UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security Based Swap Agreement Recordkeeping	))))	RIN 3038–AD46

COMMENTS OF
ATMOS ENERGY HOLDINGS, INC.

Pursuant to the Notice of Proposed Rulemaking[1] ("NOPR") issued on May 23, 2011 by the Commodity Futures Trading Commission ("CFTC" or "Commission"), Atmos Energy Holdings, Inc. ("Atmos"), respectfully submits these comments. Atmos believes that the Commission's rulemaking to define some of the key terms of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[2] should not extend the definition of "swap" to the types of physically-settled transactions and forward contracts currently used by the natural gas industry to mitigate financial risk.

I. COMMUNICATIONS

All pleadings, correspondence and other communications filed or issued in this proceeding should be served on the following:

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[1] *Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, 76 Fed. Reg. 29,818 (May 23, 2011).
[2] Pub. L. No. 111-203 (July 21, 2010).

II. IDENTITY AND INTERESTS

Atmos is a wholly-owned subsidiary of Atmos Energy Corporation, which is a publicly traded company duly organized and existing under the laws of the State of Texas and the Commonwealth of Virginia. Atmos Energy Corporation is engaged in the natural gas distribution business in the states of Colorado, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Tennessee, Texas and Virginia. Atmos does not engage in the business of distribution of natural gas but is instead engaged, through various of its wholly-owned subsidiaries, in the marketing of natural gas at wholesale, and natural gas storage, transmission and gathering. Atmos is sometimes referred to as the non-utility segment of Atmos Energy Corporation.

Atmos Energy Marketing, LLC ("AEM") is a wholly-owned subsidiary of Atmos. AEM is a wholesale natural gas marketing company providing supply, asset management and other related services to utilities, industrial facilities, power plants and gas producers. AEM manages approximately 1,800,000 dth/day of firm pipeline capacity and 40,000,000 dth of market area and production area storage. AEM, through Asset-Management Arrangements, manages the interstate and intrastate transportation capacity of a variety of entities.

Atmos considers itself to be a non-financial end-user of swaps under the Dodd-Frank Act. Through AEM, Atmos uses a variety of financial and physical instruments to hedge its exposure in connection with the future gas needs of itself and its customers. Accordingly, Atmos has a significant interest in the Commission's determination of what transactions will be defined as "swaps."

III. COMMENTS

AEM, in connection with its marketing activities, routinely enters into hedging transactions and swaps to manage and mitigate commercial risks associated with Atmos' business and the needs of its customers. The NOPR proposes that if a forward contract contains an embedded commodity option that would make physical delivery optional, than that contract cannot be considered to have actual delivery of the physical commodity as a predominant feature. The NOPR goes on to state that the Commission would look to the specific facts and circumstances of such transactions as a whole to determine whether that transaction should qualify for the forward contract exclusion form the swap definition for non-financial commodities.

In Question 35 of the NOPR, the Commission asks for comments regarding how its proposed interpretation of the forward contract exclusion would affect full requirements contracts, reserve sharing agreements, tolling agreements, energy management agreements and ancillary services. The Commission goes on to inquire whether such agreements, contracts or transactions have optionality as to delivery and if so, should they or any other agreement, contract or transaction in a non-financial commodity be excluded from the swap definition.

Atmos is concerned that the Commission's proposed interpretation may not sufficiently exclude from swap regulation the types of transactions in the gas industry currently understood and intended to be forward contracts for physical delivery. Atmos respectfully requests that the Commission's ultimate analysis of whether a transaction should qualify for the forward contract exclusion encompasses all transactions in the natural gas industry normally understood to be and intended to be physically settled.

Regulating such transactions as swaps will not further the policy goals underlying the Dodd-Frank Act, and could upset long-standing practice in natural gas markets.

The Commission has previously addressed the issue of forward contracts with embedded delivery options and when it is appropriate to exclude such contracts from the definition of a swap.[3] Where the embedded delivery option operates on the pricing term of the contract and is integral to the forward contract such that the delivery option cannot be marketed separately from the overall forward contract in which it is embedded, then such a contract should be excluded from the definition of a swap.

With forward contracts for the sale of natural gas, there is no ability to sever the option from the contract and market it separately. There is no market for such options. The ability of a gas purchaser to specify a quantity of gas for delivery on a certain day is not to allow for speculative actions. Rather, it is because the exact quantity of gas to be needed on that future day is unknown. Many gas purchasers have weather-dependent needs and cannot accurately predict their needs in advance. There is no opportunity for the purchaser to fail to take the gas required for its own use. The purchaser needs that gas to meet its own individual needs. Similarly, there is no financial incentive for the seller to fail to deliver natural gas, as the standard remedy for failure to deliver is to pay liquidated damages sufficient to compensate the purchaser for having to obtain its required natural gas.

Despite the optionality of delivery in some forward contracts for natural gas, these types of contracts are still fundamentally consistent with the characteristics of a

[3] *See In re Wright*, CFTC Docket No. 97-02 (October 25, 2010); *see also Characteristics Distinguishing Cash and Forward Contracts and "Trade" Options*, 50 Fed. Reg. 39,656 (September 30, 1985).

physically settled contract and do not undermine the nature of the contract as a non-financial commodity contract that is appropriately excluded from the definition a swap.

IV. CONCLUSION

Wherefore, Atmos respectfully requests that the Commission consider these comments in this rulemaking.

Respectfully submitted,

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