

VIA ELECTRONIC SUBMISSION

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

**Re: Comments on Interim Final Rule Regarding Position Limits for
Futures and Swaps (RIN 3038-AD17)**

Dear Mr. Stawick:

Atmos Energy Holdings (“Atmos”) respectfully submits these comments in response to the Commodity Futures Trading Commission’s (the “Commission”) request for additional comments in connection with its rulemaking regarding Position Limits for Futures and Swaps¹ (the “Position Limits Rule”), adopted on October 18, 2011 pursuant to Section 737 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)² and section 13.4 of the Commission’s Regulations.³

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

¹ *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71626 (Nov. 18, 2011) [hereinafter *Position Limits Rule*].

² Pub. L. No. 111-203 (2010).

³ 17 C.F.R. §13.4 (2011)

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. Atmos, through AEM, uses a variety of financial and physical instruments to hedge its exposure in connection with the future gas needs of its customers, which includes both affiliated and unaffiliated entities.

Section 151.4(a)(2) of the Position Limits Rule (the “Interim-Final Rule”) imposes spot-month position limits on certain futures and swap contracts and was adopted on an Interim-Final basis.⁴ Given the substantial compliance burdens the Position Limits Rule imposes on end-users and the inability of Atmos to share its position data with its regulated utility affiliates, Atmos respectfully requests that the Commission interpret the aggregation requirement to require aggregation only where there is common control over trading decisions. Additionally, Atmos respectfully requests that the Commission eliminate its Spot-Month Limit for Henry Hub Natural Gas (“HH NG”) contracts.

⁴ *Position Limits Rule, supra* note 1, at 71637.

I. The Commission Should Reevaluate Aggregation Requirements In Light Of The Unprecedented Burdens They Place On Commercial Firms.

A. Aggregation Of Positions Should Be Based Solely On Control Of Trading Decisions, Not Common Ownership.

The Position Limits Rule would require an entity to aggregate all positions and accounts in which it directly or indirectly has a 10 percent or greater ownership or equity interest, regardless of whether the affiliated entities are actually subject to common control (the “Aggregation Standard”).⁵ The Aggregation Standard is a significant compliance burden for Atmos because it requires coordination and information-sharing between entities which are not permitted to know each other’s hedging positions and are required to make independent trading decisions. As such, Atmos respectfully suggests that the Aggregation Standard’s requirement to aggregate based on a 10 percent ownership interest is less meaningful than a test that was based on common control of trading decisions.

Regardless of whether an entity is ultimately limited in its ability to enter into transactions (because of the availability of *bona fide* hedging exemptions), all entities that engage in transactions in Core Referenced Futures Contracts are required under the Position Limits Rule to coordinate, on a global basis, as to all aspects of any transactions in Core Referenced Futures Contracts in which all affiliated entities engage, regardless of whether these affiliates otherwise coordinate their activities. Consequently, the Aggregation Standard imposes significant operational challenges for end-users, requiring them to develop and maintain costly internal infrastructure mechanisms to ensure compliance.

⁵ *Position Limits Rule, supra* note 1, at 71692.

Atmos' affiliated state-regulated utility divisions, pursuant to the Position Limits Rule, must now coordinate with Atmos as to whether, when, and how they engage in transactions in Core Referenced Futures Contracts. However, Atmos and its affiliated utility divisions are not allowed to know each other's hedging positions.

Gathering and processing such trading information on a daily basis, intra-day, in real-time, from affiliated entities that are required to deal with one another on an arm's length basis, poses a significant challenge. In order to avoid subjecting these end-users to unnecessary compliance costs, Atmos urges the Commission to adopt an aggregation standard based on common control, rather than ownership, of positions. Such a standard is consistent with the underlying rationale of the Commission's aggregation requirement and mitigates the compliance costs for end-users.

In the Position Limits Rule, the Commission explained that “[t]he fundamental rationale for the aggregation of positions or accounts is the concern that a single trader, through common ownership or control of multiple accounts, may establish positions in excess of the position limits and thereby increase the risk of market manipulation or disruption.”⁶ Where common control is not exercised between affiliated entities, there is no risk of coordinated trading. Accordingly, if affiliated entities are able to demonstrate that their trading operations are independently managed and controlled, the entities should not be required to aggregate their positions in cash-settled contracts.

Accordingly, the Aggregation Standard in the Position Limits Rule will require many end users to aggregate positions with commonly-owned affiliates in situations where there is no risk of coordinated trading. While the Commission has provided an

⁶ *Id.* at 71652.

exemption for financial entities where independent management and control can be demonstrated, the Commission has not provided comparable relief for commercial end-users. Atmos respectfully suggests that the Commission revise the Aggregation Standard to permit disaggregation where independent control of trading decisions can be demonstrated.⁷

B. The Aggregation Exemption For Violation of Law Should Be Refined And Expanded To Include Circumstances That Create a Reasonable Risk of a Violation of Federal or State Law.

The Position Limits Rule provides an exemption from aggregation for situations where the “sharing of information associated with such aggregation would cause either person to violate Federal law or regulations adopted thereunder [] provided that such a person does not have actual knowledge of information associated with such aggregation” (the “Violation of Law Exemption”).⁸ Atmos believes the Commission should clarify that the Violation of Law Exemption covers: (1) information sharing that could create a *reasonable risk of a violation*, and (2) violations of federal *and state* laws and regulations.

The standard included in Rule 151.7(i) – information sharing that “would cause” a violation – is too high if applied literally. Note that Rule 151.7(i) imposes a requirement that entities seeking to utilize the Violation of Law Exemption must obtain an opinion of counsel regarding whether information sharing “would cause” a violation – such opinions are likely to prove extremely difficult to obtain from counsel in light of the very high standards that apply to the issuance of opinions and the difficulty of meeting the high

⁷ In determining whether a commercial firm’s trading operations are independently managed and controlled, the Commission could establish information barrier requirements similar to those contained in the proposed ONFE exemption or the existing IAC exemption.

⁸ 17 C.F.R. § 151.7(i).

“would cause” standard. Atmos therefore requests that the Commission revise the exemption standard to permit a showing that information sharing would have a *reasonable risk of resulting in a violation of federal or state law*.

Atmos also requests the Commission to clarify that the Violation of Law Exemption extends to potential state law violations as well. The exemption’s limited applicability to only federal law renders its relief incomplete. Indeed, the Commission noted that it was adopting the Violation of Law Exemption in light of comments received regarding the possibility that the information sharing requirements triggered by the Aggregation Standard would cause violations of other legal requirements, such as fiduciary standards and contractual obligations, both of which arise under both state and federal law.⁹ The Commission did not explain why it chose to limit the Violation of Law Exemption to violations of federal law. For consistency and completeness, the Commission should clarify that the exemption covers potential violations of state law as well.

II. The Commission’s Rationale For The Spot-Month Limit In The Henry Hub Natural Gas Contract Lacks a Sound Basis.

Atmos relies heavily on natural gas futures and swaps to hedge natural gas price risk. Thus, Atmos appreciates the Commission’s attempt to accord greater flexibility in position limits for the cash-settled HH NG contract. Should Atmos exceed the spot-month limit for the cash-settled HH NG contract, which is equal to five times the limit for the physical-delivery futures contract, it will be subject to the extensive reporting and compliance obligations necessary to enter into *bona fide* hedging transactions under the

⁹ *Position Limits Rule, supra* note 1, at 71652.

Position Limits Rule.¹⁰ Given that the cash-settled HH NG contract is both active and highly liquid, Atmos believes the Commission should eliminate the spot-month limit, or in the alternative, increase the limit to a level appropriately reflecting market conditions, to avoid subjecting Atmos and similarly situated natural gas marketers to unnecessary compliance costs.

Atmos is concerned with the manner in which the Commission established the spot-month limit for HH NG contracts. The Commission's rationale for the heightened limit for the HH NG contract is that the cash-settled markets for natural gas are "sufficiently different from the cash-settled markets in other physical commodities to warrant a different spot-month limit methodology."¹¹ The Commission makes no finding that "excessive speculation" exists in the HH NG contract, and, indeed, suggests that price discovery in the HH NG contract has generally functioned smoothly and that the market is "very active."¹² It is thus unclear why the Commission has elected to impose a limit on the HH NG contract.

As discussed above, under the CEA, the Commission is required to make a finding that there is "excessive speculation" in a contract before imposing position limits with respect to such contract. Even if the Commission were to find that "excessive speculation" in fact exists in the market for the HH NG contract, it is not clear that setting the position limit for that contract at five-times the comparable physical-delivery limit would appropriately diminish "excessive speculation." Indeed, without market data or

¹⁰ The Commission acknowledges that "there may be significant costs (or foregone benefits) associated with the implementation of the new statutory definition of bona fide hedging to the extent that the restricted definition of bona fide hedging may require trader to potentially adjust their trading strategies." *Position Limits Rule*, *supra* note 1, at 71677.

¹¹ *Position Limits Rule*, *supra* note 1, at 71635.

¹² *Id.* at 71636.

economic analysis of such market data, it is impossible to know whether a limit is needed and what an appropriate limit might be. Consequently, the use of the five-times multiple for the limit applicable to the cash-settled HH NG contract appears to both lack a factual basis and be inconsistent with the Commission's mandate under the CEA.¹³

Further, establishing position limits in this manner creates significant uncertainty for market participants. The Commission is required to periodically re-evaluate limits and modify them in light of changes to "deliverable supply" calculations by exchanges. Without a finding that limits on cash-settled HH NG contracts are necessary to prevent "excessive speculation," HH NG cash-settled contracts should not be subject to any limits. The Commission should establish limits only after it has engaged in a thorough economic analysis of the market in the HH NG contract to determine the appropriate level for a limit, based on empirical evidence that is consistent with the Commission's statutory objectives. Atmos believes that, if any limit should be applied at all, a limit greater than five times the comparable limit for the physical delivery contract is likely to be appropriate, given the substantial liquidity of the market in the cash-settled HH NG contract, which the Commission itself has acknowledged.

III. Conclusion

Atmos appreciates the opportunity to comment on the Interim-Final Rule and related aspects of the Position Limits Rule. As discussed above, Atmos encourages the Commission to revise the Aggregation Standard. Atmos also requests that the Commission only impose position limits on HH NG contracts under the CEA if the Commission finds that position limits are "necessary" to prevent "excessive speculation."

¹³ *Id.* The Commission states only that exchanges have some experience with establishing a five-times multiple for certain cash-settled contracts over their physical-delivery counterparts; aside from this, it is not clear why the Commission has chosen this level.

Wherefore, for the reasons stated above, Atmos respectfully requests that the Commission consider these comments in this rulemaking.

Respectfully submitted,

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