

From: Elizabeth Zembruski <ezembruski@jhenergy.com>
Sent: Monday, April 26, 2010 12:11 PM
To: secretary <secretary@CFTC.gov>
Cc: Keith.Sappenfield@encana.com
Subject: Proposed Federal Speculative Position Limits for Referenced Contracts and Associated Regulations
Attach: Encana Comments on CFTC Position Limits NOPR (filed 04-26-10).pdf

Dear Secretary Stawick:

Attached please find the "Comments of Encana Oil & Gas (USA) Inc. on Proposed Federal Speculative Position Limits for Referenced Contracts and Associated Regulations."

Regards,

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Encana Oil & Gas (USA) Inc.

April 26, 2010

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

RE: Comments of Encana Oil & Gas (USA) Inc. on Proposed Federal Speculative Position Limits for Referenced Contracts and Associated Regulations

Dear Secretary Stawick:

Encana Oil & Gas (USA) Inc. (Encana) submits these comments on the Commodity Futures Trading Commission's (Commission) proposed rule on Federal speculative position limits for futures and options contracts in four energy commodities.¹ As background, Encana is a subsidiary of Encana Corporation, one of the world's leading natural gas companies, active in the exploration, development, production, and marketing of natural gas and natural gas liquids (NGLs). Encana is actively engaged in the exploration, drilling, production and gathering of natural gas in the United States. Encana uses hedges to manage its commercial risks related to its production, sale and transportation of natural gas.

Encana would first like to comment on one of the eighteen questions posed by the Commission in the Notice of Proposed Rulemaking (NOPR). In response to question thirteen, Encana encourages the Commission to not proceed with the instant rulemaking until Congress passes legislation that provides the Commission with the authority to set Federal speculative position limits in all of the venues that may be affected by excessive speculation, specifically over-the-counter markets (OTC) and on foreign boards of trade (FBOT). Encana is concerned that the Commission's proposal to adopt Federal speculative position limits that do not take into account positions held in the OTC markets will not provide an accurate assessment of market activity and may confuse market participants. It is also concerned that the Commission will need to revise any regulations adopted in this rulemaking to make them consistent with derivatives-related legislation that may be passed by Congress in the future.

Encana takes no position on whether the Commission should adopt the specific Federal speculative position limits proposed in the NOPR. However, if the Commission elects to proceed with this rulemaking, Encana submits the following comments on, and requests clarification of, certain aspects of the reporting requirements proposed in the NOPR based upon its review of Form 404.

¹ Federal Speculative Position Limits for Referenced Contracts and Associated Regulations, 75 Fed. Reg. 4144 (proposed Jan. 26, 2010).

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The "When to Report" section of the proposed "Instructions for Preparing and Filing Reports on CFTC Form 404" (Instructions) advises a respondent to "transmit the form in a machine readable format and/or submit the form electronically" to the Commission's New York office. However, as currently drafted, the Instructions do not provide sufficient detail regarding how a respondent should electronically submit Form 404 to the Commission. For example, should Form 404 be emailed to the Commission's New York office? The Commission should clarify what forms of electronic submission are available to respondents.

Encana encourages the Commission to establish either (1) an internet-based electronic reporting system that would enable a respondent to use interactive data entry screens to submit Form 404 to the Commission,² or (2) an electronic filing system that would enable a respondent to upload and electronically file a fillable Form 404 with the Commission.³ Encana believes that an electronic reporting system or an electronic filing system would (1) reduce the reporting burden placed on a respondent by decreasing the amount of time that it takes to complete and file Form 404, and (2) enhance the quality, utility and clarity of the information reported to the Commission in Form 404 by reducing the opportunity for reporting errors and permitting the data to be more expeditiously uploaded to the Commission's database(s).

In addition, Encana encourages the Commission to clarify the following aspects of proposed Form 404:

- For Part B of Form 404, please clarify whether "Bona Fide Hedging Requirement" reporting is only required if a respondent's positions exceed the Federal speculative position limits set by the Commission.
- In Part B of Form 404, which forward period would a respondent report in the "Date" field? For example, as of April 20, 2010, would "Date" apply to: (i) all forward contract months from the prompt month (May 2010); (ii) just the prompt month (May 2010); (iii) the remainder of the calendar year (May 2010 through December 2010); or (iv) some other period?
- In Part B of Form 404, at the close of business on the last Friday of the month, would a respondent report positions entered into during the month for the prompt month or report the company's cumulated hedge position at the end of the month?
- The Instructions for Form 404 state that a respondent should "report monthly as of the close of business on the last Friday of the month." However, the NYMEX natural gas futures contract expires on the third to last business day of the preceding month (e.g., the May 2010 contract expires on April 28, 2010). By reporting on the last Friday of the month, in some cases the prompt month will be a few days away and in some cases it

² For example, several weekly and monthly forms are electronically filed with the Energy Information Administration through its PC Electronic Data Reporting Option (PEDRO) which allows a respondent to manually enter the data using interactive data entry screens. Another example of this type of an electronic reporting system is the Federal Energy Regulatory Commission's (FERC) Electronic Quarterly Report (EQR) which requires a respondent to download the software which is used to manually enter data and electronically file the EQR with FERC.

³ For example, a respondent must download and complete a fillable Form No. 552 (Annual Report of Natural Gas Transactions) from the FERC website, and then electronically file the completed form using FERC's eFiling system.

will be almost five weeks away. Is this the Commission's intention? Should the Commission use a different date for Form 404?

- If a respondent uses the NYMEX West Texas Intermediate (WTI) futures contract to hedge its NGL production, under which of the referenced energy contracts set forth in Part B of Form 404 should these positions be reported (*i.e.*, "Crude Oil," "Crude Oil - Other," or "Natural Gas Products")?
- Any fixed price natural gas contract in North America can be decomposed into the combination of a NYMEX fixed price swap and a basis swap. Should all fixed price natural gas positions (*i.e.*, not just those directly tied to the NYMEX natural gas price) be included in the data reported in Part B of Form 404?
- Please clarify the purpose of reporting "unsold anticipated commercial services" in Part B of Form 404. Since this information appears to be planned information, please clarify whether this information need only be reported once and then supplemented in future Form 404 reports if information changes.
- In Part B of Form 404, please revise the section entitled "Unsold anticipated commercial services or output (Sales)" to provide a blank space directly under the "Most Recent Fiscal Year," "2nd Most Recent Fiscal Year," and "3rd Most Recent Fiscal Year." This blank space will enable the respondent to insert the fiscal year for which information is being reported in the applicable column.
- In Part C of Form 404, the Commission should revise the form to provide a reference to the definition of "Swap Dealer" in the Commission's regulations.

Encana appreciates the opportunity to file comments on the Commission's Federal speculative position limits proposal, and asks the Commission to take the recommendations and comments set forth above into consideration in this rulemaking.

Sincerely,

 *Keith M. Sappenfield, II*
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Encana Oil & Gas (USA) Inc.