September 27, 2012

<u>Via Electronic Submission</u>

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

Re: Letter in Support of Request for Comprehensive Relief

Dear Ms. Yochum:

The National Rural Electric Cooperative Association ("NRECA"), the American Public Power Association ("APPA"), the Large Public Power Council ("LPPC") and the Transmission Access Policy Study Group ("TAPS") (collectively, the "NFP Electric Trade Associations") respectfully submit this letter in support of the request by the Joint Associations[1] for comprehensive relief from the rules being promulgated by the Commodity Futures Trading Commission ("Commission") to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")[2] in the form of an extension of all applicable effective dates and compliance dates or, in the alternative, comprehensive "no action" relief.[3]

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

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1 The Joint Associations include the Edison Electric Institute, the American Gas Association and the Electric Power Supply Association.

2 Pub. L. No. 111-203 (2010) ("Dodd-Frank Act").

3 *Request for an Extension of the Effective and Compliance Dates for Dodd-Frank Regulations Affecting Non-SD/MSP Energy Market Participants, or, in the Alternative, for No-Action Relief*, filed September 24, 2012. The comments herein represent the views of the NFP Electric Trade Associations, but not necessarily the views of any particular member with respect to any issue.

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

APPA is the national service organization representing the interests of publicly-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 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 publicly-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. Public power utilities are accountable to elected and/or appointed officials and, ultimately, the American public. The focus of a public power utility is to provide reliable and safe electricity service, keeping costs low and predictable for its customers, while practicing good environmental stewardship.

LPPC is an organization representing 26 of the largest government-owned electric utilities in the nation. LPPC members own and operate over 86,000 megawatts of generation capacity and nearly 35,000 circuit miles of high voltage transmission lines, representing nearly 90% of the transmission investment owned by non-Federal government-owned electric utilities in the United States.

TAPS is an association of transmission-dependent utilities in more than 35 states, promoting open and non-discriminatory access to the transmission grid and regulatory policies to facilitate the participation of smaller utilities in the electricity markets.

Like the members of the Joint Associations, the members of the NFP Electric Trade Associations are participants in the markets for nonfinancial (or "physical") energy and energy-related commodities, and the members rely on energy commodity swaps, futures, forwards and options to hedge or mitigate commercial risks arising from their electric operations. They are not financial entities, but commercial "end users." As such, it is particularly important for the NFP Electric Trade Associations that the Commission act promptly on the Joint Associations' request. As explained by the Joint Associations, comprehensive relief is required:

> "…so that uncertainty as to rules and regulations does not inadvertently disrupt the liquidity of the [energy commodity] derivatives markets and the delivery of wholesale, non-financial [energy] commodities related to electric and gas operations, both of which could result in higher prices for consumers and commodity market participants. Moreover, to the extent regulatory uncertainty persists about the status of a transaction (*e.g.*, swap, option, forward), or its treatment by the Commission (*e.g.*, "dealing", "trading", or "hedging"), market participants may be deterred from engaging in certain transactions or activities. This, in turn, may increase the cost of effective risk management for commercial

> end-users of swaps and result in higher, more volatile energy prices for residential, commercial, and industrial customers."[4]

Further, the NFP Electric Trade Associations firmly endorse the Joint Associations' statement of concern that:

> "[i]f energy market participants, including non-SDs/MSPs and swap dealers, do not have (1) regulatory certainty about the treatment of their commodity transactions and swaps-related activities, and (2) sufficient time to prepare to comply with the DFA Regulations, the Joint Associations believe the energy markets could face severe and substantial disruptions. For example, continuing uncertainty about the regulatory status of common energy transactions, (*e.g*. tolling agreements, and transportation, transmission, and storage contracts) due to ambiguities in the Product Definitions Rule could deter market participants from entering into, or lead them to reduce their reliance upon, these types of transactions that are vital to maintaining reliable and efficient electricity and gas markets."[5]

The NFP Electric Trade Associations' support of the Joint Associations' request is consistent with the focus of the NFP Electric Trade Associations' comments on the Commission's rulemakings implementing the Dodd-Frank Act. The NFP Electric Trade Associations have focused exclusively on the aspects of the Commission's rulemakings (and those of other regulators, such as the prudential regulators) that affect end users of non-cleared "swaps" of a type that the NFP Electric Trade Associations define as "Energy Commodity Swaps."[6] Therefore, the NFP Electric Trade Associations respectfully request that the Commission extend all applicable effective dates and compliance dates of its Dodd-Frank Act rulemakings for all entities that are parties to nonfinancial energy commodity transactions and for all parties to Energy Commodity Swaps.[7]

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[4] See the Joint Associations' request at page 1.

[5] See the Joint Associations' request at page 4.

[6] We use the term "Energy Commodity Swaps" to mean those swaps referencing or derived on energy commodities in which the NFP Electric Trade Associations' members transact in the ordinary course of their electric operations, such as electric energy, natural gas and other fuels for electric generation, those swaps referencing or derived on transmission, transportation, generation capacity or storage concepts or services related to the energy commodities described herein, and those swaps referencing or derived on nonfinancial environmental, emissions or renewable energy concepts or attributes required for electric operations. All of these "Energy Commodity Swaps" are related to our members' core public service mission, and many are subject to the continuing jurisdiction of regulators other than the Commission.

[7] The NFP Electric Trade Associations take no position regarding an extension of the effective dates or the compliance dates in respect of "security-based swaps" or "mixed swaps" as those terms are defined in the

When the Commission's Dodd-Frank Act regulations affect the NFP Electric Trade Association members' counterparties, the regulations simultaneously affect the liquidity of the markets for nonfinancial energy commodities and related Energy Commodity Swaps that our members need to hedge the commercial risks of electric operations. Such counterparties include "swap dealers" and "major swap participants," as well as nonfinancial energy market participants such as natural gas producers, investor-owned utilities, owners of electric generation, other commercial end users, and the regional transmission organizations and independent system operators to the extent that such entities administer electric markets in specific geographic regions. Consequently, the NFP Electric Trade Associations respectfully request that the comprehensive relief be available to all entities that execute (or are involved in administering) transactions in such nonfinancial energy commodities and Energy Commodity Swaps.

In addition, the NFP Electric Trade Associations respectfully request that the comprehensive relief extend until the beginning of a Transition Period (as such term is defined in the Joint Association's request) that will commence ***only*** when all of the Commission's rulemakings required to implement the Dodd-Frank Act in respect of Energy Commodity Swaps

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Dodd-Frank Act amendments to the Commodity Exchange Act. Nor do the NFP Electric Trade Associations take a position on an extension of the effective dates or the compliance dates in respect of financial commodities or financial commodity derivatives transactions in asset classes defined by the Commission as rates, equity, credit or currencies.

The NFP Electric Trade Associations are not requesting an extension of the effective dates or the compliance dates in respect of nonfinancial commodity transactions (or "swaps" in the "other commodity" asset class of commodities as defined by the Commission) in metals, or in agricultural or crude oil or gasoline commodity products of any grade not used as fuel for electric generation. However, the NFP Electric Trade Associations appreciate the fact that commercial end users of such other nonfinancial commodities and the related derivative transactions may be concerned about similar disruptions to the markets for these other nonfinancial commodities affecting their ability to hedge or mitigate commercial risks.

The NFP Electric Trade Associations would not oppose the Commission exercising its discretion to provide comprehensive relief to all market participants that engage in nonfinancial commodity transactions, and the derivatives referencing such nonfinancial commodities. According to sources cited by the Commission in its rulemakings, including the Office of the Controller of the Currency and the International Swaps and Derivatives Association's annual reports, swaps referencing nonfinancial commodities (or swaps in the "other commodity" asset class as defined by the Commission) comprise less than one percent of the derivatives markets that the Commission's new jurisdiction over "swaps" is intended to regulate. Deferring the effective dates and compliance dates for this small fraction of the over-the counter derivatives markets, in order to preserve the ability of commercial end users to hedge commercial risks in a cost-effective way using nonfinancial commodity derivatives, would not significantly impact the Commission's regulatory agenda.

have been completed, and all applicable rulemaking decisions have been published in the Federal Register and are effective.[8]

The Commission's rulemaking decisions include all rules and regulatory guidance interpreting Section 721(a)(21) of the Dodd-Frank Act (*e.g.*, the definition of "swap" and the exclusion provided in new Section 1a(47)(B)(ii)), all Commission rulings on petitions and requests for interpretation and clarification listed in the Joint Associations' request, and all Commission determinations on public interest waivers called for by Section 722(f) of the Dodd-Frank Act. The Commission orders and public interest waivers must be effective, and not subject to conditions that would require an interruption in the ongoing markets for nonfinancial energy commodities and Energy Commodity Swaps. It is important that the members of the NFP Electric Trade Associations have available to them the entire regulatory framework for Energy Commodity Swaps before the six-month Transition Period begins.

Until these building blocks of the new regulatory framework for Energy Commodity Swaps, all of which are called for by Congress in the Dodd-Frank Act, the members of the NFP Electric Trade Associations and others in the electric and natural gas industries cannot begin to put in place compliance programs for the Commission's new regulatory regime for Energy Commodity Swaps. Moreover, if the new regulatory framework comes into effect in bits and pieces, without a coherent implementation schedule, the ongoing markets for nonfinancial energy commodities and Energy Commodity Swaps will be disrupted.

For the aforementioned reasons, the NFP Electric Coalition support the Joint Associations' request for comprehensive relief, and respectfully request that the Commission act as soon as possible to avoid disruption to the ongoing markets for nonfinancial energy commodity transactions and Energy Commodity Swaps that the NFP Electric Trade Associations' members rely on to hedge or mitigate the commercial risks arising from their electric operations.

Please feel free to contact the undersigned below if you have any questions regarding these comments.

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8 It is important that the Commission's decisions be published in the Federal Register so that regulatory guidance is available to all affected market participants, and not provided "informally" to some, but not available to all of the entities who need such guidance in order to understand their compliance obligations and how to interpret the Commission's rules and orders.

SIGNATURE PAGE – SUPPORT LETTER RE JOINT ASSOCIATIONS' REQUEST FOR COMPREHENSIVE RELIEF

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