



February 14, 2012

Mr. Jacob J. Lew
Chief of Staff
Office of the Chief of Staff
The White House, 1/WW
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Mr. Cass R. Sunstein
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, NW
Washington, DC 20500

Mr. Gene B. Sperling
Assistant to the President for Economic Policy and
Director of the National Economic Council
National Economic Council
The White House, 2/WW
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Messrs. Jacob Lew, Gene Sperling and Cass Sunstein:

The undersigned energy trade associations, whose members serve nearly every electricity and natural gas customer in the United States, write to you today to voice our strong concerns with the proposed swap dealer rule being drafted by the Commodity Futures Trading Commission (CFTC) pursuant to the Wall Street Reform and Consumer Protection Act, more commonly referred to as "Dodd-Frank". It should be made clear that we have consistently voiced our support for the overall intent of Dodd-Frank. Dodd-Frank rightfully created a new regulatory regime for those systemically risky entities that created large exposures to counterparties in over-the-counter (OTC) derivatives markets. However, when it comes to the rulemaking process, we remain extremely concerned that Congressional intent is being ignored, or even circumvented, resulting in end-users being miscast by the CFTC as "swap dealers".

Currently, the CFTC's proposed swap dealer rule is overly broad and would result in commercial end-users who use swaps to hedge their commercial risk and reduce price volatility for their customers being misclassified as swap dealers. A close examination of the legislative history clearly demonstrates this was never the intent of Congress. As former Chairs Dodd and Lincoln stated in a letter to their House counterparts after passage of the Conference Report in the Senate:

"These entities [commercial end-users] did not get us into this crisis and should not be punished for Wall Street excesses...Congress does not intend to regulate end-users as Major Swap Participants or Swap Dealers just because they use swaps to hedge or manage their commercial risks associated with their business."

It is imperative that the Chairs' words and the language contained in the statute be properly implemented by the CFTC. Unfortunately, the signals that we have received from the CFTC lead us to believe that the draft final rule has taken an even more negative turn than the proposed rule from the end-users' perspective. Further, we are concerned that our public responses to the

proposed rule have not been given due consideration by the CFTC. Consequently, we write to you today with a sense of urgency as the rule is expected to become final later this month. Limiting the scope of this particular rule is critically important to our members because entities designated as swap dealers would no longer be able to use the end-user protections contained in Dodd-Frank and would, thus, be subjected to increased levels of margin and other collateral requirements. We believe such designations are contrary to Congressional intent. Furthermore, this action would needlessly increase the cost of hedging and reduce the capital available for capital investments and job creation by our members.

As you may know, derivatives provide electric and gas utilities, electricity providers, natural gas producers and energy companies with the ability to insulate our energy customers from wholesale commodity price volatility, and offer the stability and certainty that our respective members need to make critical capital investments that contribute to economic growth and job creation. However, the economic consequences of adopting an overly broad swap dealer rule will cause more harm to an already tumultuous economy with no regulatory gain.

It is our strong belief that the CFTC has the statutory authority to ensure end-users are not miscast as swap dealers in the final rule. In order to accomplish this objective, the CFTC's final swap dealer rule must use a clear dealer-trader distinction that delineates those firms trading for their own behalf, such as those hedging their commercial risk on behalf of their customers, and those firms acting as intermediaries between two counterparties. Drawing this distinction will ensure that the intent of Congress is followed during the rulemaking process.

Accordingly, we strongly urge you to voice your concerns about the proposed swap dealer rule to the CFTC and ensure that our members and consumers are not collateral damage from an overly broad and restrictive rule.

Sincerely,

American Gas Association
American Public Power Association
Edison Electric Institute
Electric Power Supply Association
Independent Petroleum Association of America
National Rural Electric Cooperative Association
Natural Gas Supply Association