



August 20, 2012

**VIA ONLINE SUBMISSION**

Mr. David Stawick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street N.W.  
Washington, D.C. 20581

**Re: Petition for Rulemaking to Amend CFTC Regulation 1.3(ggg)(4)**

Dear Mr. Stawick:

On July 12, 2012, the American Public Power Association ("APPA"), the Large Public Power Council ("LPPC"), the American Public Gas Association ("APGA"), the Transmission Access Policy Study Group ("TAPS") and the Bonneville Power Administration ("BPA") (collectively, the "Petitioners") filed a petition requesting the Commodity Futures Trading Commission ("CFTC" or "Commission"), pursuant to CFTC Regulation 13.2, to amend the newly issued CFTC Regulation 1.3(ggg)(4) implementing the *de minimis* exception to the definition of "swap dealer" ("Petition"). The National Corn Growers Association ("NCGA")<sup>1</sup> and the Natural Gas Supply Association ("NGSA")<sup>2</sup> respectfully submit these comments supporting the Petition and request that the Commission grant the petition as expeditiously as possible.

The Dodd-Frank Act created a new category of registered entities, swap dealers, who are subject to heightened regulatory requirements such as capital requirements, reporting and recordkeeping requirements, and internal and external business conduct standards. The definition of "swap dealer" in the Dodd-Frank Act further requires the Commission to provide a *de minimis* threshold of swap dealing activity in connection with transactions with or on behalf of customers, below which, market participants are not required to register as a swap dealer. Accordingly, in further defining the term "swap dealer," the Commission provided a general *de minimis* threshold amount of \$3 billion, subject to a phase in level of \$8 billion, and a *de minimis* level of \$25 million for swaps where the counterparty is a "special entity."

The Petition requests that the Commission exclude Utility Operations-Related

---

<sup>1</sup> Founded in 1957, NCGA is the largest trade organization in the United States, representing 37,000 dues-paying corn farmers nationwide and the interests of more than 300,000 growers who contribute through corn checkoff programs in their states. NCGA and its 48 affiliated state associations and checkoff organizations work together to create and increase opportunities for their members and their industry.

<sup>2</sup> Established in 1965, NGSA represents integrated and independent companies that produce and market approximately 40 percent of the natural gas consumed in the United States. NGSA encourages the use of natural gas within a balanced national energy policy and promotes the benefits of competitive markets to ensure reliable and efficient transportation and delivery of natural gas and to increase the supply of natural gas to U.S. customers

Swaps from the special entity sub-threshold. As defined by the requested amendments, “utility operations-related swaps” are swaps entered into by utility special entities to hedge or mitigate commercial risks “intrinsically related to the electric or natural gas facilities that the utility special entity owns or operates or its electric or natural gas operations (or anticipated facilities or operations), or to the utility special entity’s supply of natural gas and/or electric energy to other utility special entities or to its public service obligations (or anticipated public service obligations) to deliver electric energy or natural gas service to utility customers.” Moreover, the requested amendments specify that a “utility operations-related swap” does not include a swap for which the underlying commodity is interest rates, credit, or equity or currency asset classes. Therefore, the amendments sought by the Petitioners only would apply to commercial hedging transactions. NCGA and NGSA support the Petitioners’ request.

The current special entity *de minimis* threshold stands to further reduce liquidity in what is a naturally illiquid market for utility operations-related swaps. These swaps, which are used to mitigate and hedge risk, tend to be customized transactions based on the characteristics of Utility Special Entities’ physical energy needs and are transacted on illiquid regional or local swap markets. As a result, the swaps may vary significantly from one transaction to another and may not have standardized terms. Therefore, the pool of counterparties available to enter utility operations-related swaps generally is limited and often comprised of nonfinancial entities engaged in the electric, natural gas, or other aspects of the energy industry. Under the rule, if these nonfinancial counterparties engage in swap transactions in excess of the \$25 million notional amount (a notional amount that is significantly lower than the \$3 billion notional amount for other swap dealing activities) with special entities to help them manage their commercial energy procurement risks, the nonfinancial counterparty may be subject to registration as a swap dealer. Thus, these non-financial counterparties may be discouraged from entering into hedging swap transactions with special entities. Constraining the ability of these counterparties to participate in the market will impair special entities’ ability to mitigate risk and will likely concentrate the market among entities capable of meeting swap dealer obligations.

Ensuring the continued availability of cost-effective hedging tools is a cornerstone of our associations’ Dodd-Frank advocacy. In the interest of facilitating the use of these hedging tools and maintaining liquidity and participation in the utility operations-related swaps market, NCGA and NGSA respectfully request that the Commission grant the Petition and amend Regulation 1.3(ggg)(4) as requested by the Petitioners.

Sincerely,

Sam Willett  
Senior Director of Public Policy  
National Corn Growers Association  
Washington DC Office  
122 C Street NW, Suite 510

Jennifer Fordham  
Vice President, Markets  
Natural Gas Supply Association  
1620 Eye Street, NW  
Suite 700

Washington, DC 20001-2109  
202-628-7001  
e-mail: willett@dc.ncga.com

Washington, DC 20006  
Direct: 202-326-9317  
e-mail: jfordham@ngsa.org

cc: Honorable Gary Gensler, Chairman  
Honorable Jill E. Sommers, Commissioner  
Honorable Bart Chilton, Commissioner  
Honorable Scott O'Malia, Commissioner  
Honorable Mark Wetjen, Commissioner  
Jeffrey P. Burns, Assistant General Counsel  
Mark Fajfar, Assistant General Counsel  
Julian E. Hammar, Assistant General Counsel  
David E. Aron, Counsel  
Gary Barnett, Director, Office of General Counsel  
Frank Fisanich, Deputy Director