

agencies—and last year the House voted 411–12 to pass legislation to exempt end users from margin requirements. H.R. 4413 includes that critical exemption and a number of other fixes that would ensure non-financial companies would be protected from burdensome and unnecessary regulations, consistent with Congress's clear intent almost four years ago.

The Chamber also supports provisions in this bill intended to promote transparency and accountability in the CFTC's rule-making process, including a requirement to conduct a cost-benefit analysis for new rules, and the creation of an Office of the Chief Economist to support such analysis. Cost-benefit analysis has been a fundamental tool of effective government for more than three decades, and these requirements would help protect Main Street businesses, investors, and consumers from some of the unintended consequences of regulation.

Additionally, H.R. 4413 contains a number of sensible provisions that would promote principles of good governance, including providing market participants with more certainty regarding “no action” letters issued by the CFTC staff, and a requirement that the CFTC develop internal risk control mechanisms in order to protect sensitive market data. These are common sense measures that would help make the CFTC a more effective and accountable regulator, and the Chamber appreciates their inclusion in this bill.

The Chamber strongly urges you to vote in favor of H.R. 4413 and may consider including votes on, or in relation to, this bill in our annual How They Voted scorecard.

Sincerely,

R. BRUCE JOSTEN.

BUSINESS ROUNDTABLE,  
Washington, DC, June 16, 2014.

Hon. JOHN BOEHNER,  
Speaker, House of Representatives,  
Washington, DC.

Hon. FRANK LUCAS,  
Chairman, Committee on Agriculture, House of  
Representatives, Washington, DC.

Hon. NANCY PELOSI,  
Minority Leader, House of Representatives,  
Washington, DC.

Hon. COLLIN PETERSON,  
Ranking Member, Committee on Agriculture,  
House of Representatives, Washington, DC.

DEAR SPEAKER BOEHNER, MINORITY LEADER PELOSI, CHAIRMAN LUCAS, AND RANKING MEMBER PETERSON: On behalf of the more than 200 member CEOs who lead major American companies operating in every sector of the U.S. economy, I wish to convey Business Roundtable's strong endorsement of H.R. 4413, the Customer Protection and End-User Relief Act, as reported by the House Committee on Agriculture, which would reauthorize the U.S. Commodity Futures Trading Commission (CFTC).

In particular, Business Roundtable strongly supports important provisions included in H.R. 4413 that will reform derivatives regulation to focus more effectively on addressing potential systemic economic risk.

H.R. 4413 incorporates H.R. 634, the Business Risk Mitigation and Price Stabilization Act of 2013, which would ensure that non-financial derivatives end-users, who pose no systemic risk to the U.S. economy, are not subject to unnecessary margin requirements. This bill passed the House of Representatives last year by a strong bipartisan vote of 411–12 and is needed more than ever due to the uncertainty associated with differing margin proposals from the financial regulators.

H.R. 4413 also incorporates key provisions of H.R. 677, the Inter-Affiliate Swap Clarification Act, which was reported favorably out of both the House Financial Services and

House Agriculture Committees last year. The language in H.R. 4413 would ensure that end-users are not subject to clearing requirements applicable to banks simply because they trade through efficient, cost-effective centralized treasury units (CTUs).

A recent survey conducted by the Coalition for Derivatives End-Users of chief financial officers and corporate treasurers underscores the urgent need for the end-user provisions in H.R. 4413. Eighty-six percent of respondents indicated that fully collateralizing over-the-counter (OTC) derivatives would adversely impact business investment, acquisitions, research and development, and job creation, and more than nine in ten end-users indicated that a margin requirement would cause them to alter their hedging strategy.

Nearly half of the survey respondents use CTUs to execute OTC derivatives. The CFTC has issued no-action relief so that some end-users that employ CTUs may avail themselves of the clearing exception. However, the survey found that of those respondents that utilize a CTU structure, 69 percent do not qualify for the CFTC's no-action relief or are unsure about whether they could rely on the relief. Thus, a legislative solution is essential.

Business Roundtable supports efforts to increase transparency in the derivatives markets and enhance financial stability for the U.S. economy through thoughtful new regulation while avoiding needless costs. We appreciate you moving this legislation forward and urge the House of Representatives to pass this vital, bipartisan legislation to ensure that derivatives regulation addresses real economic risks without adversely affecting non-financial end-users who utilize derivatives to reduce risk.

Sincerely,

ALEXANDER M. CUTLER,  
Chairman and Chief  
Executive Officer,  
Eaton; Chair, Corporate  
Governance  
Committee, Business  
Roundtable.

## CUSTOMER PROTECTION AND END USER RELIEF ACT

SPEECH OF

**HON. K. MICHAEL CONAWAY**

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, June 23, 2014

The House in Committee of the Whole House on the state of the Union had under consideration the bill (H.R. 4413) to reauthorize the Commodity Futures Trading Commission, to better protect futures customers, to provide end users with market certainty, to make basic reforms to ensure transparency and accountability at the Commission, to help farmers, ranchers, and end users manage risks to help keep consumer costs low, and for other purposes:

Mr. CONAWAY. Mr. Chair, I submit the following exchange of letters:

AMERICAN PUBLIC POWER ASSOCIATION,  
Washington, DC, June 16, 2014.

Hon. FRANK D. LUCAS,  
Hon. COLLIN C. PETERSON,  
Committee on Agriculture, House of Representatives,  
Washington, DC.

DEAR CHAIRMAN LUCAS AND RANKING MEMBER PETERSON: On behalf of the American Public Power Association (APPA), I am writing in support of House passage of H.R. 4413, the Customer Protection and End-User Relief Act. The legislation includes important

relief for public power utilities and other end-users seeking to use swaps to hedge commercial-operations risks. APPA is the national service organization representing the interests of more than 2,000 not-for-profit, locally-owned electric utilities in the United States. These public power utilities are in every state in the nation (except Hawaii) and provide power to more than 47 million Americans.

In particular, the legislation incorporates the provisions of H.R. 1038, the Public Power Risk Management Act (PPRMA). As you know, PPRMA was approved on a 423–0 vote in the House on June 12, 2013, and has since been introduced on a bipartisan basis in the Senate. The legislation is needed to address Commodity Futures Trading Commission rules which resulted in public power utilities losing—on average—half the available counterparties to swaps needed to hedge their commercial operations risks. The legislation will allow public power utilities to hedge commercial-operations risks on an even playing field with other end users in the power and natural gas utility sector. This means continued reliable power at affordable—and predictable—prices to customers.

H.R. 4413 would take other important steps to improve protections for consumers and commercial end users. By addressing issues related to margin requirements for non-financial end-users, the definition of “bona fide hedging,” swap reporting in illiquid markets, and forward contracts with volumetric optionality, the bill improves the CEA to better reflect the needs of end users.

Finally, we praise the clarity provided as to the intent of the legislation in the accompanying committee report and the changes made to the bill in response to legitimate concerns raised by other stakeholder groups. We understand that concerns remain and hope that you will continue to work toward consensus. We stand ready to assist if we can.

Thank for your continued efforts.

Sincerely,

SUSAN N. KELLY,  
President & CEO.

AMERICAN GAS ASSOCIATION,  
Washington, DC, March 26, 2014.

Hon. FRANK D. LUCAS,  
Chairman, House Committee on Agriculture,  
Washington, DC.

Hon. COLLIN C. PETERSON,  
Ranking Member, House Committee on Agriculture,  
Washington, DC.

DEAR CHAIRMAN LUCAS AND RANKING MEMBER PETERSON: The American Gas Association appreciates the opportunity to support the Committee in its efforts to review the Commodity Exchange Act (CEA) and reauthorize the Commodity Futures Trading Commission (CFTC). AGA supports H.R. 4267, a bill to amend the CEA to provide relief for end-users that use physical contracts with volumetric optionality, as providing necessary regulatory clarity to energy end-users. In particular, AGA believes H.R. 4267 will protect natural gas utilities' ability to mitigate commercial risk and restore the contractual innovation and liquidity in physical natural gas markets that gas utilities rely on to deliver affordable, reliable natural gas to America's energy consumers.

The American Gas Association (AGA), founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 71 million residential, commercial and industrial natural gas customers in the U.S., of which 94 percent—over 68 million customers—receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas

pipelines, marketers, gatherers, international natural gas companies and industry associates. Today, natural gas meets more than one-fourth of the United States energy needs.

AGA members are regulated energy utilities that have an obligation to serve their customers. They must stand ready to meet their customers' needs at all times, under just and reasonable rates, under terms and conditions set by state regulatory authorities. To meet these physical delivery obligations, AGA members use non-financial, physical commodity contracts with volumetric optionality to secure reliable gas supplies at the lowest reasonable cost to customers, while managing commercial and operational conditions that may cause unexpected constraints on their delivery systems. AGA members require regulatory certainty to incorporate compliance into their contractual planning, including certainty as to the rules implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

In implementing the Dodd-Frank Act, the CFTC has defined "swap" and "commodity option" broadly, such that significant physical natural gas contracts that contain flexible delivery terms or "optionality" are being viewed as subject to CFTC regulation as "swaps." AGA and other gas industry participants have asked the CFTC to clarify that physical natural gas contracts containing delivery flexibility do not constitute "swaps," however, these requests remain pending.

The resulting regulatory uncertainty is creating tremendous confusion and disagreement in the natural gas industry and disrupting contracting practices, reducing liquidity in the physical natural gas commodity markets, and drying up the innovative contracting practices which have supported affordable prices for American natural gas consumers. AGA members are seeing a decrease in the kinds of offerings commercial counterparties are willing to make because counterparties are concerned that their offerings will be less competitive and desirable if they contain provisions for "optional" delivery that might trigger compliance with CFTC requirements. AGA members are also experiencing a decrease in the number of commercial counterparties willing to enter into flexible gas supply arrangements.

Given these trends, AGA is very concerned that the implementation of the Dodd-Frank Act is having the unintended consequence of reducing physical commodity market liquidity with fewer opportunities to take advantage of the flexible and reliable services that are available under physical contracts with volumetric optionality. In turn, these market constraints can lead to increased natural gas procurement costs, particularly in periods of unexpected customer demand, severe weather or unexpected operational constraints. As gas utilities are regulated entities that pass through commodity costs in customer rates, increased gas costs borne by utilities will also lead to higher natural gas prices paid by American energy consumers.

AGA therefore supports H.R. 4267, to clarify that CEA Section 1(a)(47)(B)(ii) excludes from the definition of "swap" normal commercial merchandizing transactions used to buy and sell energy for ultimate delivery to end-users, including transactions that contain stand-alone or embedded options, so long as the transaction is intended to be physically settled. By passing this legislation, Congress can resolve significant natural gas market confusion and restore regulatory certainty as to the treatment of ordinary physical merchandizing transactions.

AGA believes that Congress did not intend the Dodd-Frank Act to constrain the phys-

ical commodity markets, create business-changing impacts on regulated natural gas utilities, or ultimately increase the costs of reliable service for natural gas consumers. As such, AGA supports the passage of H.R. 4267 to clarify Congressional intent, and to require that the CFTC redirect its resources to comprehensive regulation of financial entities, oversight of financial commodity markets, and protection of end-users' ability to hedge and mitigate commercial risk in these markets. H.R. 4267 provides natural gas utilities the regulatory confidence they need to continue procuring natural gas supplies at lowest reasonable costs for the benefit of American energy consumers.

Sincerely,

DAVE MCCURDY.

JUNE 18, 2014.

HOUSE OF REPRESENTATIVES.

DEAR REPRESENTATIVE: The National Association of Manufacturers (NAM)—the nation's largest industrial trade association—supports provisions in the Customer Protection and End User Relief Act (H.R. 4413), to clarify that non-financial companies, like manufacturers, that use derivatives to manage business risk, will not be subject to onerous and harmful margin and clearing requirements.

Manufacturers use derivatives to manage and mitigate against fluctuations in commodity prices and currency and interest rates. The NAM worked to include provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) to protect manufacturers' use of over-the-counter derivatives. We continue to work to ensure that, as Dodd-Frank is implemented, end-users do not face undue burdens. Imposing unnecessary regulation on end-users would limit their ability to use these important risk management tools, increasing costs and negatively impacting business investment, U.S. competitiveness and job growth.

Provisions included in H.R. 4413 would ensure that regulators do not impose margin requirements on non-financial end-users and that end-users trading through a centralized treasury unit ("CTU") are covered by the end-user clearing exemption. These two issues also are addressed in legislation (H.R. 634 and H.R. 677) approved by the House Agriculture and Financial Services Committees with bipartisan support. Based on a survey by the Coalition for Derivatives End-Users, absent clarification on margin requirements, manufacturers and other end-users that use derivatives to manage risk may be forced to sideline a median of \$125 million away from business investment, R&D and job creation. Similarly, without the clarification on CTUs, non-financial end-users may be swept into costly clearing requirements meant for financial entities, simply because they use a CTU to manage internal and external trading to mitigate risk within a corporate entity—an industry "best practice".

The CFTC reauthorization also includes a NAM-supported provision from H.R. 3814 that requires the CFTC to take an affirmative action before lowering the swap dealer de minimis threshold. Without this provision, the de minimis level of swap dealing automatically drops from the \$8 billion to \$3 billion in a few years.

Almost four years after the enactment of Dodd-Frank, implementation of the Act is well underway and deadlines for compliance with various regulations are looming. End-users remain extremely concerned about final regulations on margin, the lack of clarity on the CTU issue, and the automatic drop in the de minimis threshold for swap dealing. Thank you in advance for supporting provisions in H.R. 4413 to ensure that derivatives regulation is focused on needed areas and not

on imposing unnecessary regulatory burdens on manufacturers.

Sincerely,

DOROTHY COLEMAN,  
Vice President—Tax and  
Domestic Economic Policy.

APRIL 8, 2014.

Hon. FRANK LUCAS,  
Chairman, House Committee on Agriculture,  
Washington, DC.

Hon. COLLIN PETERSON,  
Ranking Member, House Committee on Agriculture,  
Washington, DC.

DEAR CHAIRMAN FRANK LUCAS AND RANKING MEMBER COLLIN PETERSON: The National Rural Electric Cooperative Association (NRECA) supports H.R. 4413, the Customer Protection and End-User Relief Act, legislation to reauthorize the Commodity Futures Trading Commission (CFTC) to be considered by the House Committee on Agriculture on April 9, 2014.

NRECA is the national service organization for more than nine hundred rural electric utilities and public power districts that provide electric energy to approximately forty-two million consumers in forty-seven states or twelve percent of the nation's population. Kilowatt-hour sales by rural electric cooperatives account for approximately eleven percent of all electric energy sold in the United States. Cooperatives operate on a not-for-profit basis and all the costs of the cooperative are directly borne by their consumer-members.

Importantly, H.R. 4413 includes language that protects the National Rural Utilities Cooperative Finance Corporation (CFC), a non-profit cooperative lender owned by the rural electric cooperatives, from the potentially significant costs of margin requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

The CFTC reauthorization legislation also amends the Commodity Exchange Act (CEA) in a very narrow but important way: to clarify Congressional intent that CFTC shall not regulate as "swaps," contracts relating to nonfinancial commodities, where the parties intend physical settlement of their contract obligations. These nonfinancial, physical commodity contracts with optionality are necessary for electric cooperatives to secure adequate power supplies and hedge their fuel risks.

On behalf of rural electric cooperatives across the country, NRECA would like to thank the leaders of the House Agriculture Committee for seeking to clarify in statute that not-for-profit cooperatives do not pose risk to our financial system, and need not be regulated in the same way as a Wall Street bank.

We would like to urge all members of the House Committee on Agriculture to vote in support of H.R. 4413.

Sincerely,

JO ANN EMERSON,  
CEO, NRECA.

## CUSTOMER PROTECTION AND END USER RELIEF ACT

SPEECH OF

**HON. FRANK D. LUCAS**

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Monday, June 23, 2014

The House in Committee of the Whole House on the state of the Union had under consideration the bill (H.R. 4413) to reauthorize the Commodity Futures Trading Commission, to better protect futures customers,