The Business Council for Sustainable Energy®

April 29, 2014

The Honorable Frank Lucas, Chair
House Agriculture Committee
2311Rayburn House Office Building
Washington, DC 20515

The Honorable Collin Peterson, Ranking Member
House Agriculture Committee
2109 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Lucas and Ranking Member Peterson:

As the House prepares to review and reauthorize the Commodity Futures Trading Commission (CFTC) oversight of the futures and swaps markets, the Business Council for Sustainable Energy (BCSE) wishes to express its support for provisions in HR 4413 that provide relief for energy end-users using physical contracts with volumetric optionality and ensure that non-financial, physical energy delivery agreements are not regulated as swaps.

The Business Council for Sustainable Energy is a coalition of companies and trade associations from the energy efficiency, natural gas and renewable energy sectors, and also includes independent electric power producers, investor-owned utilities, publicly-owned utilities, and commercial end-users. Founded in 1992, the Council advocates for policies that expand the use of commercially available clean energy technologies, products and services. The coalition's diverse business membership is united around the revitalization of the economy and the creation of a secure and reliable energy future for America. A document with information about BCSE is attached for your reference.

Today's energy mix in the United States is radically different from that of a generation ago. The 2014 edition of the *Sustainable Energy in America Factbook* – produced for the Business Council for Sustainable Energy by Bloomberg New Energy Finance–documents this shift and demonstrates how energy efficiency, renewable energy and natural gas are contributing to the country's move towards cleaner energy production and more efficient energy usage. Findings from the 2014 *Factbook* include:

- Natural gas and renewable energy provided over 40 percent of U.S. electricity generation in 2013, down slightly from 2012, but up 10 percent since 2007.
- U.S. energy use has fallen 5 percent from 2007 to 2013, while GDP is estimated to have grown by 6 percent. This demonstrates the increased energy productivity of the U.S. economy.
- Clean energy generation sources and energy efficiency improvements have driven U.S. greenhouse gas emissions down nearly 10 percent since 2005, dramatically reversing decades of increases. The U.S. is now more than halfway to reaching President Obama's goal of a 17 percent reduction from 2005 levels by 2020.

The *Factbook* notes the complimentary relationship between natural gas and renewables, as natural gas-fired electricity generation can quickly ramp up or down to meet changes in demand, and can complement the integration of variable energy resources. This relationship is one way in which generators and grid operators are meeting the electricity needs of the country. Information about the *Factbook* is attached for your reference. For a complete copy of the *Factbook* please visit our website at http://www.bcse.org/sustainableenergyfactbook.html.

These trends highlight the importance of ensuring that energy markets are able to function efficiently and that market

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rules recognize the interplay between a range of clean energy technologies and resources as we move to a more diverse energy system. Important to the interplay between clean energy technologies are forward contracts that include a degree of flexibility in the final delivery terms. These contracts allow market participants to adjust delivery volumes in response to changes in supply and demand requirements at the time of delivery. For example, on a day when weather conditions are not conducive to variable sources, a power generator may call on a greater volume of natural gas and can do so using the flexibility built into a forward contract. Importantly, the intent to physically deliver remains despite the flexibility in the final delivery terms.

In the implementation of the Dodd-Frank Act, the CFTC's definition of the term "swap" provides an interpretation that an agreement, contract or transaction with embedded optionality falls within the forward exclusion (and is not a swap) when seven criteria are met. However the seven-criterion test is ambiguous in its application to forward contracts and could result in the CFTC regulating forward contracts with such flexibility as swaps. This ambiguity creates uncertainty that may limit the willingness of market participants to use volumetric flexibility.

In light of the uncertainty created by the seven-criterion test, clarity regarding the applicability of the forward-contract exclusion to a physical contract with volumetric flexibility has become essential to energy producers and consumers. The swap definition is fundamental to implementation of the CFTC's new Dodd-Frank rules and the availability of cost-effective risk management tools is important to many in the energy markets. The BCSE supports the provisions in the CFTC reauthorization legislation that provide relief for energy end users who use physical contracts with volumetric optionality and ensure the continued availability of cost effective hedging tools.

Sincerely,

Lisa Jacobson, President
Attachments (3)

Cc: Members of the House of Representatives