

From: Corinth, Lina <Lina.Corinth@gdfsuezna.com>
Sent: Monday, September 20, 2010 7:11 PM
To: dfadefinitions <dfadefinitions@CFTC.gov>; secretary <secretary@CFTC.gov>
Cc: Henry, Sam <Sam.Henry@gdfsuezna.com>; Minter, Rob <Rob.Minter@gdfsuezna.com>
Subject: GDF SUEZ Energy Marketing NA, Inc. Comments on CFTC NOPR on Definitions
Attach: GDFSUEZ Energy Marketing NA Inc Comments on CFTC NOPR on Definitions.pdf

With reference to GDF SUEZ Energy Marketing NA, Inc. ("GSEMNA") comments on CFTC NOPR on Definitions.

The attached comments are sent on behalf of GDF SUEZ Energy Marketing NA, Inc. – by Sam Henry, President and CEO.

Thank you.

Lina N. Corinth
Executive Assistant to Sam Henry
President and CEO

GDF SUEZ Energy Marketing NA, Inc.
1990 Post Oak Blvd., Suite 1900
Houston, Texas 77056
(713) 636-1258 (tel)
(713) 636-1800 (fax executive)
lina.corinth@gdfsuezna.com

GDF SUEZ



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September 20, 2010

Mr. David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

Re: Response to Request for Comments with respect to Definitions contained in Title VII of the Dodd-Frank Act (Fed. Reg., August 20, 2010, p. 51429)

Dear Secretary Stawick:

Thank you for requesting comments with respect to the definitions embedded in the Dodd-Frank Act. We are interested in many aspects of the law, but would like to focus our comments at this time on two crucial definitions – those of “major swap participant” and “commercial risk”.

Before proceeding to our specific comments, it might be helpful to understand something about GDF SUEZ Energy North America. We are involved in electricity generation and marketing, retail electricity sales, and liquefied natural gas. Each subsidiary has its own strategies, profit targets, and suite of customers. That means that we have a complex portfolio with large natural gas and power exposures.

For purposes of this effort, it might be useful to note that we have several long term power purchase agreements that will expire in the next 5 years that will significantly increase price risk. Wherever possible, we desire to hedge longer-term if liquidity and economics are attractive. We have some concentrated large positions in illiquid markets including some natural gas basis locations for which we have to use proxies in related markets in order to hedge.

It is probably also important to note that the primary purpose of our trading desk is providing a “window to the market”, competitive pricing for our products, information to our business units, insight into best placement/implementation of hedge programs, and execution of hedges for implementation of the asset portfolio risk management program.

Congress passed the Dodd-Frank Act *“to promote the financial stability of the United States by improving accountability and transparency in the financial system...and for other purposes.”* Throughout the legislative process it was recognized that commercial end-users who have an underlying physical business generally speaking do not create systemic risk to the economy and should be able to continue to manage their commercial risks in over-the-counter markets. We believe that this understanding should inform the Commission’s approach to defining the terms laid out in the legislation.

Consequently, we believe that the definitions of “major swap participant” and “commercial risk” should be implemented in a way that captures financial entities while avoiding entities whose primary purpose in the derivatives markets is to manage their commercial risks.

Major Swap Participant

The definition of a “major swap participant” is crucial, both to GDF SUEZ Energy North America and to every other actor in derivatives markets. As noted above, we believe that the Dodd-Frank Act is directed primarily towards ensuring the stability of American financial markets. The provisions related to major swap participants are no different (“ . . . *the Commission shall define by rule or regulation the term ‘substantial position’ at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States.*”).

It is essential that the law’s focus on systemic risk and financial institutions that present significant risk to the overall system inform the Commission’s effort to further define the terms found in the law. With respect to the definition of “major swap participant”, we believe that it is most prudent to focus the Commission’s limited resources on those participants in the marketplace that truly are “major”. Accordingly, we believe that the provision that identifies major swap participants as those with “substantial net positions” should be addressed in the following manner:

- The appropriate measurement for this provision should be the size of the entity involved. We propose that the Commission consider \$15 billion in total assets as the minimum threshold for major swap participant.
- Additionally, an appropriate standard could be the percentage of market share within a particular market. We propose that you consider 5 to 10 percent market share within any specific market as the minimum threshold for major swap participants.

In both instances, the metric and attendant threshold are faithful to the intent of the legislation to address those entities that truly are “major” and whose actions have systemic effects.

Commercial Risk

As you are aware, the Dodd-Frank Act specifically allows those who are not financial entities to engage in exempted swaps to the extent those swaps are designed to “hedge or mitigate commercial risk”. The legislation specifically empowers the Commission to define “commercial risk” (“*The Commodity Futures Trading Commission may adopt a rule to define: (1) the term ‘commercial risk’ . . .*”). Accordingly, we would like to offer our thoughts on what might be an appropriate definition for “commercial risk”.

We believe that the Commission should interpret "commercial risk" as broadly as possible within the confines of statutory construction. Commercial risk should be understood to include risks associated with fluctuations in earnings, cash flow, or balance sheet performance. Additionally, "commercial risk" should also include market risk, credit risk, operating risk, liquidity risk, and legal and regulatory compliance risk.

Additional Comments


Finally, we want to offer a note about the overall approach that the Commission may take to its new responsibilities. As you are probably aware, it will be difficult if not impossible for the Commission to provide real-time advice as to which swaps may or may not be exempt.

Furthermore, it may not be immediately clear when companies have crossed into the realm of being major swap participants. For that matter, the law itself is unclear whether being a major swap participant is a temporary, changeable condition or a once-in, always-in condition.

Consequently, we strongly encourage the Commission to consider the wisdom of providing written, generalized guidance (in addition to regulations) to the regulated community outlining how it plans to implement the regulatory regime on a day-to-day basis. Moreover, it may be prudent and useful for the Commission to expand its use of no-action letters when confronted with a unique, idiosyncratic, and specific set of facts in a particular situation.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,



Sam C. Henry
President and CEO

cc: Chairman Gensler
Commissioner Dunn
Commissioner Chilton
Commissioner Sommers
Commissioner O'Malia