The Honorable Michael S. Barr
Vice Chairman for Supervision
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20499

Mr. Michael J. Hsu
Acting Comptroller of the Currency
The Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Re: Comments on Regulatory Capital Rule: Large Banking Organizations and Banking Organizations with Significant Trading Activity, Docket ID OCC–2023–0008, 88 Fed. Reg. 64028 (2023) and Regulatory Capital Rule: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Systemic Risk Report (FR Y-15), Docket No. R–1814, 88 Fed. Reg. 60385 (2023)

Dear Vice Chair Barr, Chairman Gruenberg, and Acting Comptroller Hsu:

The American Public Power Association (APPA) and National Rural Electric Cooperative Association ("NRECA") (hereafter "Joint Associations") respectfully submit these comments in response to the Notice of Proposed Rulemaking on Regulatory Capital Rule: Large Banking Organizations and Banking Organizations with Significant Trading Activity (Proposed Rule).

APPA is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government to protect the interests of the more than 49 million people that public power utilities serve, and the 96,000 people they employ. Public power utilities include utilities owned or authorized by a state, utilities owned by a political subdivision of a state (such as a municipality or utility district), and joint action agencies, joint powers agencies, and similar entities formed to collectively serve other public power utilities.

Public power utilities are load-serving entities with the primary goal of providing the communities they serve with safe, reliable electric service at the lowest reasonable cost, consistent with good environmental stewardship. This orientation aligns the interests of the utilities with the long-term interests of the residents and businesses in their communities.

The National Rural Electric Cooperative Association (NRECA) is the national trade association representing nearly 900 local electric cooperatives and other rural electric utilities. America's electric cooperatives are owned by the people that they serve and comprise a unique sector of the electric industry. From suburbs to remote farming communities, electric cooperatives power one in eight Americans and serve as engines of economic development for 42 million Americans across 56 percent of the nation's landscape. America's electric cooperatives serve 92 percent of all persistent poverty counties in the United States.

Electric cooperatives operate at cost and without a profit incentive. NRECA's member cooperatives include 63 generation and transmission (G&T) cooperatives and 832 distribution cooperatives. The G&Ts generate and transmit power to distribution cooperatives that then provide it to the end of line co-op consumer-members. Collectively, cooperative G&Ts generate and transmit power to nearly 80 percent of the distribution cooperatives in the nation. The remaining distribution cooperatives receive power directly from other generation sources within the electric utility sector. Both distribution and G&T cooperatives share an obligation to serve their members by providing safe, reliable, and affordable electric service.

The Joint Associations have been active participants in previous rulemakings implementing the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Specifically, NRECA commented on rulemakings related to Capital Requirements of Swap Dealers and Major Swap Participants RIN 3038-AD54 and both APPA and NRECA commented on the Standardized Approach for Calculating the Exposure Amount of Derivative Contracts Docket R-1629 and RIN 7100–AF22; Docket ID OCC–2018–0030; RIN 3064-AE80.

The Joint Associations have members that utilize commodity markets and rely on bilateral physical power and natural gas contracts, and enter energy commodity swaps, options, and futures contracts to hedge commodity supply and price risks. Our members enter these commodity instruments as commercial "end users" seeking to hedge supply risks and minimize price variability, not for purposes of speculation.

Under the Proposed Rule, for an entity entering such a transaction with a large bank to receive a favorable risk weight, the entity must be: (1) investment grade; and (2) publicly traded or the parent entity that controls a company that is publicly traded. Rule makers argued that this would provide "a simple, objective criterion that would provide a degree of consistency across banking organizations." In addition, the proposal states that "publicly traded corporate entities are subject to enhanced transparency and market discipline as a result of being listed publicly on an exchange."

However, we are concerned that the Proposed Rule will make effective risk management more difficult and more expensive for commercial end-users in the energy industry, including our members, without materially improving risk management for the banking sector. Specifically, we believe that the Proposed Rule as drafted will have serious consequences for our members' ability to find regulated counterparties for the forward contracts, commodity trade options, and energy commodity swaps needed to hedge price and supply risks.

Specifically, because our members are not publicly traded, large bank counterparties would face increased capital requirements for such transactions—transactions that we believe do not create more risk to large banks, simply because the bank's counterparty happens to be a cooperative or a government-owned entity. In turn, large banks will be less willing to participate in such transactions or, at a minimum, increase the charges for participating in such transactions to cover the additional costs imposed by the more stringent capital requirements.

Specifically, we believe the Proposed Rule's two-pronged approach to receive a lower 65 percent risk weight for derivatives transactions is flawed and should be removed or reworked substantially. The criteria for publicly traded companies included it the Proposed Rule is a far more restrictive capital requirement than that of the EU and UK capital frameworks, and places American banks – and their customers – at a material competitive disadvantage. We believe this provision should be removed or revised significantly.

In addition, the proposal states that "publicly traded corporate entities are subject to enhanced transparency and market discipline as a result of being listed publicly on an exchange." We believe this too is a flawed argument. The Joint Associations members are community-owned and governed by

democratically elected officials who are required to operate transparently and in the public's best interest and must abide by laws and regulations instituted by multiple layers of government.

We call into question, the suggestion that, as non-publicly traded entities, co-ops, and government-owned entities are fundamentally more of a credit risk due to their ownership structure. Because co-ops are consumer-owned and operate at cost, it is in the best interests of the co-op to fulfill its financial obligations in the most cost-efficient, risk-averse manner possible. Public power providers operate in a similar vein and are accountable to the communities they serve. There is a reason why more than half of all public power utilities have been in operation for a century or longer – and more than three-quarters have been in operation since World War II.

On the other hand, publicly traded companies operate to maximize shareholder return and it can be argued that this type of ownership structure is vulnerable to the short-term interests of shareholders and shareholder returns at the expense of the firm's long-term financial viability and operation.

If the proposal's bias against non-public traded companies, cooperatives, and government-owned entities is left intact, we believe it will severely and needlessly disrupt the ability of our Joint Association members to participate in risk management hedging transactions with large banks. Adopting precedents in federal law that cooperatives, government-owned entities, and other non-publicly traded companies are less creditworthy and more risky than publicly traded companies is also dangerous and unwarranted.

We ask for you to consider the comments above and revise the Proposed Rule accordingly so that our members can continue to manage commodity risks by using hedging instruments without undue cost or complexity. If the Proposed Rule is adopted as drafted, we fear that there will be a decrease in hedging, increased costs to our consumer members, and increased market volatility in the energy sector, which is already facing many uncontrolled externalities. We urge the US prudential regulators to consider these concerns before finalizing any significant changes to the capital framework.

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