PROPOSED SPECULATIVE POSITION LIMITS RULE

March 30, 2015

Christopher Kirkpatrick, 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 Mr. Kirkpatrick:

The NFP Electric Associations[1] respectfully submit these supplemental 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] following the meeting of the Energy and Environmental Markets Advisory Committee ("EEMAC") held on February 26, 2015 and in response to certain of the Meeting Questions for EEMAC Consideration.[3]

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"),[4] and twice before this

[1] The National Rural Electric Cooperative Association ("NRECA"), the American Public Power Association ("APPA"), and the Large Public Power Council ("LPPC") are collectively referred to as 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] Answers to the Commission's questions appear in Section VI, with references to the Panels and the question as they appear at: http://www.cftc.gov/PressRoom/Events/opaevent_eemac022615.

[4] Comment letter available on the Commission's website at: http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=33909&SearchText=wasson (the "2011 NFP Electric Comments").

on the speculative position limits rules proposed by the Commission in late 2013 (the "2013 Proposed Rules").[5]

We will not restate all of our prior comments on the 2013 Proposed Rules, although we have reviewed them and continue to request that the Commission consider them as part of this rulemaking. We will expressly reiterate our pending requests for both ***an entity exemption*** for "NFP Electric Entities," and ***a transaction-by-transaction exemption*** for "CEU Hedging Transactions," ***under the Commission's new exemptive authority in Section 4a(a)(7) of the Commodity Exchange Act ("CEA")***.[6] See Sections II and III below. We will also refer back to several of our prior comments, where the NFP Electric Associations have a unique perspective that may not be represented by other energy trade associations' comments on the issues raised by applying the 2013 Proposed Rules to transactions that NFP Electric Entities use to hedge commercial risks arising from electric operations.

If the Commission denies both such prior CEA 4a(a)(7) exemption requests, the NFP Electric Associations then respectfully request in this supplemental comment ***a narrower transaction-by-transaction exemption under CEA 4a(a)(7)*** for all "NFP Electric Operations-Related Transactions." See Section IV below. As EEMAC participants representing the NFP Electric Associations stated at the meeting, there is simply no regulatory policy reason for the Commission to consider whether an NFP Electric Entity is a speculative trader in Referenced Contracts, whether an NFP Electric Entity enters into speculative transactions in Referenced Contracts or, as a result, whether an NFP Electric Entity holds a speculative trading position in Referenced Contracts.[7] NFP Electric Entities enter into NFP Electric Operations-Related

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When the 2011 Proposed Rules were published, the Commission had just recently proposed its rules defining the "end-user exception" to clearing and trade execution mandates for swaps entered into by commercial 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 2011 NFP Electric 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 commercial risks that arise from ongoing business operations.

[5] Two comment letters on the Commission's 2013 Proposed Rules are available at: http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59679&SearchText= (the "February 2014 NFP Electric Comments") and http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59934&SearchText (the "August 2014 NFP Electric Comments").

[6] These exemption requests are found in Sections II and III of the February 2014 NFP Electric Comments. These 2014 exemption requests echo requests in the 2011 NFP Electric Comments for broad exemptions from speculative position limits rules for "bona fide hedgers-only" and for all "bona fide hedging transactions" entered into by commercial end-users-to hedge or mitigate commercial risks." See the 2011 NFP Electric Comments.

[7] See the rhetorical question of Susan N. Kelly at page 214 of the EEMAC meeting transcript: "…is there any reason why not-for-profit, city and state owned utilities…owned by their customers have to be here for this [speculative position limits] regime?...[L]et our people go." Ms. Kelly, representing APPA, was associating her remarks with earlier remarks of Russell Wasson, representing NRECA, beginning at page 196 and in particular at page 198: "…[w]e don't trade, we don't speculate. We are hedging our commercial risk and, by commercial risk, I mean operating risk. The risk of keeping the lights on, and the risk of protecting our members from upward price pressure primarily from fuels." Drawing on the Transportation Services Administration (TSA) analogy found in Commissioner Giancarlo's recent White Paper on market structure to explain the NFP Electric Associations' view

Transactions only "to hedge or mitigate commercial risks" arising from electric operations, not to speculate in the markets or to accumulate speculative trading positions.

Discussion at the EEMAC meeting emphasized the importance of ***two themes*** that the NFP Electric Associations' comments have focused on throughout the Commission's Dodd-Frank Act rulemaking:

All commodity markets are not trading markets, and all commodity market participants are not traders. The electric industry is different and NFP Electric Entities are unique market participants: NFP Electric Entities only transact in Referenced Contracts to hedge or mitigate commercial risks of ongoing electric operations.

EEMAC participants provided more evidence and examples to the Commission demonstrating that all non-financial commodity markets and related derivatives (including "swaps") markets do not operate in the same way that the regulated and liquid trading markets for cleared commodity futures contracts operate. As it implements the Dodd-Frank Act amendments to the CEA, the Commission should not establish a speculative position limits regime patterned on its regulation of traders in commodity futures ***trading*** markets, simply broadening the applicability of those rules and definitions to cover all commercial industries and all commercial, over-the-counter, non-cleared, bilateral, non-financial commodity transactions that the Commission interprets to be "swaps." Furthermore, the Commission should not extrapolate its experience with the agricultural commodity trading markets, and industries that rely on such markets for to hedge commercial risks, to assume its understanding of all other commercial industries and the myriad ways in which those industries hedge the commercial risks that arise from business operations in those other industries. Such a one-size-fits all position limits structure is not what Congress intended when it amended Section 4a(a) of the CEA.

As noted at the EEMAC meeting, the NFP Electric Associations' members are not members of the futures industry (or the agricultural industry or the global crude oil industry), but of the electric utility industry. EEMAC meeting participants spoke about the unique aspects of the global crude oil markets and related industries, the differently-structured electric and natural gas industries in general, and the electric and natural gas ***utility*** industries in particular. The NFP Electric Associations' comment letters have explained the unique nature of the electric utility industry, and utilities' use of customized, non-cleared, "end-user-to-end-user" commercial risk hedging transactions. Some of these commercial risk hedging transactions may be interpreted by the Commission to be "swaps" and/or "commodity trade options" and, as a result, some of these commercial risk hedging transactions may be Referenced Contracts (associated with an energy Core Referenced Futures Contract) under the Proposed Rules.[8]

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on the overbroad nature of the 2013 Proposed Rules, the NFP Electric Entities are the grandmothers and young children caught up in an over-broad regulatory scheme to detect terrorists boarding commercial airplanes. In fact, requiring an NFP Electric Entity to prove that its electric operations-related Referenced Contract "positions" are not speculative is analogous to making a crop duster go through the TSA screening process merely because his single-engine, single-passenger crop duster airplane is parked at a commercial airport.

[8] Commissioner Giancarlo's recent White Paper on market structure differentiates dealer to dealer ("D2D) and dealer to customer ("D2C") markets for financial derivatives such as interest rate, currency and credit default swaps. In the electric industry, the most prevalent market structure for non-financial commodity swaps is end-user-to-end-

The ICE Futures presentation in Panel II explained that the futures trading markets for electricity, natural gas, and other futures contracts on electric generation fuel commodities (such as coal), and for environmental trading futures contracts, are new. Such trading markets have significantly more commercial entity participation, and other market characteristics that make such trading markets demonstrably different from the futures trading markets for light sweet crude and RBOB Core Referenced Futures Contracts. None of the EEMAC presenters, including the Commission staff, provided any data whatsoever on off-facility, non-cleared energy commodity swaps and swaptions that might be considered Referenced Contracts under the Proposed Rules. Such swap data is, or will be, available to the Commission from the swap data repositories. It will be important for the Commission to understand those "swaps" as Referenced Contracts, and how commercial end-users in the electric utility industry use such Referenced Contracts to hedge or mitigate commercial risks, before the Commission's Proposed Rules, including definitions and limits, are to be applied to such off-exchange, non-cleared Referenced Contracts. Although the NFP Electric Associations and other utility trade associations and coalitions have provided information about the electric industry to the Commission and Commission staff throughout the Dodd-Frank rulemaking process, as yet the 2013 Proposed Rules do not appear to incorporate such information.

As the NFP Electric Associations and other energy industry representatives have explained, "swaps" and "commodity trade options" derived on non-financial energy commodities have developed as privately-negotiated, customized, non-cleared commercial transactions between entities that have a long-term contractual and credit-risk-managed business relationship. The Commission has not made a determination that any such bilateral energy swaps (as Referenced Contracts) "perform or affect a significant price discovery function with respect to regulated markets" under CEA 4a(a)(4), as required before such Referenced Contracts are required to be subject to the aggregate position limits provisions of CEA 4a(a)(6). Nor has the Commission provided adequate identification of which energy swaps are "economically equivalent" to an identified Core Referenced Futures Contract as required under CEA 4a(a)(5).[9] In fact, energy industry comments on the 2013 Proposed Rules have consistently asked the Commission to identify which swaps are considered Referenced Contracts in relation to each energy Core Referenced Futures Contract.[10] The uncertainty as to which swaps constitute Referenced Contracts makes it impossible to comment adequately on measures of "deliverable supply" or numerical limits – it depends on which transactions will be subject to those measures and limits.

Commercial risks confronting businesses in the energy industry are as diverse as the ongoing energy industry operations that give rise to such risks. The Commission should allow commercial end-users broad flexibility, each to use its own business judgment (e.g., prudent utility practice), in deciding how best to hedge or mitigate, or otherwise manage, commercial risks arising from its business.

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user, or "C2C." Imposing rules developed for futures contract markets on such C2C commercial contract markets serves no regulatory policy purpose and yet imposes significant regulatory burdens and costs on both commercial end-user counterparties.

[9] CEA 4a(a)(4) and CEA 4a(a)(5).

[10] See Section IV of the February 2014 NFP Electric Comments.

As discussed at the EEMAC meeting, the commercial risks that a global oil company seeks to hedge are not the same as the commercial risks that farmers and other industries that are reliant on agricultural commodities seek to hedge. Nor are they the same commercial risks that an electric or natural gas utility seeks to hedge. Nor are the commercial risks that one NFP Electric Entity seeks to hedge identical to the commercial risks that a natural gas utility or even another NFP Electric Entity seeks to hedge. This is because of the diversity of the assets owned and business operations being conducted by commercial industries. The EEMAC meeting provided yet more evidence that the Commission cannot predict, and should not restrict, the myriad ways in which commercial companies operating in different industries use business judgment (including prudent utility practice) to hedge commercial risks arising from their ongoing, unique and diverse energy business operations.

The presentations and discussions at the EEMAC meeting focused mainly on energy futures contract markets, and "bona fide hedging transactions and positions," as such phrase is used (and has historically been interpreted by the Commission) under CEA 4a(c) – that is, in relation to traders of futures contracts and options on futures contracts.[11] By contrast, the NFP Electric Associations' comments in the Dodd-Frank Act rulemakings have primarily focused on hedging or mitigating ***commercial risks of ongoing electric utility operations***, not hedging the more discrete and predictable risks related to futures market trading. The NFP Electric Associations have focused on commercial "swap" transactions that are not listed or traded on a registered entity, and are often not cleared by a derivatives clearing organization – the "swaps" over which the Commission was first given jurisdiction in the Dodd-Frank Act.

In debating the Dodd-Frank Act amendments to the CEA, Congress understood that commercial enterprises are not trading companies. Congress understood that commercial risk hedging strategies (related to ongoing business operations) would be different, more complex and more diverse than previously-identified "bona fide hedging" categories enumerated by the Commission precedent for the trading market context in CEA 4a(c). In the Dodd-Frank Act, Congress instructed the Commission to protect the rights of commercial end-users "to hedge or mitigate commercial risks." More specifically, as an integral part of Section 737 of the Dodd-Frank Act (the Commission's newly-expanded authority to impose speculative position limits in new CEA 4a(a)), Congress included CEA 4a(a)(7). CEA 4a(a)(7) was not an afterthought, nor was it a mere restatement of the Commission's traditional authority under CEA 4a(c) to exclude "bona fide hedging positions" from limits on speculative trading positions in futures contracts and related options on futures. CEA 4a(a)(7) is new, stand-alone and broadly-written statutory exemption authority under the Dodd-Frank Act.[12]

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[11] The CEA 4a(c) concepts of "bona fide hedging positions" and "bona fide hedgers" also appear in new CEA 4a(a)(2), CEA 4a(a)(3), and CEA 4a(a)(5), all in relation to futures and options on futures, and to swaps that are "economically equivalent to" such traded futures and options contracts ("look-alikes"). By contrast, in new CEA 4a(a)(6), which relates to aggregate limits on traded futures and option contracts ***and*** swaps "based upon the same underlying commodity," the statute directs the Commission to "establish limits (including related ***hedge exemption*** provisions)" (*emphasis added*). Immediately thereafter appears new CEA 4a(a)(7) – the broad new exemption authority on which the NFP Electric Associations urge the Commission to focus.

[12] In this way, CEA 4a(a)(7) mirrors CEA 2(h)(7), another important statement of Congressional intent in the Dodd-Frank Act – Congress intended the Commission to respect commercial end-users' ability to hedge or mitigate

As discussed at the EEMAC meeting, the NFP Electric Associations generally support the Commission's efforts to impose speculative position limits (that is, limits on *speculative* trading positions), as the Commission finds necessary and appropriate to implement the Congressional intent of the Dodd-Frank Act. Commercial end-users will benefit from the Commission rigorous monitoring of speculative trading positions, and in particular from the Commission's monitoring the speculative positions held by entities with no need to hedge or mitigate commercial risks of ongoing business operations utilizing such Referenced Contracts.[13]

However, the NFP Electric Associations respectfully request the Commission not impose a one-size-fits-all speculative position limits regime on all 28 non-financial commodity Core Referenced Futures Contracts, and all categories of related Referenced Contracts, at once.[14] For the energy Core Referenced Futures Contracts, the NFP Electric Associations respectfully request the Commission to structure its speculative position limits regime differently for Referenced Contracts that are not transacted on, or cleared by, a registered entity. And, the NFP Electric Associations respectfully request the Commission to rule on all pending requests for exemptions under CEA 4a(a)(7), including those that the NFP Electric Associations have on file, prior to or contemporaneously with finalizing and imposing a speculative position limits regime applicable to any energy Core Referenced Futures Contract, including Henry Hub Natural Gas.

As the EEMAC participants collectively urged the Commission, "first, do no harm" to well-functioning energy and environmental commodity and related derivatives markets.[15]

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commercial risks arising from ongoing business operations. Such commercial business operations, and such commercial risk hedging strategies, fall outside of the Commission's traditional jurisdiction and experience.

[13] 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).

[14] Nothing in the Dodd-Frank Act requires the Commission to implement a one-size-fits-all regime, in fact, Section 4a(a)(1), which describes the speculative trading limits authority "in general," expressly provides that: "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.

[15] See the remarks of Benjamin Jackson representing ICE Futures U.S., at page 211 of the EEMAC Meeting Transcript, referencing Russell Wasson's prior statements and asking the Commission to first, "…do no harm…" Other participants repeatedly echoed that thought, noting how important it is both to protect both trading market liquidity for energy futures and to preserve cost-effective access to trading and commercial energy Referenced Contract markets for commercial risk hedgers. Tyler Slocum, representing Public Citizen, noted that "the issue of bona fide hedging is very important…" and "…we are extremely sympathetic to some of the specific examples that I've seen here where what appear to be legitimate hedging operations might be limited or prohibited under a rule, and Public Citizen is interested in making sure that legitimate hedging strategies can be utilized; that regulation doesn't go too far." See EEMAC Meeting Transcript at page 230. Former Commissioner Sharon Brown-Hruska noted that commercial business entities cannot be expected to get Commission staff signoff on every commercial risk hedge – or the opportunity to hedge that particular commercial risk will have passed… "[T]hat kind of a prescriptive model is not a good model, I think, for the government to adopt." See page 239. Her recommendation of some sort of a certification model is just what the Commission has in place for entities that avail themselves of the end-user exception to clearing new CEA 2(h)(7) and Rule 50.50. Commercial end-users could easily use a

Congress intended the Commission to use its broad exemptive authority under CEA 4a(a)(7), and its "bona fide hedging" exemption authority for futures contracts under CEA 4a(c)(2), to protect commercial end-users' continued access to cost-effective commercial risk hedging tools. Congress intended the Commission to respect, not restrict, commercial end-users' business judgment as to how best to hedge or mitigate the commercial risks arising from each commercial enterprise's ongoing business operations.

I. SUMMARY OF COMMENTS

The NFP Electric Associations respectfully request:

- **For the reasons explained in the February 2014 NFP Electric Comments, the Commission should provide a CEA 4a(a)(7) exemption from the Commission's speculative position limits rules for "NFP Electric Entities."**

- **For the reasons explained in the February 2014 NFP Electric Comments, the Commission should provide a CEA 4a(a)(7) exemption from the Commission's speculative position limits rules for all "CEU [Commercial End-User] Hedging Transactions." In particular, the Commission should exclude or exempt commodity trade options.**

- **If the Commission declines the pending requests for exemption under CEA 4a(a)(7) then, for the reasons explained in the February 2014 NFP Electric Comments and in Section IV below, the Commission should provide a CEA 4a(a)(7) exemption from speculative position limits for Referenced Contracts entered into by NFP Electric Entities "to hedge or mitigate commercial risks" arising from ongoing utility operations ("NFP Electric Operations-Related Referenced Contracts").**

- **The Commission should implement its speculative position limits regime in stages, by Core Referenced Futures Contract or by category of non-financial commodity (legacy agricultural, other agricultural, metals, energy), and should contemporaneously provide CEA 4a(a)(7) exemptions to commercial end-users in industries whose commercial risk hedging activities could otherwise be negatively affected by application of such limits.**

II. THE COMMISSION SHOULD PROVIDE A CEA 4a(a)(7) EXEMPTION FOR NFP ELECTRIC ENTITIES.

For the reasons explained in Section III of the February 2014 NFP Electric Comments, the Commission should provide a CEA 4a(a)(7) exemption from the Commission's speculative position limits rules for NFP Electric Entities, along with appropriate pass-through hedging exemptions.

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similar process to certify that they were using one (or all) Referenced Contracts "to hedge or mitigate commercial risks." See Sections II and VIII of the February 2014 NFP Electric Comments.

III. THE COMMISSION SHOULD PROVIDE A CEA 4a(a)(7) EXEMPTION FOR ALL CEU HEDGING TRANSACTIONS.

For the reasons explained in Section II of the February 2014 NFP Electric Comments, the Commission should provide a CEA 4a(a)(7) exemption from the Commission's speculative position limits rules for all "CEU [Commercial End-User] Hedging Transactions" (as defined therein), along with appropriate pass-through hedging exemptions.[16]

In particular, for the reasons explained in Section IIA of the February 2014 NFP Electric Comments and unanimously supported by utility industry participants at the EEMAC Meeting,[17] it is critically important that the Commission exclude from its definition of Referenced Contract, or provide an exemption under CEA 4a(a)(7) for commodity trade options. Commodity trade option transactions are entered into by commercial market participants to hedge or mitigate commercial risks arising from the end-user's business "as such" (per CFTC Rule 32.3). Commodity trade options are non-financial commodity transactions that are intended (if exercised) to be physically-settled, and the plain language of new CEA 1a(47) excludes them from the defined term "swap."[18] Subjecting commodity trade options to speculative position limits rules would cause severe disruption in the ability of energy industry end-users, including NFP Electric Entities and all electric and natural gas utilities, to hedge or mitigate the commercial risks arising from their ongoing utility operations.

IV. IF THE COMMISSION DECLINES THE NFP ELECTRIC ASSOCIATIONS' PENDING REQUESTS FOR CEA 4a(a)(7) EXEMPTIONS, THEN THE COMMISSION SHOULD PROVIDE A CEA 4a(a)(7) EXEMPTION FOR REFERENCED CONTRACTS ENTERED INTO BY NFP ELECTRIC ENTITIES "TO HEDGE OR MITIGATE COMMERCIAL RISKS" ARISING FROM ONGOING ELECTRIC OPERATIONS, THAT IS, FOR ALL "NFP ELECTRIC OPERATIONS-RELATED REFERENCED CONTRACTS."

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[16] As Russell Wasson remarked at the EEMAC meeting: "We do not believe that Congress intended for the Commission to substitute their judgment for the reason[ed] business judgment of commercial end-users who are trying to hedge their commercial risk…I don't know anyone with any electric utility that can even enumerate all the thousands upon thousands of ways that electric utilities have to hedge their operational risk…I don't think that end users who are trying to hedge their operational commercial risk, should be second guessed or subject to being second guessed by the Commission, when all we're trying to do is keep the lights on." See Transcript at page 198-199. Ron Oppenheimer commented that "…no one can be expected to understand or anticipate every type of [commercial risk] hedge that can be done, that could fit all markets or fit all market participants." See Transcript at page 161.

[17] See the remarks of Paul Hughes, representing Southern Company, at page 219: "[The speculative] position limits rule …can't include trade options. We cannot have trade options in the position limits rules. To try to include the calculations, trying to figure out how that would work, is almost impossible." See also further remarks by Mr. Hughes at pages 228-229, of the EEMAC Meeting Transcript; the remarks of Arushi Sharma Frank, representing the American Gas Association, in response to Commissioner Giancarlo's question at pages 223-225 of the EEMAC Meeting Transcript, and the remarks of Russell Wasson representing NRECA at page 239.

[18] See the NFP Electric Associations' request for reconsideration of the Commission's interpretation in the Products Release that all commodity options are swaps, despite the clear language of CEA 1a(47), which can be found at: http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59235&SearchText

If the Commission declines the NFP Electric Associations' pending requests for CEA 4a(a)(7) exemptions then, for the reasons explained in the February 2014 NFP Electric Comments and below, the Commission should provide a narrowly-tailored CEA 4a(a)(7) exemption for all Referenced Contracts that are entered into by NFP Electric Entities to hedge or mitigate commercial risks arising from such NFP Electric Entity's ongoing electric operations ("NFP Electric Operations-Related Referenced Contracts"), where:

1. "NFP Electric Entities" has the meaning explained in Section III of the February 2014 NFP Electric Comments, drawn from the types of entities entitled to the exemption in the NFP Electric Exemption Order,[19]

2. "to hedge or mitigate commercial risks" has the meaning in CEA 2(h)(7) and as further explained in Commission Rule 50.50, and

3. "arising from…ongoing electric operations" identifies the transactions intrinsically-related to an NFP Electric Entity's operations, as described in the NFP Electric Exemption Order and in the amendment to the "special entity" de minimis threshold to the "swap dealer" definition in Regulation 1.3(ggg) to exclude certain utility operations-related transactions.[20]

In the NFP Electric Exemption Order, the Commission acknowledges the narrow scope of electric operations-related transactions covered by such Exemption Order, and the importance of such transactions to the ability of the NFP Electric Entities to cost-effectively hedge or mitigate commercial risks arising from ongoing electric operations. Similarly, in the adopting release for the Utility Special Entity Rule Amendment, the Commission acknowledges the narrow scope of transactions covered by such rule amendment, and the importance of such transactions to the ability of Utility Special Entities, a subset of the NFP Electric Entities, to cost-effectively hedge or mitigate commercial risks arising from ongoing electric operations. The types of operations-related transactions that are covered by the Exemption Order and the Utility Special Entity Rule Amendment are ***not*** the types of financial commodity derivatives and securitization transactions that gave rise to certain newsworthy problems for municipalities dealing with large financial dealers that may or may not have adequately explained the risks of such financial commodity derivatives. These are electric utility operations-related Referenced Contracts, not financial swaps or complex financial instruments.

The NFP Electric Exemption Order also explains that the NFP Electric Entities, as entities, are an easily distinguishable group of not-for-profit electric entities, conservatively self-governed by cooperative members or by elected government officials. Such entities manage their electric operations with a single and collective public service mission: to provide reliable and affordable electric service to customers in a defined service territory, while complying with applicable environmental regulations and policies.

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[19] Order Exempting Certain Transactions Between Entities Described in the Federal Power Act, and Other Electric Cooperatives, 78 Fed. Reg. 19670 (April 2, 2013) (the "NFP Electric Exemption Order").

[20] Final Rule, Exclusion of Utility Operations-Related Swaps with Utility Special Entities from De Minimis Threshold for Swaps with Special Entities, 79 Fed. Reg. 57767 (September 26, 2014) (the "Utility Special Entity Rule Amendment").

NFP Electric Entities simply are not involved in speculative trading activities. There is no regulatory policy reason why the Commission should not exempt all NFP Electric Operations-Related Referenced Contracts from speculative position limits rules entirely under its authority in CEA 4a(a)(7).[21] The NFP Electric Associations' request for a narrowly-circumscribed CEA 4a(a)(7) exemption from speculative position limits rule is justified for the same policy reasons explained in Section II of the February 2014 NFP Electric Comments, in the NFP Electric Exemption Order, and in the Special Entity Rule Amendment.

V. THE COMMISSION SHOULD FINALIZE AND IMPLEMENT ITS SPECULATIVE POSITION LIMITS RULES IN STAGES, BY CORE REFERENCED FUTURES CONTRACT OR BY CATEGORY OF NON-FINANCIAL COMMODITY, AND THE COMMISSION SHOULD CONTEMPORANEOUSLY PROVIDE CEA 4a(a)(7) EXEMPTIONS TO COMMERCIAL END-USERS IN INDUSTRIES WHOSE COMMERCIAL RISK HEDGING ACTIVITIES WOULD OTHERWISE BE NEGATIVELY AFFECTED AND EXCESSIVELY BURDENED BY SUCH RULES.

As the Commission finalizes its speculative position limits rules for each Core Referenced Futures Contract and associated Referenced Contracts, the Commission should take into account the different market structures, market participants from different commercial industries, and the commercial risks of end-users with unique business operations that require the non-financial commodity underlying each such Core Referenced Futures Contract. In particular, for certain energy Core Referenced Futures Contracts such as Henry Hub Natural Gas, the Commission must consider the commercial risk hedging needs of natural gas and electric utilities, including the NFP Electric Entities.

Nothing in the Dodd-Frank Act amendments to CEA Section 4a(a) requires the Commission to impose a one-size-fits-all speculative position limits regime, or that such a regime be applied simultaneously to the 28 Core Referenced Futures Contracts identified by the Commission in its Proposed Rules. In fact, the contrary is quite clear in the statutory language of the Dodd-Frank Act amendments to the CEA. In several places in the plain language of Section 4a(a) of the CEA, as amended by Section 737 of the Dodd-Frank Act, Congress expressly permits the Commission to fix "different trading or position limits for different commodities, markets, futures or delivery months…"[22] In the Dodd-Frank Act amendments to CEA Section 4a(a), Congress included the new and broad exemptive authority in CEA 4a(a)(7).

Congress expressed its clear intent that, when the Commission exercises its speculative position limits authority, it should contemporaneously provide appropriate exemptions for "any persons 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

[21] The Commission should also provide an appropriate pass-through exemption for counterparties to such NFP Electric Operations-Related Referenced Contracts, for reasons explained in Section VIII of the February 2014 NFP Electric Comments. For Referenced Contracts that are bilateral swaps, such pass-through exemptions are critical to attracting counterparties into the otherwise illiquid "markets" for such bilateral electric operations-related swaps.

[22] CEA 4a(a)(1).

class of transactions from any requirement it may establish under this section [4a(a)] with respect to [speculative] position limits."[23]

Congress did not intend the Commission to push forward with finalizing limits on speculative trading without addressing the requests of commercial end-users for exemptions. Nor did Congress intend that the Commission disregard the negative impact that such speculative trading limits would or could have on commercial risk hedging activities, and conduct a later or separate regulatory process to consider exemptions. The negative impact has been explained in comment letters and was reiterated again and again at the EEMAC meeting – commercial risk hedging practices that are common in the energy industry (and consistent with the well-functioning energy trading and commercial markets) would not be permitted under the Proposed Rules' narrowly enumerated "bona fide hedging exemption" categories. The NFP Electric Associations respectfully request that the Commission address all pending requests for CEA 4a(a)(7) exemptions, and for additional "bona fide hedging" exemptions applicable to futures contracts under CEA 4a(c), prior to or concurrently with finalizing and implementing its speculative position limits rules.

VI. RESPONSES TO CERTAIN COMMISSION QUESTIONS FOR THE EEMAC MEETING, PANEL III.

A. Panel III, Question 2: Is hedging an art or a science?

Commercial risk hedging in a particular industry sector, such as the natural gas industry or the electric utility industry, is an art. That art is best practiced by experienced operations staff and the management of commercial entities in that industry. Those business persons are responsible for achieving the commercial entity's identified business objectives, and are governed by the entity's commercial risk management and hedging policies, which are tailored to the entity's risk tolerances and available hedging strategies. Requiring such commercial risk hedging professionals to "backfit" commercial enterprise and industry-specific risk mitigation strategies into a limited number of enumerated, regualtory "bona fide hedging exemption" categories which were developed under the Commission's historical authority over futures contracts and traders under CEA 4a(c), is like jamming multiple, angular-shaped commercial risk hedging pegs into a single (or several enumerated) round regulatory "bona fide [trading risk] hedging" exemption hole.[24]

C. Panel III, Question 3: How perfect must a hedge be to have value in commercial risk mitigation?

There is no "perfect" commercial risk hedge or mitigation strategy, especially in illiquid commercial markets for non-standardized, non-cleared bilateral transactions. Each commercial end-user measures the "value" of a commercial risk hedge in relation to the idiosyncratic commercial risks it is hedging, offset by the counterparty credit and performance risks of the commercial risk hedge. Valuing the "perfection" of the hedge also involves consideration of the enterprise's risk tolerances, *i.e.*, how badly does the commercial end-user want to hedge/mitigate

[23] CEA 4a(a)(7).

[24] See the remarks of Russell Wasson at the EEMAC Meeting at page 198-199.

that particular commercial risk. Finally, each commercial risk hedge or mitigation strategy comes at a cost to the enterprise.

Absolute hedge values and numeric correlations of risks and costs can only be calculated for trading risks that are first assumed, and then measured and hedged, in liquid trading markets (or in academia). Each commercial entity should be allowed to use its business judgment as to which of the commercial risks that face its enterprise it chooses to hold or transfer, manage, hedge or mitigate, by what method and to what extent.

D. Panel III, Question 4: The Commission has proposed to replace its current definition of "bona fide hedging transactions or positions" in rule 1.3(z) with a new definition of a "bona fide hedging position" in proposed rule 150.1. But the proposal does not provide for non-enumerated hedges that are available in current Rule 1.3(z)(3). See 78 Fed. Reg. at 75706. What sorts of non-enumerated hedges are currently used in the U.S. energy markets? Should the Commission make such non-enumerated hedged available in its final rule? How would the availability of non-enumerated hedges impact U.S. energy markets?

Current CFTC Rule 1.3(z) implements the Commission's authority under ***CEA Section 4(c)*** to define what constitutes a bona fide hedging transaction or position "[f]or purposes of implementation of CEA 4a(a)(2) ***for contracts of sale for future delivery or options on such contracts or commodities*** (*emphasis added*)." In other words, the current enumerated and non-enumerated "bona fide hedge" rules apply only to the futures contract trading markets.

The Commission's new proposed rule 150.1 would apply that same historical "bona fide hedging" construct (but without the flexibility of non-enumerated "bona fide hedging transactions" or "bona fide hedging positions" process) to implement the Commission's broad new Dodd-Frank Act speculative position limits authority over commercial "swap" markets. Although the term "bona fide hedging position" appears in CEA 4a(a)(2), which is still applicable only to futures contract markets, and in CEA 4a(a)(5) with reference to swaps that are "economically equivalent" to a particular futures contract, it does not appear in new CEA Section 4a(a)(6). And it is in Section 4a(a)(6) that Congress authorizes "aggregate position limits" to be applied to swaps and then directs the Commission to establish such aggregate limits "(including related hedge exemption provisions)." New CEA 4a(a)(6) does not use the same "bona fide hedging transaction or position" phrase. The Commission's precedent on "bona fide hedging transaction or position" in CEA 4a(c) does not apply to or limit the Commission's broad new exemption authority under CEA 4a(a)6) or CEA 4a(a)(7). See Sections II, III and IV above and Section VIG below.

E. Panel III, Question 5: Are the Commission's proposed enumerated [bona fide] hedges, defined in proposed rule 150.1, and illustrated with non-exclusive examples in proposed Appendix C to part 150, appropriate? Should the Commission add others? Are there risk-mitigation strategies currently used in U.S. energy markets that would not meet the proposed definition of an enumerated [bona fide] hedge?

The energy industry has provided numerous examples of commercial risk hedging and mitigation strategies that are commonly used by companies in the energy industry to hedge

commercial risks arising from ongoing business operations. The examples are as diverse as the energy industry companies' operations and associated, interdependent commercial risks. At the EEMAC meeting, participants explained from various energy industry perspectives why a particular commercial risk "hedge" was not a speculative trading position, and should be generically excluded or exempted from the proposed speculative position limits rules for the energy industry. Commission staff explained that, because a speculator in agricultural commodity markets might be able to use the same or a similar generic "storage" hedging strategy, staff would either disallow or require further detail prior to approving the use of such a commercial risk hedging strategy by the energy industry. EEMAC participants noted that staff review of an exemption request might delay use of the commercial risk hedging strategy for many months. Commission staff's resistance to additional enumerated bona fide hedging exemptions for the energy industry is of serious concern to all commercial end-users, as is the time it might take each commercial entity to explain each different or new commercial risk hedging strategy in order to get an individualized ruling that its hedging strategy is "bona fide" for regulatory purposes.[25]

Below are two more examples of how a particular NFP Electric Entity might use a "cross commodity" commercial risk hedging transaction or a "reliability" commercial risk hedging transaction. The transactions are not entered into or held for speculative purposes, yet neither would the transactions necessarily fit within the Commission's enumerated "bona fide hedging" exemptions. Moreover, if the NFP Electric Entity has to manage its "positions" under the Commission's Proposed Rules, these transactions and positions would not accomplish their commercial risk hedging purposes. These are more examples of NFP Electric Operations-Related Transactions for which the CEA 4a(a)(7) exemptions are being requested:

Assume an electric cooperative (an NFP Electric Entity) uses coal from the Illinois Basin that includes portions of Indiana and Kentucky, along with other fuels, to generate electricity to serve its electric customer/members in central Indiana. To hedge a portion of the commercial risks of its electric operations (a sufficient and cost-effective coal supply, especially during winter months), the NFP Electric Entity enters into a 5-year coal supply contract with a major coal company. The coal supply contract has a series of price adjustment clauses, and a series of contractual decision points or "optionalities" that may (or may not) cause the coal contract to be considered a "swap" under the Commission's interpretations of CEA 1a(47). The coal supply contract may or may not fit within the Commission's commodity trade option Interim Final Rule, and therefore may itself be included within the Commission's speculative position limits rule.

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[25] Energy companies have in place the commercial risk hedging strategies appropriate to the particular business operations the enterprise conducts, and that reflect the commercial risk tolerances and business objectives of the entity's management and owners. The NFP Electric Associations call particular attention to the discussion at the EEMAC meeting of the commercial risk hedging transactions commonly used by energy companies that either own, lease or require natural gas storage in a particular geographic area.It is critical that the Commission recognize the ways in which commercial "storage" risk hedging concepts in the energy and utility industries differ from what might otherwise appear to be analogous circumstances in certain agricultural industries/markets. See the EEMAC Transcript discussion of the natural gas storage hedging transaction at 170-182. Such a commercial risk mitigation strategy should not be regulated or limited by the Commission's speculative position limits rules.

That issue aside, under the terms of the coal supply contract, the delivered price of coal is calculated in part by reference to the cost of diesel fuel (a variable in the coal company's underlying transportation contract with the railroad that ships the coal for delivery to the NFP Electric Entity). The NFP Electric Entity decides to hedge a portion of the commercial risk arising from the coal supply contract/its electric supply operations by entering into a commercial risk hedge in two parts: for the first 2 years, the NFP Electric Entity buys NYMEX New York Harbor ULSD [ultra-low sulfur diesel] Heating Oil Core Referenced Futures Contracts (HO). Because that futures contract is not actively traded in longer tenors and therefore lacks a tight bid-ask spread, the NFP Electric Entity enters into a forward-starting 3-year bilateral swap referencing the NYMEX Light Sweet Crude Oil Core Referenced Futures Contract (CL) with a non-SD/MSP counterparty. Such commercial risk hedges are common in the electric industry. Yet it is impossible to determine whether such off-facility, non-cleared transactions would or would not meet the bona fide hedging exemption criteria for a cross-commodity swap. No correlations are calculable: the swap has no easily identified relationship to a traded, quoted financial trading instrument. Moreover, its value to the NFP Electric Entity is directly in relation to the portion of the underlying commercial risk being hedged, and the swap counterparty's credit support relationship also affects the price of the swap. Neither the coal supply contract (if it is a "swap") nor the forward-starting swap performs or affects a significant price discovery function with respect to regulated futures markets. If the NFP Electric Entity is required to manage its "position" in either circumstance in relation to the "spot month" of a particular Core Referenced Futures Contract, it will not be able to use the commercial hedge to manage the commercial risks (a sufficient and cost-effective source of coal at its generating unit) that the NFP Electric Entity faces right up to the time the coal is used to generate electricity.

Second, assume another NFP Electric Entity uses natural gas, among other fuels, to generate electricity to reliably serve its customers in Southern Mississippi. To hedge commercial risks arising from its electric operations, the NFP Electric Entity enters into several commercial risk hedging transactions: first, it enters into a power purchase agreement with a neighboring electric utility, where the terms allow it to purchase up to 15 MWs in the event of a regional heat wave (based on degree day calculations) at the electric utility's average cost of generation, plus $1.00, and an additional 25 MWs at particular heat rate tied to the utility's largest generation unit. Next, the NFP Electric Entity may enter into a heat rate swap, based on the average heat rate of generation units in the local geographic market area where it purchases power multiplied by the price of the Henry Hub Natural Gas Core Referenced Futures Contract (NG). In addition, the NFP Electric Entity may enter into a natural gas purchase and storage contract with a local natural gas distribution company, for up to 10,000 decatherms of natural gas for January and February 2016, at a rate per dekatherm tied to a local market index price. The NFP Electric Entity's operations management has reviewed weather conditions, customer usage patterns, natural gas storage and pipeline capacity into its area, and natural gas and power prices in its region over the past 5 winters, as well as long-term customer growth projections, weather forecasts and forward natural gas and power price curves. Such commercial risk hedges are common in the electric industry. Yet again, it is impossible to determine whether such off-facility, non-cleared transaction would or would not meet the bona fide hedging exemption criteria for a cross-commodity swap for reasons similar to those in the prior example.

In addition to these and other examples previously provided to the Commission of commercial risk hedging common in the electric industry,[26] the NFP Electric Associations respectfully call the Commission's attention in particular to the comment made in Section IXD of the February 2014 NFP Electric Comments. The NFP Electric Associations respectfully request that, unless the Commission grants their request for an entity-based CEA 4a(a)(7) exemption, the Commission must broaden the "state-regulated public utility bona fide hedging exemption" so that it is available to all NFP Electric Entities. NFP Electric Entities may or may not be regulated by state public utility regulators, and most state public utility regulators do not "but nonetheless hedge the commercial risks associated with providing 24/7/365, affordable electric utility services to their customers.

In the NFP Electric 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 structure(s) make them "self-regulating" utilities in relation to their electric operations-related hedging transactions. Either the government-owned utility's elected officials, or the electric cooperative's members, and their experienced electric operations staff conservatively manage and hedge electric operations risks to keep rates low and affordable. For the reasons articulated in the NFP Electric Exemption Order and explained in the February 2014 NFP Electric Comments, the Commission should expand the "utility bona fide hedging exemption" so as to allow NFP Electric Entities to rely on it.

F. Panel III, Question 8: In addition, how could the Commission exercise its exemptive authority under CEA section 4a(a)(7) to permit continued use of common transactions and/or protocols currently used in U.S. energy markets? Would requiring (1) hedge reports on Form 204, which are currently filed under penalty of perjury, and/or (2) contemporaneous documentation generated for business purposes provide sufficient assurance that market participants will not abuse hedge exemptions?

The NFP Electric Associations respectfully request the Commission to address all pending requests for CEA 4a(a)(7) exemptions, and respond to all requests for additional "bona fide hedging" exemptions from the energy industry applicable to energy futures contracts and options on futures contracts under CEA 4a(a)(2) and 4a(c), prior to or contemporaneously with finalizing the speculative position limits rules, and prior to implementing such rules for energy Core Referenced Futures Contracts (including Henry Hub Natural Gas).

In terms of documentation required from commercial end-users (including NFP Electric Entities) to prove that they are not speculators and are not engaged in speculative transactions, no additional documentation should be required. The NFP Electric Associations' reasoning is explained in Section VII of the February 2014 NFP Electric Comments: a new regulatory requirement for a non-speculator to create or retain documentation to prove to the Commission

[26] The NFP Electric Associations are supportive of the comments made by other trade associations representing the electric and natural gas utility industries, and the many examples of commercial risk hedging transactions common in such utility industries.

that it is not a speculator or engaging in speculation would be an unnecessary regulatory burden and cost for NFP Electric Entities. As energy industry commercial end-users at the EEMAC meeting noted, the Commission's "bona fide hedging" rules have become a regulatory burden on commercial risk hedgers: the very entities that the Commission's speculative position limits rules are intended to benefit. Yet having more than 2500 certifications from NFP Electric Entities that they do not speculate will not provide the Commission with any information to assist it in identifying those entities that may be engaged in "excessive speculation" in Referenced Contracts.

G. Panel III, Questions 8 and 11 (see above for question 8):What are the important distinctions, if any, between recognizing a hedge as a bona fide hedge exempt from [speculative] position limits pursuant to CEA section 4a(c) and simply exempting that hedge from [speculative] position limits pursuant to the Commission's CEA section 4a(a)(7) exemptive authority?

There is a significant difference between the Commission's broad statutory exemption authority in new CEA 4a(a)(7), and the narrower, historical authority of the Commission to "define what constitutes a bona fide hedging transaction or position" in relation to specific futures contracts and options on futures under CEA 4a(c). The NFP Electric Association pending requests are for exemptions under CEA 4a(a)(7). In Section VII of the February 2014 NFP Electric Comments, we explain the reason for such an approach: there is no regulatory policy reason to structure the ***speculative*** position limits rules to apply limits to all Referenced Contracts, including CEU-Hedging Transactions and CEU-only entities, only to then require the very same entities to pluck their transactions either entirely, or transaction-by-transaction back out of the limits using the same (or a different permutation) of what constitutes a valid or "bona fide" commercial risk hedge. Imposing regulatory obligations on all commercial end-users in order to provide data to assist the Commission's ability to identify the bad actors is not a good use of either the Commission's limited resources or the limited resources of capital-intensive, public service, jobs-creating commercial enterprises (including not-for-profit utilities like the NPP Electric Entities).

The discussion at the EEMAC meeting about whether and how the Commission can "leverage" the DCMs' experience with speculative position limits rules and bona fide hedging exemptions draws attention to the need for the Commission to implement a speculative position limits regime differently for Referenced Contracts that are entered into off-facility as bilateral, non-cleared "swaps" -- as to which the DCMs have no such experience, and for which the DCMs have no visibility and no oversight responsibility.

For Referenced Contracts that are "paired swaps and swaptions" under the Proposed Rules, the Commission itself has access to swap transaction data in the swap data repositories, including counterparty LEIs (identification). The Commission also has access to a swap counterparty's designation of a swap as entered into "to hedge or mitigate commercial risks," required by Regulation 50.50(b). The Commission will have the data it needs to monitor the requested CEA 4a(a)(7) exemptions. If the Commission has a regulatory need for further information about a particular commercial end-user's (or a particular NFP Electric Entity's)

Referenced Contracts, the Commission can exercise special call authority to obtain such information.[27]

VII. THE COMMISSION MUST CONSIDER THE IMPACT OF ITS SPECULATIVE POSITION LIMITS RULES, AND ITS DECISIONS TO GRANT OR DENY REQUESTS FOR CEA 4a(a)(7) EXEMPTIONS, ON "SMALL ENTITIES,"[28] INCLUDING THE MAJORITY OF NFP ELECTRIC ENTITIES[29] WHICH DO NOT ENTER INTO SPECULATIVE TRANSACTIONS OR HOLD SPECULATIVE POSITIONS

For the reasons explained in the February 2014 NFP Electric Comments, the Commission must consider the impact of its speculative position limits rules on "small entities," including more than 2500 NFP Electric End-Users, as well as the impact on "small entities" of its decision(s) to grant or deny the NFP Electric Associations' requests for CEA 4a(a)(7) exemptions.

VIII. 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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[27] An exchange can use its market surveillance authority to investigate if it has questions about a particular bona fide hedging exemption. In the same way, the Commission has access to swap transaction data that allows it to identify transactions by swap counterparty, and if the Commission is concerned about a particular concentration or position held by one or more affiliated swap counterparties, the Division of Market Oversight can 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 align with its assertion that its Referenced Contracts hedge or mitigate commercial risks.

[28] 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").

[29] 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.

Respectfully submitted,

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Russell Wasson
Director, Tax, Finance and Accounting Policy
4301 Wilson Blvd., EP11-253
Arlington, VA 22203
Tel: (703) 907-5802
E-mail: russell.wasson@nreca.coop

AMERICAN PUBLIC POWER ASSOCIATION

James C. Cater, Director of Economic and Financial Policy

2451 Crystal Drive
Suite 1000
Arlington, VA 22202-4804
Tel: (202) 467-2979
E-mail: jcater@publicpower.org

LARGE PUBLIC POWER COUNCIL

Noreen Roche-Carter
Chair, Tax and Finance Task Force
c/o Sacramento Municipal Utility District
6201 S Street
Sacramento, CA 95817-1899
Tel: (916) 732-6509
E-mail: nrochec@smud.org

cc: Honorable Timothy Massad, Chairman
Honorable Mark Wetjen, Commissioner
Honorable Sharon Bowen, Commissioner
Honorable Christopher Giancarlo, Commissioner

Jonathan Marcus, Esq., General Counsel
Stephen Sherrod, Senior Economist, Division of Market Oversight
Vincent McGonagle, Director, Division of Market Oversight
Riva Spear Adriance, Senior Special Counsel, Division of Market Oversight
David N. Pepper, Attorney-Advisor, Division of Market Oversight
Kenneth Danger, Senior Economist

ATTACHMENT A - DESCRIPTION OF THE NFP ELECTRIC ASSOCIATIONS

NRECA is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to more than forty-two million people in forty-seven states or twelve percent of electric customers. 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.