

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

Further Definition of “Swap,” “Security-Based Swap,” ) RIN 3038-AD46  
and “Security-Based Swap Agreement;” Mixed Swaps; )  
Security-Based Swap Agreement Recordkeeping )

**COMMENTS OF THE  
GAS PROCESSORS ASSOCIATION**

Pursuant to the Joint Final Rule and request for comments issued August 13, 2012,<sup>1</sup> by the Commodity Futures Trading Commission (“CFTC” or “Commission”), the Gas Processors Association (“GPA”) files these comments in support of the arguments and relief requested by the Texas Pipeline Association (“TPA”) and Interstate Natural Gas Association of America (“INGAA”) in their respective October 12, 2012, filings in this docket.

**Background on GPA**

GPA is a non-profit trade organization made up of 130 corporate members, all of whom are engaged in the processing of natural gas into merchantable pipeline gas, or in the manufacturing, transportation, or further processing of liquid products from natural gas. GPA’s membership accounts for approximately 92% of all natural gas liquids produced by the midstream energy sector in the United States. Our members also produce, gather, transmit, and market natural gas and natural gas liquids, and include a number of Canadian and international companies that produce natural gas liquids on a global scale.

**Requested Clarifications**

As described in the TPA and INGAA filings, GPA urges the CFTC to (1) either eliminate or, at minimum, clarify the seventh prong of the Seven-Part Test provided in the Swap Definition Final Rule section addressing forward contracts with embedded options<sup>2</sup> and (2) either eliminate or, at minimum, clarify a paragraph included in the “Certain Physical Commercial Agreements, Contracts, or Transactions” subsection “Facility Service Agreement Guidance.”<sup>3</sup> The particular paragraph of concern suggests that an agreement for the usage of a specific facility (which should be a physical forward agreement and not a swap), will be subject to regulation as a commodity option solely based on the fact that

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<sup>1</sup> *Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Record Keeping; Final Rule*, 77 Fed. Reg. 48208 (Aug. 13, 2012) (hereafter, “Swap Definition Final Rule”).

<sup>2</sup> *Id.* at 48238.

<sup>3</sup> The subsection entitled “Physical Commercial Agreements, Contracts, or Transactions,” provides guidance with respect to “certain physical commercial agreements for the supply and consumption of energy that provide flexibility, including “transportation agreements on natural gas pipelines and natural gas storage agreements.” *Id.* at 28242.

it employs a “two-part” rate structure consisting of a “demand” or “reservation” charge and “usage fees, rents, or other analogous services charges not included in the demand charge or reservation fee.”<sup>4</sup>

GPA maintains that contracts for services such as gathering, transporting, processing, and storage of natural gas or natural gas liquids<sup>5</sup> are best described as sales of nonfinancial commodities for deferred shipment or delivery that are intended to be physically settled. The parties to such contracts enter them in order to obtain and maintain a specific natural gas service. This key characteristic of a physical settlement means such gas service contracts are forwards, not subject to the Commission’s jurisdiction. In addition, natural gas contracts for services such as gathering, transporting, processing, and storage do not have the characteristics of options, as described in the CFTC’s *1985 Interpretative Statement*.<sup>6</sup> GPA believes that the interpretations provided in the Swap Definitions Final Rule were intended to be consistent with and supportive of the CFTC’s precedent and historical approach on determining what is a swap. This intention can be accomplished by providing the relief requested by TPA, INGAA, and GPA.

Respectfully submitted,



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<sup>4</sup> The paragraph reads as follows:

*However, in the alternative, if the right to use the specified facility is only obtained via the payment of a demand charge or reservation fee, and the exercise of the right (or use of the specified facility or part thereof) entails the further payment of actual storage fees, usage fees, rents, or other analogous service charges not included in the demand charge or reservation fee, such agreement, contract or transaction is a commodity option subject to the swap definition.*

77 Fed. Reg. at 48242.

<sup>5</sup> For purposes of this request, the term “natural gas” means natural gas or natural gas liquids.

<sup>6</sup> *In the Matter of Cargill* at 28425.