UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

Further Definition of "Swap Dealer,"	)	
"Security-Based Swap Dealer," "Major Swap Participant,"	)	RIN 3235–AK65
"Major Security-Based Swap Participant" and	)	
"Eligible Contract Participant"	)	

COMMENTS OF
ATMOS ENERGY CORPORATION

Pursuant to the Notice of Proposed Rulemaking ("NOPR") noticed in the Federal Register on December 21, 2010,[1] by the Commodity Futures Trading Commission ("CFTC" or "Commission"), Atmos Energy Corporation ("Atmos"), respectfully submits these comments. Atmos believes that the Commission's rulemaking to define some of the key terms of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[2] should provide greater guidance regarding what entities are and are not Swap Dealers. Atmos also believes that the proposed *de minimis* exception for Swap Dealers is too narrowly tailored.

I. COMMUNICATIONS

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

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[1] *Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant,"* 75 Fed. Reg. 80174 (Dec. 21, 2010).
[2] Pub. L. No. 111-203 (July 21, 2010).

II. IDENTITY AND INTERESTS

Atmos is a publicly owned corporation duly organized and existing under the laws of the State of Texas and the Commonwealth of Virginia. Atmos is authorized to do business in the State of Mississippi and is doing business in the State of Mississippi. Atmos is a utility company as defined by Mississippi Code Annotated §77-3-3 (d)(ii) and is presently engaged in the transmission, sale for resale, distribution of natural, artificial, or mixed natural and artificial gas to the public for compensation by means of transportation, transmission, or distribution facilities and equipment located within Mississippi pursuant to certificates of public convenience and necessity and other orders issued by the Mississippi Public Service Commission ("MPSC").

Atmos holds various Certificates of Public Convenience and Necessity, as supplemented from time to time, authorizing its operations in certain areas of Mississippi and is rendering service in accordance with its service rules and regulations and in accordance with schedules of rates and charges, all of which are a part of its tariffs that have been previously approved by orders of the MSPC.

Atmos provides natural gas service to retail customers under rates, terms and conditions that are regulated at the state level by the MSPC. Like many other gas utilities, Atmos uses a variety of financial tools, including 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. Part of Atmos' MSPC-approved tariff permits Atmos to contract directly with certain classes of customers so that these customers can hedge their gas ("Spot-Gas Program").[3] Accordingly, Atmos has a significant interest in how the Commission defines the term, "Swap Dealer."

III. COMMENTS

As previously described, Atmos uses a variety of instruments to hedge the commercial risks associated with providing natural gas services. Atmos understands that the CFTC intends to except "a person that enters into swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business" from the definition of a Swap Dealer.[4] It is Atmos' belief that the proposed definition of a Swap Dealer, when coupled with the proposed "end-user" exception to the mandatory clearing of swaps will generally allow Atmos and similarly situated Local Distribution Companies to continue to employ a wide variety of methods to hedge natural gas, without being considered Swap Dealers.

Swap Dealer Definition

Atmos understands that the Commission is proposing to use an "interpretive approach" to determine whether or not an entity is a Swap Dealer, focusing on factors such as whether or not an entity (1) tends to accommodate demand for swaps from other parties; (2) is generally available to enter into swaps to facilitate other parties' interest in entering into swaps; (3) tends to enter into swaps on its terms; and (4) tends to be able to arrange customized terms for swaps, upon request or to create new types of swaps at its own initiative.[5] The NOPR states that the CFTC preliminarily believes that Swap Dealers may be identified by the functional role they fulfill in the swap markets.[6] The NOPR also

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[3] *See* attached Rate Schedule 323.
[4] NOPR at 80,175.
[5] *Id.* at 80,177.
[6] *Id.*

states Swap Dealers tend to accommodate demand and to be available to enter into swaps to facilitate other parties' interest in swaps.[7] The problem with this "interpretive approach" proposed is that the wide variety of swaps and parties and purposes involved make it very difficult for the entities being regulated to know with certainty what regulations will apply to them.

While Atmos primarily only hedges its own gas supplies, Atmos also participates in its Spot-Gas Program, initiated in 1987, whereby certain large customers contract directly with Atmos to have Atmos hedge natural gas on that customer's behalf. If approached by a customer under this program, Atmos will go out into the financial markets and hedge that customer's gas in the manner and for the duration (between three to 12 months) requested by that customer. The customer pays a nominal fee to Atmos to participate in this program, and Atmos shares that revenue with the ratepayers of Mississippi. In calendar year 2010, 24 customers participated in this program, initiating a total of 73 separate spot hedge contracts of various durations. The total notational value of swaps outstanding under the Spot-Gas Program for a 12-moth period has never exceeded $10 million. But for the Spot-Gas Program, Atmos only hedges on its own behalf. Atmos is concerned that the hedging occurring pursuant to the Spot-Gas Program could cause Atmos to meet the proposed definition of a Swap Dealer. If this were to occur, the regulatory costs of being a Swap Dealer could cause the Spot-Gas Program to become uneconomic, frustrating the ability of large gas customers to hedge their gas supplies and depriving the ratepayers of Mississippi of the Spot-Gas Program's financial benefits.

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[7] *Id.*

Atmos requests that the Final Rule clarify that to the extent a state-regulated local distribution company facilitates hedging for its largest customers, that this not be considered entering into swaps as part of a regular business. The geographic limitation on potential counterparties, the relatively small amount of dollars at issue, and the state-level oversight all argue for not defining such activities to be Swap Dealing. Atmos' counterparties in these transactions are large customers, which are generally sophisticated entities well-versed in hedging natural gas. Additionally, the counterparties are all end-users of natural gas hedging their own gas supply. There is no speculative trading relating to the Spot-Gas Program. But for the number of counterparties and transactions involved, the swaps stemming from the Spot-Gas Program would be under the *de minimis* exception's limits. The regular business of Local Distribution Companies is the provision of natural gas and natural gas transportation to end-users. In light of the limited nature of Atmos' potential dealing activities, registration of Atmos as a Swap Dealer would not be warranted.

De Minimis Exception

The Dodd-Frank Act provides an exemption for a person who "engages in a *de minimis* quantity of swap dealing in connection with transactions with or on behalf of its customers." The NOPR proposes that a person meet all of the following conditions in order to be exempt from the definition on the basis of *de minimis* activity.

• The aggregate effective notional amount, measured on a gross basis, of the swaps that the person enters into over the prior 12 months in connection with dealing activities must not exceed $100 million.

• The aggregate effective notional amount of such swaps with "special entities" (as defined in CEA Section 4s(h)(2)(C) to include certain governmental and other entities) over the prior 12 months must not exceed $25 million.

• The person must not enter into swaps as a dealer with more than 15 counterparties, other than security based swap dealers, over the prior 12 months.

• The person must not enter into more than 20 swaps as a dealer over the prior 12 months

Atmos believes that the CFTC should establish a threshold for the aggregate effective notional amount, measured on a gross basis, of the swaps that an entity enters into over the prior 12 months below which an entity will be considered to meet the *de minimis* exception for a Swap Dealer, regardless of the number of swap transactions that entity enters into or the number of counterparties involved. Based on the Dodd-Frank rulemakings issued so far, it appears that the costs of compliance for a Swap Dealer will be significantly higher than those for a non-Swap Dealer. If an entity engages in a minimal amount of swap dealing on a dollar basis, it seems inappropriate to make them spend more money on compliance than they do on the swaps themselves.

IV. CONCLUSIONS

The Swap Dealer definition should not be so broad as to include natural gas local distribution companies that facilitate hedging from end-users on their distributions systems. The *de minimis* exception for Swap Dealers should establish a clear limit for the aggregate effective notional amount, measured on a gross basis, of the swaps that an entity enters into over the prior 12 months irrespective of the number of transactions or counterparties involved.

Wherefore, for the reasons stated above, Atmos respectfully requests that the CFTC consider these comments in this rulemaking.

Respectfully submitted,

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February 17, 2011

Attachment

Rate Schedule 323

RATE SCHEDULE 323
SPOT GAS SALE AND/OR TRANSPORTATION PRICING RIDER

APPLICATION OF SPOT GAS PRICING RIDER

This rider shall apply to any new or existing qualifying customer under Company's Rate Schedules 307, 308, 309, and 310, who has executed and delivered to Company, in a form satisfactory to Company, a Supplement to the Agreement for Gas Service for Spot Gas Sales and/or Transportation (Supplement) to implement sales or transportation under this rider schedule. Except as expressly provided in this rider, the other provisions of the Agreement for Gas Service and the applicable rate schedule under which customer is presently being served shall apply.

AVAILABILITY OF SPOT GAS PRICING RIDER

When Company arranges to purchase Spot Gas or similar market-priced, interruptible supplies, Company may, at its sole option, offer the opportunity to purchase any and all such supplies to any qualifying customer or customers. Service under this rider schedule is not available for standby service.

When sufficient capacity is available on Company's system and such transportation would not, in Company's opinion, have a detrimental effect on Company's operations, SPOT transportation service may be offered, at Company's sole option, to qualifying customers for, but not limited to, customer owned intrastate gas or customer owned gas transported to Company's system by an interstate pipeline for redelivery to customer by Company.

In the event at any time the Company determines that there have been changed circumstance which, in the Company's opinion, would cause any customer taking service hereunder to no longer qualify for such service, then Company may so notify customer and suspend the availability of the service hereunder to such customer.

CHARACTER OF SERVICE

Sales or transportation of gas under this rider will enable the Company, on a best efforts basis and at its sole option, to sell and/or transport SPOT gas to individual qualifying customers at a price level competitive with other gas sources available. Sales or transportation service under this rider shall be fully interruptible and subject to the terms and conditions of any gas purchase and/or transportation agreement between Company and any other party supplying or transporting the SPOT gas and to the terms and conditions set out in the applicable Supplement to Agreement for Gas Service for Spot Gas Sales and/or Transportation. Service is further conditioned upon availability of sufficient capacity on Company's system. Sales volumes delivered under this rider are sold to customer based on the cost incurred by Company for the gas so designated for the sale and not upon the rolled-in cost of all Company's supplies.

RATE FOR INTERRUPTIBLE SALES SERVICE UNDER SPOT GAS PRICING RIDER

Company may, at its sole option establish Spot Rates from time to time by pipeline supply area and varying purchase periods under this rider at any level as long as the maximum selling price does not exceed the price (including the commodity purchased gas adjustment) as calculated according to customer's otherwise applicable rate or rider schedule for the same sales volume nor does the minimum selling price fall below the cost (including applicable transportation, if any) incurred by the Company for gas designated for such sales.

RIDER SCHEDULE 323
SPOT GAS SALE AND/OR TRANSPORTATION PRICING RIDER

RATE FOR INTERRUPTIBLE SALES SERVICE UNDER SPOT GAS PRICING RIDER- continued

Should the taking of interruptible SPOT gas by any customer or group of customers cause Company to incur additional costs as a result of exceeding its entitlement from its pipeline suppliers, Company shall have the right, prior to delivery of such gas, to notify each affected customer of the terms and conditions of continued delivery. Each customer choosing to accept delivery of such gas, subject to notice, shall pay an amount equal to any additional costs incurred by Company for gas delivered to the customer.

RATE FOR INTERRUPTIBLE TRANSPORTATION SERVICE

Company will bill and customer will pay monthly to Company all costs Company is billed by any other party or parties transporting SPOT gas delivered to customer, plus the applicable Net Monthly Transportation Rate per MMBTU of $.62.

AMOUNT TO BE BILLED CUSTOMER

The amount to be billed to a customer under this rider shall be the greater of the minimum bill under the otherwise applicable rate schedule or the amount calculated under this rider.

STABLE/RATE ADJUSTMENT

Sales or transportation of gas by Company hereunder shall not be subject to the Second Adjustment (referred to as Stable/Rate Adjustment) provisions of the Company's rate or rider schedules.

PURCHASED GAS ADJUSTMENT (PGA)

Sales or transportation of gas by Company hereunder shall not be subject to the Purchased Gas Adjustment (PGA) provisions of the Company's rate or rider schedules nor will such volumes be included in the calculation of the PGA. Any volumes purchased by Company for use hereunder during a calendar month which are in excess of the volumes actually taken by qualified customers shall be included in the calculation of the PGA as general system supply. Spot sales or transportation volumes hereunder shall not be considered when distributing to Company's customer refunds from pipeline suppliers.

RIDER SCHEDULE 323
SPOT GAS SALE AND/OR TRANSPORTATION PRICING RIDER

COST OF ANY ADDITIONAL FACILITIES

Additional facilities required, if any, to provide service under this rider shall be provided for in the Supplement and the cost thereof shall be paid by customer.

DEFINITIONS

(1) "Qualifying Customer" or "Qualified Customer" means any customer that (a) qualifies under the provisions stated in this schedule regarding receipt of Spot Gas, in Company's judgment, (b) purchases at least 12, 000 MMBTU's of gas annually under normal conditions, (c) who has executed with Company a Supplement to Agreement for Gas Service for Spot Gas Sales and/or Transportation, and (d) who has amended his existing Agreement for Natural Gas Service to incorporate Company's current "Supplemental Service Rider".

(2) "Spot Rate" means the selling price or rate provided for in the Supplement to Agreement for Gas Service for Spot Gas Sales and/or Transportation with each particular customer. From time to time, usually monthly, a notice showing the one month "Spot Gas" rate available in each pipeline supply area shall be filed with the Commission and shall, until changed by filing a new notice, be the available contract rate to be offered to qualified customers, desiring monthly purchase, on a first come, first served basis and subject to the underlying gas supply obtained or designated by Company for such sales. If a customer desires a "Spot Gas" Agreement for a period longer than one month, the customer shall make its requirements known to the Company and Company shall advise the customer of the Company's "Spot Rate" for such a period. While the availability of "Spot Gas" for any period at any particular rate is subject to many factors beyond the control of the Company; Company will make a good faith effort to make "Spot Gas" available to Customers with similar circumstances at a similar rate. Subject to the foregoing, the "Spot Gas" rate for periods of more than one month shall be negotiable rate with each customer and made available on a first come, first served basis, and subject to Company obtaining sufficient gas to resell at such rate. With respect to "Spot Gas" Agreements for a period longer than one month, a copy of each such Supplement and amendments thereto, if any, in the form as agreed to by the parties shall be filed with the Mississippi Public Service Commission prior to any service being rendered thereunder and upon such filing said Agreement and this rider schedule shall be the applicable sales or services to such customer.