On behalf of eleven California public power providers, serving a population of over 10 million.

c/o Geof Syphers, CEO
Sonoma Clean Power
431 E Street
Santa Rosa, CA 95404

January 15, 2024

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, D.C. 20551

Chief Counsel's Office
Office of the Comptroller of the Currency
400 7th Street SW
Suite 3E–218
Washington, D.C. 20219

James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Regulatory Capital Rule: Large Banking Organizations and Banking Organizations with Significant Trading Activity

Secretary Misback, Assistant Executive Secretary Sheesley, and Chief Counsel,

We appreciate the opportunity to comment on the notice of proposed rulemaking published by the Board of Governors of the Federal Reserve System (the "**Federal Reserve**"), the Office of the Comptroller of the Currency ("**OCC**") and Federal Deposit Insurance Corporation ("**FDIC**") (collectively, the "**Banking Agencies**") to implement the revised Basel III capital framework (the "**Proposal**").[1]

We represent Community Choice Aggregators ("**CCAs**") that provide electrical power to our member communities. We operate California local government entities that generate electricity for state and municipal entities as well as businesses and residents. We are concerned that the Proposal will increase the public cost of energy across a variety of transactions with U.S. banking organizations, especially for transactions which permit our agencies to prudently hedge the price risks associated with energy production and for pre-payment transactions that can help significantly lower the cost of energy for our customers. Left unhedged and exposed to market volatility, the costs of such risks would be passed on directly or indirectly to U.S. businesses and consumers in the form of higher energy prices for their personal electrical needs as well as in the costs of goods and services that would also be affected by higher energy costs.

- ***We urge the Federal Banking Agencies to exempt derivatives transactions with commercial end-users including CCAs (and their associated hedges) from CVA-risk-capital requirements.***

[1] 88 Fed. Reg. 64,028 (Sep. 18, 2023). Docket No. R–1813, RIN 7100–AG64 (Board), Docket ID OCC–2023–0008 (OCC), RIN 3064–AF29 (FDIC).

Under the current Basel III capital framework promulgated by the Banking Agencies, U.S. banking organizations are required to hold certain amounts of capital against their assets or exposures to risk. CVA capital must be calculated for all counterparties with CVA-covered positions with no exemptions, resulting in the inclusion of derivatives transactions with corporates, pension funds and certain other counterparties, including CCAs in large banking organizations' CVA-risk-capital requirements. For derivatives transactions with commercial end-users, CVA will be entirely additive to existing capital already required to be held by large banking organizations on derivatives transactions, with no corresponding benefit to those banking organizations or the broader financial system generally as described below.

The application of CVA-risk-capital requirements to derivatives transactions with commercial end-users including CCAs would undermine legislative and regulatory relief afforded to commercial end-users under the final SA-CCR rule and through margin and clearing exemptions. Application to such transactions would be especially impactful to commercial end-users, which are exempt from margin requirements. As Congress has recognized, derivatives transactions with commercial end-users are risk-reducing to the broader financial system and, therefore, exempting such transactions from the CVA-risk-capital requirements would not contribute to systemic risk. Indeed, the Basel III Endgame Proposal could increase risks to the broader financial system by reducing large bank offerings of hedging transactions. This could leave end-users unable to hedge their risks or forced to go to unregulated, riskier counterparties to hedge their risks.

- ***We also urge the Federal Banking Agencies to eliminate the Public Listing Requirement from the final rule and make clear that CCAs are Public Sector Entities.***

Under the Proposal, there is a comprehensive revision to the RWA calculation currently applicable to large U.S. banking organizations called the Expanded Risk-Based Approach or "**ERBA**." In particular, the ERBA introduces a new, lower risk weight for only certain investment-grade counterparties in the Credit Risk calculation. While a non-investment-grade counterparty would receive a 100% risk weight, only a limited group of investment-grade counterparties would receive a 65% risk weight. In order to receive the lower "investment grade" risk weight, however, the counterparty or its corporate parent must have a publicly traded or listed security outstanding on an exchange. If a corporate counterparty does not satisfy this requirement, it would receive a 100% risk weight.[2]

While the risk weight for public sector entities ("**PSEs**"), i.e., "a state, local authority, or other governmental subdivision below the sovereign level,"[3] remains unchanged in ERBA (20% or 50% depending on the type of obligation), as the Banking Agencies have previously clarified, a PSE does not include "government owned commercial companies that engage in activities involving trade, commerce, or profit that are generally conducted or performed in the private sector."[4]

Many creditworthy, investment-grade counterparties will not be able to receive the new, lower risk weight due to the requirement that they or their corporate parents must have publicly traded securities. Among these affected customers are special-purpose governmental entities formed to issue tax-advantaged debt to fund electric power or natural gas, public utilities, and other energy providers, which would be subject to higher prices for their transactions with U.S. banking organizations.

In addition, although CCAs are chartered under the laws of eleven states and are not-for-profit, publicly owned electrical power providers that allow local governments to aggregate their purchasing

---

[2] 84 Fed. Reg. at 64,053, 64,192; §___.111(h)(1).
[3] 12 C.F.R. § 217.2 definition of 'public sector entity'; 12 C.F.R. § 217.32(e).
[4] 77 Fed. Reg. 52,792, 52,897 (Aug. 30, 2012); 78 Fed. Reg. 62,018, 62,086 (Oct. 11, 2013).

power, it is not clear that some or all CCAs would be considered PSEs, depending on their charters, members, structures, and range of activities. While many such CCAs possess strong investment-grade ratings from nationally recognized credit rating agencies and do not issue publicly traded securities, if CCAs are not considered PSEs, their trades with U.S. banking organizations would not benefit from a lower risk weighting for investment grade corporates.

The disparate impact of the Proposal's changes for municipal energy providers would include higher pricing for derivatives transactions used to hedge price risk relating to electrical power generation and distribution. In turn, increased prices for generating electricity would also negatively impact consumers across the United States, both in the direct costs for electrical power and in the knock-on effects of the increase in costs to providers of other goods and services.

Therefore, we respectfully request that the Banking Agencies revise the Proposal not to require an investment grade rated counterparty (or its parent) to have publicly traded securities to receive the 65% risk weight, and, further, to provide clear guidance that CCAs are PSEs for purposes of the Basel III capital framework.

* * * * *

We appreciate the Banking Agencies' consideration of our comments on the Proposal.

Sincerely,

Karin L. Burns, CEO
San Diego Community Power

Ted Bardacke, CEO
Clean Power Alliance

Girish Balachandran, CEO
Silicon Valley Clean Energy

Lori Mitchell, CEO
San Jose Clean Energy

Geof Syphers, CEO
Sonoma Clean Power Authority

Robert M. Shaw, CEO
Central Coast Community Energy

Dawn Weisz, CEO
MCE

Don Eckert, Executive Director
Pioneer Community Energy

Eileen Verbeck, Deputy Executive Director
Redwood Coast Energy Authority

Shawn Marshall, CEO
Peninsula Clean Energy

Joe Mosca, Interim CEO
Orange County Power Authority