



American Public
Gas Association



American Public Power Association



Large Public Power Council

June 17, 2010

Chairman Barney Frank
House Financial Services Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Frank:

On behalf of the American Public Gas Association, American Public Power Association and Large Public Power Council, we express our strong concerns with language being considered by the Wall Street Reform and Consumer Protection Act Conference Committee that would require swap dealers to have a fiduciary duty towards state and local governments. This requirement would significantly impact, and perhaps eliminate, the ability of our members to hedge on behalf of their customers.

Public gas and power systems provide gas and electric service to approximately 50 million customers in the U.S. Our members are not-for-profit, entities owned by, and accountable to, the citizens they serve.

Our members purchase firm energy supplies in the physical delivery market at market prices. They also enter into OTC derivative agreements on an on-going and routine basis in connection with their physical delivery contracts in order to reduce consumers' exposure to price volatility. By using both the physical and the OTC derivatives markets, they are able to purchase firm deliveries of natural gas and electricity from a diverse set of suppliers while hedging the risk of future market price fluctuations. Similarly our members use OTC interest rate swaps to hedge borrowing costs for capital expansions, reducing consumers' exposure to volatile interest rates.

Swap dealers enter into swap transactions on an "arm's length" basis as counterparties to the end-user. As the counterparty to a swap transaction, the swap dealer takes the opposite side of transactions from the end-user. Accordingly, it is inconsistent with the fundamental structure of a swap transaction to provide that the dealer should also act as a fiduciary. We are extremely concerned that the ultimate result of this provision would be that our members would no longer be able to use these markets to hedge on behalf of their customers, thus subjecting them to greater price volatility and increased rates.

We understand that there may be an effort in conference committee to amend this provision. We strongly support the removal of the fiduciary duty language. However, it is critical that any effort to amend or replace this language preserve the ability of public gas and power systems to utilize these markets on behalf of their consumers.

For example, we are concerned about potential provisions that would require our members to hire a third-party advisor to approve all of their transactions. Many of our members routinely utilize OTC derivatives for hedging purposes and as a result have invested in and maintained significant in-house expertise in constructing appropriate hedge strategies. In cases where in-house expertise is readily available, it makes no sense to require a utility to incur the additional costs of hiring a third-party advisor.

We are also concerned about legislation that would place a standard of care on the swap dealer that would make it difficult, if not impossible, for swap dealers to enter into transactions with public gas and power systems. Any standard of care imposed on a swap dealer must ensure that the swap dealer will continue to be able to enter into transactions with public gas and power systems. A standard of care must also not impose additional cost burdens on the utility or require our members to share proprietary information with the swap dealer. As non-profit utilities, any additional costs incurred by our members will be passed on to their consumers.

We do not oppose greater regulation of swap transactions entered into by municipal entities that are episodic users of the OTC swap markets. We agree that public authorities that lack expertise and are infrequent participants in the market may benefit from protections, provided that a workable standard of care is used. However, our members routinely enter into transactions in these markets and are experienced in their risk-management practices. Additionally, established hedge policies are typically set by hedge committees that meet regularly to insure that the activity is consistent with sound risk management parameters.

We look forward to working with you towards establishing an appropriate balance between providing a strong level of protection for state and local governments while preserving our ability to continue to use these markets to protect our customers from market volatility.

Sincerely,



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