

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

Reporting Certain Post-Enactment Swap Transactions) RIN 3038-AD29

**COMMENTS OF THE
AMERICAN GAS ASSOCIATION**

Pursuant to the Interim Final Rule and Request for Comment noticed in the Federal Register on December 17, 2010,¹ by the Commodity Futures Trading Commission (“CFTC” or “Commission”), the American Gas Association (“AGA”) respectfully submits these comments. AGA believes that 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 at reasonable cost for the benefit of American energy consumers.

I. COMMUNICATIONS

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

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¹ *Reporting of Certain Post-Enactment Swap Transactions*, 75 Fed. Reg. 78,892 (Dec. 17, 2010).

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

II. IDENTITY AND INTERESTS

The AGA, founded in 1918, represents 199 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, to hedge the commercial risks associated with providing natural gas service, particularly volatility in natural gas commodity costs.

The Dodd-Frank Act required the Commission to adopt rules to provide for the reporting of transition swap transactions, *i.e.*, those that are entered into on or after the date of enactment of the Dodd-Frank Act but prior to the effectiveness of rules related to swap data reporting and

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

recordkeeping.⁴ Separately, the Commission has promulgated interim rules regarding the reporting of pre-enactment swap transactions, *i.e.*, those entered into prior to the date of enactment of the Dodd-Frank Act, the terms of which had not expired as of that date.⁵ The interim rules regarding the reporting of transition swaps are similar, but not identical, to those regarding the reporting of pre-enactment swaps.

As with the interim rules regarding pre-enactment swap transaction reporting, the interim final rules in this proceeding specify the party obligated to report transition swap information as: (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.⁶ The interim final rules require 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.⁷ The interim final rules also authorize the Commission to request summary data related to any transition swap transaction,⁸ and direct counterparties to transition swaps to retain in existing formats all information and documents related to the terms of such transactions, including: (1) the terms and any information necessary to identify and value the transactions; (2) the date and time of execution; (3) the volume (notional or principal amount);

⁴ See Dodd-Frank Act § 723.

⁵ *Interim Final Rule for Reporting Pre-Enactment Swap Transactions*, 75 Fed. Reg. 63,080 (Oct. 14, 2010). AGA filed comments in response the interim rules related to pre-enactment swap transaction reporting.

⁶ 17 C.F.R. § 44.03(b).

⁷ 17 C.F.R. § 44.03(a)(1).

⁸ 17 C.F.R. § 44.03(a)(2).

(4) information relevant to the price of the transaction; (5) whether the transaction was accepted for clearing; and (6) any modifications to the terms of the transaction.⁹

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 response to the specific questions posed by the Commission in the Federal Register notice regarding the interim final rules in this proceeding,¹⁰ AGA makes the following recommendations. With regard to the date on which counterparties are to begin reporting data concerning transition swaps, AGA is concerned that a fixed deadline, such as October 13, 2011 (90 days following the July 15, 2011 effective date of the Dodd-Frank Act), may be unrealistic. As contemplated by the Dodd-Frank Act and the Commission's implementing rules, transition swap transaction data is to be reported to a swap data repository – a newly created entity specifically intended to receive and maintain data on swap transactions. Accordingly, the obligation to report swap transaction data should not begin until a reasonable time after one or more swap data repositories have been registered and commence operations, and counterparties are notified that such swap data repositories are available to begin to receive transaction

⁹ 17 C.F.R. § 44.03 Note to paragraphs (a). The information required to be retained specified in the Note in the interim final rules in this proceeding varies from the information required by the interim final rules regarding reporting of pre-enactment swaps. In particular, the interim final rules in this proceeding add requirements to retain information regarding volume and information relevant to the payment of the transaction.

¹⁰ See 75 Fed. Reg. at p. 78,894.

information. Counterparties will need a sufficient amount of time after a swap data repository is registered to develop their own internal systems to begin reporting.

The Dodd-Frank Act and the Commission's implementing rules also contemplate that in the event one or more entities do not step forward to become a swap data repository or until such time as one or more entities step forward, the Commission would fill the swap data repository role. AGA contends that the Commission should not require counterparties to report swap transaction data on a regular basis to the Commission, as if it were the swap data repository, until such time as the Commission has in place all of the necessary systems and protocols to act as a swap data repository similar to what would be required of an entity under the proposed swap data repository registration regulations. Given the Commission's limited resources and other priorities, the Commission should not plan to develop such systems and protocols to be ready to act as the swap data repository by October 13, 2011, or any other fixed deadline. Rather, the Commission can fulfill its oversight functions by relying on obtaining information from counterparties on an as-needed basis, under 17 C.F.R. § 44.03(a)(2), until such time as one or more swap data repositories commence operations or the Commission determines that it must make the commitment to devote the resources necessary to becoming the swap data repository.

Counterparties need clear rules delineating their reporting obligations in order to build effective compliance programs. The Commission should avoid requiring counterparties to report swap transaction data on a fixed date, such as October 13, 2011, to an entity that may not exist or may not be ready to receive such information on that date, including the Commission. In all events, AGA encourages the Commission to provide counterparties with adequate notice well ahead of the time swap transaction reporting must begin in order to provide sufficient time to develop the necessary reporting systems.

The Commission next sought comment on whether the date for reporting should be different for different reporting counterparties. Because gas utilities and other end users will only be required to report swap transactions that do not involve a swap dealer or major swap participant as a counterparty, end-users themselves will only need to report a small percentage of their transactions to a swap data repository. AGA urges the Commission to adopt reporting requirements that will not require end-users such as gas utilities to make major information technology system upgrades. Since gas utilities are not major market participants, the necessary changes to their IT systems and management processes would likely be more extensive than for other entities. In addition, major market players in the financial industry likely will have priority access to software and hardware vendors, which could further delay implementation of necessary system changes by gas utilities. AGA thus encourages the Commission to develop reporting requirements that would allow gas utilities and other end-users to report their few, end-user-to-end-user transactions in a manner that requires little or no system upgrades, such as through an online form or email. In that way, gas utilities may be able to comply with the same reporting deadline as other market participants.

With regard to the information that must be reported, the Commission should require reporting counterparties to provide only summary data regarding the swap transactions to the 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 through the fees charged by the swap data repositories. AGA believes it would make more sense to require reporting counterparties to

submit summary data about their swap transactions in a consistent format and provide complete transaction confirmations upon request. AGA encourages the Commission to work with the industry to determine what the appropriate information and format should be.

Moreover, as noted above because gas utilities and other end users will only be required to report swap transactions that do not involve a swap dealer or major swap participant as a counterparty, end-users themselves will only need to report a small percentage of their transactions to a swap data repository. 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. Accordingly, AGA urges the Commission to allow end users to report summary swap transaction data through a variety of easy reporting schemes, such as on-line forms or email submissions.

The Commission also sought comment on whether the permanent rules regarding transition swap data reporting should specify how counterparties that are not swap dealers or major swap participants determine which counterparty would report the transaction data. Under the interim rules, where neither counterparty is a swap dealer or a major swap participant the counterparties must select the counterparty who will report the transaction. AGA contends that the Commission should establish a default designation of the reporting counterparty in the event the counterparties cannot agree. Where neither counterparty is a swap dealer or major swap participant, the entity designated as the “Calculation Agent” under the applicable ISDA agreement should be the reporting counterparty unless the parties agree otherwise. The counterparties would continue to be free to negotiate the designation of the reporting counterparty; however, the regulations would provide the necessary certainty in the absence of

an agreement. Moreover, a regulatory designation of a default reporting party may better provide parties with a basis for negotiation of the reporting obligations.

Finally, with respect to the transition swap transaction information the Commission is requiring all counterparties to retain, AGA appreciates the Commission's effort to provide clearer direction regarding the price and valuation information that must be retained in the interim final rule in this proceeding than it did in the interim final rule regarding pre-enactment swaps. Nonetheless, AGA believes that further clarification is needed. In particular, AGA requests that the Commission provide additional detail as to the specific information, for both cleared and uncleared swaps, that would need to be retained by individual market participants, including specific examples of the documents that would fall into the various categories set forth in the regulations. The requirement to retain all information "necessary to . . . value the transaction" and "information relevant to the price and payment . . . for the transaction" could be viewed as very broad and potentially encompassing a large variety of documents. AGA also requests that the Commission further explain the differences in the document retention requirements from the interim final rules regarding reporting of pre-enactment swaps versus the interim final rules in this proceeding; in particular, the need to retain volume and payment information.

AGA supports the Commission's efforts to have access to the information it needs to effectively monitor and oversee the financial markets. To minimize administrative burdens and assist market participants in compliance, however, the Commission should determine the specific documents or types of documents that are needed to achieve those goals. 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.

AGA also contends that the document retention obligation for cleared transactions should fall on the clearinghouses and exchanges as the necessary data to effectively monitor and oversee the financial markets should be available from those entities. The document retention requirements of end-users such as gas utilities should only apply to information related to their uncleared swap transactions.

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,

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