

November 13, 2015

**Via Electronic Submission**

Christopher Kirkpatrick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

**Re: Comments on Aggregation of Positions  
(RIN 3038-AD82)**

Dear Mr. Kirkpatrick:

The Edison Electric Institute (“EEI”) respectfully submits these comments in response to the Commodity Futures Trading Commission’s (“CFTC” or “Commission”) supplemental notice of proposed rulemaking on Aggregation of Positions (“Proposed Rule”).<sup>1</sup> EEI appreciates the Commission’s issuance of the Proposed Rule and supports the proposed revisions to the 2013 Aggregation Proposal.<sup>2</sup>

EEI is the association of U.S. shareholder-owned electric companies. EEI’s members serve 95 percent of the ultimate customers in the shareholder-owned segment of the U.S. electricity industry, and represent approximately 70 percent of the U.S. electric power industry. EEI’s members are physical commodity market participants that rely on swaps and futures contracts primarily to hedge and mitigate their commercial risk. They are not financial entities. Regulations that make effective risk management options more costly for end-users of derivatives will likely result in higher and more volatile energy prices for residential, commercial, and industrial customers. As users of commodity swaps and futures contracts to hedge commercial risk, EEI’s members have a significant interest in the Commission’s proposal to amend the position limits aggregation requirements applicable to commonly held or controlled accounts.

The NOPR proposes a “limited revision to the 2013 Aggregation Proposal that would permit all owners of 10 percent or more of an owned entity (i.e., the owners of up to and including 100 percent of an owned entity) to disaggregate the positions of the owned entity of the

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<sup>1</sup> *Aggregation of Positions*, 80 Fed. Reg. 58365 (September 29, 2015).

<sup>2</sup> *Aggregation, Position Limits for Futures and Swaps*, 78 Fed. Reg. 68946 (November 15, 2013). (“2013 Aggregation Proposal”).

circumstances specified in proposed rule § 150.4(b)(2).<sup>3</sup> This proposed revision is consistent with previous EEI comments with respect to the 10 percent and 50 percent ownership thresholds. EEI had previously commented that requiring aggregation based on a 10 percent ownership interest alone, in the absence of actual control, would be commercially impracticable and very expensive for many commercial firms and that the exemption from aggregation could be improved by eliminating the 50 percent or less ownership limitation as all commonly-owned affiliates should be permitted to disaggregate their positions in Referenced Contracts where such entities demonstrate independent management and control. EEI had requested that the Commission not limit this relief to persons with a 50 percent ownership interest or less.<sup>4</sup> As such, EEI supports this revision and agrees with the Commission that the provisions in § 150.4(b)(2) provide appropriate indication of whether an owner has knowledge or control of the trading activity of an owned entity and that an ownership percentage does not necessarily mean that the owner exercises control over the entity's trading activity.<sup>5</sup>

In addition to the proposed clarification in the Proposed Rule, as indicated in Commissioner Giancarlo's statement, EEI agrees that two additional clarifications would be appropriate. First, EEI agrees that "the Commission should consider modifying the current proposal to clarify that owners and their affiliates may share such trading information as is necessary for effective risk safeguards without forfeiting eligibility for disaggregation."<sup>6</sup> Under the Proposed Rule, the exemption from aggregation is available only to entities that "that "(d) not have risk management systems that permit the sharing of trades or trading strategies".<sup>7</sup> EEI supports the Commission's efforts to ensure that entities seeking disaggregation do not use identical strategies to coordinate their trading of Referenced Contracts. However, there may be instances where it is necessary for owners and their affiliates to share information of risk management or recordkeeping purposes. For example, many of EEI's members use trade capture systems to track their positions on an enterprise-wide basis across multiple affiliates for risk management, recordkeeping and other business purposes. These systems do not direct trading. A shared trade capture system across an entity's corporate enterprise does not mean that the entities have adopted or employed identical, or even similar, trading strategies. Therefore, EEI respectfully requests that the Commission clarify that owners and their affiliates may share such information as is necessary for effective risk safeguards provided they have appropriate information barriers in place to prevent the sharing of trade positions.

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<sup>3</sup> Proposed Rule at 58369.

<sup>4</sup> See e.g. EEI Comments in response to Proposed Rule on Aggregation, Position Limits for Futures and Swaps (RIN 3038-AD82)(June 29, 2012); EEI and AGA Petitions for Order to Exempt Owned Non-Financial Entities from Aggregation for Compliance with Position Limits and Order to Broaden and Clarify Rule 151.7(i) (March 1, 2012).

<sup>5</sup> See e.g. Proposed Rule at 58371.

<sup>6</sup> Proposed Rule, Appendix 3 – Statement of Commissioner J. Christopher Giancarlo at 58381.

<sup>7</sup> Proposed CFTC Rule 150.4(b)(2)(i)(D).

Second, EEI agrees that the Commission should consider modifying the Proposed Rule to “clarify that an owner filing a notice of trading independence in order to claim an exemption from aggregation under this rule need only make subsequent filings in the event of a material change in in the owner’s degree of control over its subsidiary’s positions.”<sup>8</sup> This clarification would help address the ambiguity between the proposed Commission rule and the text of the cost section in the Proposed Rule. Proposed Rule § 150.4(c) requires persons seeking an aggregation exemption with the Commission file a notice and specifies the information required. Proposed Rule § 150.4(c)4) states that “in the event of a material change to the information provided in any notice filed under paragraph (c ) of this section, an updated or amended notice shall promptly be filed detailing the material change.” The rule does not require that any other notices be provided which is appropriate since the Commission has the authority to solicit additional information upon demand. The Cost section of the Proposed Rule indicates that “there would be costs related to subsequent filings required by the exemptions.”<sup>9</sup> This language appears to imply that there would be additional filings required. A clarification that a subsequent notice is only needed in the event of a material change would address this ambiguity.

EEI appreciates the Commission’s attention to this issue and the opportunity to submit comments. Please contact us at the number listed below if you have any questions regarding these comments.

Respectfully submitted,



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<sup>8</sup> Proposed Rule, Appendix 3 – Statement of Commissioner J. Christopher Giancarlo at 58382.

<sup>9</sup> Proposed Rule at 58375.