

Received CFTC  
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COMMENT

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COMMODITIES FUTURES  
TRADING COMMISSION

Maintenance of Books, Records  
and Reports by Traders )

) Docket No. RIN3038-AC22

COMMENTS OF THE NEW YORK  
PUBLIC SERVICE COMMISSION

The New York Public Service Commission (NYPSC) hereby submits its comments in support of the Proposed Rules issued in the referenced proceeding by the Commodities Futures Trading Commission (CFTC) and published in the Federal Register on June 22, 2007. *72 Fed. Reg.* 34413 (June 22, 2007). The purpose of the proposed rule is to enhance the CFTC's ability to deter and prevent price manipulation or any other disruptions to the integrity of the regulated futures markets. NYPSC supports the proposed rule and its underlying purpose.

**I. BACKGROUND AND STATEMENT OF INTEREST**

Given the impact of the natural gas futures market on prices of physical sales of natural gas, NYPSC is filing the instant comments in support of the CFTC efforts to increase the transparency of trades in the natural gas futures market. Increased transparency is essential, particularly in light of the serious issues that have arisen recently concerning the influx of speculative investments into energy futures markets. NYPSC is concerned about the impact that such activity has had on prices for natural gas futures and ultimately on prices paid by consumers for physical deliveries of natural gas. A report recently issued by the Staff of the Committee on Homeland Security concluded that the large positions and trades held by Amaranth in natural gas futures on the New York Mercantile Exchange (NYMEX) and IntercontinentalExchange (ICE) caused

significant price movements in key natural gas futures prices.<sup>1</sup> Such movements in natural gas futures markets, in turn, have had a corresponding impact upon prices for physical sales of natural gas.

Given the increases in natural gas prices experienced by consumers over the past several years, it is NYPSC's position that the relevant governmental entities must take all available steps to prevent market manipulation and ensure the integrity of the natural gas market. At the federal level, the Federal Energy Regulatory Commission (FERC) has been taking steps to ensure that wholesale prices for natural gas that is transported and sold in interstate commerce are determined competitively. The FERC recently issued a notice of proposed rulemaking to require buyers or sellers of natural gas to file reports of annual natural gas purchases and sales in order to increase price transparency in the physical natural gas markets.<sup>2</sup> NYPSC filed comments on July 1, 2007 supporting FERC's proposal. In those comments, NYPSC noted that while the FERC recognized the significant interaction among financial futures and physical natural gas markets, the FERC did not require the filing of information on financial transactions because the futures market is regulated by the CFTC. In this respect, the FERC noted that it communicates regularly with the CFTC pursuant to the terms of the Memorandum of Understanding entered into CFTC and FERC on October 12, 2005.

The CFTC is responsible for ensuring that fraud, manipulation and abusive practices do not occur in federally regulated financial markets such as the New York

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<sup>1</sup> *Excessive Speculation in the Natural Gas Market Staff Report: Hearings Before the Permanent Subcommittee on Investigations Committee on Homeland Security and Governmental Affairs*, 110<sup>th</sup> Congr. (2007)(“Staff Report”) at 2.

<sup>2</sup> See *Transparency Provision of Section 23 of the Natural Gas Act*, Docket No. RM07-10-000 and *Transparency Provision of the Energy Policy Act*, Docket No. AD06-11-000.

Mercantile Exchange (NYMEX). Consistent with such responsibilities, the CFTC is proposing rules which would amend existing CFTC regulations to make it explicit that persons holding or controlling reportable positions on a reporting market must retain books and records and make available to the CFTC any pertinent information with respect to all other positions and transactions in the commodity in which the trader has a reportable position.<sup>3</sup> By way of example, the proposed rule would make it explicit that a reportable trader in the Natural Gas futures contract in the NYMEX must keep books and records and provide to the CFTC pertinent information related to positions and transactions in Natural Gas on all designated contract markets (DCMs) and derivatives transaction execution facilities (DTEFs). NYPSA is specifically interested in ensuring that the CFTC has access to the traders' positions in all financial transactions, such as those traded on ICE and others, that currently are utilized as alternatives to the NYMEX.

## **II. COMMENTS IN SUPPORT OF PROPOSED RULE**

NYPSA supports CFTC's proposal to make clear that traders of Natural Gas futures contracts on the NYMEX are required to keep books and records of other positions that such trader holds in Natural Gas on ICE. As explained by the CFTC,

"[i]nformation with respect to positions and transactions in the virtually identical Natural Gas contracts on the IntercontinentalExchange (ICE), an ECM, also is important to the Commission's ability to conduct effective market surveillance of the NYMEX Natural Gas contracts and to determine the degree of a trader's exposure in both the NYMEX and ICE natural gas markets."<sup>4</sup>

NYPSA agrees with CFTC that it is essential to be able to evaluate a trader's exposure on both the NYMEX and ICE. Reports of dramatic increases in the amount of financial speculation in energy markets, and the collapse of Amaranth in September 2006

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<sup>3</sup> 72 *Fed. Reg.* 34413

<sup>4</sup> *Id.* at 34415.

demonstrate the need for CFTC to closely monitor the positions held by traders in energy markets. Such monitoring activities by the CFTC should be coordinated with FERC's monitoring of physical natural gas sales.

NYPSC notes its concern, however, that the proposed rule may cause traders that currently utilize the NYMEX and ICE to avoid regulatory oversight by trading exclusively on ICE. The inability of the CFTC to directly regulate traders that exclusively use ICE creates a serious loophole in the effective regulatory oversight of the financial markets by the CFTC. NYPSC suggests that the CFTC take steps to monitor the migration of traders that currently utilize NYMEX to ICE as the exclusive means of trading Natural Gas futures contracts. The availability of such information would be useful in the ongoing process of evaluating whether CFTC's existing jurisdiction provides the necessary tools to achieve its mission of preventing price manipulation and preserving the integrity of financial markets.

Respectfully submitted,

PUBLIC SERVICE COMMISSION OF  
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