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Ms. Melissa Jurgens, Secretary
Commodity Futures Trading Commission
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Washington, D.C. 20581
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Re: Comments of the International Energy Credit Association on CFTC "Position Limits for Derivatives and Aggregation of Positions," (including the Aggregation Proposal, 78 FR 68946 (published November 15, 2013), and the Position Limits Proposal, 78 FR 75680 (published December 12, 2013), referred to collectively as the "Proposed Rules"), RIN 3038-AD99; 3038-AD82, Extension of Comment Periods, 79 FR 37973 (published July 3, 2014)

Dear Ms. Jurgens:

I. Introduction.

The International Energy Credit Association ("IECA") is an association of over 1,400 credit, risk management, legal and finance professionals that is dedicated to promoting the education and understanding of credit and other risk management-related issues in the energy industry. For over ninety years, IECA members have actively promoted the development of best and industry standard practices that reflect the unique needs and concerns of the energy industry. Our members' concerns regarding the relevant rulemakings that followed the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("DFA") have led us to submit to the Commodity Futures Trading Commission ("CFTC" or "Commission") numerous comments on various proposed rulemakings, as well as requests for no action relief and petitions in support of relief requests sought by other energy companies and trade groups, many of which have yet to be addressed by the Commission Staff.

The IECA seeks to protect the rights and advance the interests of the commercial end-user community that makes up the majority of its membership. IECA membership includes representatives of many small and large energy companies all of whom have a fundamental mission of providing safe, reliable, and reasonably priced energy

commodities that American businesses and consumers require for our economy and our livelihood. Most of the IECA's members are representatives of commercial end-users, which rely on swaps to help them mitigate and manage (i.e., hedge) the risks of energy commodity price volatility to their physical energy businesses.

Correspondence with respect to these comments should be directed to the following individuals:

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II. Comments on the Proposed Rules.

The IECA encourages the Commission to consider the IECA's comments on the Position Limits Proposal that were submitted to the Commission on February 10, 2014. In addition to those formal comments, the IECA respectfully offers the following additional comments in response to the discussion between the CFTC Staff and market participants during the CFTC Staff's Position Limits Roundtable held on June 19, 2014.

A. Position Limits Should Limit Excessive Speculation Not Hedging

First and foremost, position limits are not price controls. The CEA does not authorize the CFTC to prohibit speculation in commodities or control the prices of commodities. Rather the CFTC is only to impose position limits to address "excessive speculation" that "adversely affects interstate commerce." At this time, the CFTC has not seen any evidence that excessive speculation has adversely affected interstate commerce, so the IECA questions what support there is for imposing position limits.

Moreover, the IECA submits that if position limits are going to be imposed by the CFTC, their impact on commercial end-users in the market must be limited to preventing excessive speculation, not to preventing hedging. The IECA believes that no provision of the Commodity Exchange Act (CEA) authorizing the CFTC to impose position limits authorizes the Commission to regulate hedging or the exercise by commercial end-users of their business judgment in deciding how to hedge their exposure to commodity risks.

In fact, commercial end-users and other businesses incur risks related to their use of commodities in their businesses, which they must manage and mitigate in order to remain in business. The success and the survival of each such business will depend on the prudent exercise of business judgment by the management of that business. So long as that business judgment does not result in a violation of any of our nation's laws, the

IECA believes that business judgment is not subject to regulation and should be respected by any attempt to impose position limits on speculators.

The IECA believes that much of the Commission's efforts with respect to position limits in the Position Limits Proposal is focused on limiting hedging and trying to limit the ability of commercial end-users to exercise their best business judgment to manage and mitigate (i.e., hedge) their risk of commodity price volatility. We submit that there is nothing in the CEA that authorizes such regulation.

Instead, the CEA requires that the Commission explicitly exclude hedging from its position limits imposed on excessive speculation. Accordingly, the IECA submits that so long as a commercial end-user believes its swap transactions are hedging the commercial risks faced by its business, that really should be the end of the Commission's inquiry.

B. Deliverable Supply Determination

IECA requests that the CFTC make a determination as to the deliverable supply estimates for each of the 28 physical commodities covered by the Position Limits Proposal that will serve as the baseline for spot month position limits. Until a proper deliverable supply baseline is established, it will be impossible to assess the appropriate long or short spot month limits that may be set for individual contract markets.

The Commission has received updated deliverable supply data from affected contract markets which we believe are very conservative estimates. We urge the Commission to make an objective economic study of the relevant physical commodities that could be delivered to satisfy relevant contracts upon expiry. As an example, in light of the vast amount of domestic crude production that occurs in the United States as well as the amount of historic import activity, we believe that deliverable supply calculations should include oil production and import capacity beyond merely referencing storage tankage in Cushing, Oklahoma as the only level of "deliverable supply" for the WTI contract.

Additionally, we encouraged the Commission to analyze physical markets in an objective fashion that is appropriate for each different commodity asset class. As referenced above, the CFTC may consider domestic storage capacity, real time production levels and historic import activity for asset classes such as oil and gas but the Commission must also consider generation capacity of power plants or refinery capacity across the United States when contemplating deliverable supply levels for electricity or gasoline as such commodity asset classes are not storable (electricity) or are manufactured in a dynamic fashion (gasoline).

Once the CFTC makes its determinations as to the physical deliverable supply estimates, it should also take into consideration an additional indicia of deliverable supply - historic swap activity - in each commodity asset class in light of the fact that federal position limits will presumably apply to swap activity along with futures activity.

Upon making objective determinations as to deliverable supply levels in all commodity asset classes, the Commission should allow an appropriate opportunity for the public and market participants to provide comments as to the accuracy of those numbers. With an objective economic study made and public comments received, the Commission will be in a better position to deliberate and decide, if necessary, on the appropriate federal spot month position limit levels for each of the relevant commodity asset classes. Upon establishment of federal limits based on updated deliverable supply estimates, the applicable designated contract markets also will be able to continue to use their discretion in setting exchange specific limits as necessary and appropriate to reduce the potential threat of market manipulation or congestion.

C. **Process for Approving Non-Enumerated Hedging Exemptions**

1. Enumerated Hedges. Commercial end users in the energy industry routinely use many different types of swaps and derivatives as a means of hedging or mitigating the complex and dynamic commercial risks of their operations. The IECA is concerned that many of these commercial risk hedging transactions will not fit readily into the Commission's proposed definition of "bona fide hedging" and the Commission's proposed list of hedges "enumerated" in paragraphs (3), (4) and (5) of Section 150.1. As discussed below, this will negatively impact market liquidity, capitalization and innovation.

- Market Liquidity – A healthy mix of actively trading market participants is critical to a functioning market. Commercial end users are a group of market participants that hedge in the market, often in spite of adverse price movements.[1] There are times, however, when today's hedge is not effective for tomorrow. This could be the case if the supply/demand fundamentals of the hedge instrument do not match the supply/demand fundamentals of the items being hedged. By applying narrow restrictions on enumerated hedge activity, the freedom a commercial end user has to utilize the most effective hedge given supply/demand fundamentals is proportionally restricted. This would negatively impact market liquidity.

- Market Capitalization – Commercial end users are generally publically traded, SEC registrants. As SEC registrants, they have fiduciary duties to bond holders and shareholders. Hedging activity is a fiduciary duty that "feeds" into corporate earnings, impacting share price and overall market capitalization. Commercial end user's business activity generally includes a portfolio of operations and their hedging activity is intertwined with many dynamic risk factors. Hamstringing commercial end users to a narrow list of enumerated hedges makes the management of risks

[1] By definition, an adverse price movement in a hedge instrument is negatively correlated to the hedge item. This occurs because commercial enterprises utilize futures as a "proxy" to hedge legitimate business activity. Stated plainly, it is a "proxy" because the legitimate business activity does not occur at the exact location or timetable as the futures at a specific delivery point and delivery period, respectively.

significantly more difficult, impacting earning, share price and overall market capitalization.

- Market Innovation – An enumerated list of acceptable hedges pre-disposes that the market will not "innovate" and adapt business activity given market pricing and changing market risks. To ensure market innovation is not stifled, there must be a process in place that facilitates the rapidly changing market place. As proposed, however, the process for non-enumerated is burdensome and inhibits innovation by requiring the innovative product to be in existence prior to granting a hedge exemption. Additionally, as discussed below, the IECA is concerned that the elimination of response deadlines by the Commission on requests for non-enumerated hedge exemptions further hinders market development.

The IECA agrees with the Commission that *bona fide* hedges reduce systemic risk by offsetting a hedger's recognized price risk, and a "hedged entity should have little incentive to manipulate or engage in other abusive market practices to affect prices."[2] Confining hedges of physical commodities to a limited list of enumerated transactions, however, will prevent commercial end-users from engaging in risk-mitigating transactions that would otherwise pose little danger of manipulation or abuse. As a result, these end users will either forego a transaction that would have reduced overall systemic market risk, would act in a manner to reduce market liquidity, would behave in a manner that could potentially negatively impact market capitalization, would lose any incentive to apply innovation in business activities, or, in the worst case, divert economic resources to foreign jurisdictions with less restrictive financial regulatory regimes.

2. Second Session Staff Question 1 (Regulation 1.47). The IECA is equally concerned with the absence of clear procedures and timelines by which commercial end-users will be able to obtain Commission approval of operations-critical "non-enumerated hedging exemptions." The proposed Section 150.3(e) eliminates time limits by which the Commission must act on a request for a non-enumerated hedging exemption. Retaining the 30-day and 10-day timelines in Regulation 1.47(a)(1) and (2), respectively, for any person that has submitted the requisite statements in conformance with reasonable and realistic standards to be specified by the Commission (comparable to the requirements previously set forth in Regulation 1.47) would provide clear administrative procedures for applicants and establish clear timelines by which the Commission will be required to notify such person that its proposed transactions and positions would "not be considered as bona fide hedging." Under proposed Section 150.3(e), commercial end users seeking exemptions for legitimate hedging transactions have no applicable standard by which to hold the Commission accountable for any failure to respond to such a request.

The Commission's existing procedures for granting non-enumerated hedge exemptions is not as formal, not as lengthy and contains a time frame within the Commission must respond. Under the Position Limits Proposal, market participants are permitted to seek

[2] See Position Limits Proposal, 78 FR 75680 at 75703.

interpretive or no action relief from the CFTC staff under CFTC regulation 140.99. The IECA is concerned that CFTC Regulation 140.99 may only allow discretion for CFTC staff to decide if a transaction falls within enumerated hedging categories and may not grant sufficient authority for the staff to decide if a transaction is bona fide if it falls outside enumerated hedging categories. Given the lack of a deadline for the CFTC to respond to a request from market participants, and given that the CFTC appears concerned that the current CFTC regulation 1.47 provision for a 30-day review period for initial filings and a 10-day review period for supplemental filings is too limiting, the IECA suggest that, rather than abandoning the timelines under CFTC regulation 1.47, that the Commission give CFTC staff authority to extend the response period when confronted with "new" and complex filings.

Lastly, formal, complex request procedures with indefinite timelines would essentially "kill" any bona fide hedge innovations for non-enumerated bona fide hedge request. Rather than introducing uncertainty in the application process, IECA strongly encourages definitive directions to market participants and CFTC staff to ensure a healthy and vibrant market.

3. Second Session Staff Questions 3 and 4 (Pre-Approval Procedure). Regarding Staff Question 3, the IECA is generally supportive of a pre-approval procedure for non-enumerated hedging exemptions, whereby a commercial end-user could first seek and obtain review and approval by a CFTC-regulated Exchange. Then, either the Exchange or the commercial end user can file with the Commission in writing that the review and approval has been completed by an Exchange. Upon filing, the commercial end user would be given immediate pre-approval of its non-enumerated hedging exemption, subject to final approval by the CFTC. Such pre-approval would expedite commercial activity and keep in place an existing regulatory relationship that commercial end users have with the Exchange.

If upon further review, the Commission does not approve of the pre-approval of the bona fide non-enumerated hedge exemption, then it can be subsequently denied by the Commission. Under this condition, rather than creating a "gotcha" moment for the commercial end user, the cancellation of the pre-approval would be on a "prospective basis." Sufficient recordkeeping regarding the transactions "active" under the pre-approval would need to exist so that any subsequent decision by the Commission can be reflected by the DCM or SDR. Such a pre-approval process would provide a valuable, additional tool to allow commercial end-users to pursue legitimate hedging transactions on a timely basis thereby enhancing their ability to manage commercial risks.

D. The Commission Should Not Regulate Exempt Commodity Trade Options As Referenced Contracts

As stated in IECA's recent comments to the NOPR filed on February 10, 2014, the IECA fully supports excluding Trade Options from the definition of "referenced contracts" and, therefore, exempting Trade Options from the Commission's proposed

position limits. In support of this recommendation, the IECA set out several key reasons, including but not limited to the following:

(i) Like forward contracts, trade options are not intended to transfer price risk from one party to another, but are both simply commercial transactions intended to transfer physical delivery and ownership of a physical commodity from one party to another.

(ii) Trade options are entered into by commercial market participants and, if exercised, result in the sale of a physical commodity for immediate or deferred shipment or delivery. The requisite intent for physical delivery of a physical commodity upon exercise under the definition of "Trade Option" provides another basis for the categorical exclusion of Trade Options from position limits. Although the requirements for forward contracts and Trade Options are phrased differently, in many respects Trade Options are functionally similar to forward contracts, when analyzed in relation to excessive speculation and other applicable contexts. Both forward contracts and Trade Options are commercial transactions used to effect physical delivery of a commodity and should be excluded from position limits.

(iii) By their terms, Trade Options are "commercial transactions" because at least one of the counterparties must be a commercial participant (a producer, processor, commercial user of, or merchant handling, the underlying physical commodity), and such commercial participant is offering or entering into the commodity option transaction solely for purposes related to its commercial business. In other words, because a Trade Option must be entered into solely for reasons related to the offeree's commercial business, it cannot also be a speculative derivative position.

(iv) Simply put, speculators will not qualify for, or be included in, Trade Options. As a result, since Trade Options are commercial and not speculative transactions, it is unclear how subjecting Trade Options to position limits would further the Commission's stated purpose to "diminish, eliminate, or prevent excessive speculation."

(v) Including Trade Options within the position limits regime subjects them to a form of analysis that simply does not fit. The Position Limits Proposal defines a significant exclusion, arising from the statutory text, for "bona fide hedges." Although Trade Options are, by definition, commercial transactions, they may not meet the requirements for a bona fide hedging position. Commercial market participants enter into swaps to hedge the price volatility underlying their physical positions, including the price volatility underlying their Trade Options. As a result, the commercial participants treat their Trade Options as the <u>basis</u> of a bona fide hedging position, just as they treat their forward contracts as the <u>basis</u> of a bona fide hedging position.

(vi) In that context, subjecting Trade Options to a position limit, and providing an exemption to the extent that the Trade Option is a bona fide hedge for a physical position, makes no sense. Commercial participants do not enter into Trade Options to hedge other physical positions, they enter into Trade Options to effect physical delivery of a commodity when that commodity is required for their commercial business.

(vii) Moreover, a commercial participant may enter into a substantial number of Trade Options in sufficient quantities to enable it to satisfy the need for a specific commodity for its commercial business. If the CFTC then orders that commercial participant to close those positions in order to not exceed the applicable position limit, what is the commercial participant to do? In general, in order to satisfy the Commission's Position Limits rule, a commercial participant cannot simply trade-out of a Trade Option position, nor can it simply close-out that position. There is not generally a liquid market for buying and selling Trade Options.

(viii) Even if the commercial participant could trade-out or close-out any Trade Option that exceeded the Commission's applicable Position Limit, that commercial participant must still obtain delivery of the commodity to meet the requirements of its commercial business and would have to attempt to replace that Trade Option with a forward contract. While the price of a new forward contract for that commodity may be substantially higher than the price under its prior Trade Option, if the commercial participant is unable to replace that commodity and that commercial participant is an electric or natural gas utility, then that commercial participant may be forced to violate its regulatory obligation to provide reliable electricity or natural gas to its customers in order to comply with the Commission's position limits.

(ix) In addition, subjecting Trade Options to position limits would impose a complex new regulatory regime on a category of commercial transactions that has never been subject to position limits set by the Commission or any of the exchanges. In this regard, these unnecessary regulations would require, among other things, compliance with complex and costly monitoring, recordkeeping, and reporting requirements despite the fact that the Commission has elsewhere excluded Trade Options from a majority of the Commission's swap regulations.

(x) Excluding Trade Options from position limits would not permit commodity options that should be regulated as swaps to circumvent the protections established in the Dodd-Frank Act for the forward contract exclusion for non-financial commodities. The Commission will continue to have access to sufficient data regarding Trade Options as a result of the Commission's recordkeeping requirements to enable the Commission to investigate allegations of inappropriate behavior and enforce its anti-fraud and anti-market manipulation rules.

Based on these reasons and the additional discussion set forth in IECA's February 10th comments, the IECA strongly believes that there is no stated or apparent benefit to the Commission that would justify the tremendous burden this proposed position limits rule will create for the IECA's members if the proposed position limits rule includes Trade Options. The IECA cannot emphasize enough, that if the Commission elects to subject trade options to position limits ***it will effectively be precluding utilities and other commercial market participants from using trade options (at certain levels) to procure supply or commodity inputs to production*** – an outcome that could jeopardize the stability of this nation's electric grid and adversely impact the reliability of other critical components of the nation's energy industry.

E. Spot Month Limits

1. Conditional Spot Month Limit for Financially Settled Contracts Must be Maintained

As stated in IECA's recent comments to the NOPR filed on February 10, 2014, the IECA fully supports higher limits for cash-settled derivative contracts, because they are less susceptible to manipulation and excessive speculation than physical-delivery derivative contracts. The establishment of a cash-settled derivative position is to hedge price risk. The IECA agrees that deliverable supply is an appropriate basis for setting limits on physical-delivery futures contracts, which impact a commodity's settlement price.

We do not, however, believe the same is true for cash-settled derivative contracts. Imposing equal levels for each contract type may result in unnecessarily constraining legitimate risk management activity in the spot month. Historically, a 25% spot month limit on physically-settled futures contracts was enforced by exchanges in order to help prevent excessive speculation. In agricultural contracts, for example, applying the same limits to physically-settled and cash-settle futures may be appropriate as the markets are generally physical and no meaningful cash-settled derivative contracts presently exist. However, in the energy markets there is robust participation and liquidity in financially-settled energy derivative contracts, which do not impact physical supply. In fact, we believe that today the vast majority of energy derivative contracts are cash-settled. These products serve an important function in the market, providing market participants with the ability to hedge exposure to the final contract settlement price without basis risk, and allowing them to avoid the potential burdens of physical delivery that is attendant to a physical-delivery derivative contract. The IECA also believes the Commission should not prohibit market participants from holding physical-delivery derivative contracts in order to avail themselves of the higher limits.

2. Increased Deliverable Supply Estimates do not Eliminate the Need for the Conditional Limit

As noted above, the IECA supports deliverable supply estimates which accurately reflect the physical markets. Increased deliverable supply indicates healthy and robust domestic

energy markets. The increase in deliverable supply also indicates an increased volume of product to hedge. The Position Limit rules need to accommodate for these increased levels of market participation specifically by maintaining the Conditional Limit. Increased deliverable supply does not eliminate the need for the Conditional Limit. In fact, just the opposite, it is necessary to maintain liquidity in an already constrained market. Market participants have voiced concerns that they are already constrained at certain locations due to all exchange traded energy contracts having position limits and large liquidity providers exiting the market. (It is critically important that the Commission keep in mind during this rulemaking process that its Position Limits Proposal would apply to all exchange-set position limits on all commodities, not just the 28 commodities on which federal position limits are currently proposed.) In addition, the Position Limits Proposal itself effectively halves the present position limit in the spot month by aggregating across trading venues and uncleared OTC swaps. Coupled with the potential for a more restrictive bona fide hedge definition and limited hedge exemptions, the limits will be substantially lower than limits applicable to futures contracts that are in place today. Increased hedging needs, coupled with a lower position limit to hedge against is a dangerous combination.

F. Gross Hedging

In First Session Staff Questions 1 and 2 (Gross Hedging), although the term "enterprise" is not defined in the Position Limits Proposal, the Commission appears to have adopted a general requirement that market participants must hedge risks on an aggregate, enterprise-wide basis. An aggregated enterprise commercial risk hedging requirement, however, may preclude end-users from qualifying as a *bona fide* hedger because there will be aspects of the commercial enterprise that will have offsetting operational risks.

For example, if a power company hedges its power purchases, but does not hedge its power sales, the power purchase hedges will not qualify for the exemption under the Position Limits Proposal because the transaction does not account for the natural "short" of sales to customers. The Commission's interpretation of the economically appropriate test, therefore, will prohibit commercial end-users from engaging in transactions that, in practice, constitute an economically appropriate commercial risk hedge.

The IECA recommends that the Commission define the term "enterprise" to permit hedging by profit center, line of business, regulatory jurisdiction or other group of related operations or commercial activities that comprise a subset of a particular legal entity or group of related legal entities. Such a definition would adapt the economically appropriate test to the portfolio of interest defined by a particular commercial market participant for the purposes of measuring and managing operational risk.

G. Cross-Commodity Hedging

Regarding First Session Staff Questions 3 and 4 (Cross-Commodity Hedging), the IECA notes that in its Position Limits Proposal, the Commission concludes "By way of example, the Commission believes that <u>fluctuations in the value of electricity contracts</u>

typically will not be substantially related to fluctuations in value of natural gas."[3] The IECA objects to that generalized conclusion if the CFTC relies on it to, for example, exclude from the substantially related safe harbor a power plant's natural gas derivative contracts that hedge exposure to electricity price movements in the applicable cash market for electricity generated by that power plant.

A substantial relationship between the prices of natural gas and electricity has been long recognized by energy market participants as well as various energy regulators, including the Federal Energy Regulatory Commission which recently (March 20, 2014) issued a series of orders designed to better align the scheduling of natural gas and electricity to improve price efficiency and reliability in energy markets.

The IECA submits that no quantitative factor should be required for a commercial end-user who legitimately believes, in the exercise of its business judgment, that its proposed cross-commodity hedge transaction will allow it to minimize an aspect of its commercial risk. There should not be a requirement of quantitative success in managing commercial risk, but rather the standard should be the commercial end-user's bona fide exercise of its business judgment to conclude that a cross-commodity transaction will allow it to manage its commercial risk.

H. Utility Hedging Rules

In the Position Limits Proposal, the Commission has said "The proposed new exemption would recognize a bona fide hedge position where a utility is required or encouraged to hedge by its public utility commission."[4] This is not how utility regulation works.

State public utility commission ("PUCs") "allow" prudently incurred costs to be recovered. PUCs generally don't "require" or "encourage" hedging; rather, they may allow it, and they may also after-the-fact disallow recovery of hedging costs or losses because of a failure to hedge when that hedge would have been prudent. PUCs "encourage" entities they regulate to be prudent. PUCs generally don't "encourage" before the fact hedging; rather they punish for lack of prudency after the fact.

At a minimum, the CFTC's rule should read "is not prohibited from hedging" rather than "required or encouraged to hedge." Similarly, the Commission should not condition its proposed bona fide hedge exemption for unfilled anticipated requirements for resale by a utility on instances in which a utility is *"required or encouraged to hedge by its public utilities commission."*

I. Unpriced Physical Purchase or Sale Commitments

Regarding First Session Staff Questions 11 and 12 (Unpriced Physical Purchase or Sale Commitments), the Commission Staff has asked for identification of various so-called

[3] See Position Limits Proposal, 78 FR 75680 at 75717.

[4] See Position Limits Proposal, 78 FR 75680 at 75824.

"plus factors" that would support a commercial enterprise establishing that the nature of its commercial operation is such that it has committed physical or financial resources toward the anticipated transaction. The IECA submits that there are numerous examples in the energy industry.

For example, a developer anticipates building a large power plant that will sell its electricity output in the available merchant markets with no present forward contract for the electrical output of the power plant. In order for that developer to obtain financing from lenders to enable it to build the power plant, the developer may enter into a long-term hedging transaction that will provide a floor on its revenues from its merchant sales. The developer will then enter into a credit agreement to finance construction of the power plant, an equipment purchase contract for the turbines and other materials necessary to construct that power plant, a fuel purchase agreement for the fuel required to operate that power plant, and various other contractual arrangements. Each of those contracts, while clearly not a forward contract for the sale of the electrical output of the power plant, would be "plus factors" which indicate that the "commercial enterprise" has "committed physical or financial resources towards the anticipated transaction."

The same would be true for an oil and/or natural gas developer who anticipates selling its oil, natural gas or other hydrocarbons in the available market place, but does not now have any forward contract for the output of its intended drilling program. That developer will enter into leases for prospective oil and gas mineral rights, a borrowing base loan agreement with a lender (or multiple lenders), a drilling rig contract to drill the proposed wells, and a pipeline construction agreement to build the means necessary to gather its hydrocarbon output and move it to market. But, in order to get its lenders to enter into the loan agreement and provide the funds to perform its drilling operations, the developer may have to enter into a long-term hydrocarbon hedging transaction first or simultaneously with entering into the loan agreement in order to put a floor on the oil and gas revenues the developer will receive to repay its loan. In that case, each of the developer's contracts, while again not a forward contract for the sale of the hydrocarbon output of its wells, would be "plus factors" which indicate that the "commercial enterprise" has "committed physical or financial resources towards the anticipated transaction."

III. Conclusion.

The IECA appreciates the opportunity to provide the foregoing comments and information to the Commission. This letter represents a submission of the IECA, and does not necessarily represent the opinion of any particular member. If you would like for us to expand our discussion of any of the above-listed discussion points, please let us know.

Yours truly,
INTERNATIONAL ENERGY CREDIT ASSOCIATION

/s/	/s/
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