

**UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION**

Interim Final Rule for Reporting) RIN 3038-AD24
Pre-Enactment Swap Transactions)

**COMMENTS OF THE
AMERICAN GAS ASSOCIATION**

Pursuant to the Interim Final Rule and Request for Public Comment issued October 1, 2010,¹ by the Commodity Futures Trading Commission (“CFTC” or “Commission”), the American Gas Association (“AGA”) respectfully submits these comments. The Commission’s rulemakings to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)² should ensure that the financial markets related to energy commodities function efficiently and protect the ability of commercial hedgers to engage in risk management activities for the benefit of American energy consumers at reasonable cost. AGA supports market transparency efforts that increase the efficiency and transparency of the financial markets to the benefit of consumers, and urges the Commission to establish rules clearly delineating the obligations of reporting entities.

¹ *Interim Final Rule for Reporting Pre-Enactment Swap Transactions*, 75 Fed. Reg. 63,080 (October 14, 2010) (“Interim Final Rule”).

² Pub. L. No. 111-203 (July 21, 2010).

I. COMMUNICATIONS

All pleadings, correspondence and other communications filed in this proceeding should be served on the following:

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II. IDENTITY AND INTERESTS

The AGA, founded in 1918, represents 195 local energy companies that deliver clean natural gas throughout the United States. There are more than 70 million residential, commercial and industrial natural gas customers in the U.S., of which 91 percent — more than 64 million customers — receive their gas from AGA members. AGA is an advocate for local natural 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 almost one-fourth of the United States' energy needs.³ AGA's members engage in financial risk management transactions in markets regulated by the Commission. As such, AGA's members will be directly affected by the Commission's regulations promulgated under the Dodd-Frank Act.

III. COMMENTS

AGA member companies provide natural gas service to retail customers under rates, terms and conditions that are regulated at the local level by a state commission or other regulatory authority with jurisdiction. Many gas utilities use a variety of financial tools, such as futures contracts traded on CFTC-regulated exchanges and over-the-counter energy derivatives,

³ For more information, please visit www.aga.org.

to hedge the commercial risks associated with providing natural gas service, including volatility in natural gas commodity costs. Gas utilities are often able to reduce the cost of hedges for their customers by relying, in part, on their strong financial profiles to obtain unsecured credit for their hedging transactions instead of posting cash collateral. These unsecured credit arrangements benefit consumers by enabling counterparties to offer hedges to gas utilities at lower cost.

The Dodd-Frank Act authorized the Commission to promulgate rules to establish the reporting requirements for all participants in swap transactions.⁴ In particular, the Dodd-Frank Act required the Commission to adopt within 90 days of enactment of the act, an interim final rule for the reporting of swap transactions entered into prior to the date of the act whose terms had not expired as of that date (pre-enactment unexpired swaps).⁵ The Interim Final Rule in this proceeding designated certain parties to a pre-enactment unexpired swap as the reporting party, namely: (1) either a swap dealer or a major swap participant; (2) the swap dealer if one party is a swap dealer and the other party is a major swap participant; or (3) the agreed-upon counterparty if neither is a swap dealer or major swap participant.

The Interim Final Rule required the designated reporting party to submit to a registered swap data repository or to the Commission a copy of the transaction confirmation in electronic form, if available, and the time the transaction was executed, if available. The Interim Final Rule authorized the CFTC to request summary data related to any pre-enactment unexpired swap transaction, including a description of a swap dealer's counterparties or the total number of pre-enactment swaps entered into by the swap dealer. The Interim Final Rule also directed counterparties to pre-enactment unexpired swaps to retain in existing formats all information and documents related to the terms of such transactions, including: (1) any information necessary to

⁴ See Dodd-Frank Act § 729.

⁵ *Id.*

identify and value the transactions; (2) the date and time of execution; (3) information relevant to the price of the transaction; (4) whether the transaction was accepted for clearing; (5) any modifications to the terms; and (6) the final confirmation of the transaction.

AGA supports market transparency efforts that increase the efficiency and transparency of the financial markets to the benefit of consumers. AGA believes that swap transaction information should be reported on a consistent basis to increase transparency and analysis of market data. AGA urges the Commission to establish rules clearly delineating the obligations of reporting entities in order to minimize the administrative burdens of reporting for gas utilities and reduce the cost of hedging on behalf of consumers.

In that regard, the Commission should require market participants to provide summary data about their transactions to swap data repositories, rather than providing copies of the transaction confirmations. Transaction confirmations can be lengthy and contain much extraneous information. It would be time-consuming and costly for swap data repositories to store the transaction confirmations and convert them into data that can be more easily analyzed. End users would be among the market participants that would bear the costs of these efforts. AGA believes it would make more sense to require market participants to submit summary data about their transactions in a consistent format and provide complete transaction confirmations upon request.

For cleared transactions, the Commission should work with the clearinghouses and exchanges to obtain necessary information regarding swap transactions. The reporting obligations for individual market participants should be minimal for cleared swap transactions, as the necessary data would be available from the clearinghouses and exchanges.

For uncleared transactions, the Dodd-Frank Act gives the Commission limited authority over the data that must be reported to swap data repositories and the means by which that data must be reported. Since gas utilities and other end users will only be required to report swaps that do not involve a swap dealer or major swap participant as a party, only a small percentage of their transactions will likely have to be reported to a swap data repository. To ensure that gas utilities and other end users should not be required to invest in significant information systems upgrades or management processes to document and report these few transactions, the Commission should ensure that end users need only report basic data and that a variety of easy reporting schemes are available, such as on-line forms or email submissions. AGA also urges the Commission to provide greater certainty as to when counterparties will need to begin reporting uncleared swap transactions. For example, the Commission should provide public notice of when swap data repositories have been certified to begin receiving swap data transaction information.

Moreover, the Commission should provide market participants with a clear understanding of the record retention requirements to enable market participants to develop or alter their document retention policies. AGA urges the Commission to clarify several aspects of the record retention requirements of the interim final rule. First, the Commission should detail further the information, for both cleared and uncleared swaps, that would need to be retained by individual market participants. The requirement to retain all information “necessary to ... value transactions” and “information relevant to the price of transactions” could be viewed as very broad potentially encompassing a large variety of documents. To minimize administrative burdens and assist market participants in compliance, the Commission should clarify the specific documents or types of documents that market participants must retained. In addition, the

Commission should indicate how long each such document or type of document must be retained, so that market participants can develop the necessary record management strategies.

IV. CONCLUSION

Wherefore, for the reasons stated above, the American Gas Association respectfully requests that the Commission consider these comments in this proceeding.

Respectfully submitted,

/s/ Andrew K. Soto

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