10-002
COMMENT
CL-08285

From: Robin Lunt <RLunt@naruc.org>
Sent: Monday, April 26, 2010 12:05 PM
To: secretary <secretary@CFTC.gov>
Subject: Proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations
Attach: NARUC Comments on Federal Speculative Limits for Energy Contracts.pdf

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Please find attached the comments of the National Association of Regulatory Utility Commissioners regarding CFTC's Proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations RIN 3038-AC85.

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UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

Federal Speculative Position Limits for	)	
Referenced Energy Contracts and	)	**RIN 3038-AC85**
Associated Regulations	)	

COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

The National Association of Regulatory Utility Commissioners ("NARUC") appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (CFTC) on the issue of Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations RIN 3038-AC85. 75 Fed. Reg. 4144 (Jan. 26, 2010).

INTRODUCTION

NARUC is the national organization of the State commissions responsible for economic and safety regulation of the retail operations of utilities. Specifically, NARUC's members have the obligation under State law to ensure the establishment and maintenance of such energy utility services as may be required by the public convenience and necessity, as well as ensuring that such services are provided at just and reasonable rates. NARUC's members include the government agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the rates and terms and conditions of service associated with the intrastate operations of electric, natural gas, water, and telephone utilities. Both Congress[1] and the federal courts[2] have long recognized NARUC as the proper party to represent the collective interests of State regulatory commissions. Our members are concerned about the consumer impacts of hedging and excessive speculation and encourage regulation that minimizes volatility.

COMMENTS

NARUC is concerned about price volatility, market manipulation and other practices that may unnecessarily increase the price of natural gas and other energy commodities. As regulators we strive to ensure that natural gas prices are just and reasonable. Our member commissions have an obligation to inform consumers, businesses and State policymakers about the causes of increased natural gas prices. In July of 2008, in response to increasing prices and volatility in the natural gas market, NARUC formed a working group to study and issue a report to NARUC about the factors that may affect the price consumers pay for natural gas. This working group was established through a NARUC policy resolution, and has resulted in an additional resolution. These resolutions establish NARUC policy and are attached.

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1 *See* 47 U.S.C. § 410(c) (1971). (Congress designated NARUC to nominate members of Federal-State Joint Boards to consider issues of concern to both the Federal Communications Commission and State regulators with respect to universal service, separations, and related concerns); *Cf.* 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). *Cf. NARUC, et al. v. ICC,* 41 F.3d 721 (D.C. Cir 1994) (where the Court explains "…Carriers, to get the cards, applied to…[NARUC], an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the 'bingo card' system").

2 *See United States v. Southern Motor Carrier Rate Conference, Inc.,* 467 F. Supp. 471 (N.D. Ga. 1979), *aff'd* 672 F.2d 469 (5th Cir. 1982), *aff'd en banc on reh'g*, 702 F.2d 532 (5th Cir. 1983), *rev'd on other grounds*, 471 U.S. 48 (1985).

NARUC supports the efforts of the CFTC and the Federal Energy Regulatory Commission to promote and protect efficient natural gas markets with transparent pricing based on market fundamentals that ensure that the price consumers pay for gas reflects the underlying cost of the commodity. We recognize that CFTC has jurisdiction to prevent fraud, manipulation and other abusive practices that relate to the sales of commodities and financial futures and options and that the CFTC tries to foster open, competitive, and financially sound futures and options markets. NARUC looks forward to working with the CFTC to ensure that consumers are protected from price volatility in the cost of natural gas due to excessive speculation caused by market manipulation.

Many utilities use *bona fide* or legitimate hedging practices to mitigate price volatility. But in the last 5 years speculation in the natural gas market has increased dramatically with over 90% of trades coming from market participants who do not intend to take delivery of the commodity. This speculation may drive up natural gas prices and negatively impact consumers.

While we oppose excessive speculation in the natural gas and other commodities markets, NARUC supports legitimate hedging activities by electric and natural gas utilities to manage the risk of price volatility and mitigate price impacts of such volatility on consumers. To the extent that CFTC's proposed rule would limit the speculative positions of traders while supporting *bona fide* hedges, NARUC supports the proposed rule. The proposed regulation would establish three exemptions to the speculative position limits including one for *bona fide* transactions generally consistent with existing CFTC regulation 1.3(z) (1)-(2).[3]

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[3] 17 C.F.R. § 1.3(z); *See* 75 Fed. Reg. 4149 (c.2). "(z) Bona fide hedging transactions and positions--
(1) General definition. Bona fide hedging transactions and positions shall mean transactions or positions in a contract for future delivery on any contract market, or in a commodity option, where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel, and where they are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise, and where they arise from:
(i) The potential change in the value of assets which a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising,
(ii) The potential change in the value of liabilities which a person owns or anticipates incurring, or
(iii) The potential change in the value of services which a person provides, purchases, or anticipates providing or purchasing.
Notwithstanding the foregoing, no transactions or positions shall be classified as bona fide hedging unless their purpose is to offset price risks incidental to commercial cash or spot operations and such positions are established and liquidated in an orderly manner in accordance with sound commercial practices and, for transactions or positions on contract markets subject to trading and position limits in effect pursuant to section 4a of the Act, unless the provisions of paragraphs (z)(2) and (3) of this section and §§ 1.47 and 1.48 of the regulations have been satisfied.

(2) Enumerated hedging transactions. The definitions of bona fide hedging transactions and positions in paragraph (z)(1) of this section includes, but is not limited to, the following specific transactions and positions:
(i) Sales of any commodity for future delivery on a contract market which do not exceed in quantity:
(A) Ownership or fixed-price purchase of the same cash commodity by the same person; and
(B) Twelve months' unsold anticipated production of the same commodity by the same person provided that no such position is maintained in any future during the five last trading days of that future.
(ii) Purchases of any commodity for future delivery on a contract market which do not exceed in quantity.
(A) The fixed-price sale of the same cash commodity by the same person.
(B) The quantity equivalent of fixed-price sales of the cash products and by-products of such commodity by the same person; and
(C) Twelve months' unfilled anticipated requirements of the same cash commodity for processing, manufacturing, or feeding by the same person, provided that such transactions and positions in the five last trading days of any one future do not exceed the person's unfilled anticipated requirements of the same cash commodity for that month and for the next succeeding month.
(iii) Offsetting sales and purchases for future delivery on a contract market which do not exceed in quantity that amount of the same cash commodity which has been bought and sold by the same person at unfixed prices basis different delivery months of the contract market, provided that no such position is maintained in any future during the five last trading days of that future.
(iv) Sales and purchases for future delivery described in paragraphs (z)(2)(i), (ii), and (iii) of this section may also be offset other than by the same quantity of the same cash commodity, provided that the fluctuations in value of the position for future delivery are substantially related to the fluctuations in value of the actual or anticipated cash position, and provided that the positions in any one future shall not be maintained during the five last trading days of that future."

When considering the rule and its exemptions, NARUC encourages CFTC to protect the public from excessive speculation, fraud, and market manipulation that will negatively impact consumers, while also considering the role that legitimate hedging plays in reducing price volatility.

COMMUNICATIONS

All pleadings, correspondence, and other communications related to this proceeding should be addressed to the following person:

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April 26, 2010