PROPOSED POSITION LIMITS RULE

February 10, 2014

Melissa D. Jurgens, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Proposed Rule, Position Limits for Derivatives, 78 Fed. Reg. 75,680, Dec. 12, 2013 (17 CFR Part 1, 15, 17, et al.) RIN No. 3038-AD99

Dear Ms. Jurgens:

The NFP Electric Associations[1] respectfully submit these comments on the proposed rules issued by the Commodity Futures Trading Commission (the "Commission") captioned **Proposed Rule, Position Limits for Derivatives** (the "2013 Proposed Rules").[2] The NFP Electric Associations have been active participants in the Commission's rulemakings implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), including submitting comments on the speculative position limits rules proposed by the Commission in early 2011 (the "2011 Proposed Rules").[3]

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[1] The National Rural Electric Cooperative Association ("NRECA"), the American Public Power Association ("APPA"), and the Large Public Power Council ("LPPC") (collectively, the "NFP Electric Associations."). See Attachment A for a description of the members of each NFP Electric Association. 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 on any issue. The NFP Electric Associations are authorized to note the involvement of the following organizations and associated entities to the Commission, and to indicate their full support of these comments and recommendations: ACES and The Energy Authority.

[2] Proposed Rule, Position Limits for Derivatives, 78 Fed. Reg. 75680 (Dec. 12, 2013) (17 C.F.R. Parts 1, 15, 17, et al.) RIN No. 3038-AD99.

[3] Comment letter available on the Commission's website at: http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=33909&SearchText=wasson (the "2011 Speculative Position Limits Comments"). The focus of the NFP Electric Associations' 2011 Speculative Position Limits Comments was much broader than these comments, because the Commission's Dodd-Frank Act rulemaking process was at a much earlier stage. In 2011, the Commission had yet to finalize its foundational rulemakings under the Dodd-Frank Act defining the entities it intended to regulate as "swap dealers" and "major swap participants." The Commission had not yet ***proposed*** its Commodity Options Interim Final Rule (77 Fed. Reg. 25320 (April 27, 2012), the "Trade Options IFR") or the "Further Definition of 'Swap'…" Release (77 Fed. Reg. 48208 (August 13, 2012) (the "Product Definitions Release"). Those last two rulemakings, when published in mid-2012 (without notice or public comment on significant Commission statutory construction determinations and interpretations of the

The NFP Electric Associations' comments relate only to those aspects of the Commission's 2013 Proposed Rules on speculative position limits which would be applicable to "swaps" and other Referenced Contracts related to Core Referenced Futures Contracts derived on energy or energy-related commodities. The NFP Electric Associations' members (hereafter, the "NFP Electric Entities") play a unique role as not-for-profit commercial end-users of such energy and energy-related commodities and related derivatives. NFP Electric Entities generate and transmit electric energy and deliver electric energy to the American public on a continuous 24/7/365 basis, and at affordable rates. Each NFP Electric Entity conducts its operations in a particular geographic area.[4]

The NFP Electric Entities enter into energy and energy-related commodity swaps and commodity options, and some larger NFP Electric Entities enter into exchange-listed energy futures contracts and options contracts. Some of these energy and energy-related commodity derivatives may fall within the defined term "Referenced Contract" if associated with a Core Referenced Future Contract derived on an energy or energy-related commodity. However, in each case, the NFP Electric Entities enter into such energy and energy-related derivatives ***only*** to hedge or mitigate commercial risks associated with electric operations. In addition, the NFP Electric Entities regularly enter into energy and energy-related commodity agreements, contracts and transactions for deferred shipment or delivery, including nonfinancial commodity trade

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Dodd-Frank Act amendments to the Commodity Exchange Act) together provided the Commission's initial view of the scope of its jurisdiction over nonfinancial commodity transactions as "swaps" as defined in CEA Section 1a(47).

When the 2011 Speculative Position Limits Rules were proposed, the Commission had just recently proposed for comment its rules defining the "end-user exception" to clearing and trade execution mandates for swaps entered into by end-users "to hedge or mitigate commercial risks" (as such phrase is used in CEA Section 2(h)(7) in relation to the Commission's swap regulations). As a result, the NFP Electric Associations' 2011 Speculative Position Limits Comments attached and cross referenced regulatory concepts from the "end-user exception" rules. The NFP Electric Associations have commented on nearly all the proposed rules and Commission interpretations implementing the Dodd-Frank Act jurisdiction over "swaps," in each case emphasizing Congressional intent to preserve the ability of commercial end-users like the NFP Electric Entities to continue to use cost-effective commercial risk management tools to hedge or mitigate risks that arise from operations.

[4] For more information about the diverse electric operation assets, obligations, electric customers and geographic locations of NFP Electric Entities, *see* the NFP Electric Association's 2011 Speculative Position Limits Comments, at the link provided in footnote 3 above, at Section 1D, or the Application for an Exemption Order under CEA Section 4(c)(6)(C), which can be found at: http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/nrecaetalltr060812.pdf. The NFP Electric Associations are ***not*** commenting on the Commission's 2013 Proposed Rules as they apply to legacy agricultural contracts for which the Commission has in place regulatory speculative position limits. Nor are the NFP Electric Associations commenting on how the 2013 Proposed Rules may apply to Referenced Contracts (including "swaps" or commodity trade options) that are related to Core Referenced Futures Contracts derived on metals, or crude oil, gasoline or refined petroleum or non-legacy agricultural commodities, other than those used as fuel for electric generation. All of those Core Referenced Futures Contracts and Referenced Contracts relate to commodities, commodity "swaps," commodity trade options and other Referenced Contracts that are transacted in different market structures, and among different market participants, than the markets for energy and energy-related commodities that are integral and intrinsically-related to the operations of NFP Electric Entities.

options, where the parties intend physical settlement. Such transactions are excluded from the defined term "swap" by CEA Section 1a(47)(B)(ii).[5]

The NFP Electric Entities also regularly enter into various commercial transactions and arrangements as part of operations that the Commission interprets as "not intended by Congress to be regulated as swaps (see Section II.B.3 of the Product Definitions Release). In addition, the NFP Electric Entities regularly enter into transactions that the Commission has exempted from its regulatory regime for swaps (with certain narrow exceptions), under exemption orders and guidance. None of such transactions are speculative in nature and/or the Commission has deemed the transactions excluded, or determined the transactions to be exempted, from its regulatory regime without determining the transactions to be (or not to be) "swaps."

The NFP Electric Entities ***do not speculate*** in nonfinancial commodity derivatives, and do not hold speculative positions in nonfinancial commodity derivatives.[6] The NFP Electric Entities are not registered with the Commission, and they are not "financial entities" as such term is defined in CEA Section 2(h)(7)(C)(i). To the contrary, the NFP Electric Entities are exclusively commercial end-users ("Commercial End-Users") of nonfinancial commodity derivatives.[7]

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[5] In October 2012, the NFP Electric Associations filed with the Commission a request for rehearing or reconsideration of the Commission's statutory construction of Section 1a(47)(A) and 1a(47)(B)(ii) that all nonfinancial commodity trade options are "swaps," notwithstanding the parties' intent to physically-settle. The Commission's misconstruction of the statute is found in the Product Definitions Release, 77 Fed. Reg. 48208 at 48236-48237, and the request for rehearing or reconsideration can be found at: http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59235&SearchText=.

[6] The term "speculate," as used herein, means taking a position (entering into an agreement, contract or transaction), and then offsetting it with another position, for the purpose of profiting from favorable movements in market prices for a commodity. Speculation is a risk-increasing activity in which commodity traders and nonfinancial market participants commonly engage. An NFP Electric Entity may enter into an energy or energy-related derivatives transaction that settles favorably (i.e., "in the money"). But that favorably-settling energy or energy-related derivatives transaction offsets a correlated unfavorable price movement/settlement in the underlying ***commercial risk*** being hedged. The underlying commercial risk may be a risk associated with the supply/demand of the commodity delivered to the NFP Electric End User's unique geographic location, weather, price or other financial markets risk, an environmental or other regulatory risk, or another commercial risk associated with the individual NFP Electric Entity's utility operations.

[7] In this comment letter, the NFP Electric Associations use the defined term "Commercial End-User" to mean a person or entity that is not registered with the Commission, and that is not a "financial entity" as such term is defined in Section 2(h)(7)(C)(i) of the Commodity Exchange Act. The NFP Electric Associations have asked the Commission in a number of dockets to define the term, which is used in the Dodd-Frank Act, in the letter from Chairmen Christopher Dodd and Blanche Lincoln to Chairmen Barney Frank and Colin Peterson, 156 Cong. Rec. H5248 (June 30, 2010) ("Dodd-Lincoln Letter") letter expressing Congressional intent (available at http://online.wsj.com/public/resources/documents/dodd-lincoln-letter070110.pdf), and throughout the Commission's rules, interpretations, no-action letters and guidance. The Commission has declined to do so. As a consequence, the terms "end-user" and "commercial end-user" are used with different meanings in various Commission rules, interpretations, no-action letters and guidance documents, as well as in other regulators' rules,

The NFP Electric Associations support the Commission's efforts to impose speculative position limits (that is, limits on ***speculative*** positions) in Referenced Contracts related to specific Core Reference Futures Contracts, as the Commission finds are necessary and appropriate to implement the Congressional intent of the Dodd-Frank Act. The NFP Electric Entities, and other Commercial End-Users, will benefit from the Commission monitoring speculative positions, and from the Commission's considered placement and monitoring of limits on the speculative positions of ***noncommercial*** entities with no commercial need for a particular nonfinancial commodity and therefore no need to hedge or mitigate commercial risks.[8]

Congress did not intend the Commission to regulate Commercial End-Users hedging or mitigating commercial risks in the same way it regulates noncommercial, financial markets traders, dealers and speculators.[9] Congress intended the Commission to protect Commercial End-Users' continued access to nonfinancial commodity swaps and other derivatives as cost-effective commercial risk management tools, and not to burden Commercial End-Users with unnecessary regulatory obligations.

The NFP Electric Associations and their members have a direct and significant interest in the way in which the Commission implements its authority to establish and monitor speculative position limits. The Commission should structure its speculative position limits rules to exclude the NFP Electric Entities, as Commercial End-Users, and their commercial risk hedging transactions entirely. To do otherwise would be to ignore Congressional intent, and to place unnecessary regulatory burdens and costs on the NFP Electric Entities, without providing the Commission with useful or usable information about speculative transactions, speculative positions or speculators.

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creating significant regulatory uncertainty for the very entities that Congress intended the Commission to protect from overbroad and unnecessary regulatory burdens and costs.

In addition, the NFP Electric Associations use the term "nonfinancial commodity" in this and all other comment letters. This term is found in the defined term "swap" in the Dodd-Frank Act amendments to the CEA – in CEA 1a(47)(B)(ii), the exclusion from "swap" more fully described in footnote 14 below as the "physically-settled transaction exclusion." If the Commission defines the term "physical commodity" in Proposed Rule 150.1 (or elsewhere in its rules), the NFP Electric Associations respectfully request that the Commission clarify that the term "physical commodity" has a meaning identical to the term "nonfinancial commodity" as such term is used in CEA 1a(47)(B)(ii) and as further interpreted by the Commission in the Product Definitions Release.

[8] The Commission cites numerous studies that explain the regulatory benefit of limiting the speculative positions of ***noncommercial entities*** in various places in the 2013 Speculative Position Limits Proposal. *See, e.g.,* page 75683. "The Commission has found, historically, that speculative position limits are a beneficial tool to prevent, among other things, manipulation of prices. Limits do so by restricting the size of positions ***held by noncommercial entities*** that do not have hedging needs in the underlying physical markets" (emphasis added).

[9] See CEA Section 4a(c)(1), which reads in part: "No rule, regulation, or order issued under subsection (a) of this section [the speculative position limits authority, as added to the CEA by the Dodd-Frank Act] shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions, as such terms may be defined by the Commission by rule, regulation or order consistent with the purposes of this Act…To determine the adequacy of this Act and the powers of the Commission acting thereunder to prevent unwarranted price pressures by large hedgers, the Commission shall monitor and analyze the trading activities of the largest hedgers [Part 20 Large Trader Reporting rules.]"

I. SUMMARY OF COMMENTS OF THE NFP ELECTRIC ASSOCIATIONS

The NFP Electric Associations respectfully request:

- **The Commission should exclude the following classes of agreements, contracts and transactions from the defined term "Referenced Contract": commodity trade options, "CEU Hedging Swaps," "CEU Hedging Derivatives," contracts not intended by Congress to be regulated as "swaps," and contracts exempted by the Commission from its swap regulations.**

- **The Commission should exempt NFP Electric Entities from the Commission's speculative position limits**

- **For each Core Referenced Futures Contract, the Commission should identify in its speculative position limits rules, or by future rulemaking, all Referenced Contracts, including the primary economic terms of all economically-equivalent swaps**

- **The Commission should revise its approach to establishing speculative position limits to recognize differences in its regulatory jurisdiction over swaps and futures contract markets**

- **The Commission should revise the "orderly trading requirement"**

- **The Commission should include a single enumerated bona fide hedging exemption for Commercial End-Users entering into Referenced Contracts "to hedge or mitigate commercial risks"**

- **The Commission should modify the pass through exemption rules**

- **The Commission should revise its speculative position limits rules as requested by other energy industry trade associations and coalitions**

- **The Commission must consider the impact of its speculative position limits rules on "small entities," including more than 2500 NFP Electric End-Users**

II. THE COMMISSION SHOULD EXCLUDE FROM THE DEFINED TERM "REFERENCED CONTRACT": TRADE OPTIONS, SWAPS AND OTHER DERIVATIVES THAT A COMMERCIAL END-USER ENTERS INTO "TO HEDGE OR MITIGATE COMMERCIAL RISKS," AND THE AGREEMENTS, CONTRACTS AND TRANSACTIONS THAT THE COMMISSION HAS PREVIOUSLY DETERMINED ARE EXCLUDED OR EXEMPTED FROM ITS NEW REGULATORY AUTHORITY OVER "SWAPS"

"Speculative position limits" are intended to measure those derivatives transactions related to a particular nonfinancial commodity that are entered into, and those derivatives positions held by, a trader for speculative reasons. The limits cap the size of such speculative positions in fungible or economically-equivalent derivatives to protect the ability of commercial hedgers to access a liquid and fair trading market for a particular defined set of economically-equivalent nonfinancial commodity derivatives. When Congress expanded the Commission's jurisdiction to include swaps, Congress simultaneously recognized that the myriad different bilateral, off-facility markets for commodity swaps -- in particular, those derived on nonfinancial commodities and where Commercial End-Users intend physical settlement -- have unique market participants with unique commercial risk management needs. In structuring its speculative position limits, the Commission should take into account Congressional intent to protect Commercial End-Users (including the NFP Electric Entities) and their ability to hedge or mitigate unique and diverse commercial risks.

The terms of many commercial transactions, swaps, and commodity options that involve nonfinancial energy commodities are highly customized. These non-standardized transactions contain important commercial terms (including transmission and transportation contingencies) that represent hedging value for Commercial End-Users in the energy industry, and affect price: terms that go well beyond commodity, contract term, delivery point and quantity. As the Commission has recognized in its margin rules, in the bilateral, off-facility swap markets, credit support and collateral/margin terms applicable to a swap are often price-determinative. Moreover, in regional energy commodity and commodity swaps markets, transmission or transportation contingencies and the granular geographic delivery points are more than just a pricing term, when the value of the swap as a commercial risk management tool is being considered by a Commercial End-User such as an NFP Electric Entity. For an NFP Electric Entity, delivery and receipt conditions are an inseparable value characteristic of the energy commodity swap.[10]

There are far more Commercial End-User to Commercial End-User swaps in the fragmented regional energy commodity markets than in financial, metals, agricultural or other commodity markets that the Commission has historically regulated.[11] Many Commercial End-Users enter into non-standardized, off-facility energy commodity contracts, swaps and commodity trade options directly with other Commercial End-Users as principals, rather than through market intermediaries or on regulated trading exchanges where the standardized terms of

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[10] For example, natural gas delivered in Houston may not have any value for an NFP Electric Entity that needs natural gas delivered to power a generating station in Minneapolis, MN in January. Similarly, electric energy (or an electricity hedging swap) deliverable or priced based on delivery in Boston may not be an economically appropriate commercial risk management hedge for an NFP Electric Entity whose commercial risks (its assets or its load) are located in California.

[11] Numerous energy industry comment letters have pointed out this fact to the Commission over the course of the Dodd-Frank rulemakings from comments submitted on the initial Commission ANOPR published for comment in September 2010 to the most recent comment letters submitted by EEI/EPSA and IECA in this docket.

futures contracts may not provide an equivalent, cost-effective hedge for a unique commercial risk.

As it establishes new speculative position limits for nonfinancial energy and energy-related commodity derivatives, the Commission must carefully evaluate how these unique and diverse markets will be affected by rules such as those the Commission has previously administered for legacy agricultural futures contracts, or by rules such as those the Commission has previously proposed for specifically-identified energy futures contracts and "specified price discovery contracts" (or "SPDCs").[12] For each Core Referenced Futures Contract and associated Referenced Contracts, the Commission must take into account the different market structures, Commercial End-Users as new market participants (including, for energy Core Referenced Futures Contracts, utility Commercial End-Users as unique types of Commercial End-Users with electricity service obligations to their customers and location-specific commercial risks), and the unique commercial risks involved in the particular commodity markets.

The Commission's authority to impose such limits on economically-equivalent swaps, and to administer such limits and bona fide hedging exemptions for each set of Referenced Contracts directly rather than through exchanges, comes with a statutory responsibility: to protect Commercial End-Users who hedge or mitigate commercial risks.[13] In new CEA Section 4a(a)(7), the Dodd-Frank Act provided the Commission plenary authority to grant general exemptive relief from the speculative position limits rules to any transaction or class of transactions.[14]

A. The Commission should exclude Trade Options from the defined term "Referenced Contract."

In the adopting release for the 2013 Proposed Rules, the Commission asked for comment on whether it should exclude from the defined term "Referenced Contract" agreements, contracts

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[12] "Nothing…shall be construed to prohibit the Commission from fixing different trading or position limits for different commodities, markets, futures, or delivery months, or for different number of days remaining until the last day of trading in a contract, or different trading limits for buying and selling operations…" Section 4a(a)(1) of the CEA. Congress did not foresee a one-size-fits-all-markets or –all- commodities set of speculative position limits.

[13] Section 4a(a)(3)(B) of the CEA directs the Commission to set limits, as appropriate, and to the maximum extent practicable, in its discretion (i) to diminish, eliminate, or prevent excessive speculation; (ii) to deter and prevent market manipulation, squeezes, and corners; (iii) ***to ensure sufficient market liquidity for bona fide hedgers***; and (iv) to ensure that the price discovery function of the underlying market is not disrupted (*emphasis added*).

[14] Section 4a(a)(7) of the CEA provides: "The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits." 7 U.S.C. 6a(a)(7).

or transactions that meet the conditions in Rule 32.3 as nonfinancial "commodity trade options" ("Trade Options").[15] The NFP Electric Entities strongly support such an approach.

The NFP Electric Associations have a request pending for the Commission to reconsider the statutory construction of CEA Section 1a(47) in the Product Definitions Release (see footnote 5 above) -- that Trade Options are "swaps," despite the parties' intent to physically settle.[16] In response to the Commission's request for comment in the Trade Options IFR (published without notice or prior public comment in mid-2012), several energy trade associations commented that Trade Options should be excluded from speculative position limits.[17] The NFP Electric Associations respectfully refer the Commission to those 2012 comments as directly responsive to the questions asked in the 2013 Speculative Position Limits proposal.

The NFP Electric Associations support the comment letter filed by the International Energy Credit Association in this docket (the "IECA Comment Letter"), in particular Section II5 of such IECA Comment Letter, and the comment letter filed by the Edison Electric Institute and the Electric Power Supply Association in this docket (the "EEI/EPSA Comment Letter"), and in particular Section IV of such EEI/EPSA Comment Letter, on this important issue for Commercial End-Users in the energy industry. The energy industry has commented consistently and repeatedly to the Commission on the inability of Commercial End-Users to evaluate non-standardized, off-facility, bilateral, physically-settled Trade Options to which Commercial End-Users are parties as if the Trade Options were standardized financial instruments, and "economically equivalent" to Core Referenced Futures Contracts. As the Commission noted in the 2012 Trade Option IFR and again in the recently-published Commodity Trade Option FAQ, Trade Options are commonly used as hedging instruments or in connection with some commercial function, and therefore should normally qualify as hedges exempt from the speculative position limits.[18]

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[15] 77 Fed. Reg. 75711, December 12, 2013. In order to adapt the Trade Option IFR to appropriately respond to this request, the Commission should also amend its Rule 32.3(c) to remove the reference to Position Limits as one of the enumerated swap rules that must be complied with for Trade Options.

[16] Although the Commission characterizes CEA Section 1a(47)(B)(ii) as a "forward contract exclusion," the statute speaks of transactions intended to be physically settled (a "physically-settled transaction exclusion"), and does not reference whether such physically-settled transactions are options or contain optionalities. In the Dodd-Lincoln letter, Congress instructed the Commission to interpret the physically-settled transaction exclusion from swap ***consistently*** with the forward contract exclusion from the Commission's jurisdiction over futures contracts, but did not instruct the Commission to construe the new statutory language in an identical fashion to its prior regulatory interpretations having to do with forward contracts. See the Dodd-Lincoln letter at page 2.

[17] The Trade Options IFR is found at 77 Fed. Reg. 25320 (April 28, 2012) at footnote 6, and the Joint Electric Trade Association comment letter, dated June 2012, can be found here: http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58272&SearchText=parikh.

[18] See the Trade Options IFR, 77 Fed. Reg. 25328, at footnote 50, and the Commodity Trade Options FAQ, https://forms.cftc.gov/_layouts/TradeOptions/Docs/TradeOptionsFAQ.pdf, footnote 29.

B. The Commission should exclude "CEU Hedging Swaps" from the defined term "Referenced Contract."[19]

Congress authorized the Commission to establish speculative position limits for economically-equivalent "swaps" (as well as futures and other nonfinancial commodity derivatives) in the Dodd-Frank Act amendments to the CEA. Concurrently, Congress expressed its intention in the Dodd-Frank Act and in legislative history to protect Commercial End-Users and their commercial risk hedging activities from being swept up in the Commission's new regulatory authority. In particular, Congress intended to preserve and protect Commercial End-Users' ability to use cost-effective nonfinancial commodity swaps "to hedge or mitigate commercial risks."[20]

In early 2011, virtually concurrently with the Commission's 2011 proposal for speculative position limits, Commercial End-Users worked closely with the Commission on the rules defining the phrase "to hedge or mitigate commercial risks."[21] The Commission carefully considered hundreds of substantive comments on the meaning of this new statutory phrase to diverse types of commercial enterprises (including the NFP Electric Associations). All these different types of Commercial End-Users had to understand what would be required in order to designate a swap as used "to hedge or mitigate [unique] commercial risks," so the Commercial End-User could benefit from the "end-user exception" provided by Congress in the Dodd-Frank Act provisions establishing swap clearing and trade execution mandates. Most Commercial End-Users have now implemented systems and procedures, and have agreed representations to be made to swap counterparties, to ensure that a swap is appropriately identified at the time it is executed as giving the Commercial End-User the benefit of the end-user exception (a "CEU Hedging Swap").[22]

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[19] This comment is consistent with the NFP Electric Associations' 2011 Speculative Position Limits Comments, which requested a "CFTC-Lite" approach to regulation of Commercial End-Users entering into CEU Hedging Swaps, either using a transaction-based exclusion/exemption, or an entity-based exclusion/exemption. When it issued its final rules based on its 2011 Proposed Rules, the Commission did not provide a rationale for why it rejected the NFP Electric Associations' proposed alternative regulatory approach. The NFP Electric Associations are again proposing an alternative approach to achieve the Commission's regulatory objectives for speculative position limits rules, without unnecessary regulation and costs for Commercial End-Users, including "small entities" like the vast majority of NFP Electric Entities. The NFP Electric Associations specifically request a substantive cost/benefit analysis as required by the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. §§ 601-612 (as amended, Mar. 29, 1996) ("SBREFA") as to why the proposed alternative approach does not achieve the Commission's objectives.

[20] Dodd-Lincoln Letter at p. 2

[21] *See* End-User Exception to the Clearing Requirement for Swaps, 77 Fed. Reg. 42559 (July 19, 2012); 17 C.F.R. 50.50(c).

[22] Although the Commission has not, as yet, established a clearing mandate or identified a trade execution mandate for energy commodity derivatives, many Commercial End-Users have put in place the necessary systems and procedures to enable them to enter into interest rate swaps for which an "end-user exception" to the Commission's clearing and exchange-trading mandates, are permitted. Commercial End-Users can adapt those

The NFP Electric Associations urge the Commission to use the same analysis, and the same deference to the diverse commercial risk hedging strategies of Commercial End-Users, to exclude all CEU Hedging Swaps from the definition of "Referenced Contract." A swap can be identified by a Commercial End-User at the time the swap is entered into as a CEU Hedging Swap. For a bilateral swap, the Commercial End-User can make representations to its counterparty that it is using the CEU Hedging Swap "to hedge or mitigate commercial risks." Thereafter, there is no regulatory reason, or additional regulatory benefit that can be identified, to consider whether such CEU Hedging Swap is a "Referenced Contract" for the Commission's ***speculative*** position limits rules. The Commission should not require the Commercial End-User to apply the directly or indirectly linked analysis to a CEU Hedging Swap. Nor should the Commission require the Commercial End-User to reevaluate the CEU ***Hedging*** Swap to determine if it fits into one of the Commission's enumerated buckets for a "bona fide hedging exemption" from speculative position limits. For that Commercial End-User, that swap was entered into as a CEU Hedging Swap.

CEU Hedging Swaps are not financial instruments or investments, chosen from among all asset classes and categories of derivatives, or from all nonfinancial commodity derivatives. For each Commercial End-User, each CEU Hedging Swap will not be offset on an ongoing basis by another "position." On page 75761 of the 2013 Speculative Position Limits Rules proposal, the Commission notes that derivatives positions of commercial entities are instead offset by commercial risks that occur "in the physical markets."[23] In the energy industry, Commercial End-Users like the NFP Electric Entities face physical market commercial conditions and risks in a particular geographic region that are constantly changing, such as the availability of fuel for generation, electricity supply (electric energy cannot be stored), generation capacity to maintain local area grid reliability/stability, demand for energy from consumers heating their homes or powering their computers/air conditioners/lights, weather forecasts, transmission and/or transportation constraints, and other commercial risks. A CEU Hedging Swap cannot be evaluated as part of a trading "portfolio hedging strategy" that compares with the way a financial entity manages a trading portfolio of offsetting positions in investment contracts, and monitors the gross or net pricing risk represented by those contracts.

The NFP Electric Associations and other energy industry commenters have explained to the Commission that, as is the case with Trade Options, the CEU Hedging Swaps used by Commercial End-Users in the regional energy markets contain highly-customized commercial

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systems and documentation strategies for nonfinancial commodity transactions for purposes of identifying CEU Hedging Swaps.

[23] See 78 Fed. Reg. at 75761, which reads in part: "Hedgers present a lesser risk of burdening interstate commerce as described in CEA 4a because their positions are offset in the physical markets." Even this statement by the Commission is garbled. A commercial risk hedger does not present ***any*** risk of burdening interstate commerce [with excessive speculation] as described in CEA 4a, because its commercial risk hedging positions, [which] are offset in the physical markets, are not speculative in the first place. The Commission must focus its rulemaking on preventing excessive speculation, on limiting speculative positions – not on limiting positions. Many commercial risk hedgers may have sizeable positions due to the fact that they have sizeable commodity-based commercial risks.

terms which will make it difficult, if not impossible, to compare or convert such CEU Hedging Swaps to "futures equivalents." Moreover, Commercial End-Users do not enter into CEU Hedging Swaps for speculative purposes. Any further evaluation under the Commission's speculative position limits rules, and any further reporting requirements for such CEU Hedging Swaps on an ongoing basis for purposes of monitoring ***speculative*** positions, would be unnecessary and burdensome regulation. The NFP Electric Associations strongly urge the Commission to exclude CEU Hedging Swaps from the definition of "Referenced Contract."

C. The Commission should exclude "CEU Hedging Derivatives" from the defined term "Referenced Contract."

In the Dodd-Frank Act amendments to the CEA, Congress authorized the Commission to impose speculative position limits directly on a broad spectrum of nonfinancial commodity derivatives. Previously, other than certain legacy agricultural contracts, the futures exchanges have established speculative position limits on the commodity futures and options contracts that are listed on the particular exchange. Each futures exchange also monitors trading liquidity in each such futures contract, and requests position limit increases where it determines such an increase is necessary to provide commercial risk hedgers with sufficient counterparties. Concurrently with providing the Commission with this broader speculative position limits authority, Congress expressed its intent not to unnecessarily burden Commercial End-Users, who "did not get us into this [financial] crisis…" "Regulators…must not make hedging so costly [that] it becomes prohibitively expensive for end users to manage their risk." And "[i]t is imperative that these standards are not punitive to the end users, that we encourage the management of commercial risk…"[24]

The NFP Electric Associations respectfully request that the Commission exclude from "Referenced Contract," and therefore from its speculative position limits rules, all nonfinancial commodity derivatives entered into or executed by a Commercial End-User "to hedge or mitigate commercial risk" ("CEU Hedging Derivatives").[25] CEU Hedging Derivatives are not speculative transactions. Today, a Commercial End-Users that anticipates the need to enter into a sizeable number of a particular futures contract or options contract traded on an exchange can approach the exchange for an exemption from exchange-imposed position limits. The process for obtaining a bona fide hedging exemption from the exchange is a matter of the exchange rules. The Commercial End-User explains to the exchange how the particular futures contract (or option contract) relates to the Commercial End-User's particular commercial risk management objectives.[26] The exchange requirements for a bona fide hedging exemption are typically

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[24] Dodd-Lincoln letter at page 4.

[25] As such phrase is defined in CEA Section 2(h)(7) and Commission Rule 50.50(c).

[26] For example, if a utility regularly executes PJM West futures and options contracts on a futures exchange, it may need to explain the commercial risks of owning generation, or serving load, in the PJM West area to secure a bona fide hedging exemption for that particular futures contract. If a natural gas utility, or an electric utility with a large fleet of gas-fired generators, in the north central United States, executes natural gas futures contracts, and

analogous to the requirements for assessing whether a Commercial End-User is "hedging or mitigating commercial risk." There is no ongoing reporting in fixed enumerated buckets, and no second-guessing by the exchange of the manner by which the Commercial End-User manages its unique commercial risks.[27]

Exchanges that list energy futures contracts monitor and apply speculative position limits with an understanding that different types of Commercial End-Users face commercial risks that are different than the risks faced by financial entities and speculators that trade energy futures as financial instruments. The exchange practice is to establish, and manage, speculative position limits (imposed on noncommercial entities) to provide Commercial End-Users sufficient liquidity to hedge commercial risks.[28] If a Commercial End-User must wait for an exchange to consider a request for the bona fide hedging exemption, the Commercial End-User can enter into a nonfinancial commodity swap or a Trade Option, or another type of futures contract, to achieve at least a portion of its commercial risk management objectives. That will not be the case if the Commission's broad speculative position limits curtail those other avenues, by limiting the availability of enumerated bona fide hedging exemptions tied to a particularly important benchmark Core Reference Futures Contract such as Henry Hub Natural Gas, and then broadly define the Referenced Contracts associated therewith.

The Commission's proposed speculative position limits will unnecessarily restrict a Commercial End-User's use of nonfinancial commodity derivatives to cost-effectively hedge or mitigate such Commercial End-User's commercial risks. These transactions are not speculative in nature, but instead are being used "to hedge or mitigate commercial risk." There is no regulatory reason for a Commercial End-User to be delayed or burdened with regulatory costs by the Commission's speculative position limits rules. [29]

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sometimes seasonally exceeds an exchange's position limits for natural gas futures due to seasonal fluctations in its commercial risks, the exchange bona fide hedging exemption is efficiently processed and tailored to the particular Commercial End-User.

[27] An exchange can use its market surveillance authority to investigate if it has questions about a particular bona fide hedging exemption, in much the same way that the Commission has the ability to investigate whether a Commercial End-User is entitled to elect the end-user exception to clearing or if a Commercial End-User's use of Referenced Contracts does not seem to align with its commercial risks.

[28] Note, for example, the Chicago Mercantile Exchange and the Intercontinental Exchange have requested significant increases in position limits for certain listed electricity contracts in light of recent market conditions. When the Commission directly sets position limits for Referenced Contracts tied to Core Referenced Futures Contracts derived on energy commodity, it will be critical for the Commission to monitor such limits closely on an ongoing basis and adjust them promptly to assure that Commercial End-Users have continuous access to Referenced Contracts for commercial hedging purposes.

[29] Examples of ways in which an NFP Electric Entity might hedge or mitigate commercial risks using natural gas Trade Options, CEU Hedging Swaps or CEU Hedging Derivatives, all of which should be excluded from the Commission's speculative position limits by exclusion from "Referenced Contract," are shown on Attachment B. As the Commission gains experience with implementing speculative position limits, it can monitor Referenced Contracts in nonfinancial commodity markets that it has not regulated in the past, and analyze the Part 45 swap

D. The Commission should exclude from the defined term "Referenced Contract" consumer, commercial or other agreements, contracts or transactions that the Commission has further defined by regulation, interpretation, guidance or other action as not intended by Congress to be regulated as "swaps," as that term is defined in CEA Section 1a(47).

The defined term "swap" is embedded in the definition of "Referenced Contract" in proposed Rule 150.1. This embedded ambiguity in the 2013 Proposed Speculative Position Limits Rules requires the Commission to expressly exclude from speculative position limits those contracts which the Commission has determined Congress never intended to regulate as "swaps," such as customary commercial agreements, contracts and transactions entered into as part of operations.[30] A customary commercial agreement entered into as part of an NFP Electric Entity's operations (off-facility and not involving a financial intermediary in accordance with the Commission's interpretation) may nonetheless reference a Core Referenced Futures Contract, or be misinterpreted as directly or indirectly linked to the commodity or the delivery point underlying such Core Referenced Futures Contract. The Commission should expressly exclude such customary commercial contracts from the defined term "Referenced Contract."

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transaction data and Part 20 Large Trader position data it receives (including data with respect of CEU Hedging Swaps and CEU Hedging Derivatives). *See* CEA 4a(c)(1), quoted in footnote 9, that instructs the Commission to evaluate position limits by monitoring and analyzing the positions of the largest (not all) hedgers. If necessary, the Commission can revisit whether such CEU Hedging Swaps or other CEU Hedging Derivatives should be brought under its speculative position limits rules. However, the Commission's current proposal to apply a futures industry-like speculative position limits regime would cast the broadest possible regulatory net, and inadvertently capture Commercial End-Users and their CEU Hedging Swaps and CEU Hedging Derivatives, when such rules are intended to identify, measure and monitor speculation, speculative trading and speculative positions. The Commission can also monitor use of the exclusions by monitoring the use of "pass-through" exemptions referencing CEU Hedging Swaps or CEU Hedging Derivatives by counterparties to Commercial End-Users. The Commission could also propose for comment an annual confirmation filing for Commercial End-Users that represent to counterparties that they are relying on a CEU Hedging Swap/CEU Hedging Derivative exclusion.

[30] See the Product Definition Release at 48246. The Commission and the banking regulators excluded such contracts from the defined term "derivative" in the Volcker Rule, to resolve the ambiguity caused by incorporating by reference the defined term "swap." The NFP Electric Associations respectfully note that the Commission should review and adapt other regulations, interpretations and guidance that incorporate the defined term, especially those proposed or finalized before the Product Definitions Release was published, in order to provide legal certainty for Commercial End-Users who enter into such customary commercial contracts regularly as part of operations. For example, the same clarification should be considered in the future as the Commission and the banking regulators finalize margin and capital rules, which were proposed before the Product Definitions Release was finalized. See the NFP Electric Trade Association's comment letter referenced in footnote 5 for other pending, but unanswered, requests for clarification of the Commission's Product Definitions Release interpretations.

E. The Commission should exclude from the defined term "Referenced Contract" agreements, contracts and transactions exempted by the Commission from its "swap" regulations under exemption orders, interpretations, no-action letters or other guidance, including the Between NFP Electrics Exemption Order[31]

For reasons similar to those described above for customary commercial agreements as part of operations, the Commission should expressly exclude from "Referenced Contract," and thus from its speculative position limits, those agreements, contracts and transactions that it has determined to exempt from its swap regulations (except for certain identified provisions including enforcement jurisdiction) under its exemptive authority in CEA Section 4(c). For example, in the case of Exempt Transactions between NFP Electric Entities,[32] the Commission has determined that such NFP Electric Entities share a common not-for-profit public service mission, and have no incentive to speculate in utility-operations related swaps or transactions among their "closed loop" of entities. Many of the transactions between NFP Electric Entities are non-standardized, and all are used to hedge or mitigate commercial risks of the NFP Electric Entity counterparties. Some of the transactions may involve direct or indirect links to the Henry Hub Natural Gas Core Referenced Futures Contract. The Commission has not determined whether the transactions are "swaps, but it has determined that it is not in the public interest to regulate the transactions as "swaps." There is no regulatory reason to apply the Commission's speculative position limits rules to transactions between NFP Electric Entities.[33]

The Commission should modify Proposed Rule 150.1 to expressly exclude from the defined term "Referenced Contract" all agreements, contracts and transactions exempted by the

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31 78 Fed. Reg. 19670 (April 2, 2013) (the "Between NFP Electrics Exemption Order").

32 This term, as used in the Between NFP Electric Entities Exemption Order, has a slightly different meaning than the meaning the NFP Electric Associations ascribe to the term in this comment letter, due to the lack of parallelism in the statutory reference in Section 4(c)(6)(C) of the Commodity Exchange Act, and the Commission's use of a defined term to circumscribe those entities that are able to rely on the Between NFP Electrics Exemption Order.

33 Similarly, the Commission has determined that it is not in the public interest to regulate as "swaps" transactions that are exempted under the ISO/RTO Exemption Order, but without expressly excluding such transactions from the defined term "swap." *See* 78 Fed. Reg. 19879 (April 2, 2013) (the "RTO/ISO Exemption Order"). In the 2013 Speculative Position Limits Rules proposal, the Commission has not designated a Core Referenced Futures Contract derived on electricity as the underlying commodity. However, the Commission indicates that it is considering such a designation as resources allow. *See, e.g.*, 2013 Speculative Position Limits Rules proposal at 75726. If and when the Commission identifies a Core Referenced Futures Contract derived on electricity, ISO/RTO transactions could, inadvertently, be considered "Referenced Contracts." Unless the Commission excludes all CEU Hedging Swaps from "Referenced Contracts," or otherwise excludes or exempts these physical electricity market contracts that it has exempted from its swap regulations, the Commission's speculative position limits will inadvertently sweep in NFP Electric Entities and other utilities that routinely enter into transactions under their regional ISO/RTO's tariff to hedge or mitigate commercial risks.

Commission from its swap regulations under exemption orders, interpretations, no-action letters and other guidance.[34]

The Commission should use its plenary authority under CEA Section 4a(a)(7) to provide relief from the speculative position limits rules for each class of transactions described in this Section II by modifying Proposed Rule 150.1 to exclude the transactions from the defined term "Referenced Contract."

III. AS AN ALTERNATIVE TO THE TRANSACTION-BASED RELIEF REQUESTED IN SECTION II, THE COMMISSION SHOULD EXEMPT "NFP ELECTRIC ENTITIES"[35] FROM THE COMMISSION'S SPECULATIVE POSITION LIMITS RULES

In new CEA Section 4a(a)(7), the Dodd-Frank Act provided the Commission plenary authority to grant general exemptive relief from the speculative position limits rules to any person or class of persons.[36] The Commission should use its authority under CEA Section 4a(a)(7) to exempt all "Exempt NFP Electric Entities." The NFP Electric Associations respectfully request that the Commission define such class of exempt entities in a manner consistent with the way the term "Exempt Entity" is defined in the Between NFP Electrics Exemption Order.[37] Specifically, the NFP Electric Associations request that "Exempt NFP Electric Entities" be defined as:

> (i) any electric facility or utility that is wholly owned by a government entity, as described in Federal Power Act ("FPA") section 201(f), 16 U.S.C. 824(f); (ii) any electric facility or utility that is wholly owned by an Indian tribe recognized by the U.S.

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[34] The Commission can use its market surveillance and its anti-market manipulation authority, jurisdiction, reserved in each of the Commission's exemption orders, to monitor such nonfinancial commodity transactions and the market participants that rely on the Exemption Orders, along with the Commission's recently executed information-sharing memorandum with the Federal Energy Regulatory Commission.

[35] The NFP Electric Associations request that the Commission define this term consistently with the definition of the term "Exempt Entity" in the Between NFP Electrics Exemption Order. *See* 78 Fed. Reg. 19670 (April 2, 2013), at 19688. The vast majority of NFP Electric Entities are small entities that may not otherwise fall within the jurisdiction of the Commission for their energy and energy-related commodity transactions and swaps. Excluding or exempting such entities from the Commission's new jurisdiction over swaps using consistent terms and definitions will make it easier for these small entities to understand and comply with even a reduced set of new regulatory compliance burdens. This comment is consistent with the NFP Electric Associations' 2011 Speculative Position Limits Comments, where the request for an entity-based exemption was for the NFP Electric Entities, characterized as "bona-fide hedgers only."

[36] Section 4a(a)(7) of the Act provides: "The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits." 7 U.S.C. 6a(a)(7).

[37] 78 Fed. Reg. 19,670 (April 2, 2013) ("*Between NFP Electrics Exemption Order*").

> government pursuant to section 104 of the Act of November 2, 1994, 25 U.S.C. 479a–1; (iii) any electric facility or utility that is wholly owned by a cooperative, regardless of such cooperative's status pursuant to FPA section 201(f), so long as the cooperative is treated as such under Internal Revenue Code section 501(c)(12) or 1381(a)(2)(C), 26 U.S.C. 501(c)(12), 1381(a)(2)(C), and exists for the primary purpose of providing electric energy service to its member/owner customers at cost; or (iv) any other entity that is wholly owned, directly or indirectly, by any one or more of the foregoing. The term "Exempt Entity" does not include any "financial entity," as defined in CEA Section 2(h)(7)(C)."[38]

The NFP Electric Associations have explained to the Commission the not-for-profit nature of NFP Electric Entities and the conservative government or cooperative member/owner governance structures that provide neither an investor profit motive, nor an opportunity for commodity speculation, as part of NFP Electric Entities' core competency in electric operations. As entities that do not enter into speculative energy commodity transactions or derivatives, the NFP Electric Entities should be spared the unnecessary costs and burdens of being subject to the Commission's speculative position limits regime. There are thousands of NFP Electric Entities throughout the United States, many of which are "small entities" as such term is defined in the SBREFA.[39] Their shared public service mission is to provide electricity to electric cooperative members and citizen/electric customers in their geographic regions at affordable rates. There is no regulatory reason to sweep these small entities within Commission rules that are intended to measure, monitor and limit speculative positions in Referenced Contracts held by noncommercial entities.[40]

IV. FOR EACH CORE REFERENCED FUTURES CONTRACT, THE COMMISSION SHOULD IDENTIFY ALL REFERENCED CONTRACTS, INCLUDING THE PRIMARY ECONOMIC TERMS OF ALL SWAPS THAT ARE "ECONOMICALLY EQUIVALENT"

The NFP Electric Associations support the comments made in Section III of the EEI/EPSA Comment Letter on these issues of importance to Commercial End-Users in the energy industry. The NFP Electric Associations urge the Commission to publish in its rules a list of Referenced Contracts for each energy Core Referenced Futures Contracts including the NYMEX Henry Hub Natural Gas contract, including the primary economic terms of off-facility,

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[38] 78 Fed. Reg. 19670 at 19688. Additionally, the Commission explained that an electric facility or utility cannot be partially-owned by an entity not describe by FPA section 201(f) and an aggregated entity such as a Joint Power Administration must consist solely of the entities otherwise described as Exempt Entities in order to be covered by the definition. 78 Fed. Reg. 19670 at 19674.

[39] See Section X below.

[40] If the Commission is concerned that an NFP Electric Entity, given an entity-based exemption from speculative position limits, would speculate in Referenced Contracts not relevant to hedging or mitigating its unique commercial risks, the NFP Electric Entities could file an annual confirmation that all Referenced Contracts entered into during the prior year were used "to hedge or mitigate commercial risks."

bilateral swaps that it considers "economically equivalent" to each such Core Referenced Futures Contract. If appropriate, the Commission should thereafter delegate to staff the responsibility to give notice and consider public comments prior to adding to the list of such Referenced Contracts.

The informal staff guidance noted in the EEI/EPSA Comment letter, which was evidently posted on the Commission's website without notice or explanation and without being referenced in the Commission's proposed rules, does not provide Commercial End-Users regulatory certainty as to how to apply the "directly or indirectly linked" test in the proposed definition of "Referenced Contract" in Part 150.1. Commercial End-Users may not be otherwise unfamiliar with the Commission's process or procedures, and cannot anticipate which Referenced Contracts the Commission will consider to be directly or indirectly linked. Nor can Commercial End-Users be expected to check the Commission's website before entering into everyday energy commodity hedging transactions that may or may not fall within the defined term "Referenced Contract."

The term "swap" is defined in Commodity Exchange Act 1a(47), and "further defined" in the Commission's rules, interpretations, no-action letters and guidance construing and interpreting that statutory definition. However, "swaps" are not like futures contracts, which are circumscribed by publicly available listing criteria on a particular designated contract market. In addition, "swaps" are not all "significant price discovery contracts" ("SPDCs"). That designation requires the Commission to evaluate whether a particular contract is economically equivalent to specific futures contracts, and to provide notice and an opportunity for public comment, before a contract is designated a "SPDC." The universe of futures contracts and SPDCs therefore is or can be known; whereas the universe of nonfinancial commodity swaps which are ***or may be*** directly or indirectly linked to a particular Core Referenced Futures Contract is unbounded.[41]

For bilateral swaps that are to be regulated as Referenced Contracts, the parties must know at the time the swap is entered into (when the contract is executed for state contract law purposes) whether such swap must be evaluated as meeting the criteria for an enumerated bona fide hedging exemption. If so, the bilateral contract may require representations in order for the counterparty to ascertain whether it is entitled to a pass-through exemption. The swap may or may not cause one or both parties to exceed a speculative position limit. If the determination of "linked" or "not linked" is left to the discretion of market participants, each party to a bilateral swap may have its own opinion based on a good faith reading of the Commission's rules, and the opinions may not be the same. Such regulatory uncertainty will have a chilling effect on

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[41] The energy industry has submitted myriad comments, request for rehearing or reconsideration or clarification of the Commission's interpretations, requests for guidance and no-action on precisely this question: what common energy industry contracts are, and are not, included in the term "swap"? At this time, there is no clear line circumscribing what is and is not a "swap," or what type of energy commodity transaction is or may be subject to the Commission's jurisdiction. See, for example, the NFP Electric Associations' comments on the Product Definitions Release, including the request for rehearing or reconsideration in footnote 5.

non-standardized, bilateral energy commodity swaps, which are critical to the ability of NFP Electric Entities to hedge or mitigate commercial risks.[42]

The only effective way to establish by rule an appropriate "limit" on speculative positions in Referenced Contracts associated with a specific Core Referenced Futures Contract, whether as an absolute number or a percentage of a number, is to identify the Referenced Contracts that comprise the universe of contracts for which deliverable supply is be estimated.[43] Only then will the Commission be able to appropriately size the numerator to be used in the rules as the "speculative position limit."

V. THE COMMISSION SHOULD REVISE ITS APPROACH TO ESTABLISHING SPOT MONTH AND NON-SPOT MONTH SPECULATIVE POSITION LIMITS TO RECOGNIZE THE WAYS IN WHICH THE COMMISSION'S JURISDICTION OVER SWAPS DIFFERS FROM ITS JURISDICTION OVER THE FUTURES CONTRACTS THAT THE COMMISSION HAS TRADITIONALLY REGULATED.

In general, the NFP Electric Associations support the comments in Section VI of the EEI/EPSA Letter on these issues of importance to Commercial End-Users in the energy industry. The energy commodity and commodity derivatives markets are structured differently than the futures markets that the Commission has traditionally regulated. The Commission needs to recognize such differences in proposing speculative position limits rules that will apply to both on-facility and off-facility, cleared and non-cleared, standardized and non-standardized energy commodity interests including "swaps" (and potentially Trade Options), many of which are entered into between Commercial End-Users without being intermediated by financial markets facilities or market professionals.[44]

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[42] The Commission has been informed of the regulatory uncertainty that exists today in the natural gas and electricity markets in terms of which transactions are forwards (with acceptable embedded options or optionality), which are Trade Options and which are "swaps," regulatory uncertainty that contract counterparties have spent spent considerable time attempting to resolve in light of the Commission's interpretations in the Product Definitions Release and the Trade Options IFR. This new regulatory ambiguity about agreements, contracts and transactions that may or may not be directly or indirectly linked to a Core Referenced Futures Contract like the Henry Hub Natural Gas futures contract will add yet another level of uncertainty to the marketplace.

[43] For more on this topic, see Section VB below.

[44] The Commission is authorized to impose speculative position limits to combat *excessive* speculation, not to limit or restrict nonfinancial commodity derivatives transaction activity by Commercial End-Users hedging or mitigating commercial risks. Some of the NFP Electric Entities have multiple and sizeable electric generation assets, many electric customers spread over a large geographic area, significant weather challenges or other significant commercial risks to hedge. Such large commercial hedgers do not take comfort in the Commission's statement on page 75720 that the Commission has set the initial speculative position limits so high that it does not expect to catch Commercial End-Users "unless they have relatively large speculative positions on the same side of the market as the Commercial End-User's hedge positions." NFP Electric Entities will not have any speculative positions, and should not be required to measure their commercial risk hedging positions. The Commission should

A. The Commission should define "spot month" in relation to each Core Referenced Futures Contract and all related physically-settled and cash-settled Referenced Contracts, to assure that the definition works appropriately in terms of how each underlying nonfinancial commodity market operates, and to ensure that Commercial End-Users of such nonfinancial commodities can effectively use such Referenced Contracts to hedge or mitigate commercial risks.

The NFP Electric Associations support the comments made in Section VIA of the EEI/EPSA Comment Letter on this issue of importance for Commercial End-Users in the energy industry. In particular, the definition of "spot month" for the various regional electricity markets is important, due to the inability to store the nonfinancial commodity.

B. The Commission should use the most current data available for "estimated deliverable supply" in respect of all Referenced Contracts related to a particular Core Referenced Futures Contract, in order to set spot-month speculative position limits.

The NFP Electric Associations support the comments made in Section VIB of the EEI/EPSA Comment Letter on this issue of importance for Commercial End-Users in the energy industry. The energy commodity and related commodity derivatives markets have undergone significant changes since 2012, partly as a result of the Commission's new swap regulations. The Commission has recognized this in many ways, including its analysis of the "futurization" of swaps that took place during the second half of 2012. In addition, since 2012, there have been other significant market changes as a result of fundamental supply and demand changes in the industry, *e.g.* the shale gas revolution, increasing environmental regulations and state renewable energy portfolio standards affecting the electric utility industry, the economic downturn and sluggish recovery affecting energy demand in various parts of the country, the multi-year drought in the Western United States, retirement or decommissioning of significant electric generation stations, such as the San Onofre nuclear plant in Southern California, and this winter's "polar vortex" of unprecedented and prolonged cold across much of the northern United States. Regional energy commodity markets, energy commodity prices, and the volatility of on- and off-facility energy derivatives prices, are all affected by these post-2012 changes in market forces.

The Commission' use of 2011-2012 data from DCMs on "estimated deliverable supply" for energy futures contracts is very likely to be incomplete, and could grossly understate "estimated deliverable supply" of all Referenced Contracts associated with a particular Core Referenced Futures Contract. Even the CME's more recent (and larger) estimates may not fully incorporate deliverable supply, depending on how the Commission establishes the scope of the term "Referenced Contract" for energy Core Referenced Futures Contracts like Henry Hub Natural Gas. For example, if the Commission includes Trade Options and CEU Hedging

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not assume the size of a Commercial End-User's hedge positions will always be inconsequential in comparison to speculative positions.

Swaps, or natural gas deliverable at locations other than Henry Hub, Louisiana, in "Referenced Contracts," the Commission may not be considering relevant data on deliverable supply relevant for all customized, bilateral, off-facility contracts or all pipeline/citigate and nodal delivery points. If the denominator used to establish spot-month position limits – estimated deliverable supply -- is grossly understated, no percentage used to set the numerator limit (including the Commission's proposal of 25%) can be effectively evaluated or deemed appropriately sized. There is a very real and present danger that the Commission's spot-month speculative position limits will restrict the ability of NFP Electric Entities and other Commercial End-Users to hedge or mitigate commercial risks in liquid and transparent markets, including the bilateral, off-facility, regional energy and energy-related swaps markets.

C. The Commission should not set non-spot month speculative position limits for Core Referenced Futures Contracts derived on energy commodities based on incomplete or outdated market data, or based on available market data for swaps if the swap data is acknowledged by the Commission to be unreliable.

The NFP Electric Associations support the comments made in Section VID of the EEI/EPSA Comment Letter on this issue of importance for Commercial End-Users in the energy industry. The NFP Electric Associations recommend that the Commission defer setting non-spot month speculative position limits until it has at last 12 months of consistent and reliable market data about each Core Referenced Futures Contract and all of the Referenced Contracts identified by the Commission to be economically equivalent thereto.

VI. THE COMMISSION SHOULD REVISE THE "ORDERLY TRADING REQUIREMENT" TO MAKE IT CONSISTENT WITH THE DISRUPTIVE TRADING PRACTICES POLICY STATEMENT, ADOPTING A RECKLESSNESS STANDARD OF CARE AND APPLYING SUCH REQUIREMENT ONLY TO REFERENCED CONTRACTS EXECUTED ON REGULATED FACILITIES

The NFP Electric Associations support the comments made in Section VIIB of the EEI/EPSA Comment Letter and Section II3 of the IECA Comment Letter on this issue of importance for Commercial End-Users in the energy industry. Commercial End-Users that enter into, and exit or terminate, Referenced Contracts to hedge or mitigate commercial risks have a duty of care to their employers, and owner/shareholders (and the NFP Electric Entities to their members and/or electric ratepayer/customers), as well as their responsibilities as market participants. The Commission should not hold Commercial End-Users, as counterparties to swaps, to a higher standard of care than the standard of care to which the Commission holds all market participants in its Disruptive Trading Practices policy statement.

Moreover, in order to be consistent with the way in which the Disruptive Trading Practices policy statement is to be applied to swaps, an "orderly trading requirement" should only be applicable to Referenced Contracts executed on a regulated trading facility such as a designated contract market or a swap execution facility. For any Referenced Contracts that are

off-facility and non-standardized swaps, entered into bilaterally without a regulated market structure like a central order book or an intermediated regulatory RFQ process, neither the Commission nor market participants have a frame of reference against which to measure such an orderly trading requirement.

VII. AS AN ALTERNATIVE TO EXCLUDING TRADE OPTIONS, CEU HEDGING SWAPS AND/OR CEU HEDGING DERIVATIVES FROM "REFERENCED CONTRACTS," THE COMMISSION SHOULD INCLUDE IN ITS RULES A SINGLE, ENUMERATED BONA FIDE HEDGING EXEMPTION AVAILABLE TO COMMERCIAL END-USERS FOR REFERENCED CONTRACTS ENTERED INTO "TO HEDGE OR MITIGATE COMMERCIAL RISKS"

The Commission has not articulated a regulatory reason why Trade Options, CEU Hedging Swaps and CEU Hedging Derivatives should be included in the definition of "Referenced Contract" for purposes of speculative position limits, only then to require a Commercial End-User to bucket or "rebucket" each such transaction as within one of the enumerated "bona fide hedging exemptions," both at the time the transaction is executed and on an ongoing basis as part of a "position." From a practical perspective it is yet another step (or steps) that an NFP Electric Entity, or another Commercial End-User, will have to build in to procedures and processes each time it executes an energy commodity derivatives transaction to hedge or mitigate commercial risk of its ongoing operations.

Congress recognized that Commercial End-Users enter into nonfinancial commodity derivatives to hedge or mitigate complex, compound, idiosyncratic and ever-changing commercial risks, as distinguished from the commodity price risks typically hedged by traders in regulated financial trading markets. The Commission should ensure that its enumerated bona fide hedging exemptions from speculative position limits do not unnecessarily burden or restrict the protections intended by Congress to permit Commercial End-Users to cost-effectively use nonfinancial commodity swaps to hedge or mitigate commercial risks.

If the Commission chooses not to exclude Trade Options, CEU Hedging Swaps and CEU Hedging Derivatives from the defined term "Referenced Contract," the NFP Electric Associations respectfully request the Commission to provide a single enumerated bona fide hedging exemption for all such Referenced Contracts entered into "to hedge or mitigate commercial risks," as such phrase is defined in Rule 50.50(c). The bona fide hedging exemption would only be available to Commercial End-Users. In addition, any Commercial End-User that relies on this bona fide hedging exemption from speculative position limits, and in particular those Commercial End-Users that rely ***solely*** on this bona fide hedging exemption in respect of all Referenced Contracts (such as the NFP Electric Entities), should be able to report to the Commission no more frequently than annually, and to submit any such reports on paper rather than through an electronic interface." The NFP Electric Associations request this accommodation in order to streamline recordkeeping, transaction execution and reporting

obligations for Commercial End-Users, whose transactions are not speculative in nature.[45] The Commission should limit the quantitative aspects of any such reports, and carefully evaluate what, if any, regulatory purpose such reports would serve in the context of its speculative position limits.[46]

VIII. THE COMMISSION SHOULD MODIFY THE "PASS THROUGH EXEMPTION" RULES TO CREATE A PRESUMPTIVE EXEMPTION FOR COUNTERPARTIES THAT TRANSACT WITH COMMERCIAL END-USERS OR NFP ELECTRIC ENTITIES, ***WITHOUT*** REQUIRING ADDITIONAL REPRESENTATIONS, DOCUMENTATION OR RECORDKEEPING

The NFP Electric Associations respectively request that the Commission provide that, if a transaction has the benefit of an exclusion or an exemption from the Commission's speculative position limits rules (whether because it is excluded from the defined term "Referenced Contract" or has the benefit of the CEU Hedging bona fide hedging exemption), the counterparty to that transaction has a presumed pass-through exemption.[47] The counterparty may be another Commercial End-User, a swap dealer, a financial entity or a speculator, but that counterparty is providing necessary liquidity to the regional energy commodity market in which it offers the Trade Option, CEU Hedging Swap or CEU Hedging Derivative.

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[45] The NFP Electric Associations respectfully submit that the Commission may not have not sufficiently considered the perspective of Commercial End-Users hedging commercial risks as it evolved its speculative position limits proposals, and its "bona fide hedging exemptions," over the past several years. The Commission's 2010 speculative position limits proposals were applicable to futures markets and SPDCs (traded electronically) identified by the Commission as economically equivalent to futures contracts. Most position limits and bona fide hedging exemptions were still managed by exchanges, and were customized depending on the particular listed futures contract or SPDC, and the way such contracts were used by particular types of noncommercial entities and "bona fide hedgers." In the preamble to the 2013 Proposed Rules, the Commission references its understanding of Congress' direction to narrow the bona fide hedging exemptions. However, in enacting the Dodd-Frank amendments to the CEA, Congress clearly did not intend to narrow or restrict, but to preserve and protect, the ability of Commercial End-Users "to hedge or mitigate commercial risks."

[46] This comment is consistent with the NFP Electric Associations' 2011 Position Limits Comments, where the NFP Electric Associations asked for a "CFTC-lite" form of reporting for those entities that were characterized as "bona fide hedgers-only." See the comment letter linked at footnote 3. The Commission's Part 19 reports should not be applicable to, or required from, Commercial End-Users whose positions should not be measured or monitored under the Commission's speculative position limits to begin with. Commercial risks, or physical market factors, are not easily articulated or valued in "futures market equivalent" terms, and Commercial End-Users may or may not be familiar with financial market reporting practices. The NFP Electric Associations respectfully remind the Commission of its obligation to explain why the regulatory burden on "small entities" associated with such reports is necessary to achieve its regulatory purposes in establishing speculative position limits.

[47] This comment is partly in response to the question posed by the Commission on page 75711 as to whether the offeree of a Trade Option should be presumed to be a "pass-through swap counterparty." The NFP Electric Associations support that presumption and any regulatory presumption that would reduce unnecessary recordkeeping and reporting burdens on Commercial End-Users, while facilitating compliance with the Commission's speculative position limits by their counterparties.

In order to preserve Commercial End-Users' cost-effective access to the Referenced Contracts, and to those transactions that are excluded or exempted from the defined term Referenced Contract, the Commission must adapt its rules to allow appropriate and easily-used "pass-through" exemptions. Because this request is more directly for the benefit of the counterparties to the NFP Electric Entities, the NFP Electric Associations respectfully request that the Commission carefully consider comments from such other market participants in structuring appropriate, useable pass-through exemptions, so long as such exemptions do not place additional regulatory requirements or reporting burdens on the NFP Electric Entities.

IX. THE NFP ELECTRIC ASSOCIATIONS SUPPORT THE COMMENTS MADE BY OTHER ENERGY INDUSTRY TRADE ASSOCIATIONS IN RESPECT OF THE DETAILS OF THE COMMISSION'S 2013 SPECULATIVE POSITION LIMITS RULES PROPOSAL

The NFP Electric Entities do not enter into speculative transactions, and do not therefore carry, hold or maintain speculative positions. However, if the Commission declines the foregoing requests and recommendations of ways that the Commission can exclude the NFP Electric Entities and their transactions from its speculative position limits rules entirely, the NFP Electric Associations support the more granular ways in which the other energy industry trade associations request the Commission to adjust and reduce the regulatory burden of the Commission's speculative position limits rules on Commercial End-Users in the energy industry.

A. The Commission should include as bona fide hedging exemptions all commercial risk management practices commonly used by energy industry Commercial End-Users to hedge or mitigate unique commercial risks associated with their operations, as proposed in the EEI/EPSA Comment Letter, the IECA Comment Letter, comment letters filed by the Working Group of Commercial Energy Companies, or by other coalitions representing Commercial End-Users in the Energy Industry.

The NFP Electric Associations support the comments made in Sections VII of the EEI/EPSA Comment Letter and in Section II2 of the IECA Comment Letter on these issues of importance for Commercial End-Users in the energy industry. The Commission's speculative position limits rules should not restrict the ability of Commercial End-User to effectively hedge or mitigate commercial risks related to its operations in an economically appropriate manner. In particular:

B. The Commission should allow a bona fide hedging exemption for cross-commodity hedges. In particular, the Commission should allow a bona fide hedging exemption for "heat rate" transactions commonly used to hedge or mitigate commercial risks in the energy and utility industries.

The NFP Electric Associations support the comments made in Sections VIIA and VIIF of the EEI/EPSA Comment Letter and in Section II4 of the IECA Comment Letter on this issue of importance to Commercial End-Users in the energy industry. The NFP

Electric Entities and other Commercial End-Users in the energy industry routinely hedge the commercial risks associated with electric generation assets and electric customer loads using Referenced Contracts associated with the Henry Hub Natural Gas Core Referenced Futures Contract as part of cross-commodity hedges and heat rate transactions.

C. The Commission should include in its rules a commercially-practicable process for requesting additional enumerated bona fide hedging exemptions, and make all such bona fide hedging exemptions available industry-wide to entities that enter into Referenced Contracts related to Core Referenced Futures Contracts derived on energy commodities.

The NFP Electric Associations support the comments made in Section VIID of the EEI/EPSA Comment Letter and Section II9 of the IECA Comment Letter on this issue of importance for Commercial End-Users in the energy industry.

D. The Commission should amend the "state-regulated public utility bona fide hedging exemption" to eliminate a requirement that a state regulator "require or encourage" hedging. If the Commission retains the reference to a state regulator, the Commission should broaden the exemption so that it is available to NFP Electric Entities, which may or may not be regulated by state public utility regulators but which nonetheless hedge the commercial risks associated with providing continuous 24/7 electric utility services to their customers.

The NFP Electric Associations support the comments made in Section VIIE of the EEI/EPSA Comment Letter and Section II6 of the IECA Comment Letter on this issue of significant importance for Commercial-End Users that are utilities with continuous 24/7/365 service obligations to deliver electricity to customers.

The NFP Electric Associations respectfully request that the Commission ensure that this bona fide hedging exemption is available to NFP Electric Entities,[48] which may or may not be subject to state public utility regulations. In the Between NFP Electrics Exemption Order, the Commission noted the fact that NFP Electric Entities are not-for-profit public utilities with no outside investors or shareholders to profit from energy commodity or commodity derivatives transactions. The rates that the NFP Electric Entities charge their customers for electricity may or may not be regulated by a state public service commission. Nonetheless the NFP Electric Entities' governance structures makes them self-regulating utilities, as either the government supervisory employees, or the electric cooperative's members, conservatively manage electric operations to keep rates low and affordable. The Commission found that transactions to which

[48] As requested in Section III above, in this Section the NFP Electric Associations continue to use the term "NFP Electric Entities," but the request is to define the term in the bona fide hedging exemption consistently with the defined term "Exempt Entity" as used in the Between NFP Electrics Exemption Order.

NFP Electric Entities are parties are less vulnerable to fraudulent or manipulative trading activity in accordance with the purposes of the CEA.

The Commission also included federally-recognized Indian tribes within the scope of the Between NFP Electrics Exemption Order, noting that FERC has traditionally treated such tribes as FPA section 201(f) entities due to the similarities they share with government entities. The Commission noted that both FPA 201(f) electric cooperatives and non-FPA section 201(f) electric cooperatives should benefit from being exempt from the Commission's "swap" regulations, so long as such electric cooperatives are treated as cooperatives under Federal tax law, but regardless of whether they have tax exempt status, are owned and operated in the same not-for-profit, self-regulated manner as FPA section 201(f) cooperatives, and their source of financing or amount of monthly electricity sold does not affect their sharing with FPA section 201(f) electric cooperatives the same underlying public service mission of providing affordable, reliable electric energy service to customers. Finally, the Commission included in the scope of the Between NFP Electrics Exemption Order entities that are wholly-owned by NFP Electric Entities, and are formed by such NFP Electric Entities to collectively and cooperatively better achieve their shared utility public service mission.[49]

NFP Electric Entities exist as self-regulating, not-for-profit entities with a shared public service mission of providing reliable, low-cost electric energy service subject to the conservative and experienced utility operations management and oversight by elected or appointed governmental officials or cooperative member/consumers.[50] For these reasons, the Commission should expand the "utility bona fide hedging exemption" so as to allow NFP Electric Entities to rely on it.

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[49] 78 Fed. Reg. 19670 at 19673 (relying on its earlier determinations made in 77 Fed. Reg. 50998, 51011-12 (August 23, 2012).

[50] See, *e.g., Dairyland Power Cooperative et al, v. Federal Power Commission*, 37 F.P.C. 12 (1967); *Salt River Project Agricultural Improvement and Power District v. Federal Power Commission*, 391 F. 2d 470 (D.C. Cir. 1968).

X. THE COMMISSION MUST CONSIDER THE IMPACT OF ITS SPECULATIVE POSITION LIMITS RULES ON "SMALL ENTITIES,"[51] INCLUDING THE MAJORITY OF NFP ELECTRIC ENTITIES[52] WHICH DO NOT ENTER INTO SPECULATIVE TRANSACTIONS OR HOLD SPECULATIVE POSITIONS

The Commission's cost-benefit analysis assumes that its speculative position limits rules, and the bona fide hedging exemptions it enumerates, are structured to provide benefits for, rather than impose costs on, Commercial End-Users. The NFP Electric Associations respectfully disagree. The NFP Electric Entities and other Commercial End-Users that enter into Trade Options, CEU Hedging Swaps and CEU Hedging Derivatives "to hedge or mitigate commercial risks" should not be swept up in the Commission's new speculative position limits. It is incumbent on the Commission to review each of its new rules implementing the Dodd-Frank Act to evaluate whether it has considered all proposed alternative regulatory approaches that would impose on "small entities" only such regulatory costs and burdens as are necessary to achieve the Commission's identified regulatory objectives.[53]

As in its other Dodd-Frank rulemakings, the Commission overstates the generic benefit of its speculative position limits rules, while failing to differentiate between the burdens imposed on speculators, financial entities and dealers, and unnecessary burdens and costs that the rules impose on Commercial End-Users.[54] The NFP Electric Entities are "small entities" that execute

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[51] The Regulatory Flexibility Act, as amended by SBREFA (collectively, "SBREFA"), incorporates by reference the definition of "small entity" adopted by the Small Business Administration (the "SBA").

[52] Using the SBREFA criteria for small business size regulations, the vast majority of NRECA's 900 members meet the definition of "small entity" (13 C.F.R. §121.201, as modified effective January 22, 2014. See 78 Fed. Reg. 77343 (December 23, 2013)). Only three generation and transmission cooperatives would be expected not to meet the definition. Most of APPA's more than 2,000 members also meet the definition of "small entity." In the aggregate, the NFP Electric Entities constitute more than 2500 "small entities" that will be affected by the Commission's rulemakings, and that number does not consider "small entity" Commercial End-Users in other industries that will be swept up in the Commission's speculative position limits even if they use nonfinancial derivatives that are "Referenced Contracts" only "to hedge or mitigate commercial risks." The Commission cannot continue to ignore its responsibilities under the RFA by repeatedly citing its own dated and unsupported assertion that "eligible contract participants" are not "small entities." See p. 75784 footnote 847. The case repeatedly cited by the Commission contains no analysis as to why the Commission made such an assertion, and provides no analysis applying the SBREFA criteria to various categories of "eligible contract participants." In some rulemakings, the Commission acknowledges that some number eligible contract participants may be "small entities," but dismisses the NFP Electric Associations' request to conduct the required SBREFA analysis by saying there are only a few such "small entities." *See*, for example, the Trade Option IFR at 77 Fed. Reg. 25320 and 25335-25336 (April 27, 2012). The NFP Electric Associations respectfully submit that their more than 2500 "small entity" members deserve the full regulatory review afforded them by SBREFA.

[53] On page 75758, in footnote 699, the Commission notes that "[t]hose who purchase or sell derivatives do so ***either*** to hedge or to speculate." We encourage the Commission to impose costs on speculators, not on hedgers.

[54] This comment is consistent with the NFP Electric Associations' 2011 Speculative Position Limits Comments, and in particular Section IIA of those Comments. A weblink to the comment letter is provided in footnote 3.

Trade Options, CEU Hedging Swaps and CEU Hedging Derivatives solely to hedge or mitigate commercial risks of their not-for-profit electric operations. NFP Electric Entities are all Commercial End-Users and "*bona fide* hedger only" entities. The NFP Electric Associations reserve the right to demand that the Commission fulfill its statutory requirements under SBREFA to show the steps it has taken, and the alternatives it has considered (including the alternatives proposed by the NFP Electric Associations in this comment letter), to reduce costs and regulatory burdens that its speculative position limits will impose on NFP Electric Entities.[55]

In addition, the NFP Electric Associations, for and on behalf of their members, reserve the right to assess the full impact of the rulemakings being promulgated by the Commission to implement and interpret the Dodd-Frank Act, and to require a SBREFA analysis be conducted with respect to those regulations as a whole. The Commission must demonstrate that such costs and burdens are necessary to accomplish an identified regulatory objective, and that such regulatory objectives cannot otherwise be achieved by alternative regulatory approaches that commenters recommend, while reducing the costs and regulatory burdens imposed on "small entities."[56]

XI. CONCLUSION

Please contact any of the NFP Electric Associations' undersigned representatives or Patricia Dondanville, Reed Smith LLP, 10 South Wacker Drive, 40th Floor, Chicago, Illinois 60606, telephone (312) 207-3911 or at pdondanville@reedsmith.com for more information or assistance.

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[55] The vast majority of NFP Electric Entities are "small entities" under the regulatory definitions in SBREFA. It is not within the Commission's authority to ignore those definitions, or to assume away its obligations under SBREFA to "small entities" in general or, or to more than 2500 NFP Electric Entities that are "small entities" in particular.

[56] The NFP Electric Entities respectfully request that the Commission evaluate the aggregate costs and benefits of its rules as well as its interpretations, no-action letters and guidance provided in other forms, to the extent that such statements of policy have the effect of rules and impose regulatory costs and burdens on "small entities" (even if the Commission does not give notice or seek public comments as required by the Administrative Procedures Act).

PROPOSED POSITION LIMITS RULE

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ATTACHMENT A - DESCRIPTION OF THE NFP ELECTRIC ASSOCIATIONS

NRECA is the national service organization for more than nine hundred rural electric utilities and public power districts that provide electric energy to approximately forty-two million consumers in forty-seven states or thirteen percent of the nation's population. Kilowatt-hour sales by rural electric cooperatives account for approximately eleven percent of all electric energy sold in the United States. Because an electric cooperative's electric service customers are also members of the cooperative, the cooperative operates on a not-for-profit basis and all the costs of the cooperative are directly borne by its consumer-members.

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.

LPPC is an organization representing 26 of the largest government-owned electric utilities in the nation. LPPC members own and operate over 86,000 megawatts of generation capacity and nearly 35,000 circuit miles of high voltage transmission lines, representing nearly 90% of the transmission investment owned by non-Federal government-owned electric utilities in the United States.

ATTACHMENT B – EXAMPLES OF THE WAY AN NFP ELECTRIC ENTITY MIGHT USE NATURAL GAS TRADE OPTIONS, CEU HEDGING SWAPS AND CEU HEDGING DERIVATIVES (FUTURES CONTRACTS) "TO HEDGE OR MITIGATE COMMERCIAL RISKS'

For example, each of the following commercial risk hedging strategies would have a similar economic effect for an NFP Electric Entity with electric generation assets (supply) and electric customer load (demand) in the middle South area of the United States, each would serve "to hedge or mitigate commercial risks," and the NFP Electric Entity is a Commercial End-User:

Based on historical weather forecasts and generation outage plans, a not-for-profit electric utility expects to consume 1,000,000 MMBtu of natural gas to produce 100,000 MWhs of electricity from its generation stations to meet a portion of its electric load obligations in Louisiana for the month of January 2015. The utility wants to hedge 50% of the deliverability and the cost (both commercial risks) of the underlying natural gas at Henry Hub today. The utility can:

- Buy natural gas at a floating price, and buy 50 Jan-15 NYMEX "NG" physical *futures contracts* - Henry Hub Natural Gas Futures for 10,000 MMBtu each
    - Sell back the same futures contract on the contract's last trading day in late December 2014 (the intent is to fix the price, not to take delivery at Henry Hub);
- Buy natural gas at a floating price, and enter into counterparty *swaps* for 50 "NG" Jan-15 contract equivalents that cash settle on the difference between today's price for the NYMEX "NG" contract, and the final settlement price on the last day of trading for the same contract (direct price link to core Referenced Futures Contract; no unique commercial terms to the swap);
- Buy natural gas at a floating price, and buy 200 Jan-15 NYMEX "NN" cash settled *futures contracts* - Henry Hub Natural Gas Last Day Financial Futures for 2,500 MMBtu each; or
- Buy natural gas at a floating price, and enter into counterparty *swaps* for 200 "NN" Jan-15 contract equivalents that cash settle on the difference between today's price for the NYMEX "NN" contract, and the final settlement price for the same contract (may constitute an indirect price link to Core Referenced Futures Contact).
- Buy natural gas at a fixed price for delivery to its generation stations, with some degree of optionality in case the weather is not as expected in the forecast at the time the purchase takes place, or the market price of natural gas drops to below the fixed price, so that the NFP Electric Entities customers do not have to pay for above market natural gas.

All of these choices for the Commercial End-User would serve "to hedge or mitigate its commercial risk." All should be excluded from the definition of "Referenced Contract," as the transactions are not speculative.