

February 27, 2012

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Via Email

Re: **LETTER OF THE COALITION OF PHYSICAL ENERGY COMPANIES**
in support of the Petition for Exemptive Relief for Certain *Bona Fide* Hedging
Transactions of the Working Group of Commercial Energy Firms

Dear Mr. Stawick:

On January 20, 2012, pursuant to Section 4a(a)(7) of the Commodity Exchange Act, as amended (“CEA”), and Section 151.5(a)(5) of the regulations of the Commodity Futures Trading Commission (“CFTC” or the “Commission”), the Working Group of Commercial Energy Firms (“Working Group”) petitioned the Commission (the “Petition”) for an Order granting exemptive relief from the Commission’s regulations governing speculative position limits¹ (the “Position Limit Rules”). Specifically, the Working Group requested that the Commission:

- (i) grant exemptive relief for the classes of risk-reducing transactions described in the Petition to the extent that such transactions are not covered by Sections 151.5(a)(1) or (2) of the Position Limit Rules or, in the alternative, clarify that such classes of transactions qualify as “*bona fide* hedging transactions or positions” within the meaning of Sections 151.5(a)(1) and (2); and
- (ii) provide exemptive relief regarding the definition of (a) “spot month” set forth in Section 151.3(c) of the Position Limit Rules, and (b) “swaption” set forth in Section 151.1 of the Position Limit Rules.²

¹ *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71,626 (Nov. 18, 2011) (Final Rule and Interim Final Rule).

² The Working Group further requested that if the Commission determines that granting exemptive relief on all of the matters requested in the Petition would not be appropriate, it grant the Petition in part as though each request was a separate petition.

The Coalition of Physical Energy Companies (“COPE”)³ hereby submits this letter in support of the Petition.⁴ COPE members are physical energy companies in the business of producing, processing, and merchandizing energy commodities at retail and wholesale. COPE members utilize swaps to hedge the commercial risks of their physical businesses.

COPE members are energy firms that are affected by the Position Limits Rules in a manner similar to the members of the Working Group, as described in the Petition. The relief sought by the Working Group’s Petition would benefit COPE members and all similarly situated firms. Absent the clarifications or relief requested in the Petition, many companies in the energy industry may not be able to use common hedging practices that they have relied on for years. Rather than recite the contents of the Petition, COPE provides this letter to urge the Commission to promptly act on the Petition and/or take other appropriate action to address the issues raised therein and to remedy other defects in the Position Limits Rules.⁵

Because the compliance date for certain aspects of the Position Limits Rules is sixty days from the date the further definition of the term “swap” is published by the Federal Register,⁶ COPE respectfully requests that the Commission act promptly to grant the Petition or otherwise address the defects in the Position Limits Rules identified therein. Compliance with the Position Limits Rules will be challenging for energy firms; prompt remediation of problematic aspects of the rules and further clarification will provide for better compliance by market participants and a greater chance at success in achieving the Commission’s regulatory goals.

³ The members of COPE are: Apache Corporation; El Paso Corporation; Enterprise Products Partners, L.P.; Iberdrola Renewables, Inc.; Kinder Morgan; MarkWest Energy Partners, L.P.; Noble Energy, Inc.; NRG Energy, Inc.; Shell Energy North America (US), L.P.; SouthStar Energy Services LLC; and Targa Resources.

⁴ COPE has inquired of the Commission’s staff regarding whether the Petition would be noticed for comment and, more generally, the mechanism by which the public can address the issues raised by the Petition. COPE has been advised by Commission staff that a letter directed to the Secretary’s Office referencing the Petition would be the proper vehicle in the absence of a formal notice.

⁵ For example, the aggregation provisions of the Position Limits Rules requiring entities that share at least ten percent common equity ownership to aggregate their positions regardless of whether they are under common control or share information is also problematic, as discussed in a separate Working Group petition supported by COPE by separate letter. *See* 17 C.F.R. § 151.7 (2012).

⁶ *See* 76 Fed. Reg. 71,626 at 71,632.

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Respectfully submitted,

/s/ David M. Perlman

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