



Via Electronic Submission

January 17, 2012

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

Re: Comments of the American Gas Association on the Interim Final Rule Regarding Position Limits for Futures and Swaps, 76 Fed. Reg. 71626 (Nov. 18, 2011) (RIN 3038-AD17)

Dear Mr. Stawick:

Pursuant to the Interim Final Rule issued November 18, 2011,¹ by the Commodity Futures Trading Commission (“CFTC” or “Commission”) in the above-referenced proceeding and section 13.4 of the Commission’s regulations², the American Gas Association (“AGA”) respectfully submits these additional comments.

AGA supports the Commission’s efforts to ensure that the financial markets related to energy commodities function efficiently for the benefit of customers. AGA generally supports position limits as a means to ensure against market manipulation and non-transparent systemic risks. However, AGA urges the Commission to reconsider the treatment of commercial hedging activities of gas utilities on behalf of their customers under the position limits final rule,

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

² 17 C.F.R. § 13.4 (2009).

particularly the Rule 151.7 aggregation requirements that would apply under the Commission's framework for spot-month position limits. As currently proposed, the aggregation requirements would pose substantial compliance and coordination burdens on gas utilities and their independently managed affiliates. AGA respectfully requests that the CFTC consider a reasonable exemption from aggregation for independently managed gas affiliates' trading activities and clarify that the exemption from aggregation for violation of law under Rule 151.7(i) extends to potential state law violations. Without such changes, local utility companies would be required to aggregate swap positions with commonly-owned affiliates even where state rules and regulations currently preclude such information-sharing. Additionally, there is no risk of coordinated trading activities between affiliates that are precluded from sharing swap position data with each other.

I. COMMUNICATIONS

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

Arushi Sharma
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II. IDENTITY AND INTERESTS

The AGA, founded in 1918, represents more than 200 local energy companies committed to the safe delivery of clean natural gas to more than 65 million customers throughout the United States. AGA is an advocate for local natural gas utility companies and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international gas

companies and industry associates. Today, natural gas meets almost one-fourth of the United States' energy needs. AGA's members engage in financial risk management transactions in markets regulated by the Commission. As such, AGA's members will be directly affected by the Commission's regulations promulgated under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). AGA member companies provide natural gas service to retail customers under rates, terms and conditions that are regulated at the local level by a state commission or other regulatory authority with jurisdiction. Many gas utilities use a variety of financial tools, such as futures contracts traded on CFTC-regulated exchanges and over-the-counter energy derivatives, to hedge the commercial risks associated with providing natural gas service, particularly volatility in natural gas commodity costs.

III. Comments

In this proceeding and in the Commission's earlier proceeding proposing speculative position limits for futures and option contracts,³ AGA has supported position limits that are appropriately tailored to benefit consumers while avoiding additional costs or exposing consumers to additional price risk. With regard to specific elements of the Commission's position limits framework, AGA has recommended that the Commission allow entities with sufficiently separate and independent trading activities to obtain their own hedging exemption. AGA also recommended that the Commission conduct a study to determine how the regulations impact the efficient operation of financial markets and to ensure that there are no adverse, unintended consequences associated with the final rules. In this additional comment period,

³ See *Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations*, 75 Fed. Reg. 4,143 (Jan. 26, 2010).

AGA respectfully requests that the Commission revisit the current aggregation requirements under the interim final rule.

First, AGA urges the Commission to modify the aggregation requirements under the position limits framework to account for gas utilities and their affiliates' independently controlled and managed activities. The position limits framework currently requires entities to aggregate all positions and accounts in which it directly or indirectly has a 10 percent or greater ownership or equity interest.⁴ However, gas utility companies with affiliates engage in transactions that are independently controlled and managed, although under common ownership with other energy-related firms. This common ownership may include, for example, the combination utility scenario where the gas utility transacts to manage commercial risk on behalf of its end-use customers while its electric affiliate uses financial transactions to hedge gas purchases for its gas-fired generation facilities, or the integrated company scenario where a holding company may include under its corporate umbrella separately managed gas utility, exploration & production and/or marketing companies, all of which independently engage in some form of hedging activity— for example, an exploration & production arm may independently engage in financial transactions to hedge its natural gas sales while a gas utility may also engage in hedging activities to mitigate its gas costs. Under these circumstances, the aggregation requirement based on common ownership may create significant compliance issues for AGA's member utilities. AGA requests that the Commission restructure the aggregation requirement to account for energy firms and their affiliates' independently controlled and managed commercial and financial risk management activities.

⁴ *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71626, at 71692.

Second, AGA requests that the Commission clarify and broaden the current exemption from aggregation under Rule 151.7(i) permitting traders to disaggregate positions where the sharing of information would violate Federal law, so that the exemption clearly extends to state rules and regulations governing affiliate transactions. Gas utilities are comprehensively regulated at the local level by a state commission or other regulatory authority with jurisdiction; in many instances, rules and regulations governing affiliate transactions prohibit the regulated utility from sharing information or coordinating operations with affiliates or business units that are not regulated by the state commission. AGA urges the Commission to recognize that not only is aggregation based on common ownership an unprecedented burden on independently controlled and managed affiliates, such aggregation of accounts could also be contrary to state regulatory requirements. Exempting independently controlled and managed gas utilities from aggregation requirements would remove an unprecedented compliance burden and ensure that gas utilities are not placed in a position where compliance with Federal regulatory requirements results in a violation of state regulatory requirements.

Finally, AGA urges the Commission to expand the overall scope of exemptive relief from the aggregation requirements under the position limits framework. For example, the Commission should reconsider the burdensome requirement under Rule 151.7(i) that energy firms may seek an exemption from aggregation for potential violation of law only after filing an opinion of counsel stating that the information would violate Federal law. The Commission should also ensure that the current framework exempting entities from the position limits requirements is appropriately tailored to protect commercial hedgers' ability to engage in risk management transactions for the benefit of American energy consumers. AGA also requests that the Commission continue to evaluate whether the financial markets function efficiently and

whether there are unintended, adverse consequences associated with implementing the position limits regulations.

IV. CONCLUSION

Wherefore, for the reasons stated above, the American Gas Association respectfully requests that the Commission consider these comments in this proceeding.

Respectfully submitted,

/s/ Arushi Sharma

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