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VIA E-MAIL

Office of the Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549

RE: File No. S7-18-08

Ladies and Gentlemen:

The American Gas Association ("AGA") appreciates the opportunity to offer comments on the proposed changes to Form S-3 under the Securities Act of 1933 proposed by the Securities and Exchange Commission (the "Commission") in Release No. 33-9186. The proposed changes would replace the provision in Form S-3 that allows issuers of non-convertible investment grade debt securities that do not have $75 million in common equity held by non-affiliates to register the sale of those securities on Form S-3, with a requirement that issuers have issued over $1 billion of non-convertible debt securities for cash in registered offerings within the previous three years.

The American Gas Association was founded in 1918 and represents 199 local energy companies that deliver clean natural gas throughout the United States. There are more than 70 million residential, commercial and industrial natural gas customers in the U.S., of which 91 percent — more than 64 million customers — receive their gas from AGA members. Natural gas currently meets almost one-fourth of the United States' energy needs and is one of the critical components in the Administration's plans for a greener economy.

Almost all of our membership is comprised of state regulated natural gas distribution utilities; many of which are organized as wholly-owned subsidiaries of publicly traded holding companies. Many of these have issued registered investment grade nonconvertible debt registered on Form S-3 to finance their operations but will not meet the proposed $1 billion threshold for continued use of Form S-3. The proposed changes will have a disproportionate impact on these companies to the extent they do not meet any of the other transaction requirements of the form (e.g., $75 million of equity securities held by non-affiliates since their equity is entirely held by an affiliate, i.e., the holding company).

Theoretically a wholly-owned subsidiary could register the public sale of debt on Form S-1, but this form is not a practical alternative to Form S-3 for periodic registered debt offerings such as a medium term note program. Such programs allow subsidiaries to quickly and relatively inexpensively access the debt markets through a shelf registration on Form S-3 as opportunities and needs arise.

A company's post-effective periodic filings, e.g., the 10-K, 10-Q and 8-K filings, are not automatically incorporated by reference into Form S-1 (as they are with Form S-3) and the registration statement on Form S-1 can be kept current for future sales after it is declared effective only by periodically preparing and filing post-effective amendments to the registration statement to include updated financial and other information. This is a time consuming and relatively expensive process. The alternative of filing a new Form S-1 for each individual debt offering would be even more unwieldy, with the uncertainty of potential staff review and comments for each filing.

Conversely, unregistered offerings of debt that rely on an exemption from registration tend to be more costly (in part because the universe of potential investors is more limited) and less transparent. The AGA expects that such offerings under Rule 144A or which are made as private placements will become the predominant method of issuance for its membership and other utilities if the proposed amendment is adopted without substantial revision.

The additional cost of such debt such as higher coupon rates for debt issued under Rule 144A is likely to ultimately be borne by the ratepayers of the affected utilities.

From a different perspective, the AGA also wishes to point out that the consequences cited above would have an adverse impact on the range of investment opportunities open to retail investors. To the extent that this is a matter of concern to the SEC, its proposed amendments would reduce choice in the retail market by driving issuances into markets accessible only to qualified investors.

In conclusion, the proposed change to Form S-3 clearly will increase the burden on capital-raising by many utility subsidiaries and reduce consumer choice. The AGA is unaware of any claims of abuse rising out of the use of Form S-3 by utility subsidiaries for the registration of investment grade debt that would justify additional onerous requirements. In fact, because these registration statements are subject to review by the Commission staff, they are subject to greater potential scrutiny than the private placement alternative for issuing debt.

If the Commission determines that it is necessary to change the eligibility requirements for Form S-3 to conform to the Dodd-Frank legislation, we believe that the proposed historical $1 billion issuance test is not the appropriate sole standard for determining Form S-3 eligibility and that any change in the eligibility requirements should not adversely impact the ability of companies, specifically utilities already under substantial regulation, to efficiently access the public markets by issuing traditional corporate debt securities.

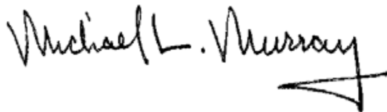
A targeted solution appropriate to this sector might be to allow utility operating subsidiaries regulated by a state or federal, state governmental entity a specific exemption under the proposed Rule changes.

The public utility commissions with jurisdiction over natural gas utilities require detailed reporting of company assets, finances, and operations. They also typically require pre-approval of the issuance of debt securities. Allowing the use of the Form S-3 in reliance on such regulatory oversight is consistent with the current Form S-3 transaction eligibility standard which – rather than predicating S-3 issuance on meeting some particular level or value of such issuances – instead recognizes that detailed financial and credit scrutiny by an independent body (here, the public utility commissions in each of the fifty states and the District of Columbia) constitute an appropriate basis for allowing S-3 issuance to proceed.

In addition, state public utility commissions oversee company rates. Regulated utilities are authorized to earn an appropriate rate of return on their equity and to charge rates under tariffs that are based on this rate of return. As a consequence, there is a reduced risk associated with their debt securities, and the more onerous requirements of Form S-1 registration statements should be unnecessary.

The AGA appreciates the efforts of the Commission to comply with the directives of the Dodd-Frank statute, but we believe that the proposed changes have an unnecessarily adverse impact on traditional corporate debt offerings. If the Commission has any questions regarding this letter, please contact the undersigned at 202 824-7071.

Respectfully submitted,



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