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VIA ELECTRONIC SUBMISSION

Mr. Christopher J. Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Aggregation of Positions, RIN 3038-AD82

Dear Mr. Kirkpatrick:

I.
Introduction

By notice in the Federal Register dated September 29, 2015,[1] the Commodity Futures Trading Commission ("CFTC" or "Commission") invited comment on a proposed revision to its November 15, 2013 proposal for the aggregation of position limits ("2013 Aggregation Proposal").[2]

Sempra Energy submits the following comments in support of the Commission's September 29, 2015 proposed revision to the 2013 Aggregation Proposal. Sempra Energy is a Fortune 500 energy-services holding company based in San Diego, California whose operating units develop energy infrastructure, operate utilities, and provide related services to their customers. Sempra Energy's operations are divided principally between (a) its two wholly-owned California utilities, Southern California Gas Company and San Diego Gas & Electric Company, and (b) Sempra U.S. Gas & Power and Sempra International.

[1] *See* 80 Fed. Reg. 58365 (September 29, 2015).
[2] *See* Aggregation of Positions, 78 Fed. Reg. 68946 (Nov. 15, 2013).

II.
Discussion

In the 2013 Aggregation Proposal, the Commission proposed a very different set of requirements and protocols for an exemption from the aggregation requirement for owners of a 10 to 50 percent equity interest in an owned entity than for owners of a greater than 50 percent interest. The Commission is now proposing to apply essentially the same requirements to those different classes of owners.

In its September 29, 2015 release, the Commission explained that:

> In view of the points raised by commenters on the 2013 Aggregation Proposal and upon further review of the matter, the Commission is proposing to revise the proposal to delete proposed rule §§150.4(b)(3) and 150.4(c)(2), and to change proposed rule §150.4(b)(2) so that it would apply to all persons with an ownership or equity interest in an owned entity of 10 percent or greater (i.e., an interest of up to and including 100%) in the same manner as proposed rule §150.4(b)(2) would apply, before this revision, to owners of an interest of between 10 percent and 50 percent.[3]

In issuing this proposal, the Commission acknowledged comments on the 2013 Aggregation Proposal that the "aggregation of positions held by owned entities may in some cases be impractical, burdensome, or not in keeping with modern corporate structures."[4] In addition, the Commission found that "ownership of a greater than 50 percent interest in an entity . . . may not mean that the owner actually controls day-to-day trading decisions of the owned entity" and that "on balance, the overall purpose of the position limits regime (to diminish the burden of excessive speculation which may cause unwarranted changes in commodity prices) would be better served by focusing the aggregation requirement on situations where the owner is, in view of the circumstances, actually able to control the trading of the owned entity."[5]

In its September 29, 2015 release, the Commission invited commenters "to address whether proposed rule §150.4(b)(2), as revised, appropriately furthers the overall purposes of the position limits regime while not creating opportunities for circumvention of the aggregation requirement."[6]

Sempra Energy supports the proposed revision to the 2013 Aggregation Proposal, which is consistent with our prior comments in this proceeding in which we advocated that the aggregation rule should be the same for 10 to 50 percent-owned and 50 percent or greater-owned companies.[7] We also concur with the Commission's stated reasons for the proposed revision and

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[3] 80 Fed. Reg. at p. 58371.
[4] *Id*. at p. 58369.
[5] *Id*. at p. 58371.
[6] *Id*. at p. 58373.
[7] *See* Sempra Energy's July 25, 2014 comments (at p. 9) and Sempra Energy's March 30, 2015 comments (at p. 6).

Chairman Massad's and Commissioner Giancarlo's statements that the proposed revision "should create a more practical, efficient rule"[8] and "better recognizes the varied corporate structures of contemporary market participants."[9]

In addition, Sempra Energy strongly believes that the proposed revision will better achieve the Commission's overall objectives of its aggregation policy.

As the Commission explained in the September 29, 2015 release, "[t]he primary purpose of requiring positions of owned entities to be aggregated is to prevent evasion of prescribed position limits through coordinated trading."[10]

Proposed rule §150.4(b)(2)(i) is expressly tailored to achieve the purpose of the aggregation policy – "to prevent evasion of prescribed position limits through coordinated trading" – regardless of whether the ownership interest is less than, equal to, or greater than 50%. In particular, proposed rule §150.4(b)(2)(i) requires a showing of independence through a notice filing certifying that "[s]uch person, including any entity that such person must aggregate, and the owned entity:"

(A) Do not have knowledge of the trading decisions of the other;
(B) Trade pursuant to separately developed and independent trading systems;
(C) Have and enforce written procedures to preclude each from having knowledge of, gaining access to, or receiving data about, trades of the other . . .
(D) Do not share employees that control the trading decisions of either; and
(E) Do not have risk management systems that permit the sharing of trades or trading strategy.[11]

In its September 29, 2015 release, the Commission stated that it "believes that the criteria in proposed rule §150.4(b)(2)(i) are appropriate and suitable for determining when disaggregation is permissible due to a lack of control and shared knowledge of trading activities."[12] Sempra Energy agrees. The disaggregation criteria set forth in proposed rule §150.4(b)(2)(i) represent a balanced and effective approach that gets to the heart of the Commission's aggregation policy – "to prevent evasion of prescribed position limits through coordinated trading." Proposed rule §150.4(b)(2)(i) also prevents the arbitrary results that would have ensued from the 2013 Aggregation Proposal, such as requiring a person that had no knowledge or control over the trading operations of an affiliate, and which operated

[8] *Id*. at p. 58381 (Appendix 2).
[9] *Id*. (Appendix 3).
[10] *Id*. at p. 58375.
[11] *Id*. at p. 58379.
[12] *Id*. at p. 58372.

independently, to aggregate its positions with that affiliate simply because they were wholly- or majority-owned by the same parent company.[13]

III.
Conclusion

For the reasons set forth above, Sempra Energy supports the proposed revision to the 2013 Aggregation Proposal set forth in the September 29, 2015 release.[14]

Sincerely,

By: /s/
Steven C. Nelson

cc: Honorable Timothy G. Massad, Chairman
Honorable Sharon Y. Bowen, Commissioner
Honorable J. Christopher Giancarlo, Commissioner
Stephen Sherrod, Senior Economist
Riva Spear Adriance, Senior Special Counsel
Mark Fajfar, Assistant General Counsel

[13] A limited exemption was potentially available under the 2013 Aggregation Proposal for parent companies that, among other things, did not report the financial results of their majority-owned subsidiaries on a consolidated basis. Given that the overwhelming majority of public companies in the United States do report on a consolidated basis, that exemption was not a practical alternative for many holding companies.

[14] In Commissioner Giancarlo's statement in Appendix 3, he invited comment on "whether 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 the owner's degree of control over its subsidiary's positions. The text of the proposed rule does not appear to require periodic filings following the initial notice of trading independence, but the Commission's calculation of the proposal's costs seems to assume that such filings will be made on an annual basis." *Id*. at p. 58382. Sempra Energy believes that proposed rule §150.4(c)(4) is clear that an "updated or amended notice" need only be filed "[i]n the event of a material change to the information provided" in the initial notice. However, Sempra Energy agrees that portions of the language in the September 29, 2015 release discussing compliance costs could be clarified to be consistent with proposed rule §150.4(c)(4). *See, e.g.*, *id*. at pp. 58375-58376 (Section III.A.4.b) and p. 58378 (Section III.C.3)