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Via Electronic Filing

David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Aggregation, Position Limits for Futures and Swaps, RIN No. 3038-AD82

Dear Mr. Stawick:

By Notice of Proposed Rulemaking, published May 30, 2012, the Commodity Futures Trading Commission ("CFTC" or "the Commission") proposed to revise its final rule on Position Limits for Futures and Swaps[1] by creating a more expansive exemption to the requirement that persons with a certain amount of equity ownership in common aggregate their positions for the purpose of compliance with CFTC position limits (the "Aggregation NOPR").[2]

By this letter, Iberdrola Renewables, LLC[3] (a renewable electricity developer and power trader) and Iberdrola Energy Services LLC [4] (a natural gas storage operator and natural gas trader) (collectively, the "Iberdrola Wholesale Companies") provide comments on the Aggregation NOPR. The Iberdrola Wholesale Companies are wholly-owned subsidiaries of Iberdrola S.A., a Spanish energy company. The Iberdrola Wholesale Companies are also

[1] *See Position Limits for Futures and Swaps*, 76 Fed. Reg. 71626 (Final Rules), (Nov. 18, 2011) (the "Position Limits Final Rule"); 17 C.F.R. Part 151 et seq. (2012).

[2] *Aggregation, Position Limits for Futures and Swaps*, 77 Fed. Reg. 31767 (May 30, 2012).

[3] Iberdrola Renewables, LLC is a United States wind generation company which also operates gas fired power generation in the Pacific Northwest.

[4] Iberdrola Energy Services LLC is a contracted storage marketer in the United States and Canada.

affiliates of Iberdrola USA[5] (a distribution utility[6] and retail-focused regional energy company) ("Iberdrola Retail Companies").[7]

The Iberdrola Wholesale Companies are also members of the Coalition of Physical Energy Companies ("COPE"). The Iberdrola Wholesale Companies agree with the comments filed by COPE with respect to the Aggregation NOPR[8] and adopt them by reference.

The Commission Should Not Limit The Proposed Aggregation Exemption To Entities With Fifty Percent Or Less Upstream Equity Ownership In Common

As explained in the comments filed by COPE, the Commission's proposed fifty percent equity limit for the exemption from the aggregation requirement in proposed § 151.7(b), if adopted, would require aggregation in circumstances where requisite separation exists between affiliates and no sharing of trading information occurs. If this aspect of the NOPR is adopted as proposed, entities which currently operate as separate and unconsolidated actors will be forced to aggregate their positions, causing unnecessary burdens and potential negative business impacts without providing the regulatory benefit of preventing excessive speculation by firms that are acting in concert or have access to each other's trading data.[9]

As COPE points out, "[i]n the energy industry there are firms that: (1) operate in separate and distinct geographic regions; (2) are in different lines of business (large scale wholesale versus regional retail marketing); or (3) are in strategic partnerships that operate outside of the

[5] Iberdrola USA, Inc., a wholly-owned subsidiary of Iberdrola S.A., is a regional energy services and delivery company with operations throughout New England and New York State. Ninety-eight percent of Iberdrola USA's assets are regulated utilities, including New York State Electric and Gas Corporation, Rochester Gas and Electric, and Central Maine Power Co.

Iberdrola USA also holds companies which operate in the same geographic region as the utility companies and provide complementary services. These companies include Energetix, Inc. – which currently distributes liquid fuels and markets electricity and natural gas at retail; and NYSEG Solutions – which is a full-service energy services company (ESCo) that provides natural gas, electricity, and clean energy solutions and serves residential, small business, and large commercial/industrial customers.

[6] It is likely that the utility distribution companies will be able to qualify for the Commission's proposed "state law" exemption to aggregation. *See* Aggregation NOPR at 31782 (proposed § 151.7(i)).

[7] The Iberdrola Retail Companies and the Iberdrola Wholesale Companies are referred to collectively herein as the "Iberdrola Companies."

[8] *See* Comments of the Coalition of Physical Energy Companies to *Aggregation, Position Limits for Futures and Swaps*, RIN No. 3038-AD82 (filed June 29, 2012) ("COPE Comments").

[9] *See id.* at 4.

corporate group, any of which cause entities that have a common parent to operate separately but that still could meet the Commission's proposed separation criteria."[10]

The Iberdrola Companies are an example of this type of separation. The Iberdrola Retail Companies were acquired as an integrated group of companies located in the northeast United States. They were a self-contained group that functioned as an integrated unit, and since the acquisition they have continued to operate in that unified fashion. The Iberdrola Wholesale Companies were, until recently, a single legal entity that functioned as a unit with multiple support functions provided on a consolidated basis. Although the Iberdrola Wholesale Companies are now comprised of separate legal entities, they maintain the shared service structure.

While the Iberdrola Companies all operate in the energy market, their operations are largely in different geographic markets (with the Iberdrola retail companies operating only in the Northeast), serve different customers, and engage in fundamentally different businesses. Simply put, the national wholesale power and gas business is materially different from the regional retail energy business.[11] The business needs of such firms do not require that they be integrated. In fact, in many ways it is more efficient for them to operate separately to preserve business focus and culture.

As further explained in COPE's comments,

> "[H]olding companies with wholly-owned subsidiary businesses are often operated as completely separate and distinct businesses which operate apart one another with completely independent management and no knowledge of the other's business or positions. [If required to aggregate their positions] [t]hese companies could be forced to implement costly and inefficient information sharing where none exists today solely to comply with the position limits rules, even if the Aggregation NOPR is adopted, even though they could otherwise meet the Commission's separation criteria."[12]

The above excerpt accurately describes the situation of the Iberdrola Companies. While the Iberdrola Companies are wholly-owned by the same common parent, they do not share management or commercial information, use a consolidated trading system, or undertake any activities that would cause them to fail to meet the Commission's substantive proposed criteria for obtaining an exemption from the position limits aggregation requirements. Senior

[10] *Id*. at 5.

[11] Ibredrola SA is contemplating a reorganization of its North American operations. In the event the reorganization occurs, the Iberdrola Companies anticipate that a similar separation of operations will continue.

[12] *Id*. at 3

officers of the firms could provide the requisite attestation of separation. The only reason the Iberdrola Companies do not qualify under the proposed exemption criteria is that they share upstream ownership in excess of fifty percent equity.

The Commission should permit the Iberdrola Companies and those like them to take advantage of the exemption to aggregation if they have the requisite characteristics for separation. If the exemption is appropriate based upon these criteria at fifty percent equity ownership, it is equally appropriate at equity levels in excess of fifty percent if the specified characteristics are present. The goal of the position limits rule is to prevent excessive speculation. The purpose of the aggregation of affiliates' positions under the rule is to ensure that entities acting in concert or with knowledge of their affiliate's positions cannot engage in speculation above the limits. The Commission's separation criteria recognize that firms that do not act in concert or have access to affiliate trading information should not be subject to aggregation of their positions as they do not trigger the regulatory concerns aggregation of positions is designed to address.

If entities at any common upstream equity level meet the proposed separation criteria, they should be permitted to take advantage of the aggregation exemption. It is the fact that they are separately operated that permits the Commission's goal to be met, not the level of common ownership. If such separately operated entities cannot take advantage of the exception, it would create the perverse outcome that they would be forced to spend resources and devote their attention to create mechanisms to share information that they do not share today and track a position which is "consolidated" solely to comply with the Position Limits Rule. The Iberdrola Companies submit that there is no regulatory benefit to be gained from forcing such separate entities to undertake this burden if they can meet the proposed separation criteria and submit the required attestation.

Conclusion

For the reasons set forth above and in the comments filed by COPE, the Iberdrola Wholesale Companies respectfully request the Commission to broaden eligibility for the aggregation exemption to include affiliates that can meet the proposed separation criteria regardless of upstream equity ownership.

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Very truly yours,

/s/ David. M. Perlman
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Counsel to
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