July 26, 2012

VIA ELECTRONIC SUBMISSION

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

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

Dear Mr. Stawick:

On July 12, 2012, the American Public Power Associations ("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"). BG Americas & Global LNG ("BGA") respectfully submits these comments supporting the Petition and requests that the Commission grant the petition as expeditiously as possible.

I. INTRODUCTION AND SUMMARY OF COMMENTS

BGA is a business unit of the BG Group plc ("BG Group"), a global natural gas company based in the United Kingdom and a major producer and supplier of natural gas in the United States. BGA is responsible for all of BG Group's operations in North and South America, the Caribbean, the company's global marine operations and its global liquefied natural gas ("LNG") operations.

BG Group owns natural gas producing assets in Louisiana and Texas known as the Haynesville Shale and in Pennsylvania and West Virginia known as the Marcellus Shale. BG Group is one of the largest suppliers of LNG to the U.S. and owns import capacity rights at Southern Union Company's Lake Charles, Louisiana ("Lake Charles") and El Paso Corporation's Elba Island, Georgia import terminals. BG Group also has an interest in associated liquids that are extracted from imported LNG at the Lake Charles LNG import terminal. BG Group's subsidiary, BG Energy Merchants, LLC ("BGEM"), is a major

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marketer of natural gas and electricity throughout certain markets in the U.S., natural gas liquids in the isolated market between Texas and Mississippi, and oil produced by BG Group in offshore Brazil to worldwide markets. BGEM regularly engages in swaps to hedge the commercial risk associated with BG Group's production and marketing activities relating to its natural gas, liquids and oil businesses. In addition, BGEM enters into swap transactions with government-owned utilities ("Utility Special Entities"), such as the Petitioners.

As discussed further below, BGA supports the Petition because the $25 million special entity sub-threshold will have the unintended consequence of discouraging market participants from engaging in swap transactions with special entities, such as the Petitioners.[1] In amending the Commodity Exchange Act ("CEA") by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), Congress did not intend to increase the risk management costs of, or create greater market risk for, special entities by limiting their access to swaps needed to hedge the risks associated with their commercial utility businesses.[2] Moreover, other amendments provided in the Dodd-Frank Act specifically authorize the Commission to, and contemplate that the Commission may, modify the *de minimis* exception to the definition of "swap dealer."

II. STATUTORY AND REGULATORY BACKGROUND ON THE *DE MINIMIS* EXCEPTION

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.[3] Accordingly, in further defining the term "swap dealer," the Commission provided a general *de minimis* threshold amount of $3 billion,

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[1] *See* 7 U.S.C. 6s(h)(2)(C) (defining "special entity" as "(i) a Federal agency; (ii) a State, State agency, city, county, municipality, or other political subdivision of a State. . . .")

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

[3] *See* section 721(a)(49)(D) of the Dodd-Frank Act.

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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."[4]

The Petition requests that the Commission exclude Utility Operations-Related 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."[5] 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. For the reasons set forth below, BGA supports the Petitioners' request.

III. THE COMMISSION SHOULD NOT IMPOSE A LOWER *DE MINIMIS* LEVEL FOR SPECIAL ENTITIES' UTILITY OPERATIONS-RELATED SWAPS.

A. THE CURRENT SPECIAL ENTITY SUB-THRESHOLD WILL HAVE THE UNINTENDED EFFECT OF LIMITING A SPECIAL ENTITY'S ABILITY TO HEDGE COMMERCIAL RISK.

Special entity market participants, such as the Petitioners, are nonfinancial commercial entities that may enter into futures, swaps, or options hedging transactions to mitigate commercial risk associated with their physical businesses in the electric energy and natural gas sectors. Due to significant variable factors directly impacting the electric and natural gas energy sectors, hedging transactions are necessary to ensure sufficient supplies and stable prices. Utility Special Entities may enter into swap transactions with financial entities or other nonfinancial commercial entities to manage the energy price risks associated with their commercial operations.

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[4] *Further Definition of ``Swap Dealer,'' ``Security-Based Swap Dealer,'' ``Major Swap Participant,'' ``Major Security-Based Swap Participant'' and ``Eligible Contract Participant,''* 77 Fed. Reg. 30596, 30632 (May 23, 2012) ("Entity Definitions Rule"). Although the Commission raised the proposed *de minimis* level from $100 million to $3 billion, the Commission did not raise the proposed *de minimis* level for swap dealing activity with special entities.

[5] Petition at *3.

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The swap transactions used by Utility Special Entities tend to be customized transactions based on the characteristics of their physical energy needs, and 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. The lack of standardized terms discourages many financial entities from entering into these tailored swap arrangements. Therefore, the pool of counterparties available to enter utility operations-related swaps generally is limited to other nonfinancial entities engaged in the electric, natural gas, coal or another aspect of the energy industry. 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 risks, they may be subject to registration as a swap dealer.[6] Thus, like the banks, these counterparties may be discouraged from entering into hedging swap transactions with special entities.

Because Utility Special Entities enter into to long-term service agreement obligations, construction projects, and fuel purchases, the commercial risks associated with these agreements similarly are also long-term and involve large notional amounts. The swaps used to hedge these cash market risks have correspondingly large notional amounts. The current special entity sub-threshold provides a significantly lower notional amount of swap dealing activity as compared to the general *de minimis* level. The special entity *de minimis* sub-threshold will discourage market participants such as BGA from entering onto swaps that have the effect of meeting the special entity's hedging needs. This, in turn, will limit the ability of special entities to enter into commercial risk hedging swap transactions. Given the already limited pool of counterparties willing to enter these highly customized swap transactions and the large notional amounts that may be the subject of one swap agreement, the special entity *de minims* sub-threshold will significantly reduce a Utility Special Entity's ability to enter into swap transactions to mitigate the commercial risks associated with its business.

B. THE DODD-FRANK ACT DOES NOT REQUIRE A LOWER *DE MINIMIS* LEVEL FOR SPECIAL ENTITIES.

The Dodd-Frank Act provisions protecting special entities do not mandate a lower *de minimis* level for swap dealing transactions with special entities. Instead, the relevant

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[6] Please note that such nonfinancial entities also may be entering swap transactions with special entities to hedge their own commercial risks, which would not trigger the swap dealer registration requirements.

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provisions of the Dodd-Frank Act applicable to special entities were meant to protect their interests. For example, swap dealers, when transacting with special entities, have enhanced regulatory duties under their external business conduct standards.[7] These protective provisions are not indicative of an intent to limit a special entity's legitimate and non-speculative hedging activities.[8] However, as promulgated (and as described above), the *de minimis* sub-threshold for special entities has the unintended consequence of limiting swap transactions entered into solely to hedge commercial risk.

IV. THE COMMISSION HAS THE AUTHORITY TO MODIFY THE *DE MINIMIS* LEVEL.

A. THE AMENDED CEA AND NEW REGULATION 1.3(GGG)

The Commission has the authority to grant the relief requested by the Petitioners and amend the *de minimis* sub-threshold for special entities. Section 1a(49)(D) of the CEA as amended by the Dodd-Frank Act provides that the Commission may promulgate regulations to exempt from registration any entity that engages in a *de minimis* amount of swap dealing activity.[9] Moreover, newly promulgated Regulation 1.3(ggg) explicitly provides for "future adjustments to scope of the *de minimis* exception."[10] Regulation 1.3(ggg) provides that the Commission, by rule or regulation, may adjust the *de minimis* threshold for exceptions to swap dealer registration. Pursuant to the authorization provided in the amended CEA and Regulation 1.3(ggg), BGA requests that the Commission amend the *de minimis* level as requested by the Petitioners.

B. THE COMMISSION SHOULD GRANT THE PETITION AS EXPEDITIOUSLY AS POSSIBLE

Regulations 13.3 and 13.4 require the Commission to provide notice and a public comment period when proposing or amending regulations. However, the Commission may waive the notice and public comment period, "[w]hen the Commission for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to

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7 *See Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties,* 77 Fed. Reg. 9734 (Feb. 17, 2012).

8 As Representative Colin Peterson explained on the House floor, "[Congress] focused on creating a regulatory approach that permits the so-called end users to continue using derivatives to hedge risks associated with their underlying businesses, whether it is energy exploration, manufacturing, or commercial activities." *See* 156 Cong. Rec. H5245 (daily ed. June 30, 2010)(statement of Rep. Peterson).

9 7 U.S.C. 1a(49)(D).

10 17 C.F.R. 1.3(ggg)(4)(v).

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the public interest."[11] BGA requests that the Commission grant the Petition as expeditiously as possible and to waive the notice and comment periods. Doing so would be in the public interest because market participants currently are evaluating their businesses, including their swap transactions with special entities, to determine whether they are required to register as swap dealers. The amendments requested by the Petitioners will allow market participants to enter into swap transactions with special entities to the same extent as with other counterparties.

IV. CONCLUSION

For the foregoing reasons, BGA respectfully requests that the Commission grant the Petition and amend Regulation 1.3(ggg)(4) as requested by the Petitioners.

Respectfully submitted,

/s/ Lisa Yoho
Lisa Yoho
Director, Regulatory Affairs

BG Americas & Global LNG

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

[11] 17 C.F.R. 13.5.

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