August 4, 2014

Ms. Melissa Jurgens, Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Position Limits for Derivatives, RIN No. 3038-AD99

Dear Ms. Jurgens:

Plains All American Pipeline, L. P. ("PAAP") appreciates that the Commodity Futures Trading Commission's ("Commission" or the "CFTC") staff held a public roundtable("Staff Roundtable") and the Commission has re-opened a public comment period to better understand issues relating to the Commission's proposed rule concerning the establishment of federal position limits ("PL NOPR"). As PAAP informed the Commission in comments previously filed in this proceeding (the "PAAP Comments"), PAAP would be materially impacted by the requirements of the PL NOPR and requests that the CFTC limit the complexity and burden of the proposed rules and, most importantly, revise aspects of the PL NOPR that would disrupt how PAAP currently carries out hedging associated with its physical business. PAAP is hopeful that the Commission will continue to consider issues related to the PL NOPR and, if it promulgates a final rule, will modify its proposal to ensure that valid hedging is not disrupted.

PAAP is engaged in the transportation, storage, terminalling, and marketing of crude oil, as well as in the processing, transportation, fractionation, storage, and marketing of natural gas liquids. PAAP owns and operates a diversified portfolio of assets that are engaged in the movement of U.S. and Canadian energy supplies which, on average, handles over 3.5 million barrels per day of crude oil and natural gas liquids.

PAAP purchases, transports and resells physical commodities, primarily crude oil and natural gas liquids ("NGL"), and to a lesser extent, natural gas. In the normal course of its business PAAP uses futures, options, and swaps contracts to manage price risk and occasionally PAAP will use futures contract to procure crude oil for delivery into its terminal at Cushing, OK. PAAP is not a speculator. PAAP has been an active market participant for many years, and does not believe that there is excessive speculation in the crude oil or NGL markets, and certainly not the level of speculation that would warrant the burdens placed on companies like PAAP by the regulations proposed in the PL NOPR. While PAAP continues to believe that the revisions to the PL NOPR requested in the PAAP Comments are critical to any final rule, it will not reiterate them here. Rather, PAAP will highlight certain of the issues addressed at the Staff Roundtable.

Participants in the Staff Roundtable made clear that: (1) practices that are routinely used for hedging in the physical commodities space are not considered *bona fide* hedges under the PL NOPR; (2) the processes included in the PL NOPR are overly complex and burdensome (particularly for energy companies that are not presently subjected to an enumerated hedge regime); (3) the PL NOPR's structure, with its emphasis on transaction form, can lead to the

Commission losing sight of the fact that the activity undertaken by the firm in question is to hedge its risk and it *has no interest in and is not speculating*; and, finally, and (4) the PL NOPR needs to be tied to the goal of preventing excessive speculation, not preventing legitimate hedging.

Instead of accepting the regime contemplated in the PL NOPR and tinkering with it, PAAP believes that the Commission should step back, consider what it has proposed in the PL NOPR and its likely impact on the market and assure that the goal of preventing excessive speculation does not result in an undue burden to those that do not speculate.

As noted above, as a physical commercial company, PAAP is not a speculator. It uses swaps and futures to hedge its risk. Like other energy firms, it is not subject to the agriculture-focused enumerated hedge regime used today for exchange limits. Rather, its transactions are recognized by designated contract markets ("DCM") as hedging transactions for its physical business exempt from the current DCM position limits. The Commission should step back and consider the propriety of the PL NOPR if it negatively affects current legitimate hedging by physical firms such as PAAP, and if it is actually creating risk, as opposed to reducing risk. Before it issues any final rule, the Commission must make certain that it is not preventing legitimate hedging either directly or through the indirect effect of creating a regulatory program that is so complex and time consuming that companies will effectively be barred from considering certain transactions to be *bona fide* hedges.

Specific Areas Raised by Roundtable Participants

5 Day Rule

As pointed out in the PAAP comments and raised at the Staff Roundtable, the 5 Day Rule is a particularly problematic aspect of the PL NOPR. The 5 Day Rule was established for a discreet and particular purpose by the Commission in the 1970s. In establishing the rule, the Commission noted that it was acting based upon futures markets conditions at that time and its view that, with respect to "cross hedge and short anticipatory hedge positions," it did not "believe that persons who do not possess or have a commercial need for the commodity will normally wish to participate in the delivery process." However, the Commission noted that "persons wishing to exceed such limits during the last five trading days may submit materials supporting classification of the position as a bona fide hedge . . . ." In other words, the 5 Day Rule was put in place based upon the then-current market conditions and was not intended to be dispositive of whether the position should be considered a legitimate hedge.

In contrast, the 5 Day Rule has been proposed for use in the PL NOPR without any consideration of today's market conditions. Further, no ability to "submit materials supporting classification of the position as a bona fide hedge", as existed in the former Section 1.47 of the Commission's regulations for *bona fide* hedges as established in 1977, exists in the PL NOPR. Instead, the 5 Day Rule is a hard and fast component of the proposed enumerated hedge regime which will be imposed on energy companies and is more likely to increase risk rather than decrease risk for market participants such a PAAP.

PAAP provided comments on the Commission's proposed use of the 5 Day Rule in its comments and will not repeat them here. Hopefully the Commission was able to discern from the Staff Roundtable, that the inclusion of the 5 Day Rule in the PL NOPR is viewed by hedgers as problematic and should not be adopted unless the Commission affirmatively determines that it is

appropriate in current markets. The facts that existed in 1977 when the rule was adopted for the non-energy enumerated hedges have changed. Importantly, the ability to employ a "non-enumerated" exception upon the presentation of relevant materials noted by the Commission in 1977 does not exist in the PL NOPR.

Thus, before proceeding with the inclusion of the 5 day Rule in any final rule, the Commission should affirmatively determine that it is appropriate in current markets (especially energy markets) and, if it is included in the final rule, make provision for a hedger's ability to submit materials supporting a timely classification of the position as a *bona fide* hedge.

Exceptions to Enumerated Hedges

At the Staff Roundtable, participants also discussed alternatives to exclusive reliance on enumerated hedges to support a *bona fide* exception from position limits. One approach discussed was the use of a former Section 1.47-like process under which the Commission would provide for individual or generic exemptions in addition to the enumerated hedges in the PL NOPR. Another approach that was discussed was to delegate to the exchanges the ability to grant such exemptions subject to Commission review.

Beyond the complexity and burden of the PL NOPR, its most significant flaw is its substitution of the Commission's business judgment for that of physical energy companies in what is a legitimate *bona fide* hedge through the inclusion of a limited set of enumerated hedges. While the Commission must guard against excessive speculation, failing to recognize legitimate hedging by adopting a generic and limited list of enumerated hedges is not the way to do it. In fact, an approach predicated on a set list of hedges seems pre-ordained to exclude legitimate hedging that the Commission has not examined.

Unfortunately, unlike today's exchange-based hedge exemptions, the PL NOPR implicates issues of *bona fide* hedging only after a limit is breached. At that point, the excess is either an enumerated *bona fide* hedge or it is not. There is no reasonable way to attempt to demonstrate that a transaction is a hedge at that point since, unless the Commission agrees with that the transaction is a bona fide hedge, the firm will be in violation. As a result, the PL NOPR must be revised to assure that such a circumstance cannot occur. Legitimate hedging that is not included in the list of enumerated hedges must have a workable vehicle to be timely recognized.

PAAP believes that the Commission must create a workable and timely process to expand or provide exception to any list of enumerated hedges adopted. If the Commission is to administer such a process, it must provide sufficient staff resources and implement an approach that either recognizes the identified transaction as a hedge until the Commission acts or assure a very quick turnaround (or both). Given the limited resources of the Commission and the realities of the administrative process, PAAP is skeptical that such a process could be workable.

However, on the other hand, a time sensitive approach that is built upon the existing knowledge of energy business that is used to grant hedge exemption on DCMs (subject to commission review), could be workable. Today, energy companies subject to exchange position limits can make known to the DCM upon which they are hedging the nature and scope of their physical business; the manner in which they perform their physical business; and the nature and size of the hedging they believe will help them manage their risks. The DCM will consider the facts and, using its expertise and experience, either grant or reject the requested hedge exemption (of course it can ask for more information or grant a more limited exemption). Assuming the

Commission could integrate this process into the after-the-fact approach proposed in the PL NOPR or otherwise modify its process, the proposal would be significantly improved and the fundamental flaw of disregarding certain legitimate hedging alleviated

Regardless of the approach the Commission takes to timely and properly consider further exceptions, PAAP believes the PL NOPR must be revised to make sure that the enumerated hedges proposed therein are not the exclusive set of *bona fide* hedges.

Conclusion

As PAAP made clear in the PAAP Comments and above, the Commission, if it issues a final rule, must modify the PL NOPR to preserve the legitimate hedging activities of physical commercial companies. PAAP does not believe it has heretofore been harmed by excessive speculation but understands the Commission seeks to prevent it from occurring. In doing so, it must be make sure that it does not harm the ability of commercial hedgers to hedge their risks as they do today or create a regime that is too complex and burdensome for physical companies to administer with their existing resources.

Respectfully Submitted,

/s/ Al Lindseth
Al Lindseth
Senior Vice President - Technology, Process and Risk Management

CC:
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