JONATHAN M. WEISGALL
VICE PRESIDENT
LEGISLATIVE AND REGULATORY AFFAIRS

VIA ELECTRONIC SUBMISSION

February 7, 2014

Ms. Melissa Jurgens
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, D.C. 20581

Re: Proposed Position Limits Aggregation Requirements-RIN 3038-AD82

Dear Ms. Jurgens:

On behalf of MidAmerican Energy Holdings Company (**"MidAmerican"**), we are submitting these comments on the Commodity Futures Trading Commission's (the "**CFTC**" or **"Commission"**) Notice of Proposed Rulemaking, *Aggregation of Positions* (the "**Proposed Aggregation Rule**")[1]. The requirements proposed under the Proposed Aggregation Rule are of particular concern to MidAmerican. We appreciate the opportunity to provide comments on this important issue and the Commission's continued and ongoing hard work in searching for a position limits aggregation standard that is both commercially practical and protects market participants.

The CFTC commendably has considered potential avenues for majority-owned affiliates to obtain relief from position limits aggregation requirements. However, unless relief is made available to majority-owned affiliates that are consolidated for accounting purposes, companies like MidAmerican will be subjected to potentially serious regulatory costs and consequences. In this letter, we provide recommendations on how the CFTC might implement aggregation relief to majority-owned affiliates, while simultaneously protecting the integrity of the swaps and futures markets.

[1] *See* Notice of Proposed Rulemaking, *Aggregation of Positions*, 78 Fed. Reg. 68,946 (Nov. 15, 2013).

I. Berkshire Companies and the Separately Managed Use of Derivatives

MidAmerican is a global provider of energy services. Through its energy-related business platforms, MidAmerican provides electric and natural gas service to more than 8.4 million customers worldwide. These business platforms are Pacific Power, Rocky Mountain Power, and PacifiCorp Energy, which comprise PacifiCorp; MidAmerican Energy Company; NV Energy; CE Electric UK; Northern Natural Gas Company; Kern River Gas Transmission Company; and CalEnergy.

Berkshire Hathaway, Inc. ("**Berkshire**") is the controlling shareholder of MidAmerican. Berkshire is a holding company that owns subsidiaries engaged in a number of diverse lines of business, including utilities and energy, property and casualty insurance and reinsurance, freight rail transportation, finance, manufacturing, services and retail.

Berkshire's operating businesses, including MidAmerican, are generally managed on a decentralized basis. There are no centralized or integrated business functions (such as sales, marketing, purchasing, legal or human resources) and there is minimal involvement by Berkshire's corporate headquarters in the day-to-day business activities of MidAmerican or Berkshire's other operating businesses. In general, each Berkshire operating business is managed by a separate and independent management team and does business in its own name with reliance on its own creditworthiness. In short, Berkshire and its operating businesses that enter into futures, options, or swaps subject to the Commission's proposed position limits operate independently and do not coordinate their trading. Berkshire personnel do not direct the transactional activity of those businesses and personnel of those businesses do not direct the transactional activity of any other Berkshire businesses. In addition, Berkshire does not generally provide corporate guarantees or any other explicit credit support for commodities related futures, options, or swap transactions of Berkshire industrial operating businesses.

II. Adverse Consequences of Affiliate Aggregation

If MidAmerican is required to aggregate all futures, options, and swaps positions subject to Federal and exchange position limits with those of Berkshire and its other operating businesses, Berkshire and its operating companies would need to establish an extensive compliance monitoring and coordination program across its independently managed, disparate businesses. A program to ensure compliance with applicable position limits that also maintains the necessary flexibility for Berkshire's individual operating businesses would be difficult and costly to establish. The aggregation requirement under the Proposed Aggregation Rule would require extensive intraday coordination of business activities that is unprecedented and runs contrary to deeply engrained policies, procedures, systems, and controls established to provide functional and legal separation for individual operating businesses.

III. Process for the Provision of Aggregation Relief for Majority-Owned Affiliates

The Proposed Aggregation Rule would only provide aggregation relief to majority-owned affiliates if they met four narrow, specific criteria, including not being consolidated for financial reporting purposes.[2] To request that relief, a company would have to apply to the CFTC. Relief would only be available if the CFTC approved the relevant request and is not required to act on a request within a specific period of time.[3] It is quite possible that a company could submit an application for relief to the CFTC and wait months for an answer. Unfortunately, during that wait, a company would bear the obligations and costs for complying with the proposed aggregation requirements.

To provide workable access to relief for majority-owned affiliates, MidAmerican suggests that the CFTC adopt the process described below.

1. If a group of majority-owned affiliates can satisfy the four criteria required for relief in the Proposed Aggregation Rule, then they should be permitted to file an application for relief stating that fact, and they should be provided aggregation relief without further review.

2. If a group of majority-owned affiliates cannot satisfy the four criteria required for relief in the Proposed Aggregation Rule, then they should be permitted to file an application for relief addressing the factors discussed below in Section IV. The entities should be provided temporary aggregation relief until the CFTC has had a chance to respond to the application.

3. In the event the CFTC denies an application, the filing majority-owned affiliates should be given three months from the date it receives notice of the denial to come into compliance with relevant aggregation requirements.

Finally, the Proposed Aggregation Rule allows higher-level entities within a corporate family to rely upon aggregation relief requests made by lower-tier affiliates. This will reduce the burden on both market participants and the CFTC by resulting in fewer requests for relief. However, even fewer requests for relief will be necessary if the CFTC also allows lower-tier entities to rely upon relief requests made by upper-tier affiliates.

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[2] *See* Proposed CFTC Regulation 150.4(b)(2).

[3] Given potentially conflicting statements in the Proposed Aggregation Rule, it is unclear whether the four conditions in Proposed CFTC Regulation 150.4(b)(2) represent criteria that must be met for majority-owned affiliates to qualify for aggregation relief or whether the enumerated conditions are just factors that the CFTC will place emphasis on when considering whether to grant relief based on consideration of facts and circumstances specific to a particular applicant (*See* Proposed Aggregation Rule at 68,960). MidAmerican recommends that the CFTC take the latter approach.

For example, even with reliance upon filings of lower-tier entities, Berkshire's operating companies would likely have to make numerous filings, each relying on substantially the same underlying facts and circumstances. If a parent company, such as Berkshire, could instead make a single filing on which specific owned entities could rely, the CFTC could avoid needless duplicative review. The end result would be a significant reduction in regulatory burden with no diminution in the CFTC's ability to prevent improper coordination of trading activity among persons and their majority-owned affiliates.

IV. Factors the CFTC Should Look to When Granting Aggregation Relief for Majority-Owned Affiliates

Whether particular majority-owned affiliates should be eligible for aggregation relief ought to turn on the answer to one question: whether there is an absence of trading-level control or coordination between the entities requesting relief. The CFTC should consider any relevant factors that a company might advance to demonstrate such independence in the determination of whether a group of majority-owned affiliates should receive aggregation relief.

The Proposed Aggregation Rule provides a good starting place for that inquiry. Specifically, two of the four criteria listed below for majority-owned affiliates to receive aggregation relief relate specifically to the issue of whether trading-level control or coordination exists.

1. The requirement that a group of majority-owned affiliates satisfy the conditions necessary to receive aggregation relief for entities with 50% or less common ownership (the "**50% Criteria**").[4]

2. The requirement for any representative of an applicant for relief on a board of an entity covered by the relief request to attest to the absence of trading control.

MidAmerican recommends, in addition to the two factors above, that the CFTC consider the following factors when determining whether to provide a company with aggregation relief:

- Separate trading accounts and broker relationships for each entity;
- Periodic certification from an officer of the requesting entity that the policies and procedures designed to prevent trading-level control or coordination remain in place and are effective;
- Lack of common guarantor(s) and/or provision of independent credit support;
- Lack of cross-default or cross-acceleration provisions in trading contracts;
- Maintenance of separate identifiable assets;

[4] *See* Proposed CFTC Regulation 150.4(b)(2).

- Maintenance of separate lines of business (*i.e.*, the business of one entity is not dependent upon the other); and
- Any other structural, legal, or regulatory barriers limiting control and inter-dependencies among affiliated entities.

Each of these factors reduces the likelihood that information will flow freely between affiliated companies. Therefore, the presence of any of these factors could be used to demonstrate that majority-owned affiliates operate independently and exhibit little likelihood of trading-level control or coordinated trading activity among such majority-owned affiliates.

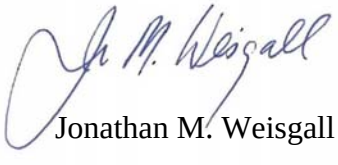
Finally, the other factors that CFTC has proposed it would consider – the nature of an entity's trading as hedges and the absence of consolidation for financial reporting – are not relevant in determining whether majority-owned affiliates deserve aggregation relief. *First*, whether the positions that are potentially subject to an aggregation requirement qualify as *bona fide* hedging transactions or, if considered speculative in nature, do not exceed 20% of any position limit currently in effect, focuses solely on the business objective and magnitude of the positions and does not assist in determining whether such positions were the product of coordinated trading.

Second, the fact that two entities are required to be consolidated for financial reporting purposes is not evidence that trading-level control or coordination exists. Under United States Generally Accepted Accounting Principles codified in 1959, consolidation is required for any subsidiary a parent entity unilaterally controls through majority voting interests.[5] In short, consolidation of majority-owned subsidiaries for financial reporting purposes merely assumes that corporate-level control over majority-owned subsidiaries exists and is not dependent on the actual presence of corporate or trading-level control or coordination.

V. Conclusion

MidAmerican supports regulation that brings transparency and stability to the swaps and futures markets in the United States. We appreciate the opportunity to comment on this matter and discuss our thoughts regarding important concepts for the rulemaking process under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Respectfully submitted,



Jonathan M. Weisgall

[5] Counterparty Risk Management Policy Group, "Containing Systemic Risk: The Road to Reform" at 41. Available at: http://www.crmpolicygroup.org/docs/CRMPG-III-Sec-II.pdf.