swaps where both counterparties are commercial end-users, began in August of 2013.¹² Since that time, commercial end users have worked with the SDRs and made a good faith effort to fit dozens of customized commercial terms of their nonfinancial commodity swaps into the standardized data fields provided by each of the various SDRs. It has been a difficult ongoing challenge and expense -- much like fitting square, rectangular and irregular pegs into “standardized” round SDR holes, while under significant time pressure.¹³

¹⁰ In Prior Comments, even prior to the publication of the initial proposals for DFA Swap Transaction Data Reporting Rules, the NFP Electric Associations recommended that the Commission consider an entity-based reporting regime, analogous to the legal entity identifier (“LEI”) system or the annual end-user exception reporting system, to supplement the transaction-by-transaction swap data reporting regime. The NFP Electric Associations also recommended varying levels of detail and periodic reporting requirements for commercial end-users, particularly those who were “commercial risk hedger-only” entities. Such entities represent minimal, if any, risk to the global swap markets or the global financial markets. In each of the Prior Comments, the NFP Electric Associations also asked for a reasonable limit on the data elements for Utility Operations-Related Swap. See footnote 26 for a reiteration of that request. Expecting each pair of commercial end-user counterparties to each long-term, customized bilateral swap to coordinate both at execution and over the life of each swap (which may be many years) to accurately and completely input 84+ data elements in a solely transaction-based database seemed and seems unrealistic, unreasonable and unnecessarily burdensome (not to mention unlikely to result in useful data).

¹¹ See 77 Fed. Reg. 1182 at 1226 and 1237 (January 9, 2012) in the adopting release for the Part 43 “real time” swap transaction data reporting rules and 77 Fed. Reg. 2136 at 2148-2150 (January 13, 2012) in the adopting release for the Part 45 “regulatory” swap transaction data reporting rules. The rules in Part 43 and Part 45 are not consistently worded, nor are the data element specifications aligned, which has led to confusion and inconsistent reporting, despite good faith efforts by commercial end-users. The initial DFA Swap Data Reporting Rules were enacted over time during the initial implementation of Commission’s Dodd-Frank Act rules. Most were published and effective before the Commission published its Interim Final Rule on Trade Options (77 Fed. Reg. 25320, April 27, 2012) and its Products Release (77 Fed. Reg. 48208 (August 13, 2012), which provided the Commission’s initial set of interpretations with respect to the defined term “swap.”

¹² Amendments were finalized in late 2013 to certain pre-Dodd-Frank Act reporting rules for outstanding derivatives *positions* (as distinguished from swap transaction-by-transaction data) in certain nonfinancial commodities (78 Fed. Reg. 69,178 (November 18, 2013, the “OCR Rule Amendments for Swaps”) and, after considerable delay, ultimately became effective on November 17, 2016. Despite numerous requests from commercial end-users in the energy industry, the staff declined to extend the deadline past November 17, 2016.

¹³ In fact, given the differences in the rules and between the various SDRs’ data fields, data taxonomy and processes, some of the round SDR holes are more oval or oblong. In addition, although financial market participants may be used to reporting time deadlines that are traditionally measured in hours, minutes or seconds, regulatory reporting obligations for utility transactions are more typically measured in calendar quarters or years.

In January 2014, then Acting CFTC Chairman Mark Wetjen acknowledged that the Commission could not decipher the swap data being collected by the SDRs. He announced the formation of an interdivisional CFTC staff working group, led by DMO, to review swap transaction data reporting rules, including Part 43, 45 and 46.¹⁴ In March 2014, that working group requested public comment on 69 questions, many with multiple subparts (the “2014 Staff Review” – see footnote 5 *infra*). The NFP Electric Associations’ comment letter in that docket is #12 on Attachment B, and we respectfully incorporate by reference the comments made therein.

In late 2015, the CFTC requested comments on certain “draft technical specifications” for certain swap transaction data elements, primarily focused on the financial commodity swap asset classes (the “2015 Draft Tech Specs” – see footnote 5 *infra*). The NFP Electric Associations’ comment letter in that docket is #14 on Attachment B, and we respectfully incorporate by reference the comments made therein. The CFTC did not propose, and has not as yet proposed, changes to the DFA Swap Transaction Data Reporting Rules based on either the 2014 Staff Review or the 2015 Draft Tech Specs.

Another year has now passed.¹⁵ The NFP Electric Associations’ members continue to have a direct and significant interest in how the Commission regulates Utility Operations-Related Swaps, and the granularity of swap transaction data that the Commission continues to collect from NFP Electric Associations’ members and their commercial end-user counterparties each and every time a bilateral, uncleared Utility Operations-Related Swap is executed, and over the life cycle of each such swap.

II. COMMENTS

A. **The NFP Electric Associations recommend a holistic consideration of all the new Dodd-Frank Act swap data reporting rules to streamline reporting obligations on commercial end-user counterparties to bilateral nonfinancial commodity swaps.**

If the Review is intended to streamline swap data reporting, and to reduce unnecessary regulatory burdens on commercial end-users, the NFP Electric Associations urge DMO and the Commission to take a holistic approach to data reporting requirements and how the data elements collected for swap transactions, counterparties, positions, valuation and collateral will be used or useful in meeting the Commission’s regulatory oversight responsibilities for each of the diverse financial commodity and nonfinancial commodity swap markets.¹⁶ As Prior Comments have

¹⁴ See the CFTC Press Release available at <http://www.cftc.gov/PressRoom/PressReleases/pr6837-14>.

¹⁵ A recent report of the Commission’s Office of Inspector General, dated June 5, 2017 (the “CFTC OIG Report”) reported that the data available to the Commission on uncleared swaps in the “Other Commodity Swaps” (nonfinancial swaps) asset class is “essentially unusable.” See the CFTC OIG Report at page 28, footnote 150 et seq. Although there were general statements about the regulatory benefit of “transparency” in each individual CFTC proposal on the DFA Swap Transaction Data Reporting Rules and other rules, there seems to have been no analysis as to whether such transparency is of any benefit if the rules collect, and provide the Commission and the markets with, unusable data.

¹⁶ The initial set of DFA Swap Transaction Data Reporting Rules affecting commercial end-users include, but are not limited to, Parts 43, 45 and 46, Part 50 with regard to the end-user exception to clearing, as well as several of the swap dealer rules (including the registration threshold and the separate “special entity” sub-threshold along with the

noted, a commercial end-user must weigh that cumulative regulatory burden when it makes its commercial decision as to (a) whether it will hedge or mitigate a particular commercial risk arising from its ongoing operations by (i) entering into a swap, or (ii) entering into a commodity trade option, a forward contract or a commercial risk-reducing contract customary in its industry (the electric industry), or (iii) buying a futures contract, or (b) alternatively, whether the cost of hedging that commercial risk of its ongoing business operations is, simply, too high.¹⁷

B. The NFP Electric Associations recommend that DMO and the Commission further sequence efforts within Tranche 1 and Tranche 2 of the Roadmap, to prioritize and focus first on financial commodity swap asset classes.

The NFP Electric Associations agree with the Tranche 1/Tranche 2 sequencing of the Review described in the Roadmap. However, the NFP Electric Associations recommend an even sharper focus, within each Tranche. In keeping with the “80/20 principle,” or in this case, the “99+/-1 principle” of maximizing the impact of the Commission’s limited resources, the NFP Electric Associations recommend that DMO and the Commission focus their efforts first on the systemically-important global financial commodity swap asset classes.

The financial commodity swap asset classes (in particular, the rates, credit and currency/FX asset classes) comprise more than 99% of the global swap markets.¹⁸ These asset classes are the focus of concern by global regulators in the G-20 goals of reducing systemic risk and preventing market abuse in the interconnected global financial markets.¹⁹ It is these asset classes where it is important to work in coordination with SDRs, as well as DCOs, DCMs, SEFs, MSPs, SDs and global regulatory counterparts, to reduce systemic risk to the global financial markets. Frankly, the NFP Electric Associations and many other commercial end-users do not have a role in this global financial markets arena. Conversely, all nonfinancial commodity swap

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“utility special entity” exclusion) as well as Part 49. Part 20, as applicable to commercial end-users holding “reportable positions” in certain nonfinancial commodities, also contains swap data reporting requirements. There are also indirect reporting requirements for commercial end-users interacting with registered swap dealers, under the swap dealer business conduct rules.

¹⁷ See comments made at the Commission’s Public Roundtable on April 3, 2014, where participants noted that even the larger, more sophisticated energy companies have dramatically reduced their use of energy commodity swaps to hedge or mitigate commercial risks of ongoing business operations.

¹⁸ These asset classes also include all of the categories of swaps that are currently mandated by the CFTC to be cleared and traded on a DCM or a SEF, and comprise virtually all of the swaps that are sufficiently standardized to be transacted on SEFs.

¹⁹ From the perspective of the European regulators, the importance of transparency and transaction reporting is focused on financial instrument transactions that are admitted to trading on a regulated market, or entered into by investment firms (not commercial end-users, as that term is used here) outside of trading venues (over the counter or “OTC”), but share the same “reference data details” as derivatives/financial instruments that are “traded on a trading venue.” Only OTC derivatives that are considered “TOTV” fall within the scope of the transparency and transaction reporting requirements according to Article 26(2) of MiFIR.” See the ESMA opinion ESMA70-156-117, dated 22 May 2017. Using this analysis, Utility Operations-Related Swaps are uncleared, not transacted on a trading facility and contain many, many customized data elements that would not share the same reference data details to consider them “TOTV.”

markets, including all Utility Operations-Related Swaps, constitute less than one half of 1% of the global swaps markets and represent minimal, if any, risk to the global financial markets. The global financial markets regulators have no interest or role in the regional United States markets for natural gas delivered to Chicago or Des Moines, or the PJM-West market for electric power.

Attachment D depicts the different stages of market structure development, and differing degrees of globalization, for various swap asset classes and types of swaps. In the outer concentric circles, there is increased customization and complexity of swap data elements, and an increase in the number of end-user-to-end-user swaps by swap asset class.²⁰ There are large and small commercial end-users from many different industries, some of which enter into very few swaps per year. The NFP Electric Association members and many others, enter into swaps only to hedge or mitigate commercial risks arising from ongoing operations (including compliance with public service and regulatory commitments, such as “keeping the lights on” for American homes and businesses).

The NFP Electric Associations strongly recommend that DMO and the Commission focus first on harmonizing, standardizing data elements and collecting high quality data (post-trade regulatory transparency) for the center concentric circle: the global financial commodity swap markets for rates, credit, and currency swaps.

In its initial DFA Swap Transaction Data Reporting Rules, the Commission broadly interpreted the Dodd-Frank Act to require that all swaps to be reported to SDRs, and assumed that meant at the same level of detail regardless of customized terms, to justify its one-size-fits-all approach to swap data reporting.²¹ Nonetheless, neither the G20 goal of “post-trade regulatory transparency” nor the Commission’s interpretation of the Dodd-Frank Act requires

²⁰The Commission and commentators including the NFP Electric Associations have noted the higher percentage of nonfinancial commodity swaps, including Utility Operations-Related Swaps, that are uncleared, off-facility, “end-user-to-end-user swaps.” See 77 Fed. Reg. 1182, at 1210, and 1220 and 1221 (January 9, 2012), for example, where the adopting release for the Part 43 “real-time” swap transaction reporting rules recognize that “the ‘other commodity’ asset class will tend to have significantly more non-SD/MSP counterparties than the credit or equity asset classes,” and that “end-users may enter into bespoke or customized swaps more often than non-end-users.”

²¹The NFP Electric Associations recommended an alternative approach to interpreting CEA 2(a)(13)(C), in conjunction with subsections (D), (E), (F) and (G) and the language of CEA 2(h), in the comment letter on the Commission’s NOPR re “Real Time Public Reporting of Swap Transactions and Pricing Data” dated February 7, 2011 (#5 on Attachment B). Under CEA 2(a)(13) read as a whole, the Commission clearly has the authority to differentiate the data elements collected for cleared and uncleared swaps in different swap asset classes and categories. This is particularly for customized uncleared nonfinancial commodity swaps transacted off-facility, where the collection of “bespoke” data elements serves no regulatory function and dissemination of such data serves no price discovery function but risk disclosing confidential commercial information. The Commission has the authority to establish different timelines for bilateral swap data reported by counterparties rather than registered entities (see subsection (F)), and to limit data published or disseminated to the public in real time to protect confidentiality of commercial business transactions and market positions (CEA 2(a)(13)(E)). In the adopting releases for the DFA Swap Transaction Reporting Rules, the Commission took exactly the opposite approach (see 77 Fed. Reg. 1182 at 1183, footnote 6 and elsewhere in and again at footnote 12, 1186, 1188, etc.). Hence the DFA Swap Transaction Reporting Rules impose more reporting burdens on commercial end-users by requiring more detailed reporting for bilateral, off-facility nonfinancial commodity swaps than for *standardized* financial commodity swaps offered and reported by SDs and entered into as financial instruments, or traded anonymously on a regulated facility such as a DCM or a SEF (where no counterparty reporting is required).

that all swaps be reported to the same degree of data granularity. As swaps become more customized, they become less like tradable, fungible financial instruments, and more like customary commercial contracts, entered into every day between energy industry companies. The benefit of “regulatory transparency” diminishes for the outer concentric circle swaps, and must be balanced against the potential risks to commercial data security, confidentiality for business strategy and trade secrets, as well as the direct and indirect costs of reporting.²²

C. Within the “Other Commodity Swap” asset class and for each type of nonfinancial commodity swap, the NFP Electric Associations recommend that DMO identify a limited number of key data elements necessary to monitor the priority regulatory risks for each type of nonfinancial commodity market structure.

Once the Commission determines that its DFA Swap Transaction Reporting Rules, and other rules, provide adequate and usable data for overseeing the global, systemically-important financial commodity swap markets, the Commission can consider rule amendments or streamlined data reporting rules that apply to the various categories of nonfinancial commodity swaps in the “Other Commodity Swap” asset class (agricultural, metals, energy, environmental attributes, other).

Within the nonfinancial commodity swap asset class, the NFP Electric Associations recommend that the Commission begin by considering data elements and proposing rule amendments applicable to the more standardized swap categories moving from the inner to the outer concentric circles on Attachment D – first for agricultural swaps, and metals swaps and potentially crude oil and other petroleum product swaps (swap categories that may have more global market characteristics), while deferring consideration of the Utility Operations-Related Swaps and those for which the Commission’s jurisdiction overlaps with commercial industry regulation.²³

²² As a consequence of the one-size-fits-all nature of the DFA Swap Transaction Data Reporting Rules in effect now, commercial end-users are required to report much more granular data (“every data point on a swap,” as referenced on page 8 of the Roadmap) for swaps in the outer concentric circles on Attachment D, the swaps that represent the least regulatory risk to the global financial system and provide the least price discovery information to the markets. Consequently, the burdens of the current reporting rules fall most heavily on commercial end-user counterparties to swaps in the outer concentric circles, entities that are less familiar with financial markets reporting, and must divert staff and systems expenditures from their core business operations to comply with the Commission’s swap reporting rules.

²³ Within each category, the Commission should work with the commercial industry groups to define each of the relevant data elements in language understandable to commercial end-users in that particular nonfinancial commodity market. The Commission has a long history of regulating agricultural commodities and metals. By contrast, under the Commission’s pre-Dodd-Frank Act regulatory regime, a combination of the “swap exemption” and the Exemption for Certain Contracts Involving Energy Products, 58 Fed. Reg. 21286-02 (April 20, 1993)(the “Energy Exemption”) meant that the Commission has little background in regulating the diverse and complex energy industry sectors or the ways in which energy commercial end-users use customized over-the-counter energy commodity swaps to hedge commercial risks arising from their diverse business operations. In the midst of its Dodd-Frank Act rulemaking, but *after* the initial DFA Swap Transaction Reporting Rules were published, the Commission “withdrew” the Energy Exemption in the Product Release (see Further Definition of “Swap,” . . . , 77 Fed. Reg. 48208 at 48229, August 13, 2012). Between the time the Product Release interpretations were effective (October 12, 2012) and the commencement of end-user-to-end-user swap reporting for Other Commodity Swaps in

Utility Operations-Related Swaps to which the NFP Electric Associations' members are counterparties (in the outer concentric circle) constitute far less than one-half of 1% of the global swaps markets. The Staff and the Commission should not consider amending its rules, or adding additional regulatory requirements for commercial end-users, or adding or changing data elements for reporting Utility Operations-Related Swaps at this time.

III. REQUESTS FOR NO-ACTION RELIEF

As DMO conducts the Review and follows the Roadmap, and the Commission considers amendments to the DFA Swap Transaction Data Reporting Rules, the SDRs are accumulating more and more incomplete, incorrect, non-comparable and unusable data for bilateral nonfinancial commodity swaps. Commercial end-users report reams of detailed data elements about each of these swaps to the various SDRs each and every day. In order to do so, in some cases, the commercial end-users must pay per-transaction reporting fees to the SDRs. Many of these commercial end-users must also maintain reporting systems and train, hire and replace personnel to perform financial market reporting functions, none of which benefits the commercial end-users' core business operations or delivers better data to the SDRs.

As the Commission has acknowledged since 2014,²⁴ this segment of accumulating swap data is admittedly not useful or usable to achieve a regulatory benefit for the Commission. It serves no market price discovery function given the customization of terms and, in these times of cyber-security and critical infrastructure security concerns, swap data collection increases disclosure risk for confidential business transactions and market positions of commercial end-users. Therefore, the NFP Electric Associations respectfully reiterate the requests made in Prior Comments that either DMO or the Commission take prompt interim action to suspend indefinitely the swap transaction data reporting obligations for all commercial end-user counterparties to off-facility, uncleared, bilateral swaps in the "other commodity swap" asset class. If that request is considered to be too broad, the NFP Electric Associations request more narrowly-tailored no-action relief to suspend obligations for narrower segments by entity (utilities, or commercial entities that only use swaps to hedge or mitigate commercial risks) or by category of nonfinancial commodity swap (energy and energy-related swaps, or "commercial risk hedging swaps"). At the most tailored level, the NFP Electric Associations specifically request no-action relief for bilateral, uncleared Utility Operations-Related Swaps to which an NFP Electric Association member and another commercial end-user are parties.²⁵

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August of 2013, and continuing through the Commission's rulemakings on "embedded volumetric optionality" and "commodity trade options," the energy industry struggled with the complexity of reporting nonfinancial energy commodity "swaps." This unfortunate sequence of rulemakings undoubtedly added to the "garbage-in-garbage-out" nature of the swap data building up in the SDRs.

²⁴ See text at footnote 14 supra.

²⁵ See the May 27, 2014 Comment Letter at page 40. See the March 7, 2016 Comment Letter at page 5. The NFP Electric Associations do not recommend a time-limited no-action approach. It is unclear how long it will take the Commission to amend its swap data reporting rules as applicable to financial commodity swaps in collaboration with its global counterparts to achieve the goal of "high quality swaps data" for 99+% of the global markets.

Another alternative form of relief would be to allow commercial end-user parties to nonfinancial commodity swaps, or at least to energy- and energy-related swaps (or to Utility Operations-Related Swaps), to report a limited subset of data transaction elements (and no swap position data under the OCR rules).²⁶ Such a limited subset of data elements would provide the Commission high-level data transparency into the diverse, regional geographic markets in which commercial end-users, including the NFP Electric Associations' members, transact to hedge or mitigate commercial risks arising in the ordinary course of ongoing business operations.²⁷

Such limited no-action relief would reduce the ongoing burden on NFP Electric Association members and their commercial end-user counterparties trying to report every single customized term of each Utility Operations-Related Swap, and each change to a swap data element over the life of a long-term swap -- data that the Commission has acknowledged is virtually unintelligible and, consequently, provides no regulatory benefit.

[Signature page to follow]

²⁶ The Staff, working in cooperation with the electric and natural gas industries and the SDRs, could identify and define the swap data elements that are currently the most standardized and most useful to the Staff in understanding these unique markets. The NFP Electric Associations recommend no more than 10 transaction data elements. For example, transaction date; commodity; delivery location; quantity (in standard measures common in underlying commodity markets); term; price; commercial end-user ("CEU") hedging purpose; swap dealing purpose; option, other than commodity trade option (yes/no), and if so exercise/strike price and option type; with "Bespoke" as a data element choice for delivery point as well as other transaction data elements; and one final "other material commercial terms (yes/no) transaction data element. The NFP Electric Associations recommend no more than 5 data elements with respect to each swap counterparty: LEI; reporting counterparty (yes/no); "CEU hedging swap/end-user exception" (yes/no); "special entity" (yes/no) and "covered swap entity or financial end-user" (yes/no). The NFP Electric Associations recommend that there be no requirement for commercial end-users to report continuation data, valuation data, life cycle data, margin or collateralization data or position data in respect of such swaps.

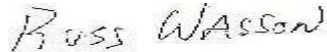
²⁷ The Staff or the Commission could supplement such swap transaction data with studies of individual market characteristics for each category of swaps. By working in conjunction with the Federal Energy Regulatory Commission, which also gathers extensive data with respect to these markets, transactions and entities, the Commission could more efficiently achieve its market surveillance objectives while reducing the duplicative and sometimes inconsistent regulatory reporting requirements for commercial end-users.

SIGNATURE PAGE

**2017 DIVISION OF MARKET OVERSIGHT
REVIEW OF SWAP DATA REPORTING RULES**

The NFP Electric Associations appreciate the opportunity to submit comments to be considered in connection with the Review.

Respectfully submitted,



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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 and owners of the cooperative, the cooperative operates on a not-for-profit basis and all the costs of the cooperative are directly borne by its members/owners.

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.

ATTACHMENT B

NFP ELECTRIC COMMENTS ON DFA SWAP TRANSACTION DATA REPORTING RULE PROPOSALS²⁸

	CFTC RULE- MAKING	DATE ISSUED BY CFTC	FEDERAL REGISTER NUMBER	ELECTRIC TRADE ASSOCIATION FILING
1	Interim Final Rule on Data Recordkeeping and Reporting	Oct. 14, 2010	75 Fed. Reg. 63,080	<p style="text-align: center;">Nov. 15, 2010 (NFP Energy End Users) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26390&SearchText=wasson</p> <p style="text-align: center;">Nov, 15, 2010 (EEI) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26394&SearchText=</p>
2	Pre-NOPR Comment - Data Recordkeeping and Reporting Task Force	-----	-----	<p style="text-align: center;">Nov. 16, 2010 (NFP Electrics) Link to Comment (PDF File) http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission17_122810-5.pdf</p>
3	Interim Final Rule re: Reporting Certain Post-Enactment Swap Transactions	Dec. 17, 2010	75 Fed. Reg. 78,892	<p style="text-align: center;">Jan. 17, 2011 (NFP Electrics) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27187&SearchText=</p> <p style="text-align: center;">Jan. 17, 2011 (EEI) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27158&SearchText=</p>

²⁸ For a list of the more than 70 comment letters filed by NRECA, APPA and the NFP Electric Association in the Dodd-Frank rulemakings, with links to the regulatory filing dockets, please contact one of the signatories to this letter.

	CFTC RULE- MAKING	DATE ISSUED BY CFTC	FEDERAL REGISTER NUMBER	ELECTRIC TRADE ASSOCIATION FILING
4	Swap Data Recordkeeping and Reporting Requirements	Dec. 8, 2010	75 Fed. Reg. 76,573	<p>Feb. 7, 2011 (NFP Electric) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27624&SearchText</p> <p>Feb. 7, 2011 (EEI/EP SA) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27575&SearchText=</p>
5	Real Time Public Reporting of Swap Transactions and Pricing Data	Dec. 7, 2010	75 Fed. Reg. 76,139 *CORRECTI ON 75 Fed. Reg. 76,930	<p>Feb. 7, 2011 (NFP Electric) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27623&SearchText</p> <p>Feb. 7, 2011 (EEI/EP SA/AGA/NG SA) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27571&SearchText=</p>
6	End-User Exception to Mandatory Clearing of Swaps	Dec. 23, 2010	75 Fed. Reg. 80,747	<p>Feb. 22, 2011 (NFP Electric) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27916&SearchText</p> <p>Feb. 22, 2011 (EEI/EP SA) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27939&SearchText=</p>
7	Registration and Regulation of Swap Data Repositories	Dec. 23, 2010	75 Fed. Reg. 80,898	<p>Feb. 22, 2011 (NFP Electric) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27919&SearchText</p>

	CFTC RULE- MAKING	DATE ISSUED BY CFTC	FEDERAL REGISTER NUMBER	ELECTRIC TRADE ASSOCIATION FILING
8	Agency Information Collection Activities: Proposed Collection, Comment Request: Reporting Pre-Enactment Swap Transactions	Jan. 11, 2011	76 Fed. Reg. 1603	Mar. 14, 2011 (NFP Electric) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=32279&SearchText
9	Agency Information Collection Activities under OMB Review: Reporting of Pre-Enactment Swap Transactions	April 4, 2011	76 Fed. Reg. 18,536	May 4, 2011 (NFP Electric) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=42333&SearchText
10	Swap Data Recordkeeping and Reporting: Pre-Enactment and Transition Swaps ("Historical Swaps")	April 25, 2011	76 Fed. Reg. 22,833.	June 9, 2011 (NFP Electric/EEI/EPSA) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=45702&SearchText=
11	Notice of Meeting of Technology Advisory Committee (Re: SDR and transaction reporting requirements)	August 16, 2013	78 Fed. Reg. 50,040	July 3, 2013 and September 6, 2013 (APPA, EEI, EPSA, NRECA, NGSA) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59332&SearchText=
12	Review of Swap Data Recordkeeping and Reporting Requirements	March 26, 2014	79 Fed. Reg. 16,689	May 27, 2014 Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59871&SearchText=
13	Supplemental Comments to the April 3, 2014 Public Roundtable on the Special Entity De Minimis Threshold Issue	April 3, 2014 Roundtable	Announced by Press Release PR 6872-14 on March 5, 2014	April 17, 2014 (APPA, LPPC, BPA) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59820&SearchText=

	CFTC RULE- MAKING	DATE ISSUED BY CFTC	FEDERAL REGISTER NUMBER	ELECTRIC TRADE ASSOCIATION FILING
14	Comments on Commission Staff's Draft Technical Specifications for Certain Swap Data Elements	December 22, 2015		March 7, 2016 (NRECA, APPA) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60709&SearchText=

**NFP ELECTRIC ASSOCIATION COMMENTS ON
DFA SWAP POSITION DATA REPORTING RULE PROPOSALS**

15	Position Reports for Physical Commodity Swaps (Large Trader Reporting and Recordkeeping for "Reportable Positions")	Nov. 2, 2010	75 Fed. Reg. 67,258	Dec. 2, 2010 (NFP Electrics) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26626&SearchText=wasson
16	Adaptation of Regulations to Incorporate Swaps	June 7, 2011	76 Fed. Reg. 33,066	August 8, 2011 Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=48031&SearchText=
17	Large Trader Reporting for Physical Commodity Swaps Ownership and Control Reports – Form 40/40S	July 22, 2011 and July 26, 2012	76 Fed. Reg. 43851 and 77 Fed. Reg. 44,968	September 24, 2012 (NRECA, LPPC, EPSA) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58829&SearchText=
	Agency Information Collection Activities: Notice of Intent to Renew Collection 3038-0103, Ownership and Control Reports, Forms 102/102S, 40/40S and 71 (Trader and Account Identification Reports).	March 8, 2017	82 Fed. Reg. 12,944	May 2, 2017 (NRECA) Link to Comment https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61195&SearchText= =

ATTACHMENT C

NFP ELECTRIC ASSOCIATIONS' MEMBERS COMMERCIAL RISK HEDGING

As discussed in Prior Comments, Utility Operations-Related Swaps are much more likely than financial commodity swaps to be customized, to be transacted or executed off-facility (via bilateral contracts), and to be uncleared. Each commodity type underlying a Utility Operations-Related Swap has its own unique quantification measures (MMBtus, MWs, decatherms, or other units). Each commercial end-user has valuation and pricing methodologies tied to the underlying commodity markets and to the specific operational or commercial risks being hedged. Delivery location and other aspects are key to value in the underlying commodity transaction or asset (power delivered in California has no value in Massachusetts). Unique commercial pricing contingencies and permutations (based on transmission/transportation constraints, available storage assets, weather, economic conditions) and the long-term commercial relationship between the parties, as well as particular creditworthiness characteristics of the commercial end-user counterparty, are all important, customized terms of a bilateral Utility Operations-Related Swap.

For Utility Operations-Related Swaps, there are also unique and unusual commercial end-user market participants, such as state utility-regulated and/or FERC-regulated counterparties, as well as not-for-profit utilities, such as NFP Electric Associations' members, with public service obligations and that *only* enter into such swaps to hedge commercial risks arising from ongoing utility operations in a particular geographic region.

Each of the NFP Electric Associations' members use Utility Operations-Related Swaps to hedge or mitigate the commercial risks arising from such member's unique ongoing electric operations. Every member is exposed to different, but identifiable, "commercial risks" arising from, and in many respects unique to, such member's ongoing electric operations and assets: fuel supply risk, location risk, delivery risk, weather risk, time risk, execution risk, political risk, counterparty risk, market risk, regulatory risk, and other operational risks. Each member makes ongoing business judgments about the best and most cost-effective way to either manage, hedge or mitigate each of the unique commercial risks that arise from its particular electric operations.

An NFP Electric Association member typically enters into a Utility Operations-Related Swap with another NFP Electric Entity (exempt from DFA Swap Transaction Reporting Rules and other Dodd-Frank Act swap regulations under the Order Exempting Certain Transactions [Between NFP Electric Association members], 78 Fed. Reg. 19.670 (April 2, 2013) or with another commercial energy company – a commercial end-user rather than a financial institution or financial entity -- with assets or businesses in the same geographic region. Such a commercial end-user may either (a) conducts energy commodity swap activity as an ancillary business to its principal commercial business in natural gas production or transportation, or as a utility, merchant generator or energy marketer, where dealing activity is below the threshold requiring registration as a "swap dealer" or (b) is itself entering into the Utility Operations-Related Swap

to hedge or mitigate commercial risks arising from the counterparty's own business operations (in either case, another "commercial end-user").

All these unique features of the narrow sector of the global swaps market in which the NFP Electric Association members participate makes the one-size-fits-all DFA Swap Transaction Data Reporting Rules, with unlimited data elements including several asking the reporting party to add any other material terms, difficult to interpret for Utility Operations-Related Swaps.

ATTACHMENT D - MARKET STRUCTURE DEVELOPMENT CHARACTERISTICS BY SWAP ASSET CLASS

