International Power
GDF SUEZ

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OFFICE OF THE
SECRETARIAT

February 7, 2012

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Dear Chairman Gensler:

As the CFTC considers definitions for several key terms related to implementation of the Dodd-Frank Act, I wanted to take a moment and provide you with a few comments from IPR - GDF Suez Energy North America, about those definitions.

As we have noted previously, IPR – GDF Suez believes that the intent of the legislation was to reduce the risk posed by the largest financial companies and not to complicate and retard well-functioning markets that pose little risk to the economy. In this spirit, we think that a swap dealer should be defined as a company with ten billion dollars or more in gross notional swaps. Such a definition needs to exclude the notional value of hedges and assume no netting.

We have heard that the Commission is contemplating a *de minimis* amount of one billion dollars gross notional as the threshold for being considered a swap dealer. Setting such a low limit could require clearing and posting of cash collateral in the range of $125 to $450 million[1] for fully hedging just one new power plant, which will be a deterrent to building needed infrastructure, increase cost to consumers, and hinder the creation of jobs.

Let me give you an idea of the scope and scale of routine transactions in the power markets. If the power output of a new 500 MW[2] power plant in Texas is hedged for three years (starting in 2015), the notional hedging amount would total $640 million dollars. In Texas alone, IPR-GDF SUEZ owns five power plants currently and has less than 5% share of installed generation. The sort of transaction outlined above is typical for us.

Simply put, just two of these transactions would send us over the one billion dollar threshold and place us into the category of swap dealer, instead of an end-user. Surely, this was not the intent of the legislation.

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1 Potential Future Exposure, assuming 30% volatility and maximum exposure in 2015 (3 years) the 3-year hedge and no offsets from the spreads, is an additional $330 Million in cash collateral for variation margin.

2 Assuming a 50% capacity factor, 7500 MMBtu/MWh heat rate, $30/MWh spark spread, and $4.50 natural gas cost

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Irrespective of the threshold amount, we believe that the definition of a swap should exclude the following:

- all physical natural gas and power energy transactions unless a particular transaction includes the right to change the quantity based on a certain price threshold being reached;
- All electric power transactions based on locational marginal price (LMP) such as exists in ERCOT, ISO-New England, NYISO, and PJM or based upon the difference between the hourly LMP and the Day-Ahead or similar average; and
- All Congestion Revenue Rights, options on CRRs, Financial Transmission Rights (FTRs) or options on FTRs because such electric power transaction types do not involve the possibility of physical delivery of a commodity.

In addition to concerns about the swap dealer definition, we remain concerned about the implementation of the Volcker rule. Currently, investment banks play an important role in the ERCOT power market in Texas. That market is characterized by a number of large independent generation companies who are sub-investment grade (e.g., Luminant, NRG, and Calpine) as well as a large number (more than 200) of privately held small firms who are retail electric providers. The banks are instrumental in providing liquidity, credit intermediation and related market-making.

The banks actively buy from generators and resell to retail electric providers and other market participants such as ourselves. If the banks reduce their transaction capability of warehousing risk for fear they may trigger one of the 17 metrics under the Volcker rule, then the efficiency of the already less-liquid ERCOT market will suffer. The immediate impact if our top 2-3 suppliers reduce market activity could be to increase cost to our end users by $15 million[3], not including the cost of posting cash collateral. Our general credit risk policy is to do business with investment-grade counterparties. If the Volcker rule is implemented as contemplated, we will suffer from a loss of liquidity and the cost of crossing a bid-ask spread in hedging will probably increase to the point that we refrain from large scale hedging. Strict application of the Volcker rule will increase our risks in Texas.

The generators in ERCOT are inherently long spark spreads (they need to sell power and buy fuel in order to lock-in margins). They tend to hedge for longer tenors and in greater size. The retail electricity providers are short power and tend to hedge in smaller units based on the timing of their sales and in tenors that do not match standard wholesale transaction tenors. Banks provide an important risk warehousing (holding positions sometimes with a point of view on price) that may without examination of the structure of the market appear to be more like trading than risk warehousing for customers.

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[3] 30 TWh times $0.50/MWh increase in hedging cost

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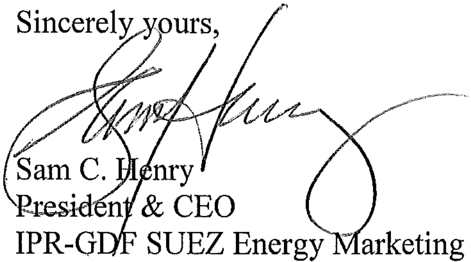
I look forward to working with you and the other Commissioners as we seek to fashion a regulatory regime that protects the economy from unnecessary risk, while ensuring that companies retain the capacity to manage their risk in the least costly, most efficient manner. I know we can meet the intent of Dodd-Frank, reduce costs, create jobs, and grow the economy. If we can be of any assistance, please do not hesitate to contact us.

Sincerely yours,



Sam C. Henry
President & CEO
IPR-GDF SUEZ Energy Marketing North America, Inc.

cc: Commissioner Chilton
Commissioner O'Malia
Commissioner Sommers
Commissioner Wetjen

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