



March 8, 2013

VIA ELECTRONIC MAIL

Ms. Melissa Jurgens
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Re: *Comments in Support of Request for No-Action Relief Extending the April 10, 2013 Compliance Date for Reporting Swap Transactions under Parts 43, 45, and 46 of the Commission's Regulations*

Dear Secretary Jurgens:

I. INTRODUCTION

The Edison Electric Institute ("EEI"), the National Rural Electric Cooperative Association ("NRECA"), the American Public Power Association ("APPA"), the Electric Power Supply Association ("EPSA"), American Gas Association ("AGA") (collectively "Joint Associations") respectfully submit these comments in support of the Request for No-Action Relief Extending the current April 10, 2013 Compliance Date for Reporting Swap Transactions under Parts 43, 45, and 46 of the Commodity Futures Trading Commission's ("Commission") Regulations submitted by the Commercial Working Group ("Working Group") on March 1, 2013. Specifically, Joint Associations support the Working Group's request that the Commission extend the compliance date applicable to non-swap dealers and non-major swap participants (collectively, "end-users") for reporting historical and new swaps to October 10, 2013,¹ effectively six months following the current April 10, 2013 compliance date for reporting swaps under Parts 43, 45, and 46 of the Commission's regulations ("reporting rules").² The

¹ If the Commission declines to grant the request for no-action relief extending the April 10, 2013 compliance date to October 10, 2013, then Joint Associations respectfully request that the Commission grant no-action relief that extends such compliance date for any period of time the Commission finds appropriate to allow end-users to finalize their agreements designating the reporting counterparty for their swap transactions and come into compliance with the reporting rules.

² 17 C.F.R. §§ 43, 45, 46.

Joint Associations believe that granting the requested relief is consistent with the Commission's authority under regulation 140.99³ and is in the public interest.

II. DESCRIPTION OF PARTIES

EI is the association of U.S. shareholder-owned electric companies. EI'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.

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 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

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.

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

AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 71 million residential, commercial and industrial natural gas customers in the U.S., of which 92 percent — more than 65 million customers — receive their gas from AGA members. Today, natural gas meets almost one-fourth of the United States' energy needs. Many AGA members use a variety of financial tools such as futures contracts traded on Commission-regulated exchanges and over-the-counter energy derivatives, to hedge and mitigate the commercial risks associated with providing natural gas service — in particular, volatility in natural gas commodity cost. AGA is an advocate for local natural gas utility companies and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international gas companies and industry associates. AGA members participate in the physical natural gas market and contract for pipeline transportation, storage and asset management pipeline services.

³ 17 C.F.R. § 140.99 (2012).

Members of the Joint Associations are not financial entities. Rather, they are physical commodity market participants that rely on swaps and futures contracts primarily to hedge and mitigate the commercial risk that they incur in operating their businesses.

III. COMMENTS

With the April 10 reporting deadline for end-users fast approaching, The Joint Associations agree with the Working Group that additional time is still needed to comply with the reporting obligations. As end users, many Joint Associations' members do not have the enterprise-wide IT systems necessary to comply with the reporting rules and have been working to put them into place. Once the final rule defining the term "swap" was issued on August 12, 2012⁴ and Joint Associations' members understood the scope of the reporting requirements applicable to them, including the need to incorporate into their trade capture systems physical deals that may exist across many business units, Joint Associations' members were able to better understand and work toward their compliance obligations

As members move toward compliance, it is becoming apparent that the swap data repositories ("SDR") may have different interpretations of the rules and the documentation needed to be provided which adds additional uncertainty and complexity to this effort. In addition, certain questions remain unanswered regarding transactions that might qualify as swaps, like physically settling forwards with volumetric optionality and the trade option rule which remains an interim final rule as comments remain pending in both dockets.⁵ In addition, it was not until no-action letter 12-06 expired on December 31, 2012 that EEI members understood that there may not be additional guidance from the Commission on reporting and other obligations in respect to "trade options."

This request is consistent with the Commission's overall plans to stagger all implementation and compliance dates. In its Final Rule on the Real Time Reporting of Swap Transaction Data, the Commission recognized the need to set up different compliance dates for different asset classes and required that end users report 180 days after swap dealers began reporting credit and interest rate swaps.⁶ This staggered compliance schedule contemplated by

⁴ *Further Definition of "Swap," Security-Based Swap," and "Security-Based Swap Agreement"; Missed Swaps; Security Based-Swap Agreement Recordkeeping*, 77 Fed. Reg. 48208 (August 12, 2012). *Commodity Options*, 77 Fed. Reg. 25320 (Apr. 27, 2012).

⁵ Given the additional difficulties in reporting trade options, EEI is simultaneously submitting a letter supporting the Working Group's request for no-action relief requesting that the Commission (i) permit all trade options to be reported annually on a Form TO or (ii) extend the compliance date for reporting trade options to April 10, 2014, one year following the end-user compliance date under Parts 43, 45 and 46.

⁶ See *Real Time Reporting of Swap Transaction Data*, 77 Fed. Reg. 1182 (January 9, 2012) at 1228.

the Commission helps ensure that SDRs and SDs/MSPs have all the necessary processes in place and that any interpretive or technical issues have an opportunity of being resolved before end users are required to report.⁷

On December 5, 2012, the Commission issued a no-action letter granting reporting relief for swap dealers (“SD”) and major swap participants (“MSP”) with respect to Compliance Date 2 swaps, which include commodity swaps. The SDs/MSPs were granted relief (i) under Parts 43 and Part 45 of the Commission’s regulations, until February 28, 2013, and (ii) under Part 46 of the Commission’s regulations, until March 30, 2013. Further, on January 7, 2013 the Commission issued a Final Exemptive Order which stated that the Commission will not bring an enforcement action against non-U.S. SDs/MSPs that are making “good-faith” efforts to implement the appropriate compliance programs before July 12, 2013, as long as there is a practical or technical impediment.⁸ Providing the relief requested in this letter will help ensure that SDRs have a sufficient opportunity to work with SD and MSP reporting parties to resolve any technical or implementation issues that may arise. The Joint Associations also request that the relief provided in the Final Exemptive Order be extended to end users so that all entities have the same assurance as they move toward compliance.

As commercial end-users, Joint Associations’ members rely on cost-effective, customized commodity swaps and physical commodity trade options to protect them and their customers from volatile changes in the prices of electricity, natural gas and other commodities related to the generation, purchase, sale, and transmission of electricity. As a result, Joint Associations’ members engage in a significant number of end-user to end-user swap transactions. Under the reporting rules, if both parties to a transaction are end users, then the parties must agree on a reporting party for each swap, and then one party must report. The process of reviewing all their historical transactions to determine which transactions need to be reported and determining which party should be the reporting party can be a burdensome. This must be done in conjunction with negotiating current and future transactions to determine which party should be the reporting entity. Only recently the International Energy Credit Association (“IECA”) released a proposed standardized agreement for end users to use with other end user counterparties to address CFTC reporting obligations. Providing the relief requested by the Working Group and supported in this letter will help reduce this burden and help ensure that any implementation issues with respect to both this industry-wide documentation requirement and the new electronic reporting regime are addressed.

⁷ Joint Associations also request that CFTC no-action letter 12-39 providing no action relief for bespoke and complex swaps and confirmation data for uncleared inter-affiliate swaps also be extended.

⁸ See *Final Exemptive Order Regarding Compliance With Certain Swap Regulations*, Final Order, 78 Fed. Reg. 858, 874 (January 7, 2013) (“Final Exemptive Order”).

Melissa Jurgens, Secretary
March 8, 2013
Page 5

IV. CONCLUSION

In conclusion, the Joint Associations support the r the Working Group's no action relief and request that the Commission extend the compliance date applicable to end-users for reporting historical and new swaps to October 10, 2013, effectively six months following the current April 10, 2013 compliance date for reporting swaps under Parts 43, 45, and 46 of the Commission's regulations. Please feel free to contact the undersigned if you have any questions regarding these comments.

Respectfully submitted,

EDISON ELECTRIC INSTITUTE



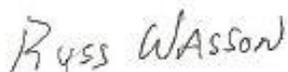
Richard McMahon
Vice President
Lopa Parikh
Director, Regulatory Affairs
701 Pennsylvania Avenue, N.W.
Washington, DC 20004
Tel: (202) 508-5098
E-mail: lparikh@eei.org

ELECTRIC POWER SUPPLY ASSOCIATION



Melissa Mitchell, Director of Regulatory Affairs
and Counsel
1401 New York Avenue, N.W., 12th Floor
Washington, DC 20005
Tel: (202) 349-0151
Email: mmitchell@epsa.org

NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION



Russell Wasson, Director, Tax, Finance
and Accounting Policy
4301 Wilson Blvd., EP11-253
Arlington, VA 22203
Tel: (703) 907-5802
E-mail: Russell.wasson@nreca.coop

AMERICAN PUBLIC POWER ASSOCIATION



Susan N. Kelly, Senior Vice President of Policy
Analysis and General Counsel
1875 Connecticut Avenue, N.W., Suite 1200
Washington DC 20009-5715
Tel: (202) 467-2933
E-mail: skelly@publicpower.org

Melissa Jurgens, Secretary
March 8, 2013
Page 6

AMERICAN GAS ASSOCIATION

A handwritten signature in black ink, appearing to read 'Arushi Sharma', with a long horizontal stroke extending to the right.

Arushi Sharma
Associate Counsel, Energy & Environment
400 N. Capitol Street, NW
Washington, DC 20001
(202) 824-7120 | asharma@aga.org

cc: Honorable Gary Gensler, Chairman
Honorable Jill Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott D. O'Malia, Commissioner
Honorable Mark P. Wetjen, Commissioner
Eric Juzenas, Senior Counsel to the Chairman
Dan Berkovitz, General Counsel
Jeffrey Burns, Associate General Counsel
Laurie Gussow, Special Counsel, Division of Market Oversight