



February 28, 2017

Via Electronic Submission

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Comments of the American Gas Association, CFTC Reproposal – Position Limits for Derivatives, RIN 3038-AD99

Dear Mr. Kirkpatrick:

Pursuant to the request for comments, the American Gas Association (“AGA”) respectfully provides these comments on the Commodity Futures Trading Commission’s (“CFTC”) Reproposal on Position Limits for Derivatives (“Reproposl”).¹

AGA supports the CFTC’s continued efforts to ensure that the CFTC-regulated markets related to energy commodities function efficiently for the benefit of all market participants, including commercial end-users. Additionally, AGA appreciates the CFTC’s efforts, where necessary and appropriate, to propose position limits to prevent harm caused by excessive speculation. However, AGA emphasizes that, consistent with the mandate of the Commodity Exchange Act (“CEA”), any speculative position limits regime finally adopted by the CFTC must be established in a way that allows commercial end-users, such as natural gas utilities, to continue to enter into bona fide hedges to manage, hedge and mitigate the commercial risks of their natural gas distribution business in a non-burdensome and cost-effective manner on behalf of customers. AGA member natural gas utilities engage in commercial hedging primarily to limit volatility in the cost of natural gas purchased to provide service to their retail customers and do not pose a systemic risk to the U.S. financial system.² Further, AGA believes that these member activities certainly do not result in the type of harm from excessive speculation that the position limits regime, as repropoled, seeks to address.

In the Reproposal, the CFTC proposes rules to amend part 150 of the CFTC’s regulations establishing speculative position limits for 25 exempt and agricultural commodity futures and option contracts, and physical commodity swaps that are “economically equivalent” to such contracts. In connection with the Reproposal, the CFTC proposes to: (1) update some relevant

¹ Position Limits for Derivatives: Reproposal, 81 Fed. Reg. 96704 (December 30, 2016).

² See discussion in AGA’s comments on the Advance Notice of Proposed Rulemaking on Definitions Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act, RIN 3235-AK65/3038-AD06, at p. 4, filed on September 20, 2010. Available at: <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26223&SearchText=american%20gas>.

definitions; (2) revise certain exemptions – including for bona fide hedging; and (3) update reporting requirements for persons claiming exemptions from the limits.

AGA appreciates the CFTC’s efforts to repropose the position limits rules in response to comments on both the December 2013 position limits proposal,³ the 2016 supplemental position limits proposal,⁴ as well as comments and viewpoints expressed during roundtables and advisory committee meetings held on this topic, including input encouraging the use of the resources and experience of the Exchanges to review and recognize positions as bona fide hedges for purposes of the federal limits. In particular, AGA supports the Reproposal’s proposed bona fide hedge exemption for utility resales, which includes an important clarification of the regulatory text that was originally proposed. AGA also believes that the Reproposal’s provision of further clarification regarding the term “indirectly linked” as used in the definition of “Referenced Contract” is helpful, as well as the updated *CFTC Staff Workbook of Commodity Derivative Contracts Under the Regulations Regarding Position Limits for Derivatives*, to the extent these clarifications help assist parties, including AGA members, in determining whether a particular contract is subject to limits. Additionally, AGA commends the CFTC for the amended definition of “Referenced Contract” to exclude trade options that meet the requirements of § 32.3 of the CFTC’s regulations.

Nevertheless, AGA continues to urge the CFTC to include anticipatory merchandising hedges among any final list of enumerated hedge exemptions, which has broad support among commenters. AGA also reiterates its support as stated in comments on the Supplemental NOPR regarding modifications to the proposal to use Exchanges to review and recognize non-enumerated bona fide hedge (“NEBFH”) requests, in order to conserve limited CFTC resources while helping to ensure that the review and recognition of a request is performed in a timely, streamlined and efficient manner. AGA believes that the proposed alternative process ultimately finalized must be reasonable and workable for all market participants.

I. Communications

All correspondence in regard to this proceeding should be delivered to the following:

Susan Bergles
American Gas Association
400 N. Capitol St., NW
Washington, DC 20001
sbergles@aga.org | 202.824.7090

Michaela Burroughs
American Gas Association
400 N. Capitol St., NW
Washington, DC 20001
mburroughs@aga.org | 202.824.7311

II. Identity and Interests

The AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 72 million residential, commercial and industrial natural gas customers in the U.S., of which 95 percent – just under 69 million customers – receive their gas from AGA members. AGA is an advocate for local natural

³ Position Limits for Derivatives, 78 Fed. Reg. 75723 (Dec. 12, 2013) (“2013 Position Limits NOPR”).

⁴ Position Limits for Derivatives: Certain Exemptions and Guidance, 81 Fed. Reg. 38458 (June 13, 2016) (“Supplemental NOPR”).

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 more than one-fourth of the United States' energy needs.⁵

AGA's members enter into commercial risk management transactions in markets regulated by the CFTC. AGA member companies' principal business is to provide natural gas local distribution services to residential, commercial and industrial customers. For state-regulated entities, this distribution service is provided at rates, terms and conditions that are regulated at the local level by a state commission or other regulatory authority with jurisdiction. In many cases, this regards the procurement and provision of the physical natural gas commodity for use by customers in equipment in their homes and businesses, and the distribution of that natural gas commodity on the local pipeline systems to such homes and businesses. To ensure reasonable rates for the natural gas commodity that is provided to natural gas utility customers, many of AGA's members engage in risk management transactions in markets regulated by the CFTC. Many gas utilities also use a variety of commercial risk hedging tools, such as futures contracts traded on CFTC-regulated exchanges and over-the-counter ("OTC") energy derivatives, to hedge or mitigate the commercial risks associated with providing safe, reliable and cost-effective natural gas service to customers.

III. Comments

A. AGA Supports the Clarification to the Bona Fide Hedge Exemption for Utility Resales

The CFTC has proposed an enumerated bona fide hedge exemption for utilities, such as AGA's members, to hedge unfilled anticipated customer requirements.⁶ The exemption as originally proposed would have applied to long positions in commodity derivative contracts that do not exceed in quantity unfilled anticipated requirements of the same cash commodity for resale by a utility that is "required" or "encouraged" to hedge by its public utility commission on behalf of its customers' anticipated use. AGA provided comments expressing concern that the utility hedge exemption as originally proposed was unduly limiting and too restrictive to satisfy its intended purpose given that state regulatory authorities vary significantly in how a utility's risk management program is reviewed.⁷ AGA encouraged the CFTC to revise the exemption to allow for more effective use by utilities of the bona fide hedge exemption for their risk management transactions on behalf of their customers. In the Reproposal, the CFTC states that it agrees with comments it received to remove the condition that a utility be "required" or "encouraged" to hedge by its public utility commission. Accordingly, in the Reproposal this condition is removed from the repropoed exemption.⁸ AGA supports this important clarification to the definition of a "bona fide hedging position" for inclusion in any final position limits rule.

⁵ For more information, please visit www.aga.org.

⁶ 78 Fed. Reg. 75,824, proposed § 150.1, paragraph (3)(iii)(B) of the definition of "bona fide hedging position."

⁷ For example, more commonly the local regulator "permits" or "allows" hedging.

⁸ Reproposal, 81 Fed. Reg. at 96,752.

B. AGA Urges that Unfilled Anticipated Requirements Include Unpriced Anticipated Requirements

In the Reproposal, the CFTC states that it is affirming its belief that unfilled anticipated requirements are those anticipated inputs that are estimated in good faith and that have not been filled, and that an anticipated requirement may be filled by fixed-price purchase commitments, holdings of commodity inventory, or unsold anticipated production of the market participant. The Reproposal continues that unfixed-price purchase commitments do not fill an anticipated requirement because the participant's price risk to the input has not been fixed.⁹

In prior comments, AGA urged that hedge exemptions for unfilled anticipated requirements and unsold anticipated production should apply equally to unpriced anticipated requirements and unpriced anticipated production. AGA explained that utilities, such as AGA's members, in performing their obligations to serve the needs of their customers, typically enter into contracts to purchase natural gas with respect to anticipated customer requirements months, or even years, in advance of a particular anticipated delivery period in order to ensure that sufficient natural gas supply is available to provide safe and reliable service to customers. AGA described a utilities' use of forward contracts with floating prices based on monthly or daily price indices compiled independently and published in a number of industry publications. Moreover, while the portion of these utilities' anticipated customer requirements acquired through these index-priced contracts are no longer unfilled, and from their suppliers' standpoint, the portion of anticipated production represented by these contracts no longer remains unsold, these contracts effectively remain unpriced and exposed to price risk. AGA thus urged – and continues to urge – the CFTC to reconsider its position and clarify that the bona fide hedge exemption related to unfilled anticipated requirements also applies to this circumstance. At a minimum, the clarification can be limited to apply to regulated utilities' provision of natural gas supplies to perform their obligations to serve the needs of their customers.

C. AGA Supports a Bona Fide Hedge Exemption for Anticipatory Merchandising

The 2011 position limits rules, vacated by a federal court, specifically included the anticipatory merchandising hedge (“AMH”) in the list of enumerated hedge transactions, and even a related fact pattern.¹⁰ However, the original 2013 proposed rules omitted this enumerated hedge exemption, and the Reproposal did not propose to add the AMH in the list of enumerated hedge exemptions.¹¹

Reiterating its prior comments,¹² AGA continues to express support, along with other market participants, for adding an AMH exemption to the list of enumerated bona fide hedge exemptions for qualifying hedgers of storage or transportation assets (and any other anticipated merchandising of natural gas) for the reasons already fully set forth in the record in this rulemaking proceeding. The denial of an exemption for such activity, or a piecemeal petition process to permit it, would reduce liquidity and severely constrain, raise costs for, and create undue risk for gas

⁹ Reproposal, 81 Fed. Reg. at 96,752.

¹⁰ *Position Limits for Futures and Swaps*; Final Rule and Interim Final Rule, 76 Fed. Reg. 71,626, at 71,698 (Nov. 18, 2011).

¹¹ Reproposal, 81 Fed. Reg. at 96,752.

¹² See AGA Comments in RIN 3038-AD99 filed on March 30, 2015; available at <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60382&SearchText>. AGA reaffirms these comments herein.

utilities – without any regulatory benefit to the CFTC’s interest in reducing excessive speculative activity.¹³

It is important that the list of enumerated hedges does not unreasonably restrict or eliminate certain hedging strategies commonly used by gas utilities to reduce gas price commodity risk because the cost of doing so is ultimately one borne by consumers. AGA thus respectfully urges the CFTC to consider these and AGA’s prior comments if it moves forward to finalize a position limits rule and include an enumerated AMH exemption that is important to gas utilities’ businesses.

D. AGA Supports the Reproposal’s Clarifications to “Referenced Contracts”

As proposed, position limits would apply to 25 core physical commodity futures contracts and their “economically equivalent” futures, options, and swaps (defined as “Referenced Contracts”). The Reproposal generally maintains the definition of “Referenced Contract” as originally proposed, but with two substantive modifications: (1) the CFTC proposes to amend the definition to expressly exclude trade options that meet the requirements of 32.3 of the CFTC’s regulations; and (2) the Reproposal clarifies the meaning of “indirectly linked” as used in the definition.

First, with respect to the exclusion of trade options, AGA supports the change. This modification is consistent with the CFTC’s final rule on trade options amending the limited trade options exemption in the CFTC’s regulations.¹⁴ Regarding the applicability of position limits to trade options, the Trade Options Rule Amendment observed that several commenters, including AGA, requested assurance from the CFTC that federal speculative position limits would not apply to trade options. In response, the CFTC stated that it believed that federal speculative position limits should not apply to trade options and that it intended to address this matter in the context of the proposed rulemaking on position limits, if such rule is adopted. As anticipated, the Reproposal modifies the definition of “Referenced Contract” to expressly exclude qualifying trade options from the position limits, and AGA urges that this modification be included in any final rule.

Second, as described above, the proposed position limits would apply to economically equivalent swaps defined as “Referenced Contracts.” Such transactions would include swaps that are directly or “*indirectly linked*,” including being partially or 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. In the Reproposal, the CFTC proposes to clarify that under the repropoed definition of a Referenced Contract, “indirectly linked” means a contract that settles to a price based on another derivative contract that, either directly or through linkage to another derivative contract, has a settlement price based on the price of a core referenced futures contract or based on the price of the same commodity underlying that particular core referenced futures contract for delivery at the same location specified in that particular core reference futures contract.

¹³ *Id.*

¹⁴ Trade Options, 17 C.F.R. Part 32, RIN 3038-AE26 (March 16, 2016)(“Trade Options Rule Amendment”).

In the Reproposal, the CFTC also provides an example of a referenced contract that would be indirectly linked to the core referenced futures contract, such as a swap that prices to the ICE Futures US Henry LD1 Fixed Price Futures (H) contract, which is a “Referenced Contract” that settles directly to the price of the NYMEX Henry Hub Natural Gas (NG) core referenced futures contract. Further, the CFTC states that an outright derivative contract whose settlement price is based on an index published by a price reporting agency (“PRA”) that surveys cash market practice (even if the cash market practice is to price at a differential to a futures contract) would not be directly or indirectly linked to the core referenced futures contract. Additionally, the CFTC states that a derivative contract whose settlement price is based on the same underlying commodity at a different delivery location would not be linked, directly or “indirectly,” to the core referenced futures contract. Finally, the CFTC provided an updated *CFTC Staff Workbook of Commodity Derivate Contracts Under the Regulations Regarding Position Limits for Derivatives* with the Reproposal that provides a non-exhaustive list of referenced contracts for use by market participants in determining categories of contracts that fit within the definition.

AGA appreciates these additional clarifications that the Reproposal provides, particularly with respect to the use of the unclear and broad term, “indirectly linked.”¹⁵ AGA reiterates prior comments that market participants should not be left guessing as to whether a particular swap transaction would qualify as economically equivalent to a core referenced futures contract because any uncertainty would only serve to invite potential disagreement among counterparties leading to increased transaction costs, potential loss of liquidity, and compliance strategies that generally make the markets less efficient – all to the detriment of consumers. AGA respectfully requests that the clarifications of “indirectly linked” in the Reproposal be incorporated into any final rule. Further, AGA respectfully requests, as it has stated in prior comments, that the CFTC also establish a specific and time-limited process that market participants could use when questions arise in order to obtain a timely clarification whether a particular transaction would be considered a “Referenced Contract.”

E. AGA Reiterates Prior Comments on the Use of Exchanges to Recognize NEBFHs

In the Supplemental NOPR, the CFTC proposed an alternative process to permit Exchanges to recognize NEBFHs with respect to the proposed federal speculative position limits. Specifically, the CFTC proposed that an Exchange, as a self-regulatory organization (“SRO”) that is under CFTC oversight and whose rules are subject to CFTC review, could establish rules under which the Exchange would recognize NEBFH positions that meet the general definition of a bona fide hedging position. The CFTC explained that an Exchange recognition of a position as a NEBFH would allow the market participant to exceed the federal position limit to the extent that it relied upon the Exchange’s recognition unless and until such time that the CFTC notified the market participant to the contrary.

AGA reiterates its support as stated in comments on the Supplemental NOPR regarding the proposal to use Exchanges to review and recognize NEBFH requests, to conserve limited CFTC resources while helping to ensure that the review and recognition of a request is performed in a

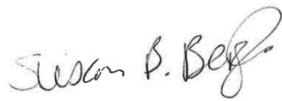
¹⁵ Reproposal, 81 Fed. Reg. at 96,735-36.

timely, streamlined and efficient manner. AGA urges that in any final rule, the CFTC adopt an alternative process that is reasonable and workable for all market participants.

IV. Conclusion

AGA commends the CFTC for its efforts in the Reproposal to address comments received and provide additional clarifications to the position limits proposal, particularly to address comments by commercial end-users. However, as stated in these comments, AGA respectfully urges the CFTC to consider making the additional modifications discussed herein to address the remaining concerns of AGA members

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Susan B. Bergles".

American Gas Association
400 N. Capitol St., NW
Washington, DC 20001
Email: sbergles@aga.org

cc: Honorable Acting Chairman J. Christopher Giancarlo
Honorable Commissioner Sharon Bowen