

MEMORANDUM

TO: File
FROM: Leah Drennan
RE: Meeting with representatives of the Not-For-Profit Energy End User Coalition
DATE: September 17, 2010

On September 15, 2010, Rebekah Goshorn, Sheila Swartz, and Leah Drennan of the Securities and Exchange Commission¹ and Terry Arbit, David Aron, Jennifer Bauer, Dan Berkovitz, Geoff Burns, Thelma Diaz, Mark Fajfar, Julian Hammar, Eric Juzenas, Steve Kane, Doug Leslie, Greg Kuserk, Bob Pease, John Riley, Rose Troia and George Wilder of the Commodities Futures Trading Commission met with Patrica Dondanville (Schiff Hardin LLP), Susan Kelley (American Public Power Association), William Rust (The Energy Authority), Dave Shryver (American Public Gas Association), Jeffrey Walker (ACES Power Marketing) and Russ Wasson (National Rural Electric Cooperative Association) (collectively, the “Not-For-Profit Energy End User Coalition” or the “Coalition”).

The Coalition discussed the public energy sector and its differences from the for-profit energy sector, including the significance of these differences in the context of Dodd-Frank. The Coalition also discussed the definitions of “swap,” “swap dealer,” and “major swap participant.”

The Coalition raised questions regarding the CFTC-FERC memorandum of understanding required by Dodd-Frank.

¹ Ms. Goshorn, Ms. Swartz, and Ms. Drennan all attended via phone.

DRAFT AGENDA

Meeting of the
National Rural Electric Cooperative Association,
American Public Power Association and
American Public Gas Association
Large Public Power Council
(the “NFP Energy End User Coalition”)

With Staff of the
Commodities Futures Trading Commission
Washington, D.C.

August ____, 2010

I. The “Not-For-Profit Energy End User Coalition”

- A. Brief description of consumer-owned coalition members, and their natural gas and power public service territories
- B. Mission critical to American consumers and businesses – reliable, affordable natural gas and power
- C. Need for certainty and long-term planning in order to meet existing statutory and regulatory public service requirements
- D. Not-for-profit --no significant net worth, net assets (in come cases) or liquidity. Limited staff and systems; physical delivery/reliability focus
- E. Pure “commercial” risk management and end use of “swaps”
- F. Involvement within narrow portion of the global OTC derivatives or “swaps” markets – can the CFTC identify the “categories, types and classes” of “swaps” in such a way in which we can, similarly, narrow our involvement in the rule-making processes?
- G. In swap categories where our business requires us, or we choose, to participate, we are highly sophisticated and have in-house expertise – this is our core business

II. List of significant commodity end user issues that the Coalition shares (numerous small inconsistencies and clarifications)

- A. Clarification of deadlines regarding pre- and post-enactment swap reporting – the “interim final rule” issue – **deadline October 19, 2010**)
- B. Definitions - “swap,” “categories, types or classes,” “commercial risk,” “bona fide hedging transaction”
- C. End user margin-posting and holding issues
- D. End user exemption process/forms
- E. New CFTC enforcement authority regarding
 - 1. Market manipulation
 - 2. Whistle-blower mandates

III. List of significant energy end user issues that the Coalition shares (numerous small inconsistencies and clarifications)

- A. Concern only re narrow “categories, types and classes” of swaps – those in which our regulated status (FERC, States, NERC, EPA) require us to participate in the market – captive market participants
- B. Cross commodity (fuel/supply/load) and dynamic nature of energy companies’ hedging
- C. CEA 2(h) exemption for all energy (at least natural gas and power) swaps for 1 year from effective date of Dodd-Frank (the 723(c) issue – **deadline September 19/20, 2010**)
- D. Clarification that “swap dealer” doesn’t include end users who, in the ordinary course, transact in energy swaps to manage commercial risk
- E. Physical forward and commercial option exclusions from definition of “swap”
- F. Clarification that an energy marketing “affiliate” is not a “financial entity”
- G. “Real time” reporting of energy swaps (and underlying commodities – “cash positions”) - cost/benefit analysis
- H. FERC tariff exemption(s) from the Act
- I. FERC/CFTC MOU process
- J. Position limits and large trader reporting, especially if positions are defined

to include physical gas and power commodities held by an entity that has public service obligations in a service territory (may be addressed in “bona fide hedging” definition?)

IV. Unique issues of importance to the Not-For-Profit Energy End User Coalition

- A. Language affirming that a governmental entity or a not-for-profit has “commercial risk” to hedge
- B. “Between 201(f)” exemption from Act
- C. Potential exemption from “financial entity” for CoBank and/or CFC
- D. Clarification of SD and MSP duties regarding “special entities, including the meaning of “independent” and the interplay with the definition of eligible contract participant (municipals, agencies, instrumentalities), both with respect to energy swaps and for interest rate swaps
- E. Accommodations regarding margin and any record-keeping or reporting requirements for not-for-profit energy end users

V. How can we help the CFTC, and how can we efficiently have input?

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