

GDF SUEZ Energy Marketing NA, Inc.
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Houston, TX 77056

April 26, 2010

David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

O.F.T.O.
OFFICE OF THE SECRETARIAT
2010 APR 23 PM 2 40

COMMENT

Re: Proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated regulations; 75 Fed. Reg. 4144 (January 26, 2010)

Dear Mr. Stawick:

GDF Suez Energy Marketing NA, Inc. ("GSEMNA") submits these comments to respond to the Notice of Proposed Rulemaking to impose Federal speculative positions limits for certain Referenced Energy Contracts issued by the Commodity Futures Trading Commission ("Commission") on January 26, 2010 (the "Proposed Rule").¹ GSEMNA opposes the Proposed Rule because (1) the Commission has not explained sufficiently the market situation that the Proposed Rule is intended to address, or how the Proposed Rule will correct the as yet defined problem in the market; (2) the restriction on holding a speculative position within a *bona fide* hedge exemption will reduce trading and market liquidity, thereby increasing costs to consumers; (3) the aggregation requirement based upon a 10 percent ownership interest in a position is not reasonable and cannot be adhered to readily within current complex corporate structures; and (4) the Proposed Rule is premature because of pending Congressional legislation that may revamp the financial markets regulatory structure.

1. Introduction

GSEMNA is the commodity risk manager for the GDF Suez Energy North America companies. Our companies are (1) the largest importer of Liquefied Natural Gas ("LNG") into the U.S., (2) the second largest seller of electric power to commercial

¹ See 75 Fed. Reg. 4144 (Jan. 26, 2010).

and industrial customers in the U.S., (3) the third largest bio-fuel generator of power in the U.S., and (4) a generator of 7,700 Megawatts of electric power from 77 power plants in the U.S., mostly fueled by natural gas. GSEMNA uses exchange-traded futures, options on futures, and over-the-counter (“OTC”) swaps to manage our price risk and to lock in price margins between power and fuel, as well as between geographic markets in LNG and natural gas.

Our companies have considerable interest in the Commission’s Proposed Rule because of the immediate impact that the limits will have on our ability to manage the risk in our power and gas portfolios, and the potential impact the Rule may have on energy markets as a whole. For the reasons set forth below, we request that the Commission withdraw the Proposed Rule, build a record that identifies both the problems to be solved as well as the efficacy of the proposed solution, and reissue the Rule.

2. The Proposed Rule Does Not Explain the Market Conditions It Is Supposed to Address or Correct

In our review of the Commission’s Proposed Rule, we could not discern an explanation of the problem or market situation that the Commission is attempting to solve by imposing the proposed position limits and other restrictions. The Proposed Rule references the volatility in commodity prices that occurred in 2007 to mid-2008. Volatile commodity prices, however, can be caused by various factors, none of which reflect a disruption in the proper functioning of the market. For example, sudden changes in weather or perceptions of weather risks can – and do – cause sudden and dramatic spikes in natural gas prices. Volatile prices, in of themselves, do not indicate a problem. The Proposed Rule further cites to the Commission’s statutory authority to address “excessive speculation” in the markets. Under the Commodity Exchange Act (“CEA”), the Commission is vested with authority to address speculative activity to the extent that it causes “sudden or unreasonable fluctuations or unwarranted changes in the price” of a commodity.² The Commission does not state whether it believes that the changes in energy prices in 2007 though mid-2008 were “unreasonable” and “unwarranted” and, if so, the basis for its conclusion. It similarly fails to explain whether, and if so why, it believes the changes were caused by speculative activity. Rather, the Commission offers only the conclusion that “[l]arge and concentrated positions in the energy futures and option markets can potentially facilitate abrupt price movements and price distortions.”³

In fact, the Commission acknowledges that none of the numerous market studies or testimony at Congressional or Commission hearings concluded that large speculative positions caused the price volatility in energy markets during the relevant period.⁴ Consistent with these studies and based on its own participation in the markets, GSEMNA believes that the overwhelming evidence supports a finding that commodities prices in 2007 and 2008 were driven by market fundamentals.

² 7 U.S.C. § 6a(a).

³ See 75 Fed. Reg. at 4147-48.

⁴ *Id.*

To the extent the Commission has determined that the solution to prevent future energy price volatility is to impose federal limits on certain energy futures and options on futures positions, GSEMNA urges the Commission to reconsider implementation of the Proposed Rule. It is far from clear that volatile energy prices reflect other than well functioning markets, and GSEMNA is unaware of any data that shows that speculative activity caused volatile energy prices in 2007 and 2008. Equally important, it is unclear whether position limits will minimize volatile energy prices. Indeed, as Commissioner O'Malia pointed out in his Statement concerning the Proposed Rule, "despite federal position limits, [futures] contracts such as wheat, corn, soybeans, and cotton contracts were not spared record setting price increases."⁵

3. The Propose Rule's Restriction on Holding a Speculative Position Within a Bona Fide Hedge Position Is Unnecessary and Will Reduce Market Liquidity, And Ultimately Increase Energy Costs

We expect that GSEMNA's energy futures, options and swaps positions will qualify for a *bona fide* hedge exemption under the Proposed Rule. However, we understand that the Proposed Rule will prohibit GSEMNA from holding any speculative position in the spot month once it relies on the *bona fide* hedge exemption to exceed the position limits. We believe this restriction is unnecessary, and we respectfully question whether the Commission even has the authority to impose this limitation.

By the Commission's own determination, holding a speculative position within the limit set (or approved) by the Commission is neither disruptive nor causes unwarranted price fluctuations. Nevertheless, in proposing that a trader who holds a *bona fide* hedge exemption be precluded from trading speculatively within its hedge exemption limit, the Commission is effectively finding that the trader's speculative position becomes disruptive and causes unwarranted price fluctuations based solely on the existence of a contemporaneous hedge exemption. GSEMNA does not believe that restricting a trader's ability to speculate based on the existence of a hedge exemption is logical, supportable, or authorized by the CEA.

Active trading, including speculative trading, allows commercial hedgers (and speculators) to gain market intelligence and insight into other market participants' activity, market liquidity and depth. This, in turn, informs their decisions about when and how to implement their hedges. Futures positions also may be initiated as speculative, but then used to acquire the underlying physical commodity needed for commercial purposes. If market participants retreat from the futures and options markets because they do not want to risk violation of the position limits, the markets may lose liquidity which will cause greater price volatility. If hedging price risk becomes more difficult and expensive for energy businesses, that will result in higher energy costs for consumers. We support Commissioner O'Malia's statement that, if the Commission imposes the proposed position limits, it "must ensure that such limits do not affect market liquidity

⁵ *Id.* at 4172.

and thus hinder the market's fundamental purpose of allowing commercial hedgers to manage risk.”⁶

4. The Aggregation Requirement Should Be Based on a Control Over Trading Standard and Not Based on a Mere Ten Percent Ownership Interest in a Position

GSEMNA believes that requiring aggregation of positions based solely on a minimal ownership interest, which otherwise does not confer control, is without justification and will impose an unreasonable burden on market participants. Section 4a of the CEA, which authorizes the Commission to impose position limits, states only that “[i]n determining whether any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person”⁷ (emphasis supplied). Nowhere does the CEA state, or even suggest, that partial ownership should give rise to a requirement to aggregate positions.

Furthermore, the aggregation requirement in the Proposed Rule will create many problems for energy businesses that have complex corporate structures. GDF SUEZ, GSEMNA parent company has operations in more than 50 countries worldwide. As part of its international structure, it has a large number of joint ventures, partnerships, [affiliates, and subsidiaries], and [many] of them most likely use the energy futures and options markets to hedge their commercial price risks. It will be extremely difficult for GSEMNA to aggregate its futures and options positions with those entities that might have a 10 percent ownership interest in GSEMNA, but over which it has no management control. [Indeed, policies, procedures, and information systems will have to be put in place for GSEMNA to gain information about trading by other entities in the corporate structure because GSEMNA does not currently have access to that information.] As a result, this requirement of the Proposed Rule will have a profound impact on the way that GSEMNA conducts its trading.

5. The Proposed Rule Is Premature Because of Pending Legislation That May Change the Commission's Regulatory Jurisdiction

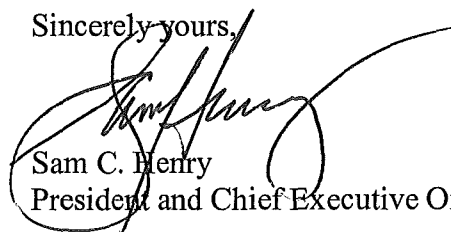
The Commission should put aside the Proposed Rule and wait until Congress has determined whether or how it will revamp regulation of financial markets. If any of the pending legislation is passed, the Commission most likely will have to enact position limit rules that potentially are more far-reaching than the Proposed Rule. To implement the proposed limits now will waste the Commission's and market participants' time and resources, when the Commission has not found that the markets have been or are being burdened by excessive speculation.

⁶ *Id.*

⁷ 7 U.S.C. § 6a(a).

GSEMNA appreciates the opportunity to comment on the Proposed Rule. In summary, we are concerned that implementation of the Rule may cause unintended negative consequences for energy markets that will ultimately cause higher energy costs for consumers. Therefore, we respectfully request that the Commission withdraw its Notice of Proposed Rulemaking.

Sincerely yours,



Sam C. Henry
President and Chief Executive Officer

Cc: Mr. Rob Minter
Mr. Mike McKenna