Steven C. Nelson
Assistant General Counsel

101 Ash Street, HQ 12
San Diego, California 92101

tel: (619) 696-5136
fax: (619) 696-4488
email: snelson@sempra.com

July 25, 2014

Via Electronic Submission

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

Re: Position Limits for Derivatives, RIN 3038-AD99
Aggregation of Positions, RIN 3038-AD82

Dear Ms. Jurgens:

By notices dated May 29, 2014 and July 3, 2014,[1] the Commodity Futures Trading Commission ("CFTC" or "Commission") re-opened the comment period to address certain issues with respect to the Commission's proposed position limits and aggregation rules,[2] which also were addressed in a public roundtable Commission Staff hosted on June 19, 2014.

As set forth in the notices, "[c]omments should be limited to the issues of hedges of a physical commodity by a commercial enterprise, including gross hedging, cross-commodity hedging, anticipatory hedging, and the process for obtaining a non-enumerated exemption; the setting of spot month limits in physical-delivery and cash-settled contracts and a conditional spot-month limit exemption; the setting of non-spot limits for wheat contracts; the aggregation exemption for certain ownership interests of greater than 50 percent in an owned entity; and aggregation based on substantially identical trading strategies."

Sempra Energy ("Sempra Energy" or "Sempra") appreciates the opportunity to submit comments in response to the notices. In these comments, Sempra Energy urges the Commission to:

- Set initial spot-month limits based on the CME Group's updated estimates of deliverable supply submitted to the Commission on July 1, 2013;

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[1] *See* 79 Fed. Reg. 30762 (May 29, 2014) and 79 Fed. Reg. 37973 (July 3, 2014).

[2] *See* Position Limits for Derivatives, 78 Fed. Reg. 75680 (Dec. 12, 2013) and Aggregation of Positions, 78 Fed. Reg. 68946 (Nov. 15, 2013).

- Modify its proposed conditional spot-month limit exemption to allow independently-operated subsidiaries to hold positions in physical-delivery contracts;
- Reinstate unfilled storage capacity as an enumerated bona fide hedge; and
- Tailor the requirements for the aggregation exemption for majority owners to the purpose of the aggregation policy – "to prevent evasion of position limits through coordinated trading" – and revise the rule to permit notice filings.

I.
DESCRIPTION OF SEMPRA ENERGY AND ITS SUBSIDIARIES

A. Sempra Energy

Sempra is a Fortune 500 energy-services holding company whose operating units develop energy infrastructure, operate utilities, and provide related services to their customers. Sempra's operations are divided principally between (a) its two wholly-owned California utilities, Southern California Gas Company ("SoCalGas") and San Diego Gas & Electric Company ("SDG&E") (collectively, "California Utilities") and (b) Sempra U.S. Gas & Power and Sempra International.

B. California Utilities

SoCalGas is regulated by the California Public Utilities Commission ("CPUC") as a public utility, as defined by California law. SoCalGas is the nation's largest natural gas distribution utility. It owns and operates a natural gas distribution, transmission and storage system that supplies natural gas throughout its service territory, which consists of approximately 20,000 square miles. SoCalGas' service territory extends from San Luis Obispo, California in the north to the Mexican border in the south, excluding San Diego County, the city of Long Beach and the desert area of San Bernardino County. SoCalGas also provides natural gas service to residential, commercial, industrial, utility electric generation and wholesale customers through 5.8 million meters, covering a population of 21.3 million.

SDG&E is also a CPUC-regulated public utility, as defined by California law. SDG&E has a franchised service territory that provides electric and natural gas service in San Diego County and southern Orange County, California. SDG&E owns electric transmission facilities in the market operated by the California Independent System Operator Corporation and has an open access transmission tariff on file with the Federal Energy Regulatory Commission. SDG&E provides electricity to approximately 3.4 million consumers and natural gas to approximately 3.2 million consumers. SDG&E delivers electricity through approximately 1.4 million meters in San Diego County and an adjacent portion of southern Orange County, California. The electricity that SDG&E provides to its customers is either purchased from third parties or generated from SDG&E's electric generation facilities. SDG&E also delivers natural gas through 0.9 million

meters in San Diego County and transports electricity and natural gas for others. SDG&E's service territory encompasses 4,100 square miles.

C. Sempra U.S. Gas & Power and Sempra International

Sempra U.S. Gas & Power develops, owns and operates renewable energy generation projects in several states, a natural gas-fired electric generation facility in Arizona, natural gas pipelines and storage facilities in Louisiana, Mississippi and Alabama, natural gas distribution utilities in Mississippi and Alabama, and a terminal in Louisiana for the import and export of liquefied natural gas ("LNG"). Sempra International includes for financial reporting purposes a Sempra Mexico segment and a Sempra South American Utilities segment.[3]

Sempra Energy's California Utilities – SoCalGas and SDG&E – and Sempra U.S. Gas & Power all engage in the purchase and/or sale of Henry Hub natural gas futures contracts and swaps that would be subject to the Commission's proposed position limits and aggregation rules.

II.
DISCUSSION

A. The Commission Should Set Initial Spot-Month Limits Based on the CME Group's Updated Estimates of Deliverable Supply Submitted to the Commission on July 1, 2013

In the proposed position limits rule, the Commission explained that "[a]s an alternative to the initial spot month limits in proposed appendix D to part 150, the Commission is considering setting the initial spot month limits based on estimated deliverable supplies submitted by the CME Group in correspondence dated July 1, 2013."[4] Under this alternative, the Commission "would use the exchange's estimated deliverable supplies and apply the 25 percent formula to set the level of the spot month limits in a final rule if the Commission verifies the exchange's estimated deliverable supplies are reasonable."[5] The Commission set forth the specific spot month limits that would result from application of the CME Group's updated estimated deliverable supplies in Table 9 of the proposed rule.[6]

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[3] The Sempra Mexico segment involves the ownership and operation of natural gas transmission pipelines and propane and ethane systems, a natural gas distribution utility, electric generation facilities, including a wind-powered facility, a terminal for the import of LNG and marketing operations for the purchase of LNG and the purchase and sale of natural gas. The Sempra South American Utilities segment involves the operation of electric transmission and distribution utilities in Chile and Peru.

[4] Proposed position limits rule at p. 75727.

[5] *Id.*

[6] *Id.* at pp. 75727-28.

Sempra Energy strongly supports the Commission's adoption of the CME Group's updated estimates of deliverable supply for purposes of setting initial spot month limits. As many market participants pointed out in their February 2014 comments, the proposed position limits are, in a number of cases, based on decades-old data and do not reflect current market conditions. For example, the proposed 1,000 spot-month limit for Henry Hub Natural Gas contracts is based on 1996 estimates of deliverable supply,[7] which clearly do not reflect the dramatic growth in the natural gas industry in the last twenty years.

Using updated estimates of deliverable supply based on current market conditions to set initial spot-month position limits is an approach that was strongly supported by most market participants in their February 2014 comments[8] and at the June 19 roundtable, would provide some reasonable and much-needed flexibility to market participants as they adjust to the new position limits requirements, and, simply put, make the proposed rules more legally defensible. In addition, as the representative from BG Energy Merchants and NGSA explained at the June 19 roundtable, using updated estimates of deliverable supply will enhance liquidity by increasing the number of counterparties with whom bona fide hedgers can contract.[9] Sempra Energy thus urges the Commission to complete its verification review of the CME Group's July 1, 2013 updated estimates of deliverable supply and move forward on that basis.

B. The Commission Should Modify its Proposed Conditional Spot-Month Limit Exemption to Allow Independently-Operated Subsidiaries to Hold Positions in Physical-Delivery Contracts

The Commission has proposed that the conditional spot month limit would be available only to traders that do not hold or control positions in the spot-month physical delivery referenced contract. Under the aggregation requirements proposed by the Commission, different subsidiaries of a holding company would apparently all be considered a single "trader" for purposes of determining whether the spot month limit would be available. As a result, by

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7 *See, e.g.,* the CME Group's February 10, 2014 comments on the proposed positions limit rule at pp. 3 and 20.

8 *See, e.g.*, the February 2014 comments on the proposed position limits rule by (in alphabetical order), BG Energy Merchants (pp. 2 and 6), Calpine Corporation (p. 3), the CME Group (pp. 3-4 and 20-23), the Coalition of Physical Energy Companies (p. 21), the Commercial Energy Working Group (pp. 58-59), the Commodity Markets Council (pp. 13-14), the Edison Electric Institute and the Electric Power Supply Association ("EEI" and "EPSA") (pp. 8-9), the Futures Industry Association (pp. 3 and 8), Morgan Stanley (p. 11), the Natural Gas Supply Association ("NGSA") (pp. 3 and 37-38) and the U.S. Chamber of Commerce's Center for Capital Markets Competitiveness (pp. 6-7).

9 Sempra also observes that for purposes of setting the initial single-month and all-months-combined limits, the Commission is proposing to use open interest data for calendar years 2011 and 2012. (*see* pp. 75765-66 of the proposed position limits rule). The Commission's approach of using relatively updated data for setting the initial single-month and all-months-combined limits appears to be inconsistent with the approach the Commission would be taking with respect to setting initial spot-month limits if it does not adopt the CME Group's July 1, 2013 updated estimates of deliverable supply.

holding or controlling a single physical contract, one of a holding company's multiple subsidiaries could make the conditional spot month limit unavailable to the other subsidiaries.

The Commission states in the proposed rule that "[t]his proposed conditional exemption for cash-settled contracts generally tracks exchange-set position limits currently implemented for certain cash-settled energy futures and swaps."[10] One important distinction, however, between the Commission's proposed rule and the position limits established by exchanges is that the exchanges do not require aggregation of the positions of subsidiaries that are separately and independently operated.[11]

The Commission states that, "[h]istorically, the Commission and Congress have been particularly concerned about protecting the spot month in physical-delivery futures contracts. For example, new CEA section 4c(a)(5)(B) makes it unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period."[12] The Commission further notes that the proposed conditional exemption would eliminate "all speculation in a physical-delivery contract during the spot period by a trader availing herself of the conditional spot month limit exemption."[13]

There may be a rationale for imposing this restriction on multiple affiliated entities that engage in joint or coordinated trading activities. However, there appears to be no justification for imposing the same limitation "across the board" on all subsidiaries of a holding company when the subsidiaries trade futures contracts and swaps independently of each other. The exchanges do not impose such a restriction and there has been no information presented by the Commission or any other party that this has resulted in any unlawful or improper conduct (nor is there any reasonable basis for inferring that it has). If two or more subsidiaries engage in separate and independent trading and hedging activities and share no employees or information relating to those activities, and if the subsidiaries are not jointly directed in their trading activities by the corporate parent, the fact that one subsidiary holds one or more spot month physical delivery contracts should not make the conditional spot month limit exemption unavailable to the other subsidiary(ies). Moreover, this limitation may pose significant difficulties to companies that are subject to state or federal regulatory rules that require physical, operational and

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[10] *See* proposed position limits rule at p. 75736.

[11] *See, e.g.*, ICE Futures U.S., Inc.'s February 10, 2014 comments on the proposed aggregation rule at p. 2: "There are numerous instances in our markets where companies with 100% common ownership nonetheless operate in a manner where there is complete independence of decision-making and control of the trading decisions. The Exchange does not automatically aggregate such commonly owned entities, and based on the comment letters submitted in response to the original Part 151 amendments, it would seem that market participants across a broad variety of futures markets agree with this approach."

[12] *See* proposed position limits rule at p. 75736.

[13] *Id.* at p. 75737.

information separation among subsidiaries, as discussed in greater detail below in Subsection II.D.

Sempra Energy therefore urges the Commission to recognize in the final rule that, if one of the subsidiaries of a holding company holds a spot month physical delivery referenced contract, the other subsidiaries of the holding company could nonetheless utilize the conditional spot month limitation, provided that the subsidiary holding the physical delivery contract (i) engages in separate and independent trading activities from the other subsidiaries, (ii) shares no employees with the other subsidiaries and (iii) is not jointly directed in its trading activities with the other subsidiaries by the corporate parent (or other controlling entity or person).

C. The Commission Should Reinstate Unfilled Storage Capacity As an Enumerated Bona Fide Hedge

The Commission is not re-proposing the hedging exemption for unfilled storage capacity that was in vacated Section 151.5(a)(2)(v). That exemption was limited to the current or anticipated amount of unfilled storage capacity that the person owned or leased. In the proposed rule, the Commission has invited commenters to provide specific, empirical analysis that would demonstrate how particular types of transactions could reduce the value at risk of unfilled storage space that could support such an exemption.

Sempra Energy submits the following comments in the context of underground natural gas storage, which is vital to meeting the energy requirements of industrial, commercial and residential customers throughout the country.

The acquisition of firm natural-gas-storage capacity requires payment of a fixed fee to the storage facility owner. To recover this fixed cost, a party holding gas storage capacity needs to realize a sufficient margin between (i) the cost of the gas that it purchases and injects into storage and (ii) the price it receives when it subsequently withdraws the gas from storage and sells it. Natural gas prices are typically highest during the peak winter heating season, so a storage customer may decide to lock in the “spread” between (a) the cost of gas available for purchase during non-peak periods for injection into storage and (b) the revenues to be realized when the gas is withdrawn from storage for sale during future periods of peak demand. This greatly mitigates the risk to the party holding the storage capacity and protects that party against future swings in natural gas prices relative to the cost of the storage capacity. The timing of the purchase and sale of futures contracts or swaps that lock in this spread may or may not correspond to the timing of the actual physical purchase of gas that will be injected into storage. The fact that there may be a difference in the timing of the two does not, however, negatively impact the effectiveness of the futures/swap transaction(s), which in any event has the effect of locking in both the realized cost and profit on the ensuing physical transaction.

Typically, a customer of a storage facility will first enter into the futures/swap transactions and follow that transaction with the purchase and injection of the related physical

quantity of gas. The futures/swap contracts, however, will have established in economic terms both a fixed purchase price and a fixed sales price for the gas, regardless of when the physical purchase and sales transactions actually occur. These types of financial transactions, although not necessarily accompanied by the simultaneous injection of gas into storage, are nonetheless intended to mitigate the commercial risk associated with holding firm storage capacity. Frequently, it is not possible from a logistical perspective to arrange for the purchase and injection of gas to coincide exactly with financial hedging transactions. And there appears to be no good reason to require that the two occur at the same time.

Of course, to qualify for the bona fide hedge exemption, a futures or swap transaction relating to unfilled storage capacity must be entered into for the purpose of reducing commercial risk and not for speculative purposes. But assuming that requirement is satisfied, the distinction between hedges entered into for filled versus unfilled storage capacity appears to be an artificial one that will unduly constrain the ability of market participants to engage in a reasonable and effective hedging technique. Sempra Energy urges the Commission to reinstate vacated Section 151.5(a)(2)(v).

D. The Commission Should Tailor the Requirements for the Aggregation Exemption for Majority Owners to the Purpose of the Aggregation Policy – "To Prevent Evasion of Position Limits through Coordinated Trading."

Under the Commission's proposed aggregation rule, "unless an exemption set forth in paragraph (b) of [Section 150.4] applies, all positions in accounts for which any person, by power of attorney or otherwise, directly or indirectly controls trading or holds a 10 percent or greater ownership or equity interest must be aggregated with the positions held and trading done by such person."[14]

For persons with an ownership or equity interest in an owned entity of 10 to 50 percent, the proposed aggregation rule provides an exemption upon a showing through a notice filing – that takes effect upon filing – of several specified "indicia of independence" ("Independence Criteria")[15] and other requirements that appear to be reasonably tailored to the Commission's stated "purpose" of its aggregation policy – "to prevent evasion of position limits through coordinated trading" of affiliated entities.[16] The five (5) Independence Criteria – carried over from the earlier Part 151 aggregation proposal, with some further clarification and explanation –

[14] Proposed Section 150.4(a).

[15] Proposed aggregation rule at p. 68966. The phrase "indicia of independence" is used in the context of the discussion of the Part 151 aggregation proposal, but the criteria mirror those currently being proposed.

[16] At p. 68971 of the proposed aggregation rule, the Commission explains that it "continues to view aggregation as an essential part of its position limits regime. The proposed regulations include exemptions from the aggregation policy, *the purpose of which is to prevent evasion of position limits through coordinated trading*." (emphasis added).

are set forth in proposed Section 150.4(b)(2)(i)(A) – (E) and require that "[s]uch person, including any entity that such person must aggregate, and the owned entity:"

(A) Do not have knowledge of the trading decisions of the other;
(B) Trade pursuant to separately developed and independent trading systems;
(C) Have and enforce written procedures to preclude each from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities;
(D) Do not share employees that control the trading decisions of either; and
(E) Do not have risk management systems that permit the sharing of trades or trading strategy.

For persons with an ownership or equity interest in an owned entity of greater than 50 percent, however, the proposed aggregation rule would require not only a showing that the Independence Criteria have been met, but an application – that would not take effect until approved by the Commission – demonstrating compliance with a number of additional requirements that are not reasonably tailored to "prevent evasion of position limits through coordinated trading." For example, the proposed aggregation rule would limit the scope of the exemption to entities that do not report earnings on a consolidated basis and that adhere to overly restrictive trading requirements.[17] As various market participants noted in their February 2014 comments, the proposed exemption, if adopted without change, would be "unworkable,"[18] "so restrictive as not to be useable,"[19] and "largely unavailable to market participants."[20]

Sempra Energy recognizes that ownership can be one indicia of control.[21] However, ownership does not equate to control, at least when the relevant issue – based on the stated

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[17] *See* proposed Sections 150.4(b)(3)(i) and (iv): "(i) Such person certifies to the Commission that the owned entity is not required under U.S. generally accepted accounting principles to be, and is not, consolidated on the financial statement of such person;" and "(iv) Such person certifies to the Commission that either all of the owned entity's positions qualify as bona fide hedging transactions or the owned entity's positions that do not so qualify do not exceed 20 percent of any position limit currently in effect . . ."

[18] *See, e.g*., the February 10, 2014 comments of the Asset Management Group of the Securities Industry and Financial Markets Association (p. 5) on the proposed aggregation rule.

[19] *See* the February 10, 2014 comments of NGSA (p. 40).

[20] *See* the February 10, 2014 comments of ICE Futures U.S., Inc. (p. 3) on the proposed aggregation rule.

[21] As the Commission explains at p. 68958 of the proposed aggregation rule, "the U.S. Federal Trade Commission and U.S. Department of Justice use a 50 percent ownership threshold test to determine 'control' for the purpose of defining pre-merger and acquisition filing requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1974."

purpose of the proposed rule - should be control over trading decisions that could result in "coordinated trading" among affiliated entities. This is very different than the high-level control that a majority owner exercises to satisfy its corporate oversight and governance responsibilities pursuant to Sarbanes Oxley and other rules and regulations.

Thus, in our view, a notice filing demonstrating that a market participant meets the Independence Criteria of proposed Section 150.4(b)(2)(i)(A) – (E) – along the lines of what the Commission would require of persons with an ownership or equity interest in an owned entity of 10 to 50 percent – should be sufficient for persons with an ownership or equity interest in an owned entity of greater than 50 percent because the Independence Criteria go to the heart of the purpose of the aggregation rule, which is to prevent evasion of position limits through coordinated trading among affiliated entities.

If, nonetheless, the Commission believes that something more should be required for persons with ownership or equity interests greater than 50 percent, a starting point could be the question Staff raised at the June 19 roundtable:

> 1. For ownership interests over 50 percent, what organizational structures do you have in place that would indicate that there is an appropriately high degree of separation between the owner and the owned entity, in light of the statutory purposes of position limits, such that the two should not be aggregated? For example, in this situation, what organizational structures would prevent the owner and the owned entity from using the limits that would apply to them separately (if they are not aggregated), in order to engage in excessive speculation or market manipulation?"[22]

It is not entirely clear how a demonstration of the "organization structures" a person has in place to achieve "an appropriately high degree of separation between the owner and the owned entity" would differ from a demonstration of how a person meets the Independence Criteria.[23] Nonetheless, if Sempra Energy were to address these issues in a subsequent notice filing or application, Sempra Energy would point to, among other things, the rules adopted by the California Public Utilities Commission ("CPUC") that require physical, operational and information separation and independence between the trading groups within Sempra's California Utilities and Sempra U.S. Gas & Power and Sempra International. These CPUC rules also prohibit Sempra Energy, as the parent holding company, from acting as a conduit to transfer non-

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[22] "Position Limits Roundtable: Staff Questions," June 18, 2014 (p. 6).

[23] In addition, it is not entirely clear how a demonstration that the Independence Criteria set forth in proposed Section 150.4(b)(2)(i)(A) – (E) have been met would differ, if at all, from the demonstration required in proposed Section 150.4(b)(3)(ii) that "procedures are in place that are reasonably effective to prevent coordinated trading decisions by such person, any entity that such person must aggregate, and the owned entity."

public information between the California Utilities and Sempra U.S. Gas & Power and Sempra International.[24]

SoCalGas and SDG&E have in place detailed written affiliate compliance plans, policies and procedures that assure the physical, operational and information separation required by the CPUC's rules. This separation ensures against coordinated trading by requiring that affiliates (1) do not have knowledge of the trading decisions of the others, (2) trade pursuant to separately-developed and independent trading systems, (3) do not share employees that control

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[24] The CPUC rules Sempra Energy is referring to are the (1) the CPUC's "Affiliate Transaction Rules Applicable to Large California Energy Utilities" ("CPUC Affiliate Transaction Rules") set forth in CPUC Decision ("D.") 97-12-088, as most recently modified by D.06-12-029 (Appendix A-3), 2006 Cal. PUC LEXIS 460, and (2) what Sempra Energy refers to as the "CPUC Merger Conditions," which are the conditions the CPUC imposed when it approved the 1998 merger of Enova Corporation and Pacific Enterprises to form Sempra Energy, D.98-03-073, 79 CPUC2d 343 (1998) (see Attachment B of the decision, "Required Mitigation Measures").

With respect to information-sharing and operational restrictions, Rule IV.B of the CPUC Affiliate Transaction Rules, for example, prohibits utilities from directly or indirectly transferring non-public information to their affiliates unless such information is made publicly available on a contemporaneous basis ("A utility shall make non-customer specific non-public information, including but not limited to information about a utility's natural gas or electricity purchases, sales, or operations or about the utility's gas-related goods or services and electricity-related goods or services, available to the utility's affiliates only if the utility makes that information contemporaneously available to all other service providers on the same terms and conditions, and keeps the information open to public inspection.") Rule II.C(3) of the CPUC Affiliate Transaction Rules prohibits parent holding companies from acting as a conduit to transfer non-public utility information to affiliates ("No holding company . . . shall knowingly . . . be used as a conduit to provide non-public information to a utility's affiliates.").

The CPUC Merger Conditions applicable to the Sempra family of companies also contain information-sharing and operational restrictions. For example, Section III.O. of Attachment B of the merger decision states that "[t]he merged company shall preclude [SoCalGas'] Gas Operations or Gas Acquisition from learning the financial positions in futures markets of any affiliate" and "[i]f non-public information of this nature is received by personnel working at [SoCalGas'] Gas Operations or Gas Acquisition, it shall be contemporaneously posted on the GasSelectEBB." Section IV.A.12(d) of Attachment B requires that "[f]or transactions between SDG&E and SoCalGas . . . [t]he utilities must establish security measures to ensure that SDG&E employees engaged in the electricity market function cannot obtain access to confidential gas information of SoCalGas." Finally, Section IV.A.14(a) of Attachment B states that "Employees of Utilities shall not provide confidential gas or power marketing or operational information to a gas or power marketing affiliate, unless such information is made available contemporaneously to other gas and power marketers. Examples of confidential marketing information include customer gas and power consumption data, names and address. Examples of confidential operational information include real-time storage injection/withdrawal information, gas purchase plans and recent gas purchases."

In addition to the information-sharing and operational restrictions noted above, the CPUC rules also contain physical separation requirements, such as those in Rule V.C of the CPUC Affiliate Transaction Rules ("A utility shall not share office space, office equipment, services, and systems with its affiliates, nor shall a utility access the computer or information systems of its affiliates or allow its affiliates to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions permitted under Section V.E of these Rules. Physical separation required by this rule shall be accomplished preferably by having office space in a separate building, or, in the alternative, through the use of separate elevator banks and/or security-controlled access.")

the trading decisions of each other and (4) do not have risk management systems that permit the sharing of trades or trading strategy.

The Commission should confirm that companies will be exempt from the aggregation rule to the extent they demonstrate that regulatory rules require their subsidiaries to make independent decisions with respect to their respective positions and prohibit their subsidiaries from sharing information about their respective positions.

In summary, Sempra Energy requests that the proposed exemption for majority owners be revised so that it is reasonably tailored – like the exemption for persons with an ownership or equity interest in an owned entity of 10 to 50 percent – to the purpose of the aggregation rule, which is to prevent evasion of position limits through coordinated trading. If the Commission wishes to require majority owners to demonstrate something more, it should recognize that this "something more" may differ from company to company, from region to region and from industry to industry, just like the information-sharing and operational restrictions and physical separation requirements that may be unique to certain California utilities and, in some cases, just to the Sempra family of companies.[25]

Sempra Energy also requests that the proposed exemption for majority owners be revised to require only a notice filing, similar to the process for the exemption for persons with an ownership or equity interest in an owned entity of 10 to 50 percent. It would be inefficient and costly to require entities to put interim aggregation control systems in place while awaiting the Commission's determination on their applications. In the proposed aggregation rule, it appears that the Commission assumes that entities already have aggregation control systems in place.[26] However, as explained above, this is not the case because the exchanges do not currently require aggregation of the positions of subsidiaries that are separately and independently operated. If the Commission lacks sufficient resources to review the showings entities will submit in their notice filings, the Commission could consider accepting the offers of assistance the exchanges made at the June 19 roundtable.

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[25] The CPUC Affiliate Transaction Rules apply to Pacific Gas and Electric Company and its parent holding company (PG&E Corporation), Southern California Edison and its parent holding company (Edison International) and, as previously explained, to SoCalGas and SDG&E and their parent holding company (Sempra Energy). In contrast, the CPUC Merger Conditions only apply to the Sempra family of companies because they arose out of the 1998 merger that formed Sempra Energy.

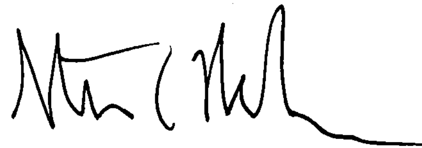
[26] *See, e.g.*, proposed aggregation rule at p. 68970 ("Because the Commission and DCMs generally have required aggregation of positions starting at a 10 percent ownership threshold under the current regulatory requirements of part 150 and the acceptable practice found in the prior version of part 38, the Commission expects that market participants active on DCMs have developed systems of aggregating positions across owned entities.") and p. 68971 ("The Commission again notes that entities who have been transacting in futures markets have been subject to these aggregation requirements for decades, and should have means of aggregating positions across multiple owned entities.").

III.
CONCLUSION

In conclusion, Sempra Energy respectfully urges the Commission to:

- Set initial spot-month limits based on the CME Group's updated estimates of deliverable supply submitted to the Commission on July 1, 2013;
- Modify its proposed conditional spot-month limit exemption to allow independently-operated subsidiaries to hold positions in physical–delivery contracts;
- Reinstate unfilled storage capacity as an enumerated bona fide hedge; and
- Tailor the requirements for the aggregation exemption for majority owners to the purpose of the aggregation policy – "to prevent evasion of position limits through coordinated trading" – and revise the rule to permit notice filings.

Sincerely,



Steven C. Nelson

cc: Honorable Timothy G. Massad, Chairman
Honorable Scott D. O'Malia, Commissioner
Honorable Mark P. Wetjen, Commissioner
Honorable Sharon Y. Bowen, Commissioner
Honorable J. Christopher Giancarlo, Commissioner

Stephen Sherrod, Senior Economist
Riva Spear Adriance, Senior Special Counsel