



6345 Dixie Road, Suite 200  
Mississauga, Ontario L5T 2E6

T 905.670.4440  
F 905.670.9160  
info@justenergy.com

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**VIA Online Filing Process: <http://comments.cftc.gov>**

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

**Re: Position Limits for Derivatives (RIN No. 3038-AD99)**

Dear Ms. Jurgens:

Just Energy Group Inc. (“Just Energy”), on behalf of itself and its subsidiaries, submits these comments in response to the Notice of Proposed Rulemaking on Position Limits for Derivatives (“Proposed Rule”)<sup>1</sup> issued by the Commodity Futures Trading Commission (the “Commission”) to implement Section 721 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>2</sup>

## **I. BACKGROUND**

Just Energy, through its U.S. subsidiaries, is a leading competitive supplier of retail electricity and natural gas to residential and small commercial consumers pursuant to state utility regulations.<sup>3</sup> Just Energy and its affiliates provide power in California, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, and Texas, and provide natural gas in California, Georgia, Illinois, Indiana, Michigan, New York and Ohio. Just Energy also is the largest competitive green energy retailer in North America. Just Energy is an end user that enters into derivatives to hedge its physical risk associated with its core physical commodity business to supply energy to consumers.

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<sup>1</sup> *Position Limits For Derivatives*, Notice of Proposed Rulemaking, 78 Fed. Reg. 75,680 (Dec. 12, 2013).

<sup>2</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> Depending on the State’s regulatory regime, the retail electric and natural gas industry is generally comprised of two types of entities: traditional utilities that have a monopoly service territory established by the State (“Traditional Utility”) and competitive suppliers that provide services comparable to the Traditional Utility but do so pursuant to State regulations that do not impose monopoly service obligations and permit the supplier to provide customers with more price and service options (“Competitive Retail Supplier”). Both are regulated by the applicable State.

While Just Energy appreciates rules and regulations that bring transparency and price discovery to the energy commodity markets, it is concerned that the Proposed Rule could inadvertently restrict legitimate bona fide hedging activity and, as a result, drive up costs for commercial hedgers. Specifically, Just Energy submits:

1. the proposed definition of “bona fide hedging position” is too restrictive and would inappropriately deny certain transactions, like heat rate transactions, bona fide hedging treatment;
2. the safe harbor test for cross-commodity hedges is arbitrary and does not reflect prudent risk management practices commonly used in the energy markets;
3. physical contracts, such as trade options, should not be subject to federal speculative position limits; and
4. non-spot month limits are unnecessary and were inappropriately derived without accounting for open interest data on the swaps markets.

Because it relies on the energy commodities and derivatives markets, Just Energy appreciates the Commission’s consideration of these concerns as further described below. Just Energy notes that it generally supports the comments submitted by The Commercial Energy Working Group (“CEWG”) and offers these comments to highlight Just Energy’s specific concerns.

## **II. BONA FIDE HEDGING EXEMPTION FOR HEAT RATE TRANSACTIONS**

Just Energy uses heat rate transactions to hedge its price risk in its power portfolio.<sup>4</sup> By entering into a heat rate transaction, Just Energy removes exposure to volatile price movements in the power markets by fixing a price associated with power and transferring its remaining price risk to natural gas, which typically has lower price volatility. Heat rate transactions therefore provide more price certainty than an outright power purchase. For example, from time to time, there might be more liquidity for a heat rate transaction than an outright power transaction. Natural gas-fired generation facilities are exposed to the costs of inputs (*i.e.*, natural gas) and price of the output (*i.e.*, electricity). By selling a heat rate, the generation asset is able to manage both risks and minimize transaction costs. Just Energy can transact directly with the electricity supplier and get favorable pricing that will then be passed through to its customers. In addition, Just Energy can combine its heat rate gas requirements with its existing natural gas requirements, allowing it to achieve economies of scale and economical pricing, which can then be passed through to its customers in the form of lower rates.

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<sup>4</sup> For a thorough description of heat rate transactions, see the CEWG comment letter filed on February 10, 2014 in this proceeding.

Just Energy is concerned that heat rate transactions would not be granted bona fide hedging treatment as proposed. Specifically, for the reasons described in the CEWG's comment letter, a natural gas Referenced Contract hedging a physical heat rate transaction likely would not fall within an enumerated bona fide hedging position under proposed CFTC regulation 150.1(3)(i) (hedges of inventory and cash commodity purchase contracts), 150.1(3)(ii) (hedges of cash commodity sales contracts), or 150.1(4)(i) (hedges of unsold anticipated production). Given that heat rate transactions are often used in power markets as effective hedging tools, the Commission should provide an additional bona fide hedging exemption for such transactions or clarify that the enumerated exemption for cross-commodity hedges would include heat rate transactions and electricity and natural gas transactions used to hedge physical heat rate transactions.

### **III. CROSS-COMMODITY HEDGES**

The Proposed Rule provides bona fide hedging treatment to cross-commodity positions if the fluctuations in value of the position in the commodity derivative contract are substantially related to the fluctuations in value of the actual or anticipated cash position. However, it further states that fluctuations in the value of electricity contracts typically will not be substantially related to fluctuations in the value of natural gas.<sup>5</sup> Just Energy is troubled by this assertion and believes the value of natural gas and power are indeed highly correlated.

In the electricity markets, cross-commodity hedging is often based upon the economic relationship of forward power prices and forward natural gas prices. Just Energy refers the Commission to the CEWG's comments wherein it provides its own data demonstrating that electricity prices are highly correlated with natural gas futures prices. However, the data demonstrates that, at times, the correlation between the two commodities may fall below the .80 safe harbor established in the Proposed Rule. Market participants with legitimate hedging objectives will choose to establish these cross-commodity positions whenever they are the best hedging instrument available. Just Energy submits that, often, natural gas is the best available hedging instrument for forward power price exposure. The safe harbor test should reflect industry risk-mitigating practices and grant bona fide hedging treatment for these particular cross-commodity hedges.

Accordingly, Just Energy requests the Commission to eliminate the proposed .80 safe harbor test and apply a facts and circumstances test in determining whether bona fide hedging treatment should be applied to cross-commodity positions. If the Commission elects to adopt an arbitrary correlation safe harbor test that does not reflect the commercial realities in the power markets, many end users, including Just Energy, will be unable to hedge their physical price risks, which would ultimately lead to higher consumer electricity prices.

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<sup>5</sup> Proposed Rule at 75,717.

#### **IV. TRADE OPTIONS**

Like many market participants in the natural gas and power markets, Just Energy enters into trade options, including forward contracts with embedded volumetric optionality, to meet its physical supply needs in instances, for example, where there is an unexpected increase in customer demand for electricity. Trade options play a critical role in providing Just Energy with the ability to hedge its volumetric needs and the flexibility it needs to ensure it has access to a physical commodity. By subjecting trade options to federal speculative position limits, Just Energy's physical operations and related hedging objectives will be harmed.

As described in the CEWG's comment letter, Just Energy is concerned that if trade options are included within the definition of Referenced Contract, they would not meet certain requirements of the bona fide hedging definition, such as the "temporary substitute test"<sup>6</sup> or the "five-day rule."<sup>7</sup> In light of the above, Just Energy requests that the Commission exempt trade options from any final rule establishing federal position limits.

#### **V. ANY AND ALL MONTH LIMITS**

Just Energy believes non-spot single and all months combined limits are not necessary or appropriate. Before adopting any non-spot month limits, the Commission should engage in a cost-benefit analysis to determine whether they are indeed necessary. As discussed in the CEWG comment letter, the historical basis for imposing these limits does not exist, and accountability levels provide the appropriate level of surveillance in the non-spot month periods. If the Commission determines to adopt non-spot month limits in any final rule establishing federal speculative limits, it should consider swap data, including data on trade options. The consideration of swaps data is appropriate given (i) federal speculative position limits will be applicable to Referenced Contracts in futures, options, *and* swaps, and (ii) the Commission has access to swap data collected under its large trader reporting and swap data repository reporting requirements.

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<sup>6</sup> The "temporary substitute test" requires a commodity derivative contract to "represent a substitute for transactions made or to be made, or positions taken or to be taken, at a later time in a physical marketing channel." See Proposed Rule 150.1. Given that some trade options are simply physical purchases or sales of a commodity, such transactions might not be considered a substitute, but rather the actual position taken in the physical marketing channel.

<sup>7</sup> The "five-day rule" prevents bona fide hedgers from holding physically-delivered Referenced Contracts into the spot month.

## **VI. CONCLUSION**

Just Energy requests the Commission to (i) adopt a final bona fide hedging definition to reflect the comments submitted herein, (ii) exempt trade options from federal position limits, and (iii) find that non-spot month limits are actually necessary before deciding to impose them. Please contact the undersigned with any questions regarding these comments.

Respectfully submitted,

/s/ Stephanie Bird

Stephanie Bird

Senior Vice President, Corporate Risk Officer