Edison Electric Institute

Power by Association

May 14, 2012

Via Electronic Submission

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

Re: Comments on Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades (RIN 3038-AD08)

Dear Mr. Stawick:

The Edison Electric Institute ("**EEI**") respectfully submits these comments in response to the Commodity Futures Trading Commission's (the "**Commission**") rulemaking regarding Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades (the "**Re-Proposal**").[1] Section 727 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**") requires the real-time public dissemination of swap transaction data, as appropriate, to enhance price discovery.[2] However, when Congress established the requirement of real-time reporting of certain swap data, it recognized that the goal of promoting price transparency must be balanced against the equally important goals of preserving market liquidity and protecting the anonymity of market participants' business transactions and market positions.[3]

To achieve that balance, the Commission has issued the Re-Proposal which would establish formulas by which the minimum block sizes for particular swap categories would be determined. Transactions in excess of those block sizes would be subject to time delays before public dissemination. Conversely, transactions below these minimum block sizes would be required to be executed on an exchange and would have their swap transaction data disseminated in real-time. As discussed more fully herein, EEI respectfully requests that the Commission eliminate minimum block sizes for certain electricity and natural gas swap categories and make

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1 *Re-Proposal*, 77 Fed. Reg. 15460 (March 15, 2012).

2 Pub. L. No. 111-203 (2010).

3 CEA Section 2(a)(13)(E)(i) provides that the Commission must ensure that information disseminated under the real-time reporting regime "does not identify the participants" and CEA Section 2(a)(13)(E)(iv) provides that the Commission must "take into account whether the public disclosure will materially reduce market liquidity." CEA Section 2(a)(13)(C)(iii) provides that with respect to certain uncleared swaps, the Commission must ensure that the manner of real-time reporting does not "disclose the business transactions and market positions of any person."

certain other modifications to the Re-Proposal in order to preserve market liquidity and protect market participants' identities.

I. Summary of EEI's Comments on the Re-Proposal

EEI is the association of U.S. shareholder-owned electric companies. EEI's members serve 95 percent of the ultimate customers in the shareholder-owned segment of the U.S. electricity industry, and represent approximately 70 percent of the U.S. electric power industry. EEI also has more than 65 international electric companies as Affiliate members, and more than 170 industry suppliers and related organizations as Associate members.

EEI's members are physical commodity market participants that rely on swaps and futures contracts primarily to hedge and mitigate their commercial risk. They are not financial entities. As users of commodity swaps and futures contracts to hedge commercial risk, EEI's members have a direct and significant interest in how the Commission determines the appropriate minimum block size for the electricity and natural gas swap categories, the cap size for transactions in these swap categories, and the level of specificity at which swap data will be publicly disseminated under the Real-Time Public Reporting Rule.[4] EEI believes that the six electricity swap contracts (the "**Electricity Swap Contracts**") and seven natural gas swap contracts (the "**Natural Gas Swap Contracts**") listed in Appendix B of the Re-Proposal (collectively, the "**Energy Swap Contracts**") and transactions in the other commodity swap categories for electricity in Appendix D (hereinafter "**Other Commodity Electricity Swap Category**") should not be subject to minimum block sizes for both the initial and post-initial periods.[5]

As explained below, the limited liquidity of the market for Energy Swap Contracts depends upon the ability of market participants to locate willing buyers and sellers through the use of intermediaries. Establishing minimum block sizes for these contracts will eliminate the possibility of using market intermediaries in some circumstances, which EEI believes could severely diminish the contracts' liquidity and potentially raise the cost of hedging for end-users like EEI's members. In addition, given the bespoke nature of transactions in the Other Commodity Electricity Swap Category, EEI believes all such transactions should be subject to a time delay to ensure that market participants entering into these swaps have sufficient time to effectively hedge their risk before the trade is publicly disseminated. Similarly, the Commission should protect the anonymity of market participants' identities and their positions by setting the

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4 *Real-Time Public Reporting of Swap Transaction Data*, 77 Fed. Reg. 1182 (Jan. 9, 2012).

5 Of the 13 swap contracts listed in proposed Appendix B, the following six are electricity swap contracts: SP-15 Financial Day-Ahead LMP Peak Contract; SP–15 Financial Day-Ahead LMP Off-Peak Contract; PJM WH Real Time Peak Contract; PJM WH Real Time Off-Peak Contract; Mid-C Financial Peak Contract; and Mid-C Financial Off-Peak Contract. The remaining seven are natural gas swap contracts. EEI defines the "Other Commodity Electricity Swap Category" as the other commodity swap category(ies) for electricity listed in proposed Appendix D and covered under proposed CFTC rule 43.6(b)(5)(iii).

cap sizes for transactions in the Electricity Swap Contracts and the Other Commodity Electricity Swap Category at a level that accurately reflects the average sizes of trades in these markets.

Accordingly, EEI respectfully requests that the Commission revise the Re-Proposal to:

- Eliminate minimum block sizes for the six Electricity Swap Contracts listed in Appendix B of the Re-Proposal and for transactions in the Other Commodity Electricity Swap Category, allowing them to be eligible for treatment as block trades or large notional off-facility swaps, regardless of the size of the transaction, during the initial and post-initial periods.[6]

- Eliminate minimum block sizes for the Natural Gas Swap Contracts proposed to be listed in Appendix B during the initial and post-initial periods.

- In the alternative, delay the adoption of initial and post-initial minimum block sizes for the Energy Swap Contracts and the Other Commodity Electricity Swap Category until the Commission has the benefit of at least one year of swap data repository ("**SDR**") data for these swap categories. However, if the Commission decides to adopt minimum block sizes for these categories of swaps, EEI recommends that the Commission adopt a post-initial minimum block size of $3 million.

- Adopt initial and post-initial cap sizes of $3 million for the Electricity Swap Contracts and the Other Commodity Electricity Swap Category.

- Disseminate the delivery or pricing point of transactions in the Other Commodity Electricity Swap Category according to the North American Electricity Reliability Corporation ("**NERC"**) regions rather than disseminating according to the Federal Energy Regulatory Commission's ("**FERC**") 10 regions.

II. Overview of the Real-Time Reporting Rule and the Re-Proposal

The Real-Time Reporting Rule requires the reporting counterparty to all swap transactions to report swap transaction data as soon as technologically practicable to SDRs. The SDRs will then publicly disseminate this swap data to the public as soon as technologically practicable, taking care to mask the identities of the counterparties. In response to Congress' mandate that the Commission "specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts" the Commission has

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[6] EEI recognizes that the Commission's Re-Proposal would not establish minimum block sizes for the Other Commodity Electricity Swap Category during the initial period. Proposed CFTC Rule 43.6(e)(2).

proposed minimum block sizes for outsize swap transactions.[7] A swap transaction in a particular swap category that exceeds the minimum block size is eligible to be treated as a block trade or large notional off-facility swap subject to a time delay before public dissemination by the SDR. Establishing correct minimum block sizes for all swap categories is essential to following Congress' instruction to protect market participants' anonymity and to preserve market liquidity while implementing the real-time reporting regime; this is particularly true for the electricity swaps markets which are still relatively small and still developing.[8]

The Re-Proposal would establish minimum block sizes for the other commodity asset class during the initial period (the period prior to the publication of post-initial minimum block sizes)[9] according to the follow groupings, among others: (1) swaps that are economically related to one of the 13 Energy Swap Contracts proposed to be listed in Appendix B, and (2) other commodity swaps listed in Appendix D (including the Other Commodity Electricity Swap Category).[10] The Commission has elected to treat the Energy Swap Contracts in Appendix B differently than the Other Commodity Electricity Swap Category when setting initial minimum block sizes.[11] Unlike transactions in the Other Commodity Electricity Swap Category, which will all be eligible to be treated as block trades or large notional off-facility swaps, as applicable, until the establishment of the post-initial minimum block sizes, the Commission has set an initial minimum block size of $25 million for the Energy Swap Contracts.[12]

For post-initial minimum block sizes, the Commission would treat the Energy Swap Contracts comparably with the Other Commodity Electricity Swap Category. The Commission proposes to establish post-initial minimum block sizes for each swap category after receiving at least one full year's worth of SDR data for each particular swap category. The Commission would then set the minimum block sizes by applying a 67-percent notional amount calculation to the SDR data of each specific swap category using a rolling three-year window of data

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7 CEA Section 2(a)(13)(E)(ii).

8 CEA Sections 2(a)(13)(E)(i) and (iv); CEA Section 2(a)(13)(C)(iii).

9 *Re-Proposal*, 77 Fed. Reg. at 15467.

10 *Re-Proposal*, 77 Fed. Reg. at 15467, 15486.

11 *Re-Proposal*, 77 Fed. Reg. at 15487. The other commodity swap categories listed in Appendix D include all swaps that are not economically related to contracts in Appendix B, the 13 energy swap contracts proposed to be added to Appendix B, and the 18 futures contracts listed under Proposed CFTC Rule 43.6(b)(5)(ii).

12 In the Re-Proposal, the Commission provides little analysis or explanation as to why $25 million is an appropriate minimum block size for the Energy Swap Contracts during the initial period. The Commission simply notes that setting the initial minimum block size for these contracts at $25 million would correspond to the level of the interim cap size for the other commodity asset class established in the Real-Time Reporting Rule and the initial cap size for the other commodity asset class proposed in the Re-Proposal. *Re-Proposal*, 77 Fed. Reg. at 15487. Presumably, due to this lack of record evidence, the Commission specifically seeks comment on whether $25 million is the correct block size. *Id*.

(beginning with one year's worth of data and adding one year of data for each calculation until a total of three years of data is available).[13]

III. The Commission Should Eliminate Minimum Block Sizes for the Electricity Swap Contracts During the Initial and Post-Initial Periods

The Commission proposes to treat the six Electricity Swap Contracts differently from transactions in the Other Commodity Electricity Swap Category based on a determination that these swap contracts are "liquid contracts serving a price discovery function."[14] EEI believes that even if the Electricity Swap Contracts may perform important price discovery functions for the electricity markets, that does not necessarily mean that the contracts themselves are sufficiently liquid to justify a $25 million block trade threshold. In short, a contract's price discovery function in the markets is not a basis for establishing its minimum block size and the Commission does not provide a justification for its decision to link the two. Moreover, even if the price discovery function of the Electricity Swap Contracts was relevant to whether they should be subject to minimum block sizes, the Commission does not provide any substantial evidence for why $25 million is the correct size.[15]

The electricity swaps market is, relative to other commodity markets, a new and developing market that is often illiquid, particularly in the deferred months. Electricity Swap Contracts are still not actively traded and are not liquid compared to many other commodity contracts (*e.g.*, New York Harbor No. 2 Heating Oil or the NYMEX Light Sweet Crude Oil contracts). Given their relative illiquidity, the price discovery function of the Electricity Swaps Contracts is not an adequate basis for establishing a $25 million block trade threshold. Rather, as explained below, substantial evidence favors eliminating the minimum block sizes for Electricity Swap Contracts during both the initial and post-initial periods.

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[13] *Re-Proposal*, 77 Fed. Reg. at 15479.

[14] *Re-Proposal*, 77 Fed. Reg. at 15487. Specifically, the Commission previously issued orders prior to the enactment of the Dodd-Frank Act finding that these contracts were significant price discovery contracts ("**SPDC**") under CEA section 2(h)(7). The Dodd-Frank Act repealed CEA section 2(h)(7) and added CEA section 4a(a)(4) which contains similar criteria for determining a SPDC in the context of excessive speculation and position limits. *Id.* at 15498.

[15] EEI recognizes that the Commission has requested comment on whether $25 million is the correct block size and thanks the Commission for the opportunity to comment. EEI also recognizes that the Commission noted in the Re-Proposal that setting the initial minimum block size for the Electricity Swap Contracts at $25 million corresponded to the level of the interim cap size for the other commodity asset class established in the Real-Time Reporting Rule and the initial cap size for the other commodity asset class proposed in the Re-Proposal. 77 Fed. Reg. at 15487. However, EEI does not believe it is appropriate to base the establishment of minimum block sizes on the Commission's analysis of the appropriate cap size for the other commodity asset class. Although related, the determination of the appropriate minimum block size for a swap category is a separate and different inquiry from the determination of the appropriate minimum block size for a swap category.

A. The Majority of Transactions in the Electricity Swap Contracts are Currently Traded in the Over-the-Counter ("OTC") Markets

Because the markets for Electricity Swap Contracts are illiquid, market participants generally are unable to transact directly on the exchanges. Instead, the vast majority of transactions in the Electricity Swap Contracts are executed in the OTC markets where market participants rely upon market intermediaries, like voice brokers, to locate buyers and sellers and otherwise negotiate the terms of the transaction.[16] For example, ICE's OTC trading platform allows market participants to choose either to (1) execute the trade *via* an electronic platform, or (2) negotiate the trade bilaterally in the OTC markets. If the OTC transactions are subsequently cleared, then they are reported as block trades on the exchange and cleared through ICE Clear U.S. Because they are principally traded in the OTC markets, ICE's OTC platform has not established minimum block sizes for the Electricity Swap Contracts (*i.e.*, even a transaction for one contract may qualify for block-trade treatment). Thus, market participants currently have the flexibility to choose to transact a trade in these contracts, regardless of the size, either on the ICE OTC platform, or off the platform with the use of a market intermediary, and the vast majority choose to execute the transaction off-platform.

A sample of End of Day Settlement Reports from the ICE OTC market demonstrates that on average, 60% to 70% of the volume of trades in the Electricity Swap Contracts on the ICE OTC platform are block trades (*i.e.*, OTC trades subsequently brought back to the exchanges to be cleared).[17] For example, the May 10, 2012 PJM WH Real Time Peak Settlement Report reveals that for the June 2012 contract, 51% of all transactions were block trades; for the August 2012 contract, 65% were block trades; and for the March 2013 contract, 91% were block trades. The more distant the contract date becomes, the higher the percentage of block trade transactions becomes (*e.g.*, for Nov. 2013, 95% of transactions were block trades). The PJM WH Real Time Peak Settlement Report's percentage of block trade transactions is consistent with the percentages of block trade transactions in the other Electricity Swap Contracts.

While market participants currently have the flexibility to choose whether to execute these contracts on or off exchanges, once the new clearing and trade execution requirements

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[16] In fact, the Electricity Swap Contracts are not available for trading *via* electronic trading platforms on all exchanges. CME Group does not list the Electricity Swap Contracts on any electronic trading platform; the contracts are not available for trading on CME Globex and CME Group has no electronic trading OTC platform. Therefore all transactions in the Electricity Swap Contracts must occur in the OTC markets, although market participants may subsequently bring the trade to CME ClearPort for clearing, in which case CME ClearPort will treat the transaction as a block trade.

[17] It is unclear to what extent Electricity Swap Contracts are executed in the OTC markets and never brought to an exchange. We have included an End of Day Settlement Report for each Electricity Swap Contract in **Appendix A** with the percentage of block trade transactions noted in the margin. The ICE OTC End of Day Settlement Reports for each of the Electricity Swap Contracts are available daily at https://www.theice.com/marketdata/reports/ReportCenter.shtml#report/116.

mandated by the Dodd-Frank Act go into effect, swaps that are required to be cleared by the Commission and are "made available for trading" by a SEF or DCM will be required to be executed on an exchange.[18] As a result, it is likely that the only way transactions with non-end-users in the Electricity Swap Contracts will be able to be facilitated by market intermediaries is if they qualify for block-trade treatment.[19] Although EEI members are predominantly end-users, EEI is concerned that restricting market participants' ability to negotiate these contracts with non-end-user counterparties will reduce the liquidity of the Electricity Swap Contracts.

B. Market Intermediaries are Necessary to Maintain Liquidity in the Electricity Swaps Market

The flexibility to transact in Electricity Swap Contracts through the use of market intermediaries is essential to maintaining the liquidity of these contracts. The illiquidity of these contracts on exchanges is not limited to large transactions, but rather is intrinsic to the contract itself. Even small transactions are difficult to execute on the exchanges. For example, the May 10, 2012, ICE OTC End of Day Settlement Reports for the Mid C Peak contract shows that for many contract months there is no transaction volume.[20] If market participants were forced to transact the Electricity Swap Contracts on the exchanges, they would likely be unable to find willing counterparties to their trades or would be forced to trade on very broad bid/ask spreads. It is essential that the Commission eliminate minimum block sizes for the Electricity Swap Contracts, thereby preserving the contracts' liquidity by ensuring that market participants will be able to use market intermediaries to locate willing counterparties, regardless of whether the transaction qualifies for the end-user exception.

If the Commission departs from the exchanges' status quo and establishes a minimum block size for the Electricity Swap Contracts, a certain amount of trades will be required to be executed on the exchanges, if they can be executed at all.[21] Without the benefit of market

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[18] CEA Section 2(h)(8)(A) provides that if a swap is subject to the mandatory clearing requirement, then it must be executed on a DCM or SEF. CEA Section 2(h)(8)(B) provides an exception from this exchange execution requirement for swaps which are not made "available to trade" on a DCM or SEF and for swap transactions with end-users. *See also* CEA Section 2(h)(1)(A)(providing that "it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization … if the swap is required to be cleared" and establishing the Commission's process for designating swaps as required to be cleared).

[19] EEI acknowledges that whether voice brokered trades will be permitted on SEFs has not yet been determined because the *Core Principles and Other Requirements for Swap Execution Facilities* proposed rule has not yet been finalized. However, the proposed rule would not treat voice trading as a permitted form of trade execution. 76 Fed. Reg. 1214, 1218 (Jan. 7, 2011).

[20] The May 10, 2012 End of Day Settlement Report shows that there were no transactions for contract months beyond September 2012.

[21] End-users will be able to continue to negotiate transactions in the Electricity Swap Contracts off-exchange due to the end-user exemption from clearing under CEA § 2(h)(7) and the exemption from trade execution requirements under CEA § 2(h)(8)(B).

intermediaries, EEI believes that the liquidity of the Electricity Swaps Contracts will likely be significantly diminished, if not altogether eliminated, for trades below the minimum block size threshold. Diminishing the liquidity of the Electricity Swaps Contracts will likely negatively impact EEI members' ability to use these contracts to effectively hedge and mitigate their commercial risk. By making effective risk management options more costly for end-users of swaps, the establishment of minimum block sizes for Electricity Swap Contracts will likely result in higher and more volatile energy prices for residential, commercial, and industrial customers.

Accordingly, in order to preserve the liquidity and efficient operation of the electricity markets, as well as to fulfill Congress' mandate that the Commission balance the Real-Time Reporting Rule's goal of promoting price discovery with the goal of maintaining market liquidity, EEI respectfully requests that the Commission eliminate minimum block sizes for the Electricity Swap Contracts.

IV. The Commission Should Eliminate Minimum Block Sizes for the Natural Gas Swap Contracts During the Initial and Post-Initial Periods

EEI members rely heavily on the Natural Gas Swap Contracts as a hedge against the price of electricity and thus have a significant interest in the establishment of the appropriate minimum block sizes for these contracts. Like the Electricity Swap Contracts, the Natural Gas Swap Contracts are relatively illiquid contracts dependent upon market intermediaries to locate willing buyers and sellers. As the End of Day Settlement Reports in **Appendix B** show, the majority of transactions in these contracts on the ICE OTC trading platform have been negotiated bilaterally and subsequently brought back onto the exchange to be cleared at ICE Clear U.S.[22] If, as a result of the Dodd-Frank Act's new clearing and trade execution mandates the Natural Gas Swap Contracts are required to be transacted on exchanges, the liquidity of the contracts will likely be significantly diminished.[23] Accordingly, in order to preserve the liquidity of the Natural Gas Swap Contracts, EEI requests that the Commission eliminate minimum block sizes for these contracts during the initial and post-initial periods.

However, if the Commission decides to set minimum block sizes for these contracts, EEI believes that the proposed block size of $25 million during the initial period is too high. The Commission has proposed an initial block size of 1,000,000 mmBtu for the Henry Hub Natural

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[22] As a point of reference, **Appendix B** also contains the End of Day Settlement Report for the HHNG futures contract, demonstrating that typically fewer than 10% of all transactions are block trades for near-term months.

[23] The Natural Gas Swap Contracts would be required to be executed on exchanges if the Commission determined that they were subject to the mandatory clearing requirement and they were "made available to trade" by DCMs and SEFs. EEI recognizes that transactions with end-users would not be subject to the trade execution requirement, but is concerned that by placing limitations on market participants' ability to negotiate these contracts with some counterparties, the overall liquidity of the Natural Gas Swap Contracts will be impaired. As noted above, EEI also recognizes that the ability to transact *via* voice brokers on SEFs is currently an unresolved issue.

Gas futures contract ("**HHNG futures contract**"), which is roughly equivalent to a minimum block size of $3 million.[24] Because the HHNG futures contract is widely recognized as one of the most liquid energy futures contracts, it would be inappropriate to establish a minimum block size larger than the HHNG futures contract's minimum block size for the significantly more illiquid Natural Gas Swap Contracts. Therefore, EEI respectfully requests that any minimum block size established by the Commission for the Natural Gas Swap Contracts not be greater than $3 million.

V. During the Post-Initial Period, the Commission Should Eliminate Minimum Block Sizes for the Other Commodity Electricity Swap Category

The majority of transactions in the Other Commodity Electricity Swap Category listed under Appendix D are highly tailored, bespoke transactions that are designed to meet the particular needs of an end-user. These transactions often occur in thinly traded, illiquid markets and are typically not capable of being cleared on an exchange. EEI's members engage in a substantial number of these transactions with other end-user and traditional commercial counterparties as well as with financial entities. Given the customized nature of these transactions any minimum block size may be too large to preserve liquidity and protect counterparty identities. Consequently, EEI respectfully requests that the Commission eliminate minimum block sizes for transactions in the Other Commodity Electricity Swap Category.

A. A Minimum Block Size for the Other Commodity Electricity Swap Category Would Impair Market Liquidity and Raise Transaction Costs for End-Users

As the Commission notes in the preamble to the Re-Proposal, the "publication of detailed information about an outsize swap transaction may alert the market to the possibility that the original liquidity provider to the outsize swap transaction will be re-entering the market to offset that transaction."[25] As soon as other market participants become aware of a liquidity provider's need to offset the risk of a large transaction, they are in a position to extract a premium from the liquidity provider, the cost of which will ultimately be passed on to their end-user counterparties.

EEI is concerned that, given the illiquidity of the electricity markets and the predominance of non-standardized swap transaction, real-time reporting of transactions in the Other Commodity Electricity Swap Category, may inadvertently result in the disclosure of counterparty identities. As a result of this disclosure, other market participants may seek to

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[24] The HHNG futures contract prices for the months in 2013 are currently trading in the mid-$3.00 range, equating the current minimum block size of a HHNG futures contract to a notional value of approximately $3.5 million, whereas in the near-term 2012 months, the price is in the mid $2.00 range, equating to a notional value of $2.5 million.

[25] *Re-Proposal*, 77 Fed. Reg. at 15466.

obtain a premium from transactions with liquidity providers, who will be trying to manage their risks arising from the initial trade. End-users like EEI's members will likely face higher hedging costs as the liquidly provider passes on the premium to them, and these higher hedging costs, in turn, may deter end-users from using swaps to mitigate commercial risk or may lead to trading inefficiencies, such as unnecessarily fragmenting large trades into smaller hedges. Furthermore, as the Commission notes, the higher transaction costs for liquidity providers may deter some market participants from entering into outsize transactions with counterparties in the first place, thereby decreasing market liquidity.[26] Accordingly, EEI urges the Commission to preserve the liquidity of the electricity markets and eliminate minimum block sizes for the Other Commodity Electricity Swap Category.

B. Bespoke Other Commodity Electricity Swap Transactions Should Not Be Subject to Real-Time Reporting

As EEI has noted previously in its joint comment letter with the Electric Trade Associations, most electric companies hedge their commercial risks in bespoke swaps containing multiple unique terms.[27] Their commercial risks are system-specific, geography-specific, seasonal, and include such highly specific variables as generation or transmission availability or the load projections for a particular utility. As the Commission noted in the notice of proposed rulemaking for the Real-Time Reporting Rule, there may be energy markets for which the underlying asset is so specific that there are only two active parties trading in the market.[28] Regardless of the size of the transaction, real-time disclosure under such circumstances would result in the inadvertent disclosure of the counterparties' identities in contravention of Congress' direction in CEA Section 2(a)(13)(E)(iv) and would impair the ability of a liquidity provider to offset its risk from the transaction.

The Commission should balance the Real-Time Reporting Rule's goal of facilitating price discovery with Congress' direction that real-time reporting not disclose business transactions and market positions of market participants or materially reduce market liquidity. Given the small number of market participants in some segments of the electricity markets and the bespoke nature of these energy swap transactions, EEI is concerned that real-time reporting of such transactions will reveal counterparty identities, regardless of the size of the transaction and the geographic safeguards the Commission has put in place. The end result would be to diminish the liquidity provider's ability to manage its risk from entering into the transactions with end-users and the disclosure of counterparty identities. Moreover, real-time reporting of

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[26] *Id*.

[27] Electric Trade Associations (including EEI), Comments on Notice of Re-Opening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act (17 C.F.R. Part 1) at 12 (June 3, 2011).

[28] *Real Time Public Reporting of Swap Transaction Data*, Proposed Rule, 75 Fed. Reg. 76140, 76150 (Dec. 7, 2010).

these bespoke energy swap transactions does little, if anything, to enhance price discovery given the non-standardized terms of the transactions and the small volume of transactions occurring in these specific markets. In order to maintain the liquidity of the electricity markets and protect market participants' anonymity, EEI respectfully requests that the Commission eliminate minimum block sizes for the Other Commodity Electricity Swap Category.

VI. In the Alternative, The Commission Should Delay the Establishment of Minimum Block Sizes for the Energy Swap Contracts and the Other Commodity Electricity Swap Category Until It Has at Least One Year of SDR Data

If the Commission decides to adopt minimum block sizes for the Energy Swap Contracts (*i.e.*, both the Electricity and Natural Gas Swap Contracts in Appendix B) and the Other Commodity Electricity Swap Category, EEI requests that the Commission delay the adoption of such minimum block sizes, or any formula to establish such minimum block sizes, until it has the benefit of at least one year of SDR data for these swap categories. In the interim, all transactions in the Energy Swap Contracts and the Other Commodity Electricity Swap Category should remain eligible for block-trade treatment. Without the benefit of market data at the outset, the Commission cannot be certain that any formula or minimum block size it adopts will result in the appropriate minimum block size for the electricity and natural gas markets. In any event, EEI believes that the minimum block sizes for the Energy Swap Contracts and the Other Commodity Electricity Swap Category should be no greater than $3 million.[29] As noted above, a $3 million minimum block size is roughly equivalent to the 1,000,000 mmBtu initial block size that the Commission proposes for the HHNG futures contract. It would be inappropriate to establish a minimum block size greater than the minimum block size of one of the most liquid energy futures contracts for the significantly more illiquid Energy Swap Contracts and Other Commodity Electricity Swap Category.

VII. The Commission Should Establish Initial and Post-Initial Cap Sizes of $3 Million for the Electricity Swap Contracts and the Other Commodity Electricity Swap Category

EEI agrees with the Commission that cap sizes are necessary to protect counterparties' anonymity and preserve market liquidity as required by CEA sections 2(a)(13)(E)(i) and (iv).[30] However, the Commission's initial cap size of $25 million for both the Electricity Swap Contracts and the Other Commodity Electricity Swap Category is too high to accomplish either

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[29] EEI supports denominating the minimum block size for the Energy Swap Contracts in USD rather than notional quantity (*e.g.*, Mwh). Denominating minimum block sizes in USD indexed to inflation promotes standardization across the various trading hubs in the electricity and natural gas markets.

[30] *Real-Time Reporting Rule*, 77 Fed. Reg. at 1213-14.

of these objectives.[31] Similarly, EEI believes that the CFTC's proposal to set post-initial cap sizes by applying a 75-percent notional amount calculation to the SDR data of a specific swap category using a rolling three-year window of data (beginning with one year's worth of data and adding one year of data for each calculation until a total of three years of data is available) would also result in an inappropriately high cap size that fails to adequately protect counterparty identities and provide liquidity providers with sufficient time to hedge their risk.[32]

In the electricity markets, even transactions that have small notional values may enable sophisticated market participants to discern counterparty identities or require liquidity providers to gradually offset their risk over the course of days or even weeks. For example, although the average size transaction of EEI members in the Electricity Swap Contracts is $11 million, it is not unusual for EEI members to enter into transactions as small as $3 million. In order to protect counterparty identities and prevent other market participants from extracting premiums from liquidity providers offsetting the risks from these transactions, EEI recommends that the Commission adopt a fixed cap size of $3 million during both the initial and post-initial periods.

VIII. The Commission Should Mask the Delivery or Pricing Locations for Other Commodity Electricity Swaps According to the NERC Regions

EEI supports the Commission's proposal to mask the geographic details of key delivery or pricing locations for certain swaps in the other commodity asset class.[33] Under the Re-Proposal, the swap transaction data for off-facility swaps in the Other Commodity Electricity Swap Category would be publicly disseminated using "masked" delivery and pricing points to ensure the counterparties' anonymity. Specifically, the Re-Proposal proposes to mask the specific delivery or pricing points by referencing one of FERC's 10 electric power markets, including ERCOT.[34]

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[31] Specifically, under the Re-Proposal, initial cap sizes for each swap category would be equal to the greater of (1) the initial appropriate minimum block size for the respective swap category in Appendix F, or (2) the respective cap sizes set in proposed CFTC Rule 43.4(h)(1)(i)-(v). If Appendix F does not establish an appropriate minimum block size for the swap category, then the cap size will be determined according to proposed CFTC Rule 43.4(h)(1)(i)-(v). Appendix F sets the initial cap size for the 13 Energy Swap Contracts at $25 million and proposed CFTC Rule 43.4(h)(1)(v) would set the initial cap size for swaps in the other commodity asset class at $25 million. *See* proposed CFTC Rule 43.4(h)(1) and Appendix F.

[32] *Re-Proposal*, 77 Fed. Reg. at 15479, 15491.

[33] Proposed CFTC Rule 43.4(d)(4)(iii); 77 Fed. Reg. at 15494. Under the Re-Proposal, swaps in the other commodity asset class that are not described in proposed CFTC Rule 43.4(d)(4)(ii) (describing swap transactions that reference, or are economically related to, one of the contracts described in Appendix B and transactions executed on or pursuant to a DCM/SEF) would be allowed to mask their specific delivery or pricing points.

[34] Proposed CFTC Rule 43.4(d)(4)(iii); 77 Fed. Reg. at 15495. *See* Appendix E.

While EEI supports the Commission's proposal to mask the specific delivery and pricing points for off-facility transactions in the Other Commodity Electricity Swap Category, EEI respectfully requests that the Commission mask the data according to the NERC regions. The NERC's eight regions are broader than the FERC regions and include much of Canada. Public dissemination of pricing and delivery location at this level of detail strikes the appropriate balance between protecting the identities of market participants while enhancing price discovery in the electricity markets.

IX. Conclusion

EEI appreciates the Commission's consideration of our comments on the Re-Proposal. For the reasons stated herein, we respectfully request that the Commission eliminate minimum block sizes for the Energy Swap Contracts and Other Commodity Electricity Swap Category in order to preserve the liquidity of the electricity and natural gas markets and protect the anonymity of market participants. EEI also requests that the Commission establish initial and post-initial cap sizes of $3 million for the Electricity Swap Contracts and the Other Commodity Electricity Swap Category and give consideration to our suggestion to mask the delivery and pricing locations of electricity transactions according to the NERC regions.

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Please contact us at the number listed below if you have any questions regarding these comments.

Respectfully submitted,

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Enclosures