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Office of the  
Secretariat

May 22, 2012

Mr. David A. Stawick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

COMMENT

Re: 17 CFR PART 1, RIN 3038-AD06. *" FURTHER DEFINITION OF "SWAP DEALER," "SECURITY-BASED SWAP DEALER," "MAJOR SWAP PARTICIPANT," "MAJOR SECURITY-BASED SWAP PARTICIPANT" AND "ELIGIBLE CONTRACT PARTICIPANT" and 17 CFR 1.3 (ggg)(6)(iii)*

Dear Secretary Stawick:

In response to the recent request for comments in connection with the subject rulemaking, IPR GDF SUEZ Energy Marketing North America, Inc. ("IPR-GSEMNA") offers the following suggestions for improvement:

- The costs of the Proposed Rule substantially outweigh the benefits, and the Commission's cost-benefit analysis should be redone.
- The Proposed Rule should be amended to clarify that commercial end-users can use both physical and financial products to hedge their commercial risks without jeopardy of being classified as a "swap dealer".

IPR GDF SUEZ Energy Marketing North America Inc. is the market-facing affiliate of IPR GDF SUEZ Energy North America ("IPR-GSENA") that procures fuel, sells wholesale power, and hedges on behalf of its affiliates in North America. The primary businesses of IPR-GSENA's North America affiliates are to produce electricity from 77 power plants located in North America; import LNG into the US; sell natural gas to utilities and other customers at wholesale; and, to sell electric power at retail in 11 states to commercial and industrial customers.

**Compliance Costs.** For our own company, IPR-GSEMNA, the costs of planning, implementing, and planned compliance with the Dodd-Frank legislation and resulting CFTC regulations was \$0.2 million in 2011, and is forecast to be \$0.25

million in 2012 and \$ 1 million in 2013. Our company is a commercial end-user and not a swap dealer. However, because we have moderate complexity and sufficient uncertainty about the application of the definition of “swap dealer,” we deemed it appropriate to spend those amounts for implementation planning and analysis. The CFTC rule estimates that the cost to industry to determine whether an individual entity’s activities involve dealing and the application of the *de minimus* threshold is \$42,000. Based on our experience to date, this estimate seems wholly unrealistic and grossly understated.

**Hedges involving both Physical and Financial Products.** As a participant in the global LNG trade, we procure LNG from foreign ports, load it into vessels, and import the cargoes into the U.S. In order to manage the risk that margins may erode, we hedge to lock-in margins (or cash flows). These transactions frequently involve the purchase or sale of a physical cargo whose price is tied to oil or natural gas, and then we use of an oil or natural gas swap to hedge. In addition, some of these transactions expose the company to foreign exchange risk so that commercial risk is hedged with a financial product. Under the proposed rules, the combination of using both physical and financial products to manage our end-user commodity risk may increase the likelihood of being classified as a “swap dealer”. We believe it was Congress’ intent not to subject commercial end-users to the burdens of being a “swap dealer”<sup>1</sup>.

Moreover, we (and other commenters) have consistently noted throughout the process that an overly broad or unduly complex rule would have deleterious effects on us, our customers, our trading partners, and the economy at large. We still think that is accurate.

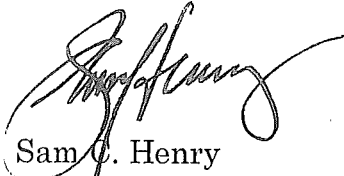
Hedges that are exempted should be both physical and financial on a permanent rather than interim basis. That approach will ensure that the Commission can focus on those market elements that pose the greatest amount of risk to the system and it will help us continue to properly hedge our risk in an appropriate and economical fashion.

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<sup>1</sup> Letter from Chairman Christopher Dodd, Committee on Banking, Housing and Urban Affairs, United States Senate, and Chairman Blanche Lincoln, Committee on Agriculture, Nutrition, and Forestry, United States Senate, to Chairman Barney Frank, Financial Services Committee, United States House of Representatives, and Chairman Colin Peterson, Committee on Agriculture, United States House of Representatives (June 30, 2010)

Finally, we are concerned that the approach chosen by the Commission in its proposed rule will result in many energy market participants exiting the market. This means that more risk will be concentrated in fewer places – an outcome directly contrary to the purposes of the Dodd-Frank Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam C. Henry", written in a cursive style.

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

CC: Hon. Gary Gensler, Chairman  
Hon. Jill Sommers, Commissioner  
Hon. Bart Chilton, Commissioner  
Hon. Scott O'Malia, Commissioner  
Hon. Mark Wetjen, Commissioner