



May 6, 2010

Honorable Blanche L. Lincoln
Chairman
Senate Agriculture, Nutrition & Forestry Committee
U.S. Senate
Washington, D.C. 20510

Dear Chairman Lincoln:

On behalf of the American Public Gas Association, American Public Power Association and Large Public Power Council, we urge you to amend the provision of Section 731 of the Restoring American Financial Stability Act of 2010 that would add to the Commodity Exchange Act a new section 4s(h)(2), which mandates that swap dealers have a fiduciary relationship when entering into swaps with all state and local governments and instrumentalities. The provision as currently drafted would significantly impact, and perhaps eliminate, the ability of our members to hedge on behalf of their customers in the over-the-counter (OTC) derivatives market.

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, retail distribution entities owned by, and accountable to, the citizens they serve.

Our members purchase firm 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.

Section 731 of the financial reform legislation currently being debated on the Senate floor would provide that swap dealers have a fiduciary duty towards state and local governments. However, 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. Because of their routine use of OTC derivatives for hedging purposes, many of our members have invested in and maintain significant in-house expertise in constructing appropriate hedge strategies using OTC derivatives instruments. Others that do not have in-house expertise band together in joint-action agencies which are able to provide such hedging expertise or engage outside advisors. Our members do not rely upon swap dealers for advice in constructing hedge strategies. Moreover, many of our members would be reluctant to share proprietary information that a swap dealer might require as a consequence of acting as a fiduciary.

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 the protections of this provision. However, our members routinely enter into transactions in these markets and are experienced in their risk-management practices. For example, our members frequently have established hedge policies with hedge committees that meet regularly to insure that the hedge activity is consistent with sound risk management parameters set by the hedge committees.

We strongly urge you to provide an exemption from the assignment of fiduciary duty on a swap dealer when such dealer enters into transactions with an energy end-user who routinely purchases or sells a physical commodity and has significant portfolios and investment history using OTC derivatives. We believe that a narrowly-crafted exemption would provide 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. The legislation as written is simply not workable, and we therefore would support such an exemption or some other sort of alternative to allow our members to continue to participate in these transactions.

We thank you in advance for your consideration.

Sincerely,



American Public Gas Association



American Public Power Association

American Public Power Association



Large Public Power Council