June 7, 2013

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Chairman Gensler:

We understand that the CFTC may be considering changing the rules issued jointly with the SEC in the spring of 2012 that established a de minimis threshold of swap dealing activity in which a swap market participant can engage before the entity is required to register with the CFTC as a "swap dealer." We are concerned that such action not be taken without public notice, an opportunity for comment and a full consideration of the impact that such a change would have on the markets for physical commodity swaps and the ability of commercial end-users to hedge or mitigate commercial risks. We are concerned that there would be serious and unintended negative consequences for the United States energy commodity swaps markets, and the electric and gas utilities, energy companies and other commercial end-users that rely on such markets to hedge commercial risks of their electric and gas operations and physical assets.

A new category of market participants, swap dealers, was created by the Dodd-Frank Act. These swap dealers must register with the CFTC and are subject to extensive recordkeeping, reporting, business conduct standards, clearing, and in the future regulatory capital and margin requirements. However, the Act directed the CFTC to exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing. The CFTC and the SEC issued proposed rules for comment in early 2011. After review of hundreds of comments, a series of congressional hearings and after dozens of meetings with market participants, including our associations and other participants in the United States energy swap markets, the CFTC and the SEC jointly set this de minimis threshold at $8 billion for the first 5 years and then reduced to $3 billion absent CFTC action.

The CFTC taking unilateral action, without administrative process, to reduce the de minimis threshold level at this juncture would not be sound regulatory policy because it could result in commercial end-users being misclassified as swap dealers. Since swap dealers are subject to costly margin requirements and burdensome regulatory obligations, this misclassification would increase the cost associated with using swaps to hedge and mitigate commercial risk. A close examination of the Dodd-Frank legislative history clearly demonstrates that capturing end users as swap dealers was not the intent of Congress. As former Senate Banking Committee Chairman Dodd and former Senate Agriculture Committee Chairman Lincoln stated in a letter to their House counterparts after passage of the Dodd-Frank 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."

Lowering the de minimis limit and potentially misclassifying end-users as swap dealers would do nothing to increase the CFTC's ability to monitor for manipulation, excessive speculation, and systemic risk in energy markets. What it would do, however, is reduce a commercial end-user's ability to hedge its commercial risks, and impose unnecessary costs that will ultimately be borne by electric and gas consumers in the form of higher prices. With respect to greater transparency, we think Congress and the CFTC largely reached the right balance by requiring that swaps transactions entered into by end-users be subject to recordkeeping and reporting requirements as well as market manipulation provisions.

Finally, another unintended consequence of reducing the de minimis threshold would be a reduction in the number of swap market participants willing to engage in swap dealing activity in the energy commodity markets (where volatility has been historically high and gross notional amounts are significant given the long-term nature of the commercial risks being hedged). Counterparties engaged in swap dealing activity in such markets would reduce activity or even exit the space as opposed to being required to register and subject to costly swap dealer regulation. Loss of such market participants would result in a greater concentration of these transactions with systemically risky financial institutions.

Electric and gas utilities are in the business of providing safe, affordable and reliable electricity and natural gas. Wholesale markets for electricity and natural gas have historically been very volatile and utilities use swaps, commercial trade options and other derivatives for commercial risk hedging purposes to insulate their customers from this price volatility. The $8 billion de minimis threshold in the current CFTC rule is necessary and appropriate to allow utilities and other market participants to engage in these transactions ancillary to their broader energy commodity businesses, without incurring the higher costs associated with being a swap dealer.

Sincerely,

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

cc: The Honorable Debbie Stabenow, Chairwoman, Senate Committee on Agriculture, Nutrition and Forestry

The Honorable Thad Cochran, Ranking Member, Senate Committee on Agriculture, Nutrition and Forestry

The Honorable Frank Lucas, Chairman, House Committee on Agriculture

The Honorable Collin Peterson, Ranking Member, House Committee on Agriculture