NEWS

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Current CFTC Threshold for Swaps by Government-Owned Utilities Would Constrain Hedging, Risk Mitigation and Market Liquidity

NGSA Supports APGA-APPA-LPPC-TAPS-BPA Petition to Amend CFTC Regulation on De Minimis Threshold

(Washington, D.C.) -- The Commodity Futures Trading Commission (CFTC) should grant a petition from a coalition of government-owned utilities and amend its current language setting an impractical threshold for utility operations-related swaps, according to the Natural Gas Supply Association (NGSA) and the National Corn Growers Association (NCGA).

As presently written, the CFTC's Swap Dealer Definition Rule holds swaps transacted by special entities, such as municipal gas and electric utilities, to a $25 million threshold that would require swap dealer registration if exceeded, thereby discouraging non-financial entities from entering into transactions with government-owned utilities.

NGSA and NCGA jointly wrote [CFTC officials] today, expressing support for the petition by a coalition of municipally and federally-owned utilities and describing the potential consequences of the CFTC's regulation as currently written.

"We support the municipal utilities' petition, which clearly demonstrates their appreciation of the importance of a robust hedging program and a diversity of counterparties to make swaps," said Jenny Fordham, NGSA vice president, markets. Fordham said, "Counterparty diversity would be severely constrained by the current *de minimis* exception to the swap dealer rule."

NGSA and NCGA described the negative consequences that would arise as a result of instituting the threshold. Without non-financial entities as counterparties, government-owned utilities would be left with significantly fewer counterparties to help hedge commercial risk. They would find it impractical to follow good risk management practices, which require diversification of suppliers and swap counterparties. Furthermore, the threshold would require government-owned utilities to operate in a climate of diminished market liquidity.

"The continued availability of cost-effective hedging tools is a cornerstone of our advocacy," said Fordham. "We urge the Commission to grant the utilities' petition, which will strengthen market liquidity and promote sound risk management principles."

The joint letter to the CFTC follows.

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NGSA represents integrated and independent companies that supply natural gas. Established in 1965, NGSA encourages the use of natural gas within a balanced national energy policy, and promotes the benefits of competitive markets to ensure reliable and efficient transportation and delivery of natural gas and to increase the supply of natural gas to U.S. customers. For more information, please visit www.ngsa.org and www.naturalgas.org

Clean Natural Gas: *Smart, Secure and Essential*

August 20, 2012

VIA ONLINE SUBMISSION
Mr. David Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street N.W.
Washington, D.C. 20581

Re: Petition for Rulemaking to Amend CFTC Regulation 1.3(ggg)(4)

Dear Mr. Stawick:

On July 12, 2012, the American Public Power Association ("APPA"), the Large Public Power Council ("LPPC"), the American Public Gas Association ("APGA"), the Transmission Access Policy Study Group ("TAPS") and the Bonneville Power Administration ("BPA") (collectively, the "Petitioners") filed a petition requesting the Commodity Futures Trading Commission ("CFTC" or "Commission"), pursuant to CFTC Regulation 13.2, to amend the newly issued CFTC Regulation 1.3(ggg)(4) implementing the *de minimis* exception to the definition of "swap dealer" ("Petition"). The National Corn Growers Association ("NCGA")[1] and the Natural Gas Supply Association ("NGSA")[2] respectfully submit these comments supporting the Petition and request that the Commission grant the petition as expeditiously as possible.

The Dodd-Frank Act created a new category of registered entities, swap dealers, who are subject to heightened regulatory requirements such as capital requirements, reporting and recordkeeping requirements, and internal and external business conduct standards. The definition of "swap dealer" in the Dodd-Frank Act further requires the Commission to provide a *de minimis* threshold of swap dealing activity in connection with transactions with or on behalf of customers, below which, market participants are not required to register as a swap dealer. Accordingly, in further defining the term "swap dealer," the Commission provided a general *de minimis* threshold amount of $3 billion, subject to a phase in level of $8 billion, and a *de minimis* level of $25 million for swaps where the counterparty is a "special entity."

The Petition requests that the Commission exclude Utility Operations-Related

1 Founded in 1957, NCGA is the largest trade organization in the United States, representing 37,000 dues-paying corn farmers nationwide and the interests of more than 300,000 growers who contribute through corn checkoff programs in their states. NCGA and its 48 affiliated state associations and checkoff organizations work together to create and increase opportunities for their members and their industry.

2 Established in 1965, NGSA represents integrated and independent companies that produce and market approximately 40 percent of the natural gas consumed in the United States. NGSA encourages the use of natural gas within a balanced national energy policy and promotes the benefits of competitive markets to ensure reliable and efficient transportation and delivery of natural gas and to increase the supply of natural gas to U.S. customers

Swaps from the special entity sub-threshold. As defined by the requested amendments, "utility operations-related swaps" are swaps entered into by utility special entities to hedge or mitigate commercial risks "intrinsically related to the electric or natural gas facilities that the utility special entity owns or operates or its electric or natural gas operations (or anticipated facilities or operations), or to the utility special entity's supply of natural gas and/or electric energy to other utility special entities or to its public service obligations (or anticipated public service obligations) to deliver electric energy or natural gas service to utility customers." Moreover, the requested amendments specify that a "utility operations-related swap" does not include a swap for which the underlying commodity is interest rates, credit, or equity or currency asset classes. Therefore, the amendments sought by the Petitioners only would apply to commercial hedging transactions. NCGA and NGSA support the Petitioners' request.

The current special entity *de minimis* threshold stands to further reduce liquidity in what is a naturally illiquid market for utility operations-related swaps. These swaps, which are used to mitigate and hedge risk, tend to be customized transactions based on the characteristics of Utility Special Entities' physical energy needs and are transacted on illiquid regional or local swap markets. As a result, the swaps may vary significantly from one transaction to another and may not have standardized terms. Therefore, the pool of counterparties available to enter utility operations-related swaps generally is limited and often comprised of nonfinancial entities engaged in the electric, natural gas, or other aspects of the energy industry. Under the rule, if these nonfinancial counterparties engage in swap transactions in excess of the $25 million notional amount (a notional amount that is significantly lower than the $3 billion notional amount for other swap dealing activities) with special entities to help them manage their commercial energy procurement risks, the nonfinancial counterparty may be subject to registration as a swap dealer. Thus, these non-financial counterparties may be discouraged from entering into hedging swap transactions with special entities. Constraining the ability of these counterparties to participate in the market will impair special entities' ability to mitigate risk and will likely concentrate the market among entities capable of meeting swap dealer obligations.

Ensuring the continued availability of cost-effective hedging tools is a cornerstone of our associations' Dodd-Frank advocacy. In the interest of facilitating the use of these hedging tools and maintaining liquidity and participation in the utility operations-related swaps market, NCGA and NGSA respectfully request that the Commission grant the Petition and amend Regulation 1.3(ggg)(4) as requested by the Petitioners.

Sincerely,

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