VIA ELECTRONIC SUBMISSION

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

February 10, 2014

RE: Comments of Atmos Energy Holdings, Inc. on Position Limits for Derivatives (RIN 3038-AD99)

Atmos Energy Holdings, Inc. ("Atmos") hereby submits the following comments to the U.S. Commodity Futures Trading Commission (the "Commission") with respect to the Notice of Proposed Rulemaking ("NOPR") noticed in the Federal Register on December 12, 2013.[1]

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

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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

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[1] *Position Limits for Derivatives*, 78 Fed. Reg. 75680 (Dec. 12, 2013).

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. 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. Atmos will be directly affected by the Commission's regulations governing position limits for futures and swaps.

COMMENTS

Atmos respectfully recommends that the Commission modify its proposal in this proceeding to (1) clarify that trade options are not subject to position limits and need not be counted in position limit reporting and (2) clarify which positions are to be treated as referenced contracts.

I. Background

In its current proposal, the Commission seeks to establish position limits for 28 exempt and agricultural commodity futures, as well as the futures, options and swaps that are economically equivalent to such futures contracts.[2] Under the proposal, "referenced contracts" include the enumerated core referenced futures contracts, in particular the New

[2] *Id.*

York Mercantile Exchange Henry Hub Natural Gas (NG) futures contract, and any futures contract, options contract, or swap that is (i) directly or indirectly linked, including being partially for fully settled on, or at a fixed differential to, the price of the core referenced futures contract; or (ii) directly or indirectly linked, including being partially or fully settled on, or priced at a fixed differential to, the price of the same commodity underlying the core referenced futures contract for delivery at the same location or locations as specified in the core referenced futures contract.[3]

The Commission also proposes to restructure how bona fide hedge exemptions to the position limits may be obtained and established. In general, any bona fide hedge must: (1) offset price risks incidental to commercial cash operations; and (2) must be established and liquidated in an orderly manner in accordance with sound commercial practices.[4] A bona fide hedge must also be economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise and either be specifically enumerated, or be recognized as a bona fide hedge by a designated contract market or swap execution facility.[5]

II. Discussion

a. The Commission Should Not Subject Trade Options To Position Limits

Pursuant to the NOPR, position limits would apply to trade options. However, the Commission sought comment on “whether it would be appropriate to exclude trade

[3] *See* 78 Fed. Reg. at p. 75825, proposed § 150.1.
[4] 78 Fed. Reg. at p. 75707.
[5] *Id.*

options from the definition of referenced contracts and, thus, to exempt trade options from the proposed position limits."[6]

Atmos submits that trade options should not be subject to position limits. Forward contracts are not subject to the proposed position limits because the fundamental nature and scope of forward contracts effectively forecloses the possibly that a market participant could use forward contracts for speculation or market manipulation. Trade options are far more similar in nature to forward contracts than other swaps. While Atmos understands and accepts that the CFTC's trade option rules impose recordkeeping and reporting requirements for trade options, Atmos contends that the burdens of subjecting trade options to position limits would far outweigh any possible benefits.

In order to be a trade option, substantial requirements must be met: (1) the offeror must be an Eligible Contract Participant or a producer, processor, or commercial user of, or a merchant handling the commodity underlying the option transaction and offer or enter into the transaction solely for the purpose related to its business as such; (2) the offeree must also be a producer, processor, or commercial user of, or a merchant handling the commodity underlying the option transaction and be offered or enter into the transaction solely for the purposes related to its business as such; and (3) the commodity option must be intended to be physically settled such that its exercise would result in the sale of an exempt or agricultural commodity for immediate or deferred delivery.[7] These

[6] *Id*. at p. 75711.

[7] *See Commodity Options*, Final Rule and Interim Final Rule, 77 Fed. Reg. 25320 at p. 25326 (Apr. 27, 2012).

substantial requirements essentially preclude the ability of market participants to use trade options for the purposes of speculation or market manipulation.[8]

Additional consequences of subjecting trade options to position limits involve the proper way to "count" a trade option. With natural gas, physical constraints on the maximum quantity of gas a commercial user could possibly use can effectively limit the upper bounds of a quantity of gas that could ever flow pursuant to an individual contract, and the maximum quantity might be left unstated. Indeed, a local distribution company might want a trade option that enables them to buy as much gas as they could potentially need on the coldest day of the year even though they cannot even specify with exact certainty what that maximum quantity might be. It is not uncommon for gas systems to exceed their maximum design quantities in cold weather events. Other common natural gas trade options are embedded in forward contracts but don't specify exact quantities. While market participants can accurately count the dollars associated with the exercise of that optionality after the fact for the purposes of annual Form TO reporting, they could not come close to calculating the quantity of optionality that could be exercised in an upcoming or ongoing month.

The Commission subjects trade options to a significantly lesser regulatory burden than other swaps. Imposing position limits on such transactions would be burdensome and inconsistent with the approach of an overall lesser regulatory burden for trade options and Atmos fears that subjecting trade options to position limits would dramatically affect

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[8] A trade option must be entered into by a producer, processor, or commercial user of, or a merchant handling the commodity underlying the option and the transaction must relate to the offeree's commercial business – which means a speculative position or a position entered into to commit market manipulation cannot be a trade option.

both the types of natural gas contractual arrangements used by eligible contract participants as well as the number of counterparties willing to enter into trade options.

Additionally, AEM often enters into swaps in order to hedge its obligations associated with trade options. Atmos asks that the CFTC clarify that swaps used to hedge the risks associated with trade options should be granted bona fide hedging treatment.

b. The Commission should clarify which positions are to be treated as referenced contracts

Under the Commission's proposal, position limits would apply not only to the 28 core referenced futures contracts listed in the NOPR, they would also apply to economically equivalent swaps defined as "referenced contracts."[9] Referenced contracts include both swaps that are directly linked or partially linked, including being partially for fully settled on, or at a fixed differential to, the price of the core referenced futures contract; or directly or indirectly linked, including being partially or fully settled on, or priced at a fixed differential to, the price of the same commodity underlying the core referenced futures contract for delivery at the same location or locations as specified in the core referenced futures contract.[10]

AEM engages in thousands of natural gas transactions a year and often prices them not in relation to the NYMEX Henry Hub Natural Gas (NG) contract but rather via highly-customized pricing provisions most appropriate for each specific customer's situation – for many of these pricing provisions, it may not be readily apparent whether the underlying contract is a referenced contract or not. Additionally, it is not uncommon for a single contract, particularly trade options, to have multiple pricing provisions that apply for different ranges of quantities of natural gas purchased or sold. It would be

[9] *See* 78 Fed. Reg. at p. 75742.
[10] *Id.* at p. 75825, proposed § 150.1.

extremely difficult to have to determine what percentage of each contract "counted" for the purposes of position limit reporting.

Substantial guidance is needed regarding what constitutes a referenced contract. With all due respect to the CFTC Staff Workbook of Commodity Derivative Contracts issued by Commission staff, there is currently still widespread confusion among natural gas market participants regarding what will and will not constitute a referenced contract. Without a complete and definitive list of what will be considered economically equivalent to the core referenced futures contracts, position limits will severely impair natural gas markets.

III. Conclusion

Atmos appreciates the opportunity to provide comments on these aspects of the NOPR. Atmos respectfully requests that the Commission consider these comments.

Respectfully submitted,

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