



May 22, 2020

**SWAP DATA RECORDKEEPING AND  
REPORTING REQUIREMENTS (2020)  
AND  
REAL-TIME PUBLIC REPORTING  
REQUIREMENTS (2020)**

**Via Electronic Submission**

Christopher Kirkpatrick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

**RE: Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 21578, April 17, 2020 (RIN 3038-AE31)(the “2020 R&R Proposal”)**

**Real-Time Public Reporting Requirements,” 85 Fed. Reg. 21516, April 17, 2020 (RIN 3038-AE60)(the “2020 Real-Time Proposal,” and together with the 2020 R&R Proposal, the “2020 Proposals”)**

Dear Mr. Kirkpatrick:

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),<sup>1</sup> welcome the ongoing review by the Commodity Futures Trading Commission (“CFTC” or “Commission”) of its swap data recordkeeping and reporting requirements, published in January 2012 (the “2012

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<sup>1</sup> 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.

Swap Reporting Rules”).<sup>2</sup> We continue to strongly support Commission’s efforts to streamline the 2012 Swap Reporting Rule requirements for reporting nonfinancial commodity swaps that are entered into “off-facility” (“Off-Facility NFC Swaps”), including Off-Facility NFC Swaps derived on energy commodities (“Energy Swaps”),<sup>3</sup> to reduce messages that must be reported, to define data elements that harmonize with international standards (once technical guidance on those standards is finalized), and most importantly ***to reduce reporting burdens for reporting counterparties that are not SDs, MSPs or DCOs***, including the members of the NFP Electric Associations (the “NFP Electric Entities”).<sup>4</sup>

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<sup>2</sup> The framework in Parts 43, 45 and 49 for the Commission’s swap reporting rules, along with interpretations and other guidance in the adopting releases, was initially established in September of 2011 and January of 2012. Part 49, containing the rules for swap data repositories (“SDRs”) was published at 76 Fed. Reg. 54538 (September 1, 2011). Part 43, containing the “real-time” rules, was published at 77 Fed. Reg. 11182 (January 9, 2012). Part 45, containing the “data reporting rules” was published at 77 Fed. Reg. 2136 (January 13, 2012). Reporting for Off-Facility NFC Swaps between non-SD/MSP/DCO counterparties began in August of 2013.

<sup>3</sup> As of May 2020, there are few, if any, swaps derived on energy commodities executed on a designated contract market (a “DCM”) or a swap execution facility (a “SEF”). For this reason, the burdens of reporting Energy Swaps fall on the counterparties to such a swap, including non-SD/MSP/DCO counterparties like the members of the NFP Electric Associations.

The NFP Electric Associations have filed these same comments in the 2 parallel dockets referenced as the “2020 Proposals” herein, and would also request that it be filed in the docket for the “2019 Proposal,” the first of the trilogy of amendments to the 2012 Swap Reporting Rules. The NFP Electric Associations have commented often on the need for consistency in the 2012 Swap Reporting Rules applicable to the NFP Electric Associations’ members (the “NFP Electric Entities”) and to off-facility, bilateral nonfinancial energy commodity swaps (“Energy Swaps”).

Each time an NFP Electric Entity enters into an Energy Swap with another counterparty, the NFP Electric Entity must a) keep certain records related to that Energy Swap and b) fulfill certain reporting requirements, both initial and ongoing, with respect to that Energy Swap. If the 2012 Swap Reporting Rules are inconsistent with each other, the compliance challenge for NFP Electric Our comments do not address the obligations of other types of entities under the Swap Recordkeeping and Reporting Rules – CFTC-regulated market entities such as DCMs or SEFs, other entities that have reporting obligations such as swap dealers (“SDs”), major swap participants (“MSPs”) and derivatives clearing organizations (“DCOs”), or entities that receive swap data reports and themselves have public dissemination obligations with respect to data reported to them, *i.e.* swap data repositories (“SDRs”). Our comments do not address the data elements required to be reported or publicly disseminated for financial asset classes of swaps (interest rates, currencies, credit or equity), or for other categories of the nonfinancial commodity (or the “Other”) asset class of swaps, such as agricultural commodities and metals.

<sup>4</sup> See the 2020 R&R Proposal at 21578-79 referencing back to the goals of the Division of Market Oversight (“DMO”) Review of Certain Swap Data Reporting Rules, and Roadmap to Achieve High Quality Swaps Data (the “2017 DMO Roadmap Project”), which marked the beginning of the current effort to amend the 2012 Swap Reporting Rules. The NFP Electric Associations filed comments in August of 2017 in response to the request for public input on the 2017 DMO Roadmap Project. The NFP Electric Association’s comment letter is available at: <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61274&SearchText=> (the “2017 Roadmap Comments”). Most recently, in late 2019 the NFP Electric Associations submitted comments along with the Edison Electric Institute on the first of the trilogy of current proposals resulting from the 2017 DMO Roadmap Project (the 2020 Proposals being the other two in the trilogy), “Certain Swap Data Repository and Data Reporting Requirements,” 84 Fed. Reg. 21044, RIN 3038-AE32 (May 13, 2019) (the “2019 Proposal”). Those comments are available at: <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62230&SearchText=> (the “2019 Comments”). As we did in these and other comment letters on the 2012 Swap Reporting Rules, the NFP Electric Associations urge the Staff and the Commission to focus holistically and from the perspective of a non-

Until such time as the Commission publishes and implements amendments to its 2012 Swap Reporting Rules, the NFP Electric Associations also respectfully reiterate the request that the Commission provide interim relief and suspend the obligation of non-SD/MSP/DCO counterparties to report Off-Facility NFC Swaps, particularly Energy Swaps, in the granular and burdensome detail currently required by the 2012 Swap Reporting Rules.

**Introduction.** The NFP Electric Associations have been active participants over the past decade of rulemaking to implement the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (“2010 Dodd-Frank Act”),<sup>5</sup> and the Commission’s new regulatory jurisdiction over “swaps.”<sup>6</sup> The NFP Electric Associations have focused on requirements for commercial end-user<sup>7</sup> counterparties -- rather than DCMs, SEFs, DCOs, SDs or MSPs -- to keep records of swaps, and report swap data to SDRs, with a particular focus on Energy Swaps, *i.e.*, Off-Facility NFC Swaps derived on electricity and related commodities, as well as natural gas, fuel oil, other commodities used as fuel for generation of electricity, and environmental commodities, that NFP Electric Entities use to hedge or mitigate commercial risk arising from ongoing electric operations.

Many Energy Swaps are highly customized, are not cleared, and a higher percentage of such Energy Swaps (compared to financial commodity swaps) are executed between two non-SD/MSP counterparties, *i.e.*, the Energy Swaps are “end-user-to-end-user” swaps. The heavy burdens of understanding the 2012 Swap Reporting Rules, the data elements and fields referenced in the Appendices thereto, and complying with the granular reporting requirements, fall squarely on entities whose primary business is in commercial industry. In the case of NFP

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SD/MSP/DCO counterparty on *all* of the reporting obligations and burdens relative to entering into each Off-Facility NFC Swap.

<sup>5</sup> Pub. L. No.111-203 (2010)

<sup>6</sup> Throughout the Commission’s 2010 Dodd-Frank Act rulemakings, the NFP Electric Association comments have been narrowly focused on issues important to commercial end-users in the energy industry. The NFP Electric Association’s members are not investors for whom energy commodities are one of several asset classes of potential investments. They do not execute commodity swap transactions as a financial hedge of market price risk; *i.e.*, they do not trade, deal or speculate in financial instruments. The members of the NFP Electric Associations are not registered with the Commission. Our members are not financial entities, and their core business is not participation in financial market transactions. The NFP Electric Association’s members enter into nonfinancial commodity swaps (derived on electricity, natural gas and other utility operations-related commodities) as part of the normal course of their ongoing electric operations – not on a regulated trading facility, but as bilateral contracts under the Uniform Commercial Code and basic contract law principles. The NFP Electric Association members are electric utilities, and 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, and 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.**

<sup>7</sup> 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 2010 Dodd-Frank Act.

Electric Entities, the focus of our not-for-profit electric operations is to provide reliable and affordable electricity to American businesses and consumers, not to transact in the financial markets or comply with financial markets reporting protocols.

**Incorporation by Reference of Prior Comments on 2012 Swap Reporting Rules.** The NFP Electric Associations continue to strongly support the Commission’s goals articulated in the 2017 DMO Roadmap Project, the 2019 Proposal and the 2020 Proposals in amending the 2012 Swap Reporting Rules. In comments since 2014, the NFP Electric Associations have made many recommendations on how to amend the 2012 Swap Reporting Rules, as well as other Commission rules that require swap data to be reported to SDRs by non-SD/MSP/DCO counterparties.<sup>8</sup> The NFP Electric Associations have also recommended that the Commission dramatically scale back the number of data elements required to report Off-Facility NFC Swaps (eliminate the “catch all” data elements), explain the required data elements in terminology more understandable for commercial end-users in a particular relevant industry (such as the energy industry), correlate the data elements to its “priority use-case” regulatory objectives, and collect each data element once from the data source most likely to have the data, as well as to have the ability, expertise and IT systems to accurately and timely report the data to a financial markets regulator. For a list of prior NFP Electric Association comment letters on the 2012 Swap Reporting Rules (the “Prior Comments”), with links to the Commission’s website, *see* Attachment B.

In several places, the 2020 Proposals ask for comment on “all aspects” of the 2012 Swap Reporting Rules or the 2020 Proposals. Due to the economic hardships our members are currently experiencing as a result of the COVID-19 pandemic and government lockdowns, the NFP Electric Associations respectfully submit that we cannot summarize or restate for the Commission our Prior Comments on the 2012 Swap Reporting Rules. Instead, we will provide bullet point comments specific to the 2020 R&R Proposal and the 2020 Real-Time Proposal, and respectfully request that our Prior Comments be incorporated by reference and considered in the dockets for the 2019 Proposal and for both these 2020 Proposals. In particular, we call the Commission’s attention to the 2017 Roadmap Comments and the 2019 Comments at the links provided in footnote 4.<sup>9</sup>

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<sup>8</sup> For example, the rules for the “end-user exception” to clearing require that counterparties report additional data elements (about the transaction and swap counterparties) when each swap transaction is executed. Still other post-Dodd-Frank Act rules, interpretations, exemptions and no-action letters, and proposals including with regard to swap dealer registration thresholds, “large trader” reporting, 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 Off-Facility NFC 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 elements on valuation or collateralization of a swap, or a portfolio of uncleared swaps.

<sup>9</sup> In some respects, the 2020 Proposals contain the same or similar proposals as are found in, or cross-reference to, the 2019 Proposal. We will not restate here the comments made in the 2019 Comments on the same proposals. For example, the 2020 Real-Time Proposal restates the 2019 Proposal that SDRs validate or verify previously-reported swap data with the reporting counterparty and the non-reporting counterparty to an Off-Facility NFC Swap, and assumes the counterparties have new regulatory obligations to participate in such a validation process. See the 2020 Real-Time Proposal at 21605. We view such additional regulatory requirements as a significant and unnecessary

**Comments Specific to the 2020 Proposals.**

*A. Comments specific to the 2020 R&R Proposal:*

1. We note the proposal to add a definition of “swap” to Part 45 (p. 21581), and request the Commission to incorporate into that definition its interpretations, exemptions and other guidance regarding the defined term “swap” in CEA §1a, as well as to exclude from such defined term guaranties of a swap, commodity options meeting the conditions in Rule 32.3, and other types of agreements, contracts and transactions that the Commission has determined Congress did not intend to regulate as “swaps.” See the NFP Electric Associations’ comment letter on the Commission’s recent proposal on speculative position limits, linked here:  
<https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62487&SearchText>  
≡.
2. We support restructuring the reporting requirements to eliminate duplication and clarify requirements for non-SD/MSP/DCO reporting counterparties in §45.3 and §45.4, and removing the requirement for non-SD/MSP/DCO reporting counterparties to report valuation data in §45.4(d)(2)(ii). p. 21585 and p.21590-21591.
3. We support not requiring non-SD/MSP/DCO reporting counterparties to report margin/collateralization of swaps. p. 21590-21591. We urge the Commission not to add any additional data elements being discussed by the international regulators or standard setting organizations until those international requirements are finalized, and the Commission identifies each additional data element as required by a particular Commission “priority use-case” for such data.
4. We support removal of the regulations regarding voluntary supplemental reporting in §45.12. p 21603
5. Consistent with the 2019 Comments, we respectfully request that the Commission provide evidence that the validation process will achieve a specific regulatory benefit to offset the significant additional burden on non-SD/MSP/DCO counterparties to Off-Facility NFC Swaps. Otherwise, we have stated our objection to the substantial and unnecessary additional burden on non-SD/MSP/DCO counterparties, and have no further comments on the concept which remains in the 2020 Proposals.
6. We support not requiring non-SD/MSP/DCO reporting counterparties to report entity data (for the reporting counterparty or the non-reporting counterparty) as part of reporting Off-Facility NFC Swaps.

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burden on commercial end-users, and a burden the Commission has not justified as providing any measurable regulatory benefit.

7. We strongly support the Commission’s approach (p. 21581) to amend and replace appendix 1 to Part 45 (“swap data”) and Appendix C to Part 43 (“swap transaction and pricing data”) with a single list of data fields for each asset class of swaps. The swap transaction and pricing data elements required under Part 43 must be a harmonized subset of the data elements in the appendices to Part 45. Once a non-SD/MSP/DCO reporting counterparty reports an Off-Facility NFC Swap to an SDR in compliance with Part 45, there should be no separate or distinct Part 43 “public dissemination” obligation for that non-SD/MSP/DCO counterparty with respect to that swap. The Commission is authorized to require “registered entities,” not non-SD/MSP/DCO counterparties, to publicly disseminate swap data under the clear language of CEA §2(a)(13)(D).
8. We support the continued delegation to the Division of Market Oversight of the responsibility to harmonize data elements between Part 45 (and 46) and Part 43 (p. 21605 and 21610), and look forward to participating that effort with respect to the Energy Swap categories within the “Other” asset class that the NFP Electric Entities rely on for commercial risk hedging. We recommend that DMO further delineate, clarify and propose for public comment the data elements and the technical specifications for data fields by category and/or type of swap, in a manner similar to the categories used to establish AMBS for the block trade rules. See our request for industry technical conferences in the 2017 Roadmap Comments.

B. Summary of comments specific to the 2020 Real-Time Proposal:

1. We support the real-time data elements (Part 43) being an identical subset of the swap data reporting data elements (Part 45). The SDR cannot disseminate to the public pursuant to Part 49 data elements other than those it receives from a reporting counterparty under Part 45.
2. We support alignment of defined terms and concepts between Part 45 and Part 43 in identifying events and dates relevant to reporting by non-SD/MSP/DCO counterparties to SDRs, *e.g.*, “execution,” and in defining the data elements that must be reported. We disagree with using different definitions or terms defined in one, but not the other, of Parts 43, 45, 46 and 49. For a non-SD/MSP/DCO counterparty that, when it enters into or “executes” an Off-Facility NFC Swap, if it must comply with portions of Parts 43, 45 (or 46), 49 and other Parts (Part 50 for the end-user exception to clearing), inconsistencies create confusion.
3. We support public dissemination of data regarding swaps only where such public dissemination would enhance price discovery – that would, in our view, mean that data regarding few, if any, Off-Facility NFC Swaps would be publicly disseminated. If the Real-Time Reporting Rules need to distinguish which Off-Facility NFC Swaps might have such a price discovery function and therefore require public dissemination of data under CEA §2a(13)(B), we recommend the definition of such subset of swaps parallel the concept of “economically-equivalent swap,” as defined in Part 150 for the same concept – a swap that is equivalent in all material terms and conditions to (and therefore plays a significant price discovery role for) a commodity derivative instrument that is traded on a registered entity/regulated market/exchange.
4. Consistent with the 2019 Comments, we respectfully request that the Commission provide evidence that the validation process proposed in the 2020 Proposals will achieve

a specific regulatory benefit to offset the significant additional burden on non-SD/MSP/DCO counterparties to Off-Facility NFC Swaps.

5. We strongly support the effort to provide additional “masking” of large notional off-facility swaps in the “Other” or “nonfinancial” asset class, per p21530, to assure business transactions and market positions of counterparties are not disclosed.
6. The concept of a “block trade” is not well understood in the swap markets (even if it is understood in the futures markets). Consequently, we support continued use of the descriptive term “large notional off-facility swap,” as drawn from the primary language of CEA §2a(13)(E), rather than use “block trade” to identify those swaps for which the SDR is to delay in public dissemination of swap data to protect counterparty interests.
7. We take exception to the defined term “Execution Date,” which seems to be determined by reference to a time (“eastern time”), not a date. This is an example of a data element under the “Real-Time Rules” that differs from data elements in the “R&R Rules, where the data elements that are “timestamps” – call for date and time, expressed in UTC.” – after execution.
8. We note the 2020 Real-Time Proposal to define “physical commodity swap” in §43.2 (p. 21558) by reference to a swap “based on a tangible commodity.” Consistent with our comments on the Commission’s recent proposal for speculative position limits rules regarding the terms “physically-settled swap” and “physical commodity,” the proposed definition is not consistent with the language of CEA §1a(47) or the CFTC’s interpretations on “nonfinancial commodity” in the context of swaps. Tangible/intangible is not a useful or usable distinction with regard to swaps derived on either electricity or regulatory commodities, such as RECs or other environmental commodities. Consequently, we respectfully request that the proposed definition of “physical commodity swap” be revised to reference a swap “based on a nonfinancial commodity.”<sup>10</sup>

The NFP Electric Associations’ members continue to have a direct and significant interest in the 2012 Swap Reporting Rules as applicable to Energy Swaps, and the granularity of data that the Commission continues to collect from NFP Electric Entities and their commercial end-user counterparties each and every time a bilateral, uncleared Energy Swap is entered into or “executed,” and over the life cycle of each such Energy Swap.<sup>11</sup>

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<sup>10</sup> See the NFP Electric Associations’ comment letter on the Commission’s recent proposal on speculative position limits, linked here: <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62487&SearchText=> for the importance of using consistent terminology applicable to swaps to enable commercial end-users (aka non-SD/MSP/DCO counterparties) to understand the Commission rules applicable to swaps taken as a whole.

<sup>11</sup> It is regrettable that the Commission has continued to require reporting of this data for nearly 7 years, merely so that the SDRs can “store it,” as one CFTC staffer explained in 2011, in an ever-growing pile of unusable information. As explained in the “2019 Comments” cited in footnote 4 at Section IIC, the Commission should delete from its current proposals the new requirement presumption that non-SD/MSP/DCO counterparties will correct or complete swap data reported for “dead swaps.” See 2019 Comments at 11. The Commission has acknowledged since 2014 that the 2012 Swap Reporting Rules need amendment, particularly with respect to Off-Facility NFC Swaps. It cannot now expect commercial end-users to access, re-assess and re-report those

**Request for Interim Relief.** The NFP Electric Associations reiterate the request made in the 2017 Roadmap Comments<sup>12</sup> that the Commission consider interim relief for non-SD/MSP/DCO counterparties and exclude or exempt non-SD/MSP/DCO reporting counterparties to Off-Facility NFC Swaps from complex, burdensome and unnecessary financial market reporting obligations that have not delivered the quality of data with respect to such swaps that enables the Commission to fulfill its regulatory priorities.

In its 2012 Swap Reporting Rules, the Commission interpreted the 2010 Dodd-Frank Act broadly to require that all swaps to be reported, **and** 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 swap 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/or costs.<sup>13</sup> Yet nothing in the 2010 Dodd-Frank Act requires that all swap transactions be

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transactions. For Energy Swaps, at such time as the amendments to the 2012 Swap Reporting Rules (and the data elements) are effective and the SDR reporting protocols are in place, all “dead swaps” (and all transactions reported as “swaps” prior to the 2015-2016 clarifications regarding commodity trade options and forward contracts with embedded volumetric optionality) should be deleted from the SDR databases.

<sup>12</sup> See the 2017 Roadmap Comments, cited in footnote 4 at Section III. If, as a condition to such interim relief, the Commission feels it necessary to require non-SD/MSP/DCO counterparties to report some limited number of data elements, within reasonable time periods consistent with market practice in specific industries where commercial end-users rely on Off-Facility NFC Swaps to hedge or mitigate commercial risk arising from ongoing business operations, the NFP Electric Associations are available to work with the Commission and the Staff immediately to finalize such conditions. A proposed list of data elements for reporting Energy Swaps during a period of interim relief is found in the 2017 Roadmap Comments page 11, in footnote 26.

<sup>13</sup>As a result, the DFA Swap Reporting Rules impose more reporting burdens on commercial end-users that enter into customized Off-Facility NFC 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 or submitted to a DCO for clearing (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 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-

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reported at the same granular level of detail, on the same timeline, and using the same electronic interface.

As Off-Facility NFC Swaps become more customized, they become less like tradable, fungible financial instruments trade on regulated exchanges, and more like customary commercial contracts, entered into every day between commercial businesses. The benefits of “regulatory transparency” and market transparency/price discovery with respect to products that trade on regulated markets (“on facility”) are greatly diminished. Any such minimal benefits must be measured, and weighed, against potential risks to commercial data security, confidentiality for business strategy and trade secrets, as well as the substantial direct and indirect costs of reporting.<sup>14</sup>

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.<sup>15</sup>

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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).

<sup>14</sup> 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 Project overview) for Off-Facility NFC Swaps, and Energy Swaps, 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 2012 Swap Reporting Rules fall most heavily on commercial end-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.

<sup>15</sup> 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 2012 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 swap reporting for end-user-to-end-user Other Commodity Swaps in August of 2013, and continuing throughout the Commission’s ongoing rulemakings on

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The data that the SDRs currently collect about Off-Facility NFC Swaps is not useful or usable.<sup>16</sup> The Commission could simplify application of its Reporting rules, more 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 Off-Facility NFC 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.

**Conclusion.** The NFP Electric Associations appreciate the opportunity to submit these comments, and look forward to working with the Commission as it moves forward to amend its 2012 Swap Reporting Rules. We would also appreciate an opportunity to continue the discussion of interim relief for non-SD/MSP/DCO counterparties.

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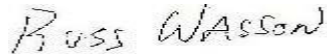
“embedded volumetric optionality” and “commodity trade options,” the energy industry struggled with the complexity of reporting Energy Swaps. This unfortunate sequence of rulemakings undoubtedly added to the “garbage-in-garbage-out” nature of the swap data that continues to build up in the SDRs to this day.

<sup>16</sup> 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 2017 Roadmap Comments for a timeline of various other acknowledgements by Commissioners or CFTC staff that the SDR data, particularly on Off-Facility NFC Swaps, is not usable to achieve regulatory objectives. There have been general statements about the regulatory benefits of “transparency” in each of the CFTC proposals and in the adopting releases for the 2012 Swap Reporting Rules, as well as in post-2012 proposals for amendments to the 2012 Swap Reporting Rules. However, there seems to have been no analysis as to whether there is any regulatory “transparency” benefit if the 2012 Swap Reporting Rules are so complex, ambiguous, internally inconsistent and difficult to apply that the SDRs collect, and provide the Commission and the markets with, unusable data.

**SIGNATURE PAGE**

**SWAP DATA RECORDINGKEEPING  
AND REPORTING REQUIREMENTS (2020)  
AND  
REAL-TIME PUBLIC REPORTING  
REQUIREMENTS (2020)**

Respectfully submitted,



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Russell Wasson  
Senior Director of Tax, Finance and Accounting  
Policy  
National Rural Electric Cooperative Association  
4301 Wilson Blvd., EP11-253  
Arlington, VA 22203  
[russell.wasson@nreca.coop](mailto:russell.wasson@nreca.coop)



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Delia D. Patterson  
SVP Advocacy & Communications and General  
Counsel  
American Public Power Association  
2451 Crystal Dr., Suite 1000  
Arlington, VA 22202  
[dpatterson@publicpower.org](mailto:dpatterson@publicpower.org)

cc: Honorable Heath Tarbert, Chairman  
Honorable Brian Quintenz  
Honorable Rostin Behnam  
Honorable Dawn Stump  
Honorable Dan M. Berkovitz  
Daniel J. Davis, General Counsel  
Meghan Tente, Acting Associate Director, Division of Market Oversight  
David E. Aron, Special Counsel, Division of Market Oversight  
Richard Mo, Special Counsel, Division of Market Oversight  
Thomas Guerin, Special Counsel, Division of Market Oversight  
Kristin Liegel, Surveillance Analyst, Division of Market Oversight  
Nancy Doyle, Senior Special Counsel, Office of International Affairs  
Gloria Clement, Senior Special Counsel  
John Coughlan, Research Economist, Office of the Chief Economist  
Owen Kopon, Special Counsel, Division of Swap Dealer and Intermediary Oversight  
Matthew Jones, Special Counsel, Division of Market Oversight  
John Roberts, Senior Research Analyst, Office of the Chief Economist

## **ATTACHMENT A**

### **DESCRIPTION OF THE NFP ELECTRIC ASSOCIATIONS**

NRECA is the national trade association representing nearly 900 local electric cooperatives and other rural electric utilities. From growing regions to remote farming communities, electric cooperatives power 1 in 8 Americans and serve as engines of economic development for 42 million Americans across 56 percent of the nation's landscape. Electric cooperatives operate at cost and without a profit incentive. Because an electric cooperative's electric service customers are also members and owners of the cooperative, all the costs of the cooperative are directly borne by its members/owners. NRECA's member cooperatives include 62 generation and transmission (G&T) cooperatives and 831 distribution cooperatives. The G&Ts generate and transmit electricity to distribution cooperatives that, in turn, provide it to the end of line co-op consumer-members. Both distribution and G&T cooperatives share an obligation to serve their member/owners 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  
POST-DODD-FRANK ACT SWAP REPORTING RULE PROPOSALS<sup>17</sup>**

	<b>CFTC RULE- MAKING</b>	<b>DATE ISSUED BY CFTC</b>	<b>FEDERAL REGISTER NUMBER</b>	<b>ELECTRIC TRADE ASSOCIATION FILING</b>
1	Interim Final Rule on Data Recordkeeping and Reporting	Oct. 14, 2010	75 Fed. Reg. 63,080	<p>Nov. 15, 2010 (NFP Energy End Users) <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26390&amp;SearchText=wasson">Link to Comment</a> <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26390&amp;SearchText=wasson">http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26390&amp;SearchText=wasson</a></p> <p>Nov. 15, 2010 (EEI) <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26394&amp;SearchText=">Link to Comment</a> <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26394&amp;SearchText=">http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26394&amp;SearchText=</a></p>
2	Pre-NOPR Comment - Data Recordkeeping and Reporting Task Force	-----	-----	<p>Nov. 16, 2010 (NFP Electrics) <a href="#">Link to Comment (PDF File)</a> <a href="http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission17_122810-5.pdf">http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission17_122810-5.pdf</a></p>
3	Interim Final Rule re: Reporting Certain Post-Enactment Swap Transactions	Dec. 17, 2010	75 Fed. Reg. 78,892	<p>Jan. 17, 2011 (NFP Electrics) <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27187&amp;SearchText">Link to Comment</a> <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27187&amp;SearchText">http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27187&amp;SearchText</a></p>

<sup>17</sup> The first list includes comments on the 2012 Swap Reporting Rules – rules regarding reporting for swap transactions. The second list includes comments on the CFTC rules for “positions” in commodity derivative contracts. In the post-Dodd-Frank Act rulemakings, those Position Reporting Rules were amended to include “swaps.” For a list of the more than 80 comment letters filed by NRECA, APPA, and the NFP Electric Associations in the Dodd-Frank rulemakings, with links to the regulatory filing dockets, please contact one of the signatories to this letter.

	<b>CFTC RULE- MAKING</b>	<b>DATE ISSUED BY CFTC</b>	<b>FEDERAL REGISTER NUMBER</b>	<b>ELECTRIC TRADE ASSOCIATION FILING</b>
				<p>Jan. 17, 2011 (EEI) <a href="#">Link to Comment</a> <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27158&amp;SearchText=">http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27158&amp;SearchText=</a></p>
4	Swap Data Recordkeeping and Reporting Requirements	Dec. 8, 2010	75 Fed. Reg. 76,573	<p>Feb. 7, 2011 (NFP Electric) <a href="#">Link to Comment</a> <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27624&amp;SearchText=">http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27624&amp;SearchText=</a></p> <p>Feb. 7, 2011 (EEI/EPISA) <a href="#">Link to Comment</a> <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27575&amp;SearchText=">http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27575&amp;SearchText=</a></p>
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	<p>Feb. 7, 2011 (NFP Electric) <a href="#">Link to Comment</a> <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27623&amp;SearchText=">http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27623&amp;SearchText=</a></p> <p>Feb. 7, 2011 (EEI/EPISA/AGA/NGSA) <a href="#">Link to Comment</a> <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27571&amp;SearchText=">http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27571&amp;SearchText=</a></p>
6	End-User Exception to Mandatory Clearing of Swaps	Dec. 23, 2010	75 Fed. Reg. 80,747	<p>Feb. 22, 2011 (NFP Electric) <a href="#">Link to Comment</a> <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27916">http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27916</a></p>

	<b>CFTC RULE- MAKING</b>	<b>DATE ISSUED BY CFTC</b>	<b>FEDERAL REGISTER NUMBER</b>	<b>ELECTRIC TRADE ASSOCIATION FILING</b>
				<a href="#">&amp;SearchText</a>  Feb. 22, 2011 (EEI/EP SA) <a href="#">Link to Comment</a> <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27939">http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27939</a> <a href="#">&amp;SearchText=</a>
7	Registration and Regulation of Swap Data Repositories	Dec. 23, 2010	75 Fed. Reg. 80,898	Feb. 22, 2011 (NFP Electrics) <a href="#">Link to Comment</a> <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27919">http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27919</a> <a href="#">&amp;SearchText</a>
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) <a href="#">Link to Comment</a> <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=32279">http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=32279</a> <a href="#">&amp;SearchText</a>
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) <a href="#">Link to Comment</a> <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=42333">http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=42333</a> <a href="#">&amp;SearchText</a>
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/EP SA) <a href="#">Link to Comment</a> <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=45702">http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=45702</a> <a href="#">&amp;SearchText=</a>

	<b>CFTC RULE- MAKING</b>	<b>DATE ISSUED BY CFTC</b>	<b>FEDERAL REGISTER NUMBER</b>	<b>ELECTRIC TRADE ASSOCIATION FILING</b>
11	Notice of Meeting of Technology Advisory Committee  (Re: SDR and transaction reporting requirements)	August 16, 2013	78 Fed. Reg. 50,040	July 3, 2013 and September 6, 2013 (APPA, EEI, EPSA, NRECA, NGSA)  <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59332&amp;SearchText=">Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59332 &amp;SearchText=</a>
12	Review of Swap Data Recordkeeping and Reporting Requirements	March 26, 2014	79 Fed. Reg. 16,689	May 27, 2014 <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59871&amp;SearchText=">Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59871 &amp;SearchText=</a>
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) <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59820&amp;SearchText=">Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59820 &amp;SearchText=</a>



	<b>CFTC RULE- MAKING</b>	<b>DATE ISSUED BY CFTC</b>	<b>FEDERAL REGISTER NUMBER</b>	<b>ELECTRIC TRADE ASSOCIATION FILING</b>
14	Comments on Commission Staff's Draft Technical Specifications for Certain Swap Data Elements	December 22, 2015		March 7, 2016 (NRECA, APPA) <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60709&amp;SearchText=">Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60709 &amp;SearchText=</a>
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) <a href="https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61274&amp;SearchText=">Link to Comment https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61274 &amp;SearchText=</a>
16	Notice of Proposed Rulemaking, Certain Swap Data Repository and Data Reporting Requirements, (RIN 3038-AE32)	May 13, 2019	84 Fed. Reg. 21044	November 1, 2019 (EEI, NRECA, APPA) <a href="https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62230&amp;SearchText=">Link to Comment https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62230 &amp;SearchText=</a>

**ADDITIONAL NFP ELECTRIC ASSOCIATION COMMENTS - ON  
POST-DODD-FRANK ACT RULE PROPOSALS FOR REPORTING  
SWAP POSITION DATA**

17	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) <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26626&amp;SearchText=wasson">Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26626 &amp;SearchText=wasson</a>
18	Adaptation of Regulations to Incorporate Swaps	June 7, 2011	76 Fed. Reg. 33,066	August 8, 2011 <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=48031&amp;SearchText=">Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=48031 &amp;SearchText=</a>
19	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) <a href="http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58829&amp;SearchText=">Link to Comment http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58829 &amp;SearchText=</a>
20	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) <a href="https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61195&amp;SearchText=">Link to Comment https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61195 &amp;SearchText=</a>