211 Carnegie Center
Princeton, NJ 08540

February 22, 2011

**Via Electronic Submission:** https://comments.cftc.gov

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

**Re: Further Definition of "Swap Dealer" and "Major Swap Participant" (RIN 3038-AD06)**

Dear Mr. Stawick:

NRG Energy, Inc. ("NRG") appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the "Commission") on its December 21, 2010 Notice of Proposed Rulemaking on Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," and "Eligible Contract Participant" (the "Proposed Rules").[1]

## I. Overview of NRG's Business

NRG is a wholesale power generation company with a significant presence in major competitive power markets in the U.S., as well as a major retail electricity provider through Reliant Energy and Green Mountain Energy Company. NRG is engaged in the ownership, development, construction and operation of power generation facilities, the transacting in and trading of fuel and transportation services, the trading of energy, capacity and related products, and the supply of electricity and energy services to retail electricity customers, primarily in the Texas market.

NRG has a total domestic generation portfolio of 180 active operating fossil fuel and nuclear generation units, at 45 power generation facilities, with an aggregate generation capacity of approximately 23,600 megawatts ("MW"), as well as ownership interests in renewable facilities with an aggregate generation capacity of 470 MW. NRG's domestic generation fleet consists of intermittent, baseload, intermediate and peaking power generation units. The sale of capacity and power from baseload generation facilities accounts for the majority of NRG's revenues.

[1] These comments are submitted without prejudice to, and subject to a reservation of all rights regarding, the Petition dated September 20, 2010, that NRG Power Marketing LLC submitted to the Commission for relief under Section 723(c) of Dodd-Frank Wall Street Reform and Consumer Protection Act.

Reliant Energy and Green Mountain Energy Company, NRG's retail electricity providers, arrange for the transmission and delivery of electricity to customers, bill customers, collect payments for electricity sold and maintain call centers to provide customer service. Based on metered locations, Reliant Energy and Green Mountain Energy Company serve approximately 1.9 million residential, commercial and industrial customers.

NRG is also focused on development and investment in new sustainable and low carbon energy businesses and technologies. NRG's current initiatives in these areas include: (i) low carbon baseload – primarily nuclear generation; (ii) renewables, with a concentration in solar and wind generation development; (iii) fast start, high efficiency gas-fired capacity; (iv) electric vehicle ecosystems; and (v) smart grid services. Implementation of these initiatives will require the investment of significant amounts of new capital, which will have the important added benefit of creating thousands of new jobs for American workers.

## II. Concerns Regarding the Proposed Rules

NRG hedges the exposure that its baseload generation and retail load operations have to price volatility in the physical markets for fuel and electricity through swap transactions. NRG generally collateralizes its obligations for a significant portion of these swaps by providing counterparties with liens on substantially all of the assets of NRG and its domestic subsidiaries that own electric power generation units (each such subsidiary, a "Generation Sub"). As discussed in more detail below, these secured swap positions are fully collateralized and do not pose any systemic risk to the financial system of the United States.

If the Commission's final rules implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act" or the "Act") are written in a way that requires NRG or one of its subsidiaries to register as a major swap participant ("Major Swap Participant") or swap dealer ("Swap Dealer") because of its hedging activities, or that otherwise limits NRG's ability to continue to secure its swap obligations using liens on the physical assets of NRG and its Generation Subs, such rules would dramatically increase the cost of conducting NRG's hedging program. These costs, under historic patterns of electricity and fuel price volatility, would be so substantial that they could force NRG to either curtail its hedging program or reduce its investments in new sustainable and low carbon energy businesses and technologies – or both. None of these results would be good from a public policy perspective. The curtailment of NRG's hedging program would expose NRG to the risks associated with volatile fuel and energy prices. Curtailment of NRG's investment plans will slow the growth of sustainable and low carbon energy businesses and technologies and reduce the number of new jobs such investments create for American workers.

There is no reason for implementation of the Dodd-Frank Act to produce such results. The Act was clearly intended to be implemented in a way that will permit end-users to continue

to use swaps for hedging purposes without undue interference.[2] The principal authors of the Act were unanimous in their agreement that "Congress does not intend to regulate end-users as Major Swap Participants or Swap Dealers just because they use swaps to hedge or manage commercial risks associated with their business."[3] Moreover, Section 2(h) of the Commodity Exchange Act (the "CEA"), as amended by Section 723 of the Act, expressly provides that end-users (like NRG) that use swaps to hedge or mitigate commercial risk should not be required to clear such swaps through central clearinghouses. Further, Section 4(s) of the CEA, as added by Section 731 of the Dodd-Frank Act, makes clear that end-users must be permitted to continue to use "noncash collateral" to secure their obligations under swaps that are not required to be cleared.

Implementation of the Act in this manner is also consistent with the current Administration's overarching view that effective regulation can and should be structured in a manner that does not hinder the ability of American businesses to innovate and compete. For example, in a recent speech to the U.S. Chamber of Commerce, President Obama called on U.S. businesses to make investments in new technologies, including clean energy technologies, and to create new jobs for American workers. In return, he promised that his administration would knock down regulatory barriers that make it hard for U.S. businesses to compete. As outlined above, NRG is making significant investments in new clean energy technologies, investments that will create thousands of new jobs for American workers. These new investments, however, will be put at risk unless the Commission fulfills its part of the bargain that the President has promised.

The final rules implementing the Major Swap Participant and Swap Dealer provisions of the Dodd-Frank Act must allow NRG, as an end-user, to continue to conduct its hedging program under the statute's end-user exception, that is, in a way that does not require NRG or one of its subsidiaries to register as a Major Swap Participant or Swap Dealer and that permits NRG to continue to secure its obligations under swaps through the use of liens on physical assets. This is the only rulemaking outcome under which NRG will avoid needing to substitute what may be a billion dollars or more of cash collateral for the highly effective collateral currently provided at a much lower cost by liens on NRG's generating assets. Thus assuring NRG is not needlessly swept into either the Major Swap Participant or Swap Dealer category is the only outcome of this rulemaking that will not directly put at risk NRG's ability to make its planned investments in new sustainable and low carbon energy businesses and technologies and to create the new jobs for American workers that will result from such investments.

NRG appreciates the efforts the Commission has made to avoid directly categorizing end-users such as ourselves as Major Swap Participants or Swap Dealers. However, our review of the Proposed Rules indicates a number of areas that still pose a substantial risk of sweeping end-users such as ourselves into these categories, which would deny us the ability to benefit from the

---

[2] See letter dated June 30, 2010 (the "Dodd-Lincoln Letter"), from Chairman Christopher Dodd, Senate Committee on Banking, Housing and Urban Affairs, and Chairman Blanche Lincoln, Senate Committee on Agriculture, Nutrition and Forestry, to Chairman Barney Frank, House Financial Services Committee, and Chairman Colin Peterson, Chairman, House Committee on Agriculture.
[3] See the Dodd-Lincoln Letter at 3.

statute's end-user exception. In our comments below, lay out a path through which such results can be avoided, consistent with the terms of the Dodd-Frank Act.

## III. Major Swap Participant

Under the Dodd-Frank Act, a person that is not a Swap Dealer can be required to register as a Major Swap Participant if such person: (i) maintains a "substantial position" in any of the major swap or security-based swap categories, excluding positions held for hedging or mitigating commercial risk (the "Substantial Position Test"); or (ii) maintains outstanding swaps that create "substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets" (the "Substantial Exposure Test"). Under the Proposed Rules, each of the Substantial Position Test and the Substantial Exposure Test will, in turn, be implemented by reference to measures of current exposure and potential exposure.

### A. Current and Potential Exposures should be Subject to Reduction where Secured by Liens on Physical Assets

The Proposed Rules will permit a person's current exposure with respect to its swaps to be reduced by the value of the collateral it has "posted" with respect to such swaps. They also will permit a person's potential exposure with respect to its swaps to be reduced to the extent that such swaps are subject to daily mark-to-market margining or are cleared by a derivatives clearing organization.

The Proposed Rules do not, however, appear to permit reductions in current exposure or potential exposure where such exposures are secured by liens on physical assets. This will create problems for end-users like NRG that rely on liens on physical assets, instead of cash and letters of credit, as the primary means of securing their obligations under swaps. The absence of current exposure reductions and potential exposure reductions for swaps secured by liens on physical assets increases the likelihood that a party that relies on such liens to secure its swap obligations will be required to register as a Major Swap Participant. It also has the indirect effect of discouraging the use of liens on physical assets as a form of collateral for swap obligations.

Such results are inconsistent with the purposes of the Dodd-Frank Act and unnecessary given that liens on physical assets are one of the most basic, reliable and widely used forms of collateral. Swap counterparties that accept liens on physical assets as collateral for swap obligations are in the business of making sophisticated credit judgments concerning the ability of the grantors of such liens to meet their obligations and the sufficiency of the pledged physical assets to cover the obligations in the event of a default. While the terms of these secured hedging arrangements vary, all of them are designed to provide the grantor of the lien with a cost effective means of securing its obligations under swaps, while at the same time ensuring that the counterparties will be made whole in the event of a grantor default.

Pursuant to a Guarantee and Collateral Agreement,[4] NRG and its Generation Subs have pledged substantially all of their physical assets (including the generation units owned by the Generation Subs) (collectively, the "Collateral") to secure, among other things, the obligations NRG and its subsidiaries under swaps that meet the requirements set forth in NRG's Collateral Trust Agreement.[5] Under Section 3.8 of the Collateral Trust Agreement, NRG may, on a transaction-by-transaction basis, permit the counterparties to swaps that meet the following criteria to share in the liens on the Collateral:

(i) the only swaps that can be secured by the Collateral are those that hedge sales of electric capacity or energy (or that offset such hedges);[6]

(ii) the amounts of capacity and energy that can be covered by all secured swaps, together with the amounts of capacity and energy that can be covered by all secured physical forward sales of such commodities, can never collectively exceed specified percentages of the production capabilities of the generation units included in the Collateral; and

(iii) the aggregate amount of exposure of all counterparties in respect of all secured swaps can only be increasing in circumstances where the market prices of capacity and/or energy are increasing and can never exceed the aggregate value of the generation units included in the Collateral because each increase in the market price of capacity or energy also will result in a corresponding increase in the market value of such generation units.

Collectively, these NRG Collateral Trust Agreement requirements provide counterparties to secured swaps with NRG and its subsidiaries with assurance that the value of the Collateral securing the swaps will be more than sufficient to cover the obligations arising from the swaps in the event of a default. NRG uses secured swaps primarily to hedge the output of its baseload generation units, and these baseload generation units have been pledged to secure the obligations arising under such swaps. Baseload generation units are the backbone of an electric power system; they operate on an around-the-clock basis except when they are taken out of service for maintenance or by an outage. Our secured swap counterparties take additional comfort from the fact that it is highly likely that the baseload generation units included in the Collateral will continue to operate even in the event of an NRG default and that such operations will produce the cash flows necessary to satisfy any and all financial obligations arising from the secured swaps.

---

[4] "Guarantee and Collateral Agreement" means that certain Guarantee and Collateral Agreement dated as of February 2, 2006, as amended from time to time, among NRG, the Guarantors from time to time party thereto and Deutsche Bank Trust Company Americas, as priority collateral trustee and parity collateral trustee.

[5] "Collateral Trust Agreement" means that certain Amended and Restated Collateral Trust Agreement dated as of June 30, 2010, among NRG, the Grantors from time to time party thereto, Citigroup North America Inc., as administrative agent, J. Aron & Company, as counterparty under the GS Commodity Hedging Agreement, and Deutsche Bank Trust Company Americas, as priority collateral trustee and parity collateral trustee.

[6] The ability to enter into new secured swaps that offset existing secured hedging swaps enables NRG to adjust its hedges as circumstances change.

The protections provided by the NRG Collateral Trust Agreement are fully comparable to the protections provided by the "posted" collateral and daily mark-to-market margining systems that, under the Proposed Rules, will be allowed to reduce current exposures and potential exposures for purposes of the Major Swap Participant provisions. This comparability of protection justifies amending the Proposed Rules to allow swaps that are secured by liens on physical assets that meet standards like those set forth in the NRG Collateral Trust Agreement[7] to produce reductions in the current exposures and potential exposures arising from such swaps that are comparable to the reductions that the Proposed Rules allow for swaps that are secured by "posted" collateral and daily mark-to-market margining arrangements.

Such amendments will be fully consistent with the purposes of the Dodd-Frank Act. It would make little or no sense to require a person to register as a Major Swap Participant based on swap exposures that are fully collateralized by liens on physical assets. Such swap exposures will not contribute to systemic risk because no such risk can arise from swaps that are fully collateralized. These amendments are also consistent with the margining provisions of the Dodd-Frank Act, which recognize that noncash collateral can be equivalent to cash collateral in reducing capital margin requirements.[8] They also will allow NRG and other similarly situated end-users to continue to meet their swap collateral obligations in a cost effective manner that will not divert working capital into margin accounts or otherwise discourage hedging. Further, these amendments will avoid putting at risk NRG's ability to continue funding its planned investments in new sustainable and low carbon energy businesses and technologies and, in so doing, to create new jobs for American workers.

B. Swaps held to Hedge or Mitigate Commercial Risk should not be Considered for purposes of the Substantial Exposure Test

Under the Proposed Rules, swaps that a person holds to hedge or mitigate commercial risk will not be considered for purposes of determining whether such person's swap positions satisfy the Substantial Position Test. In contrast, positions held to hedge or mitigate commercial risk will be considered in determining whether a person's overall swap position satisfies the Substantial Exposure Test. The Commission has asked for comment on whether positions held to hedge or mitigate commercial risk should be excluded from determinations of whether the Substantial Exposure Test has been satisfied. NRG respectfully suggests such positions be excluded.

Including swaps held to hedge or mitigate commercial risk in determinations of whether a person's overall swap position satisfies the Substantial Exposure Test can only increase the likelihood that such person will be required to register as a Major Swap Participant. Such a result is totally inconsistent with the purposes of the Dodd-Frank Act. Registration as a Major Swap Participant will impose significant regulatory burdens and major costs on an end-user. If

[7] The foregoing description of the requirements of the NRG Collateral Trust Agreement is merely intended to illustrate the manner in which one group of swap counterparties have structured their security arrangements with one end-user and is not meant to exclude other structures that are designed to achieve the same or similar objectives that other swap counterparties use with other end-users.

[8] See Section 731 of the Act.

an end-user is faced with a choice between registering as a Major Swap Participant and curtailing its hedging activities, many end-users will choose the latter route. Such a result will promote, and not reduce, systemic risk. End-users did not cause the financial crisis and they should not be required to register as Major Swap Participants simply because they use swaps to hedge or manage commercial risks associated with their businesses.[9] Accordingly, swaps held to hedge or mitigate commercial risk should be excluded from determinations of compliance with the Substantial Exposure Test, just as they are excluded from determinations of compliance with the Substantial Position Test.

C. Netting should be Permitted in respect of all Transaction Types covered by Section 561 of the U.S. Bankruptcy Code

In calculating current exposure, the Proposed Rules will permit a person to apply the terms of any master netting agreements it has with swap counterparties.[10] In such calculations, a person will be able to take account of all offsetting positions involving swaps, security-based swaps and securities financing transactions (consisting of securities lending and borrowing, securities margin lending and repurchase and reverse repurchase agreements) to the extent such offsets are consistent with the terms of the relevant master netting agreement.

Significantly, however, the proposed list of the types of transactions that can be taken into account in calculating net exposure under a master netting agreement (i.e., swaps, security-based swaps and securities financing transactions) does not include forward contracts. This exclusion of forward contracts from net exposure calculations will create problems for end-users like NRG that have numerous netting agreements in place that also permit the netting of forward contracts with swaps.

The purpose of master netting agreements is to reduce risk. Greater risk reductions can be achieved by including the broadest possible range of transaction types within the permitted scope of master netting agreements. With a U.S. counterparty that is eligible to be a debtor under the U.S. Bankruptcy Code (the "Bankruptcy Code"), the only real limit on the range of transaction types that can be covered by a master netting agreement is the limit that the Bankruptcy Code places on the transaction types that can be terminated and netted free of the automatic stay that otherwise goes into effect upon the commencement of a Bankruptcy Code proceeding with respect to such a counterparty. Currently, this list of eligible transaction types includes securities contracts, commodity contracts, forward contracts, repurchase agreements and swap agreements (as each such term is defined in the Bankruptcy Code). See, e.g., Section 561 of the Bankruptcy Code.

NRG has a particular interest in the risk reducing effects of master netting agreements that cover both swaps and forward contracts. Under such agreements, NRG is able to conduct both its physical energy transactions and its energy swap transactions with a single counterparty

[9] See the Dodd-Lincoln Letter at 3.
[10] The Proposed Rules do not define the term "master netting agreement." The Commission should clarify that this term includes all standard industry master agreements for swaps (including, without limitation, the various ISDA Master Agreements) without regard to whether such agreements are expressly styled as master netting agreements.

under a single agreement. This allows NRG's exposure to the counterparty on the physical transactions and the swap transactions to be combined and managed on a net basis, thus providing for reductions in NRG's overall risk exposure to the counterparty

In order to fully achieve the risk reducing benefits of master netting agreements, we recommend that the Proposed Rules should be amended (i) to encompass all of the transaction types covered by Section 561 of the Bankruptcy Code (including, without limitation, forward contracts) and (ii) to define the permitted transaction types by reference to the Bankruptcy Code definitions of the related terms. Such amendments will allow the master netting agreement provisions of the Proposed Rules to operate in a manner that is consistent with the full scope that the Bankruptcy Code provides for master netting agreements and also will allow such agreements to achieve their broadest possible risk reduction effects.

The Proposed Rules also permit adjustments to the potential exposure arising from swaps that are subject to master netting agreements. While the potential exposure adjustment provisions relating to master netting agreements do not expressly limit the types of transactions that can be the basis for such adjustments, NRG also recommends that all of the transaction types covered by Section 561 of the Bankruptcy Code should be included in the types of transactions that can be taken into account in calculating master netting agreement adjustments to potential exposure.

D. Retain the Proposed "Economically Appropriate" Standard

Under the Proposed Rules, an "economically appropriate" standard is to be used in identifying swaps that hedge or mitigate commercial risk. The Commission has, however, asked for comment whether this "economically appropriate" standard should instead be replaced by a "highly effective" standard.

NRG opposes replacement of the "economically appropriate" standard with a "highly effective" standard. There is very little liquidity in the physical and financial markets for power beyond about 12 months. This creates challenges for end-users like NRG that seek to hedge portions of their expected energy output for up to five years forward. Such hedges can only be put on in swap markets for other energy commodities, such as natural gas, that have significant liquidity in such forward periods and that have shown price correlations with energy prices. Based on current electric energy industry hedging practices, it should be possible for such swaps to meet the proposed "economically appropriate" standard for identifying swaps that hedge or mitigate commercial risk. In contrast, it might be more difficult for such swaps to meet a "highly effective" standard. Accordingly, we oppose replacement of the "economically appropriate" standard with a "highly effective" standard because such a change could interfere with the ability of electric energy producers to hedge their future output in the only swap markets that are presently available to them for such hedging. Such a result would not be consistent with the purposes of the Dodd-Frank Act.

## IV. Swap Dealer

### A. Clarify the "not as part of a regular business" Exception to the Swap Dealer Definition

In the preamble to the Proposed Rules, the Commission states that the Dodd-Frank Act defines the term Swap Dealer in a "functional matter," encompassing how a person holds itself out in the market, the nature of the conduct engaged in by the person, and how the market perceives the person's activities. In this regard, the Commission also maintains that there are certain distinctive functional characteristics of Swap Dealers, including that they tend to accommodate demand for swaps from other parties. The Commission also notes that one of the factors that can be used to identify Swap Dealers is that they contact potential counterparties to solicit interest in swaps.

Collectively, these statements can be taken to imply that a swap transaction cannot take place unless one of the parties to the transaction is a Swap Dealer. We urge the Commission not to impose such a definition on end-user parties to a bilateral transaction. Such a definition would impose substantial harm on power sector end-users, with no countervailing public benefit in terms of reducing systemic risk. In the power sector, a Swap Dealer is no more than a middle man. It enters into one side of a swap transaction with Party A and the other side of the same transaction with Party B. If Party A and Party B can find one another without the intermediation of a Swap Dealer, they should be free to enter into the relevant swap transaction directly with one another without one of them being required to register as a Swap Dealer.

Direct transactions between end-users happen frequently in certain small or specialized electric capacity and energy markets, such as, for example, load pockets. A load pocket is a geographical market in which, due to transmission constraints and other factors, the demand for electric capacity and energy can only be met by a limited number of generation units that are physically located in the load pocket. In a load pocket, the entities that serve the load and those that own the generation units generally know one another and have frequent direct commercial dealings with one another. Indeed, because of the constraints on the load pocket, such entities frequently are the only parties that are willing and able to engage in physical transactions and swap transactions relating to energy and capacity for the load pocket. If an entity that owns generation in a load pocket enters into a capacity swap relating to the load pocket with an entity that serves load in the load pocket, neither entity should be viewed as a Swap Dealer, regardless of which entity initiated the transaction. More generally, direct bilateral transactions between power sector end-users are efficient, do not increase systemic risk, and should not lead to either side of the bilateral transaction being required to register as a Swap Dealer.

Concerns of this nature, as well as other similar problems, could be resolved by the Commission's adoption of the clarifications that the Edison Electric Institute ("EEI") and the Electric Power Supply Association ("EPSA", and together with EEI, the "Associations") have jointly proposed to the rules implementing the statutory exception from registration as a Swap Dealer for persons that enter into swaps for their own account, but not as part of a regular

business. Specifically the Associations' have proposed that the "regular business" element of the statutory exception should be limited to the business of entering into swaps to accommodate demand and in response to interest expressed by others and that these two concepts should, in turn, be limited to the entry into swaps to satisfy the business needs or purposes of counterparties. The Associations' also have proposed that the final rules should expressly provide that the following activities will not be deemed to be part of such a "regular business":

(A) Entering into swaps for the purpose of hedging or mitigating commercial risk as defined in Section 1.3 (ttt);

(B) Entering into swaps for the purpose of benefiting from future market price changes affecting their value;

(C) Entering into swaps on a designated contract market or swap execution facility, unless such swaps are entered into by a person who holds itself out as making a market in that swap.

Adoption of the Associations' recommendations will help to achieve the purposes of the Dodd-Frank Act. The Act clearly did not intend for end-users to be required to register as Swap Dealers simply because they enter into swaps to hedge or mitigate commercial risk. The Associations' recommendations will exclude such swaps from Swap Dealer registration determinations. Swaps that a person enters into for the purpose of benefiting from future market price changes also should be excluded from such determinations because they do not, by definition, constitute an accommodation of demand or a response to interest expressed by others. Further, no useful regulatory purpose will be served by requiring Swap Dealer registrations of persons that enter into swaps on designated contract markets ("DCM's") or swap execution facilities ("SEF's"), but that do not make markets in such swaps. The regulatory scheme that the Commission has proposed for DCM's and SEF's will, by itself, be sufficient to ensure that such swaps will enjoy the protections contemplated by the Dodd-Frank Act.

B. Simplify the De Minimis Exception

NRG also supports the Associations' recommendation that the de minimis exception to the Swap Dealer registration requirement should be simplified to limit it to a single test that focuses only on the aggregate effective notional amount, measured on a gross basis, of swaps that a person has entered into over the prior 12 months as part of such person's dealing activities. The other two proposed tests – which focus on the number of swap counterparties that a person has during the prior 12 months and the number of swaps that a person entered into during the same period – should be deleted.

In contrast to the Associations, however, NRG recommends that the U.S. dollar thresholds for this simplified de minimis exception should vary with the size of the relevant person's non-swap business activities. In other words, the applicable U.S. dollar thresholds for a person with annual non-swap revenues of $10 billion should be higher than those for a person with annual non-swap revenues of $10 million. Such an approach will allow the de minimis

exception to actually apply to more end-users than just the smallest ones. This would be an appropriate outcome since even large end-users may have some activities that could be characterized under the rule as dealing in swaps, but that do not increase systemic risk or warrant them being required to register as Swap Dealers. On the other hand, if the Commission insists on retaining its original approach, the U.S. dollar thresholds for the simplified de minimis exception must be far higher than those proposed by the Commission. The thresholds must be set at levels that actually could pose a systemic risk to the U.S. financial system. Any other approach increases the risk that far too many end-users will be required to register as Swap Dealers.

C. Swaps between Affiliates

Finally, NRG concurs in the Associations' recommendation that swaps that transfer risk between affiliates should be excluded from determinations of whether a person is acting as a Swap Dealer or Major Swap Participant. Like many corporate groups, NRG concentrates its hedging activities in a limited number of its subsidiaries. The benefits of these hedging activities are then allocated among members of the NRG group through accounting and other mechanisms. Arrangements of this nature among affiliated companies should not require Swap Dealer or Major Swap Participant registrations because, as the Commission itself has observed, they do not involve the interaction with unaffiliated persons, nor do not pose any risks to the U.S. financial system.

* * * * *

NRG appreciates the opportunity to comment on the Proposed Rules and respectfully submits these comments for the Commission's consideration. We would be pleased to meet with the members of the Commission or its staff to discuss our comments. If the Commission members or staff have any questions, please do not hesitate to call my colleague, Shiran Kochavi, at (609) 524-4604.

Respectfully submitted,

NRG ENERGY, INC.

Chris Moser
Senior Vice President, Commercial Operations

cc: The Hon. Gary Gensler, Chairman
The Hon. Michael Dunn, Commissioner
The Hon. Bart Chilton, Commissioner
The Hon. Jill E. Sommers, Commissioner
The Hon. Scott D. O'Malia, Commissioner