



AMERICAN PUBLIC GAS ASSOCIATION

February 22, 2011

FILED ELECTRONICALLY

David A. Stawick
Secretary, Commodity Futures Trading Commission
3 Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

**Re: Definition of Eligible Contract Participant, 75 Fed. Reg. 80,174, 17
CFR Part 240 (Dec. 21, 2010), RIN No. 3038-AD06**

Dear Mr. Stawick:

The American Public Gas Association (“APGA”) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“Commission”) proposed rule entitled, “Further Definition of ‘Swap Dealer,’ ‘Security-Based Swap Dealer,’ ‘Major Swap Participant,’ ‘Major Security-Based Swap Participant’ and ‘Eligible Contract Participant,’” 75 Fed. Reg. 80,174 (Dec. 21, 2010) (“Proposed Rules”). The Proposed Rules, proposed jointly with the Securities and Exchange Commission, further define the term “Eligible Contract Participant” (“ECP”) as provided in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”).¹

The Dodd-Frank Act amended the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.* (“Act”), to make it unlawful for non-ECPs to enter into a swap other than on, or subject to the rules of, a designated contract market (“DCM”).

APGA

APGA is the national association for publicly-owned natural gas distribution systems. There are approximately 1,000 public gas systems in 36 states and over 700 of these systems are APGA members. Publicly-owned gas systems are not-for-profit, retail distribution entities owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, and other public agencies that have natural gas distribution facilities.

APGA members regularly engage in swaps transactions to hedge or mitigate the risk of their purchase or sale of natural gas, including risks related to the making and taking of physical deliveries of natural gas. These hedging activities assist APGA members in maintaining long-term supplies of natural gas and enable them to mitigate price volatility in selling gas to their customers.

¹ Public Law No. 111-203, 124 Stat. 1376 (2010).

The Proposed Rules

A governmental entity or political subdivision thereof may qualify as an ECP if it has a demonstrable ability, directly or through separate contractual arrangements, to make or take delivery of the underlying commodity; or incurs risks in addition to price risk related to the commodity.² Almost all of APGA members would qualify as ECPs under the governmental entity definition. A few, however, may not. These entities may rely upon section 1a(18)(A)(v) of the Act to meet the definition of ECP³ or they may rely upon the Commission's 1989 Policy Statement Concerning Swaps Transactions ("1989 Policy Statement") to qualify as "appropriate persons" to enter into a swap. These entities generally are cooperatives.

APGA's Comments on the Proposed Rules

The Commission under section 1a(18)(C) of the Act has the authority to include within the definition of ECP "any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person." The Commission requested comment on whether any additional categories of ECPs should be included in the definition.

As noted above, certain APGA members, such as cooperatives, may be relying upon the 1989 Policy Statement to qualify as appropriate parties to transact swaps.⁴ The 1989 Policy Statement requires that the swap be undertaken in conjunction with an entity's line of business.⁵ In order to assure that such entities are able to continue to hedge the natural gas that they purchase for delivery to their customers, APGA requests that in addition to those entities which qualify as an ECP under the governmental entity definition (including joint action agencies), the Commission exercise its authority under section 1a(18)(C) of the Act and determine that public natural gas distribution companies, including member-owned co-operatives, that enter into swaps in connection with their business of supplying customers with natural gas are ECPs within the meaning of section 1a(18) of the Act.

Conclusion

As APGA has noted in the past, natural gas is a lifeblood of our economy and millions of consumers depend on natural gas every day to meet their needs. It is critical that the price that those consumers pay for natural gas comes about through the operation of fair and orderly markets. For this reason, APGA has long been supportive of the Commission's efforts to bring greater transparency to the over-the-counter swap markets. We appreciate the Commission's efforts to implement the new requirements for swap market participants and build a comprehensive framework on the foundation laid by the Dodd-Frank Act.

² See Section 1a(18)(A)(vii) of the Act.


³ Section 1a(18) of the Act defines an ECP to generally include "a corporation, partnership, proprietorship, organization, trust, or other entity" with total assets exceeding \$10 million, or if the entity is engaged in business-related hedging, a net worth exceeding \$1 million.

⁴ Cooperatives, because they may distribute their profits to members, may not have sufficient capital to meet the \$10 million total asset or \$1 million net worth tests of section 1a(18)(A)(v) of the Act.

⁵ Other factors include: the terms of the swap agreement are individually tailored; swap obligations are terminable only with the consent of the counterparty; the swap is not marketed to the general public; and there is an absence of a clearing organization on a margin system.

We would be happy to discuss our comments at greater length with the Staff. Please feel free to contact Bert Kalisch, President and CEO of APGA, David Schryver, Executive Vice President at 202-464-2742, or Paul M. Architzel of WilmerHale, outside counsel to APGA, at 202-663-6240.

Respectfully submitted,



Bert Kalisch
President & CEO
American Public Gas Association