



September 6, 2013

Via Electronic Service

Melissa Jurgens, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

Andy Menon, Counsel
Office of Commissioner Scott O'Malia
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Comments in Response to Notice of Meeting of the Technology Advisory Committee

Dear Mr. Menon:

The American Gas Association submits the following written statement pursuant to a Notice of Meeting of the Commodity Futures Trading Commission (“CFTC” or “Commission”) Technology Advisory Committee (“TAC” or “Committee”).¹ AGA supports the Commission’s efforts to standardize swap data reporting to provide a clear view of financial markets that end-users rely on to hedge commercial risk. We believe the Committee should serve as a transparent forum for stakeholder-driven data standardization, allowing end-users a reasonable opportunity to understand how reporting program changes could impact their compliance obligations. The Committee should also provide guidance on what Part 45 reporting field accommodations should be made for easier reporting of physical commodity options, and recommend to the CFTC that commodity trade options between a financial entity and an end-user should be reported on Form TO rather than to swap data repositories (SDRs). Finally, the Committee should provide guidance that standardization activities aimed at improving SDR data would not require non-reporting counterparties to participate on SDRs, or pay SDR fees, given that the Part 45² rules intend reporting counterparties to bear these obligations.

I. Statement of Interests

AGA represents more than 200 local energy companies that deliver clean natural gas throughout the United States. More than 65 million residential, commercial and industrial natural

¹ Notice of Meeting, Technology Advisory Committee, 78 Fed. Reg. 50040 (August 16, 2013).

² Swap Data Recordkeeping and Reporting Requirements, Final Rule, 17 C.F.R. Part 45, 77 Fed. Reg. 2136 (January 13, 2012) (hereinafter “Part 45 Final Rule”).

gas customers, or more than 175 million Americans, receive their gas from AGA members. AGA member companies provide natural gas service to retail customers under rates, terms and conditions that are regulated at the local level by a state commission or other regulatory authority with jurisdiction. They use financial tools to hedge the commercial risks associated with providing natural gas service to customers, such as commodity cost volatility. These tools include futures contracts traded on CFTC-regulated exchanges and over-the-counter energy derivatives. AGA members also participate in the physical natural gas market and contract for pipeline transportation, storage and asset management services in order to procure and deliver affordable, reliable natural gas to their customers. AGA members have an interest in transparent and efficient financial markets for energy commodities, so that they can engage in risk management activities at reasonable cost for the benefit of America's natural gas consumers. Under CFTC rules, AGA member companies are classified as non-financial entities, or "end-users" of futures and swaps.

II. **Providing a Forum for Stakeholder - Driven Data Standardization**

AGA supports the CFTC's goals to obtain better swap transaction data and provide a clear view of financial markets that end-users rely on to hedge commercial risk. However, as the swap data standardization process may involve substantive changes to end-users' compliance obligations under the Part 45 rules, we believe the Committee should provide a public process for end-users to actively participate in standardization discussions and provide comments, before changes are implemented.

Currently, there are limited procedural mechanisms for the CFTC to provide market participants sufficient notice about Part 45 reporting program changes that are being communicated to SDRs. The implications of this ad-hoc process have been raised in a letter from energy end-user associations to the CFTC Office of Data and Technology.³ The Associations requested that the CFTC avoid changing reportable fields for swaps transactions until all reporting deadlines take effect for end-users, and asked that any changes be made through a transparent, stakeholder-driven process that includes a proposal of changes to be made, and an opportunity for public comment. AGA shares the Associations' concern that if data standardization efforts continue to be issued through a private exchange of information between the CFTC and the SDRs, end-users could face new compliance obligations without having an opportunity to be heard. AGA further agrees with the Associations that changes to the reporting of material economic terms for swaps in different asset classes should be proposed by asset class, and that the CFTC should not rely on SDRs to represent the views of energy end-users or any other class of market participants. Conversely, the CFTC should also not rely on SDRs to communicate the agency's views on how market participants should comply with the Part 45 rules.

In addition to the need for a transparent administrative process and direct communication between the agency and market participants, there are serious policy considerations at stake that merit the Committee's attention. While sophisticated financial entities that the CFTC has historically regulated may be able to quickly adapt and modify their reporting systems to comply with new requirements that they first learn of from SDRs, end-users do not have the same resources or experience at their disposal. Recognizing this fact, Dodd-Frank, and the Part 45 reporting hierarchy in turn, were designed to place the smallest reporting burden on end-users. And yet, for a number of reasons, there are now hundreds of energy end-users alone that currently are or will be reporting swaps to at least one SDR. Under these circumstances, end-users require a reasonable opportunity to understand how proposed data standardization changes could impact their current

³ *Harmonization of SDR Data Fields*, Letter from the NGSA, EEI, NRECA, APPA and EPSA Regarding Harmonization of SDR Data Fields (Filed July 3, 2013), at www.ngsa.org/download/Changing%20Reporting%20Requirements%20Letter_Final%2007032013.pdf

and future compliance obligations. AGA members, for example, are investor-owned, publicly regulated utilities that flow through the costs of regulatory compliance in customer rates. They need an opportunity to understand the potential impacts of Dodd-Frank reporting program changes on their existing compliance programs, air any concerns before the CFTC, get answers from the agency, and explain to their state regulators and stakeholders why new resources may be required for Dodd-Frank compliance activities.

AGA shares and appreciates Commissioner O'Malia's views that the CFTC should address data and technology challenges through an ultimate re-proposal of portions of the Part 45 rules.⁴ In the interim period, however, AGA urges the Committee to consider how it could facilitate a stakeholder-driven process for data standardization efforts that gives end-users a fair opportunity to be heard and add valuable, collaborative insights that will only further the CFTC's goal to obtain useable data from the Part 45 reporting program. In any instance where data standardization efforts could result in changes to regulated entities' compliance obligations under the Part 45 rules, the Committee should provide notice and a process for market participants to ask questions and determine the extent of the proposed changes' impact on their compliance obligations. For example, the Committee could communicate proposed changes through public press releases, solicit comments on proposals at the Committee's public meetings, or provide notice of proposed changes in the Federal Register. To the extent that the Committee receives significant feedback that market participants' compliance obligations would be affected by proposed changes, AGA encourages the Committee to convey this feedback to the Commission in a recommendation for an expedited rulemaking before making changes to the reporting program.

III. **Swap Data Repository Reporting Issues**

Certain SDR reporting issues are uniquely tied to end-users that are counterparties to commodity swaps and commodity "options" that may or may not be reported to an SDR, even as the CFTC has created a more simplified program for reporting trade options. In the absence of Commission action responding to public comments regarding the product definition and trade option rules, AGA urges the Committee to take steps to better facilitate the reporting of these transactions and ultimately make a recommendation to the Commission for further guidance. AGA submits the following issues for the Committee's consideration and further action.

A. Status of Trade Options Reporting to SDRs

The CFTC's interim final rule regarding commodity options created an exemption from Part 45 reporting for commodity trade options to allow end-users to report their Trade Options on an annual, aggregated form filing known as "Form TO".⁵ However, the rule permitted an end-user to use Form TO only where the end-user was not also reporting other swaps transactions (non-trade options) pursuant to Part 45 reports to an SDR.⁶ The Commission then issued no-action relief for end-users, allowing all end-users to report commodity trade options on Form TO, irrespective of

⁴ See Statement by Commissioner Scott O'Malia, Staff No-Action Letters Regarding Data Reporting Rules (Part 43, 45 & 46) (April 9, 2013).

⁵ Commodity Options, Final Rule, 78 Fed. Reg. 25320 (April 27, 2012).

⁶ *Id.* at 25327 (stating: "if any trade option involves at least one counterparty (whether as a buyer or seller) that has (1) Become obligated to comply with the reporting requirements of Part 45, (2) as a reporting party, (3) during the twelve month period preceding the data on which the trade option is entered into, (4) in connection with any non-trade option swap trading activity, *then* such trade option must also be reported pursuant to the reporting requirements of part 45. If only one counterparty to a trade option has previously complied with the part 45 reporting provisions, as described above, then that counterparty shall be the part 45 reporting entity for the trade option.") (emphasis original).

whether or not they were reporting other swaps to SDRs. However, the interim final trade option rule still requires that where an end-user enters into commodity trade options with a swap dealer, the latter would be required to report these trade options to an SDR.⁷

The natural gas marketplace is facing tremendous uncertainty and confusion with respect to how to classify physical commodity transactions consistent with the CFTC's rules, particularly on the issue of whether physical energy contracts containing flexible delivery terms are swaps, trade options or forwards excluded from the definition of swap. Until these issues are resolved, the scope and nature of energy transactions reported to SDRs may vary dramatically over time, and some counterparties will report certain physical transactions to SDRs while others avail of Form TO. AGA is concerned that the varied interpretation of the trade option exemption will result in inconsistent, inaccurate or duplicative reporting of these transactions if financial entities roll this reporting into their Part 45 reporting of other swaps with end-user counterparties. End-users in the energy industry are experiencing the very regulatory compliance uncertainties that the no-action letter regarding trade options was intended to eliminate. For example, the reporting of physical energy commodity options in Part 45 reporting fields, which were designed for financial swaps, has proven to be a resource-draining exercise for both SDRs and market participants – akin to fitting a round peg in a square hole.

For these reasons, AGA respectfully requests that the Committee recommend that the CFTC provide formal guidance responding to industry comments and allow all trade options entered into with an end-user to be reportable on Form TO. Without such a change, the inconsistent reporting of Trade Options on Form TO and in SDR reports will hinder the Commission's goal to receive accurate data through the swaps reporting program and create additional regulatory uncertainties for the energy industry. Until the Commission responds to outstanding comments in the product definition and trade option rulemaking dockets, AGA urges the Committee to consider what accommodations or re-designs to Part 45 reporting fields may be necessary, and how data standardization efforts must be tailored by asset class, so that physical commodity options can be more easily reported.

B. Ensuring the Accuracy of Reported Data While Limiting Burdens on Non-Reporters

Until the Commission answers requests for further guidance on what is a reportable “swap”, there will continue to be disagreements in the marketplace about the format and the analysis that should govern whether or not certain physical energy contracts are reportable swaps. Non-reporting end-user counterparties will continue to have significant concerns about the extent of their responsibilities if the party assuming reporting obligations incorrectly reports data to the SDRs, or the SDRs incorrectly record and reflect this data. AGA urges the Committee to provide guidance to end-users that data standardization activities aimed at improving SDR data do not require non-reporting counterparties to commit resources, such as paying SDR fees, to confirm, verify the accuracy of, or discover and report errors and omissions in how data is reported to, or recorded and reflected by the SDRs.

Currently, the Part 45 rules provide that non-reporting counterparties to a swap bear an obligation to report all data errors which are discovered, and do not require either of the swap counterparties to monitor data in an SDR.⁸ However, the Part 49 rules for SDRs note that an SDR must obtain acknowledgement from both counterparties as to the accuracy of reported data, and also

⁷ *Id.* (Explaining that if only one counterparty is a Part 45 reporter of swaps, then that same counterparty shall be the Part 45 reporting entity for the trade option as well).

⁸ Part 45 Final Rule, at 2170.

requires the SDR to transmit information to both parties regarding errors or omissions that are subsequently reported.⁹ In the absence of clarity regarding their obligations, end users will continue to have significant concerns that data reported on their behalf may be inconsistently reported and reflected in SDRs. AGA urges the Committee to clarify that data standardization activities aimed at improving data submissions from SDRs to the Commission do not require non-reporting counterparties to make substantial resource commitments to verifying swap transaction data reported to SDRs, given that the Part 45 rules indicate that reporting parties bear these obligations. The Committee should also consider at its upcoming meeting how the CFTC can fulfill its mission to protect the integrity and accuracy of swap data across all registered SDRs while also preserving the limited burdens that the Part 45 rulemaking intends to place on non-reporting counterparties, particularly end-users.¹⁰

AGA thanks Commissioner O'Malia and the Committee for the opportunity to raise these concerns. We believe the Committee has an important role to play in providing specific guidance to end-users, and in facilitating a stakeholder-driven data standardization process that will serve the goals of the regulated industry and the Commission to improve data quality, support market transparency and ensure that regulatory compliance obligations are clear, reasonable and consistent with the intent of the Part 45 reporting program to limit reporting burdens on non-financial end-users.

Respectfully Submitted,



Arushi Sharma
Counsel, Regulatory Affairs
American Gas Association
400 N. Capitol St., NW
Washington, DC 20001
asharma@aga.org | 202.824.7120

⁹ Swap Data Repositories: Registration Standards, Duties and Core Principle, 17 C.F.R. § 49.11, 76 Fed. Reg. 54528, at 54579 (September 1, 2011).

¹⁰ Part 45 Final Rule, at 2170.