September 28, 2017

2017 Project KISS (Reporting)

<u>Via Electronic Submission</u>

Michael Gill, Regulatory Reform Officer
c/o Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

RE: <u>Request for Public Input on Simplifying the Application of Rules, Regulations and Practices ("Project KISS," RIN 3038-AE55) - Reporting</u>

Dear Mr. Gill:

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] welcome the Commodity Futures Trading Commission ("CFTC" or "Commission")'s "Project KISS" review of its rules, regulations, and practices to identify areas where the CFTC's requirements can be applied in a simpler, less burdensome and less costly manner. The NFP Electric Associations respectfully submit these comments and recommendations on the Project KISS topic of "Reporting."[2]

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[1] See Attachment A for a description 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. 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] The NFP Electric Associations have also filed comments on the Project KISS topic "Miscellaneous." The reader may want to review those comments first; as the recommendations made there serve as background to these comments in terms of the definitions of "swap" and "commercial end-user," and explain why CFTC "Reporting" for nonfinancial commodity swaps entered into as bilateral contracts is unnecessarily complicated and burdensome, and yet yields little if any usable data for regulators or market participants. The NFP Electric Associations do not have recommendations on the other Project KISS topics. The members of the NFP Electric Associations are not registered with the Commission (the "Registration" topic). The NFP Electric Association's members are "commercial end-users" (see Project KISS "Miscellaneous" comments) and enter into swaps solely to hedge or mitigate commercial risks of electric operations, not to trade, deal or speculate in cleared financial instruments (the "Clearing" topic). The NFP Electric Association's members typically "execute" or enter into a limited number of

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The NFP Electric Associations have been active participants in rulemakings implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[3] and expanding the Commission's jurisdiction to include regulation of "swaps."[4] The NFP Electric Associations have filed comments, in some cases in collaboration with other energy industry trade associations,[5] in response to all proposals and requests for comment related to swap data reporting rules, and on other Dodd-Frank Act proposed rules, interpretations and guidance requiring "commercial end-user"[6] counterparties to report data related to swaps.[7] For a

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financial commodity swaps (interest rate and, in a few cases, currency swaps). The members typically enter into nonfinancial commodity swaps (derived on electricity, natural gas and other utility operations-related commodities) as part of the normal course of their electric operations – not on a regulated trading facility, but as bilateral contracts under the Uniform Commercial Code and basic contract law principles (no recommendations on the "Execution" topic, where the topics at issue are almost exclusively related to financial commodity swaps executed on a regulated designated contract market ("DCM") or a swap execution facility ("SEF").

[3] Pub.L. No.111-203 (2010)

[4] Throughout the Commission's Dodd-Frank Act rulemakings, the NFP Electric Associations comments have been narrowly focused on issues important to "commercial end-users" in the energy industry. Our members are not financial entities, and their core business is not participation in financial market transactions. The NFP Electric Association members are electric utilities, and they enter into nonfinancial commodity swaps solely "to hedge or mitigate commercial risks" that arise from ongoing electric operations. Their nonfinancial commodity transactions, including swaps, are typically entered into as bilateral contracts with other utilities or other commercial energy companies (not intermediated by banks or other financial market professionals), and are governed by state law, including the Uniform Commercial Code where it is applicable to the sale of goods. Our members' electric operations are not-for-profit: NRECA's member cooperatives are directly or indirectly owned by the consumers who receive electric service from the member's electric operations; APPA's members are not-for-profit government-owned electric utilities. Each dollar spent on compliance with financial markets rules and regulations is a dollar less that can be invested in infrastructure and electric operations to "keep the lights on" for Main Street businesses and consumers, and is likely to result in higher and more volatile costs for residential, commercial and industrial electricity customers.

[5] 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 join 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").

[6] 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. As noted in the NFP Electric Associations' Project KISS – Miscellaneous comments, one of the easiest ways the CFTC could simplify its rules, regulations and practices would be to define this key term, and either adapt the rules applicable to "swaps" to use consistently the single defined term, or provide an interpretation or guidance document on the CFTC website identifying all the entity definitional terms used by the Commission and the staff that mean, in effect, or include "commercial end-users."

[7] 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. Still other Dodd-Frank Act rules, interpretations, exemptions and no-action letters, and proposals including with regard to swap dealer registration thresholds and Federal speculative position limits, anticipate the Commission using data elements relative to a counterparty identity/entity 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
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list of prior NFP Electric Association comment letters relevant to swap data reporting (the "Prior Comments"), see Attachment B.

The NFP Electric Associations respectfully submit that the Commission should simplify application of its rules, regulations and practices by clarifying the answers to three basic "Reporting" questions. To summarize our recommendations:[8]

- Which ***transactions*** must be reported? We recommend the Commission adopt rules, or one clear set of separately published interpretations, that distinguishes a "swap" from a nonfinancial energy commodity transaction that is not a "swap," particularly as the line is applied to off-facility, uncleared transactions entered into as bilateral contracts between commercial end-user counterparties. As part of this recommendation, we urge the Commission to confirm that nonfinancial commodity trade options, where the parties intend physical settlement, are not "swaps," whether such options are embedded in other transactions, or are "stand-alone" options.[9]

- What types of ***entities*** are required to report swap data to swap data repositories ("SDRs")? We recommend the Commission adopt a single definition of "commercial end-user," and provide an interpretation or a cross-reference list on its website of other terms used in its rules, interpretations and guidance that have the same meaning as, or encompass the term, "commercial end-user," as well as terms in which the Commission does not intend to include "commercial end-users."[10]

- What ***data elements*** do commercial end-users need to report about each type or category of nonfinancial commodity swap, and within what timeframe after the swap is "executed" or entered into as a bilateral off-facility contract, or on an ongoing basis over the life of the swap (including "position" reporting)? We recommend the Commission determine the minimum number of data elements that need to be reported

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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 _ above) on all reporting obligations and burdens relative to entering into bilaterally-executed, uncleared nonfinancial commodity swap transactions. Using a single defined term for "commercial end-user," and excluding such entities from swap reporting rules, or limiting the burden of swap reporting rules in a meaningful way and extending reporting timelines, would significantly simplify the Commission's rules.

[8] Each of these recommendations has been made, and explained in more detail, in the Prior Comments.

[9] The recommendation for a clear definition of the term "swap" is covered in the NFP Electric Associations' comments in the Project KISS- Miscellaneous docket.

[10] The recommendation for a single definition of "commercial end-user" is covered in the NFP Electric Associations' comments in the Project KISS- Miscellaneous docket.

> when such a nonfinancial commodity swap is entered into by commercial end-users, in order to achieve the Commission's identified regulatory priorities with respect to that particular nonfinancial commodity swap market. Reporting deadlines should be extended. Commercial end-users should be excluded or exempted from any further reporting obligations.

Nothing in the Dodd-Frank Act requires that all financial and nonfinancial swap transactions be reported at the same granular level of detail, on the same timeline, and using the same electronic interface. Nothing in the Dodd-Frank Act requires a commercial end-user counterparty to one or more bilateral swaps to report details about its organization, its ownership structure, its employees (and those of its swap counterparty), and its swaps/futures "positions," as if it were a financial markets trader, speculator or dealer.

We support the Commission applying its swap Reporting rules so as to prioritize use of its regulatory resources to achieve the G-20 principles of reduction of systemic risk to the global financial markets and regulatory and market transparency for standardized financial commodity swaps (fungible financial instruments) that are traded on regulated facilities among interconnected dealers and traders, and cleared by systemically important clearinghouses (or subject to clearing mandates). Commercial end-users, such as the NFP Electric Associations' members, and the nonfinancial commodity swaps they enter into to hedge or mitigate commercial risks of ongoing business operations, should be excluded or exempted from such Reporting rules.

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' ongoing electric utility operations, and the types of nonfinancial commodity transactions which NFP Electric Association members and other utilities enter into to hedge or mitigate such commercial risks ("Utility Operations-Related Swaps"),[11] please see Attachment C.

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[11] "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." The defined term "special entity," for purposes of the CEA as amended by the Dodd-Frank Act and the CFTC rules promulgated thereunder, includes government entities. APPA's members, as government-owned electric utilities, are "special entities, and are also "Utility Special Entities" (an entity descriptor term defined in CFTC Rule 1.3(ggg). By contrast, NRECA's members are predominantly electric ***cooperatives,*** and therefore are "not-for-profit electric" utilities, but are not government owned "special entities." Despite the differences in application of the Commission's entity descriptors, 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.

B. Prior Comments.

Beginning in October 2010, the NFP Electric Associations' Prior Comments focused on the way the DFA Swap Reporting Rule proposals would apply to bilateral, off-facility, uncleared nonfinancial commodity transactions that might be considered "swaps," where at least one of the counterparties is an NFP Electric Association member or another energy industry commercial end-user or "commercial risk hedger-only" entity. The NFP Electric Associations recommended first that the Commission clearly define "swap," and what is and is not a "nonfinancial commodity" swap, pointing to the clear language of the CEA 1a(47)(A) and (B)(ii) – the definition of "swap." The NFP Electric Associations recommended that the Commission focus on a limited number of standardized data elements regarding such nonfinancial commodity swaps for Reporting purposes, 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 accurately and timely report the data to a financial markets regulator.[12]

Most recently, the NFP Electric Associations filed comments in August of 2017 in response to the request for public input on the Division of Market Oversight ("DMO") Review of Certain Swap Data Reporting Rules, and Roadmap to Achieve High Quality Swaps Data (the "2017 DMO Review/Roadmap")[13]. The NFP Electric Associations' members continue to have a direct and significant interest in the Commission's DFA Swap Reporting rules as applicable to Utility Operations-Related Swaps, and the granularity of swap data that the Commission continues to collect from NFP Electric Associations' members and their commercial end-user counterparties within hours after each and every time a bilateral, uncleared Utility Operations-Related Swap transaction is executed, and over the life cycle of each such swap.

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[12] https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61274&SearchText. In Prior Comments, even prior to the publication of the initial proposals for DFA Swap Reporting Rules, the NFP Electric Associations recommended that the Commission consider a separate reporting regime for swap entity data, similar 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 swaps markets or the global financial system. In 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 of the NFP Electric Association comment on the 2017 DMO Review/Roadmap, linked at footnote 13 below, for the latest 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).

[13] The NFP Electric Association's comment letter is # 15 on Attachment B.

II. COMMENTS

A. The NFP Electric Associations recommend the Commission adopt rules, or one clear set of separately published interpretations, that distinguish a "swap" from a nonfinancial energy commodity transaction that is not a "swap," particularly as the line is applied to off-facility, uncleared transactions entered into as bilateral contracts between commercial end-user counterparties. As part of this recommendation, we urge the Commission to confirm that nonfinancial commodity trade options, where the parties intend physical settlement, are not "swaps," whether such options are embedded in other transactions, or are "stand-alone" options.

See Section II.A of the NFP Electric Association's comment letter on the Project KISS topic "Miscellaneous." A clear definition of which nonfinancial commodity transactions must be reported is fundamental to understanding and complying with the CFTC's rules.[14] Each time a commercial end-user evaluates a contract that involves a nonfinancial commodity, it must use its business judgment to decide (a) whether it will "hedge or mitigate 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, vs. (b) alternatively, whether the cost of hedging that commercial risk, including the regulatory uncertainty of whether a particular transaction is (or may be) and therefore must be reported as, a "swap" is simply too high.[15]

B. We recommend the Commission adopt a single definition of "commercial end-user," consistently use that term in the rules, interpretations and guidance, and provide an interpretation or a cross-reference list on its website of other terms used in its rules, interpretations and guidance that have the same meaning as, or encompass the term, "commercial end-user," as well as terms in which the Commission does not intend to include "commercial end-users." Concurrently, we recommend excluding or exempting "commercial end-users" from complex, burdensome and unnecessary financial market Reporting obligations.[16]

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[14] 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 swap dealer registration threshold and the separate "special entity" sub-threshold, along with the "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.

[15] 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.

[16] The single definition of "commercial end-user" is recommended in the NFP Electric Associations' comments in the Project KISS- Miscellaneous docket. The request for no-action relief for commercial end-users was made most recently in the NFP Electric Associations' comment letter on the 2017 DMO Review/Roadmap.

As the NFP Electric Associations have explained in Prior Comments, we recommend the Commission simplify its Reporting rules, 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, by focusing the Commission's efforts to improve the quality of swap data Reporting first on the systemically-important global financial commodity swap asset classes. The financial commodity swap asset classes (in particular, the rates, credit default and currency/FX asset classes) comprise more than 99% of the global swap markets.[17] 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.[18] It is these asset classes for which it is important that Commission work in coordination with SDRs, as well as DCOs, DCMs, SEFs, MSPs, SDs and global regulatory counterparts, to collect high quality and consistent swap data to reduce systemic risk to the global financial markets.[19]

Attachment D depicts the different stages of market structure development, and differing degrees of globalization, for various swap asset classes, and types of nonfinancial commodity swaps. In the outer concentric circles, there is increased customization and complexity of swap data elements, and an increase in the number of commercial 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).

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[17] 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.

[18] From the perspective of the European regulators, the importance of transparency and transaction reporting is focused on derivatives (financial instrument) transactions that are admitted to trading on a regulated market, or that are 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 that 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." The same is true for many other categories of nonfinancial commodity swaps.

[19] The NFP Electric Associations and many other commercial end-users do not have a role to play in this global financial markets arena. Conversely, the nonfinancial commodity swap markets, including the regional and local markets for Utility Operations-Related Swaps in the United States, 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 overseeing such regional United States swaps markets derived on natural gas delivered to Chicago or Des Moines, or the PJM-West market for electric power.

[20]The 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."

In its initial DFA Swap Reporting rules, the Commission interpreted the Dodd-Frank Act broadly to require that all swaps to be reported, and assumed that Congress intended every swap to be reported to the same granular level of detail ("every element of every swap") and within the same timeframe, regardless of the asset class or category/type of nonfinancial commodity swap, regardless of the standardization/fungibility of the swap, regardless of whether the swap was executed on a trading facility or bilaterally, and regardless of reporting party capabilities and costs.[21] Nonetheless, neither the G20 goal of "post-trade regulatory transparency" nor the Commission's interpretation of the Dodd-Frank Act requires that all swaps be reported to the same degree of data granularity. In fact, 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 and other commercial businesses. 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]

[21] As a result, the DFA Swap Reporting Rules impose more reporting burdens on commercial end-users that enter into bilateral, off-facility nonfinancial commodity swaps (by requiring more detailed swap data element reporting) than for dealers and financial entities that report ***standardized*** financial commodity swaps entered into as financial instruments, particularly those executed anonymously on a regulated facility such as a DCM or a SEF (where no counterparty reporting is required). The regulatory burdens are inversely proportional to the regulatory benefit intended to be achieved. The 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. The Commission has the authority to establish different timelines for bilateral swap data reported by counterparties rather than registered entities (see subsection CEA 2(a)(13)(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 some DFA Swap Reporting rule proposals, to justify its one-size-fits-all approach to swap data reporting, the Commission stated its assumption that there are not many swaps to which a registered swap dealer or another financial entity would not be party (so there would not be many commercial end-user reporting parties). See, see 77 Fed. Reg. 1182 at 1183, footnote 6 and again 1186 at footnote 12, and 1188, etc., stating the Commission's assumptions, and setting aside commercial end-user concerns. By contrast, in other releases, the Commission acknowledges what the energy industry has said all along: that there are many "end-user-to-end-user" swaps in the nonfinancial commodity (or "Other") asset class, where large and small commercial companies contract directly with each other based on the basis of long-standing relationships and without financial market intermediation typical in the financial commodity world. For example, the Commission acknowledged the higher percentage of nonfinancial commodity swaps that are uncleared, off-facility, "end-user-to-end-user swaps," in the adopting release for the Part 43 "real-time" swap transaction reporting rules, which also recognized 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." 77 Fed. Reg. 1182, at 1210, and 1220 and 1221 (January 9, 2012).

[22] Commercial end-users are required to report much more granular data ("every data point on a swap," as referenced on page 8 of the 2017 DMO 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. The burdens of the current swap reporting rules fall most heavily on commercial end-

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C. For each type of nonfinancial commodity swap, the NFP Electric Associations recommend the Commission determine the minimum number of data elements that need to be reported when such a nonfinancial commodity swap is entered into by commercial end-users, in order to achieve the Commission's identified regulatory priorities with respect to that particular nonfinancial commodity swap market. Reporting deadlines should be extended. Commercial end-users should be excluded or exempted from any further reporting obligations.

The NFP Electric Associations recommend that the Commission begin by considering data elements to be reported and, if necessary, proposing rule amendments applicable ***only*** to the more standardized swap asset classes and, within the nonfinancial commodity asset class by swap categories, moving from the inner to the outer concentric circles on Attachment D – first for financial commodity swaps, then for agricultural swaps, and metals swaps and potentially crude oil and other petroleum product swaps (swap categories that may have more global market structure and characteristics), while deferring until later consideration of the Utility Operations-Related Swaps and those for which the Commission's jurisdiction overlaps with commercial industry regulation, such as the Federal Energy Regulatory Commission and state utility commissions.[23]

The data that the SDRs currently collect about nonfinancial commodity swaps is not useful or usable.[24] The Commission could simplify application of its Reporting rules, more

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user counterparties, entities that are less familiar with financial markets reporting, and must divert staff and systems expenditures from core business operations to understand and comply with the Commission's Reporting rules.

[23] Within each category, the Commission should work with interested commercial industry groups to define each of the required data elements in language more 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 "1993 Energy Exemption") meant that the Commission has little recent 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 diverse business operations. In the midst of its Dodd-Frank Act rulemaking, but ***after*** the initial DFA Swap Reporting Rules were published, the Commission *sua sponte* "withdrew" the 1993 Energy Exemption in the "Joint Final Rule and Interpretations on Further Definition of "Swap," "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping (the "Products Release"), 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 August of 2013, and continuing throughout the Commission's ongoing 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 that continues to build up in the SDRs.

[24] In January 2014, then Acting CFTC Chairman Mark Wetjen acknowledged that the Commission could not decipher the swap data being collected by the SDRs. See the NFP Electric Associations' comment letter on the 2017 DMO Review/Roadmap at #15 on Attachment B. Although there have been general statements about the regulatory benefit of "transparency" in each CFTC proposal and adopting release for the DFA Swap Reporting Rules, as well as other DFA swap rule proposals, there seems to have been no analysis as to whether there is any

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effectively employ its limited regulatory resources and, at the same time, dramatically reduce the regulatory burden on commercial end-users, by excluding or exempting commercial end-users from reporting obligations for nonfinancial commodity swaps, and/or by limiting the number of data elements reported at the time each such swap is executed and extending the timeframe for such swap reporting.

The NFP Electric Associations appreciate the opportunity to submit these recommendations on the Commission's Project KISS, and look forward to working with the Commission to simplify application of its swap Reporting rules, regulations and practices.

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regulatory transparency benefit if the Reporting rules are so complex, ambiguous and difficult to apply that the SDRs collect, and provide the Commission and the markets with, unusable data.

SIGNATURE PAGE **2017 PROJECT KISS (REPORTING)**

The NFP Electric Associations appreciate the opportunity to submit comments to be considered in connection with Project KISS (Reporting).

Respectfully submitted,

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ATTACHMENT A

DESCRIPTION OF THE NFP ELECTRIC ASSOCIATIONS

The National Rural Electric Cooperative Association (NRECA) is the national service organization for America's electric cooperatives. The nation's member-owned, not-for-profit electric cooperatives constitute a unique sector of the electric utility industry – and face a unique set of challenges. NRECA represents the interests of the nation's more than 900 rural electric utilities responsible for keeping the lights on for more than 42 million people across 47 states. Electric cooperatives are driven by their public service purpose to power communities and empower their members to improve their quality of life. Affordable electricity is the lifeblood of the American economy, and for 75 years electric cooperatives have been proud to keep the lights on. Because of their critical role in providing affordable, reliable, and universally accessible electric service, electric cooperatives are vital to the economic health of the communities they serve.

America's electric cooperatives serve 56 percent of the nation, 88 percent of all counties, and 12 percent of the nation's electric customers, while accounting for approximately 11 percent of all electric energy sold in the United States. NRECA's member cooperatives include 63 generation and transmission (G&T) cooperatives and 834 distribution cooperatives. The G&Ts are owned by the distribution cooperatives they serve. The G&Ts generate and transmit power to nearly 80 percent of the distribution cooperatives, those cooperatives that provide power directly to the end-of-the-line consumer-owners. Remaining distribution cooperatives receive power directly from other generation sources within the electric utility sector. NRECA members account for about five percent of national generation and, on net, generate approximately 50 percent of the electric energy they sell and purchase the remaining 50 percent from non-NRECA members. Both distribution and G&T cooperatives share an obligation to serve their members by providing safe, reliable, and affordable electric service.

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 PROPOSALS[25]

	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	Nov. 15, 2010 (NFP Energy End Users) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26390&SearchText=wasson Nov, 15, 2010 (EEI) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26394&SearchText=
2	Pre-NOPR Comment - Data Recordkeeping and Reporting Task Force	-----	-----	Nov. 16, 2010 (NFP Electrics) Link to Comment (PDF File) http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission17_122810-5.pdf
3	Interim Final Rule re: Reporting Certain Post-Enactment Swap Transactions	Dec. 17, 2010	75 Fed. Reg. 78,892	Jan. 17, 2011 (NFP Electrics) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27187&SearchText Jan. 17, 2011

[25] 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
				(EEI) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27158&SearchText=
4	Swap Data Recordkeeping and Reporting Requirements	Dec. 8, 2010	75 Fed. Reg. 76,573	Feb. 7, 2011 (NFP Electrics) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27624&SearchText Feb. 7, 2011 (EEI/EPSA) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27575&SearchText=
5	Real Time Public Reporting of Swap Transactions and Pricing Data	Dec. 7, 2010	75 Fed. Reg. 76,139 *CORRECTION 75 Fed. Reg. 76,930	Feb. 7, 2011 (NFP Electrics) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27623&SearchText Feb. 7, 2011 (EEI/EPSA/AGA/NGSA) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27571&SearchText=
6	End-User Exception to Mandatory Clearing of Swaps	Dec. 23, 2010	75 Fed. Reg. 80,747	Feb. 22, 2011 (NFP Electrics) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27916&SearchText Feb. 22, 2011 (EEI/EPSA)

	CFTC RULE-MAKING	DATE ISSUED BY CFTC	FEDERAL REGISTER NUMBER	ELECTRIC TRADE ASSOCIATION FILING
				Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27939&SearchText=
7	Registration and Regulation of Swap Data Repositories	Dec. 23, 2010	75 Fed. Reg. 80,898	Feb. 22, 2011 (NFP Electrics) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27919&SearchText
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 Electrics) 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 Electrics) 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 Electrics/EEI/EPSA) Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=45702&SearchText=
11	Notice of Meeting of Technology	August 16, 2013	78 Fed. Reg. 50,040	July 3, 2013 and September 6, 2013 (APPA, EEI, EPSA, NRECA,

	CFTC RULE-MAKING	DATE ISSUED BY CFTC	FEDERAL REGISTER NUMBER	ELECTRIC TRADE ASSOCIATION FILING
	Advisory Committee (Re: SDR and transaction reporting requirements)			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=
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=
15	Division of Market Oversight Review of Swap Data Reporting Rules in Parts 43, 45 and 49 (CFTC Letter 17-33) and Requests for No-Action Relief	July 10, 2017	CFTC Letter 17-33	August 18, 2017 (NRECA, APPA) Link to Comment https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61274&SearchText=

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

16	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
17	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=
18	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=
19	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.

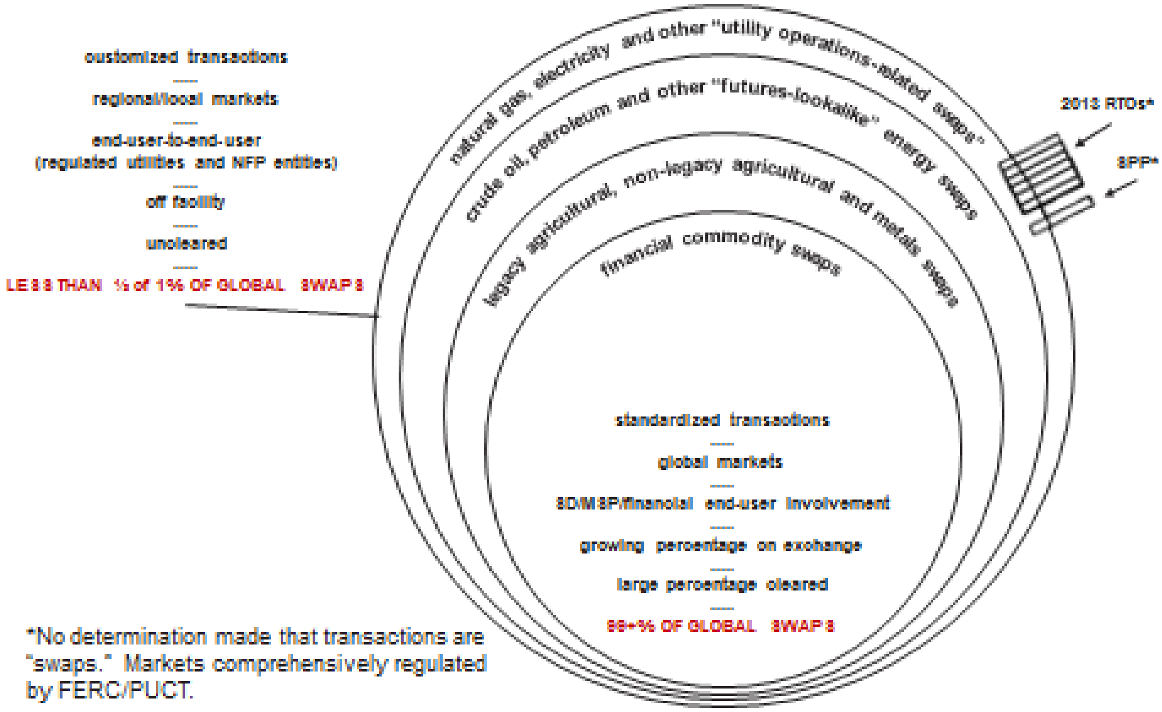
For Utility Operations-Related Swaps, there are also unique and unusual commercial end-user market participants, such as state utility-regulated and/or FERC-regulated counterparties, as well as not-for-profit utilities, such as NFP Electric Associations' members, with public service obligations and that *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



*No determination made that transactions are "swaps." Markets comprehensively regulated by FERC/PUCT.