

From: Dondanville, Patricia
Sent: Thursday, January 20, 2011 5:47 PM
To: Fajfar, Mark
Cc: 'Wasson, Russell D.'
Subject: RE: Proposed Meeting with Not-For-Profit Energy End User Coalition

Mark -- Thanks again for your time, and the time of all the other CFTC staff who met with the NFP Energy End User group yesterday.

We had met some of the CFTC staff members last fall, and we had filed ANOPR or pre-NOPR comments to several of the Task Forces via the CFTC protocols. We filed comments on both the IFRs. We understand that the staff has been deluged with comments on each Task Force or NOPR. So, if any staff member has particular questions about our comments, please indicate that we are always available to explain or expand. For others of the CFTC who were there yesterday, "their NOPRs" are out for comment, and we plan to file comments on those that present issues for our members (as we discussed yesterday). In each comment letter, as we discussed yesterday, we have tried to give the "basic" NFP Energy End User story, and we have tried to be consistent in proposing solutions "across Task Forces."

We are making ourselves available to help the CFTC staff understand the fundamental structural differences between the non-cleared "swaps" markets our members use and the financial futures markets the CFTC has traditionally regulated. It's like the difference between a seasonal one-truck fruit stand and a regional Walmart Supercenter (and the full range of food, drug, gasoline, auto repair, banking, etc in between -- all are markets, but they're different. A one-size-fits-all "swaps" market patterned on the global financial futures markets just doesn't reflect the reality out there on Main Street in the commercial regulated energy and utility industry. We'll try to propose alternative regulation ideas in our comment letters to fit the statutory framework, and hope the CFTC will be open to making the proposed new non-cleared swaps market structure more approachable, and less costly, from the standpoint of NFP Energy End Users.

We appreciate you coordinating the meeting. Best regards.

Patty Dondanville

From: Dondanville, Patricia
Sent: Wednesday, January 12, 2011 12:16 PM
To: Fajfar, Mark
Cc: Wasson, Russell D.; Duffy, Lee Ann
Subject: RE: Proposed Meeting with Not-For-Profit Energy End User Coalition

Mark -- I've been in touch with NRECA, APPA and APGA, who can all make the meeting on the 19th at 2. So, if it's still available for you and Lee Ann, let's plan on meeting at that time and date, and we will assume at the CFTC headquarters and we'll ask for you at the front desk. We will also likely be bringing someone from the Large Public Power Council, ACES Power Marketing and The Energy Authority -- you met Scott Scholten from the New York Power Authority (LPPC), and Jeff Walker from ACES at the meeting on October 29. We may also bring Ed Tatum from Old Dominion Electric Cooperative (also there on Oct 29), and perhaps other of our trade association members.

As I mentioned in my earlier email to you, and in my email to Eric Juzenas (attached), the NFP EEU Coalition has concerns about a variety of issues in the NOPRs issued in late November and December. We plan to file comment letters on a number of the NOPRs. If you are in contact with Eric, and he can

attend the meeting on the 19th as well, that would be terrific. Dan Berkovitz (who attended the October 29 meeting) would also certainly be welcome.

Others at the CFTC that the NFP Coalition has discussed meeting with would be the following -- each has been identified as CFTC leads on some of the NOPR issues currently of most critical to the NFP EEU group:

1. Terry Arbit -- our members continue to be, perhaps, most troubled by the unresolved issues surrounding the definition of "swap."
2. Phyllis Cela and/or Peter Sanchez -- the definition of "special entity" in business conduct standards for swap dealers and major swap participants, and its interplay with existing "eligible contract participant" and "eligible commercial entity" definitions for our municipal or other governmental entity energy businesses.
3. Susan Nathan -- the "Interim Final Rules" on record-keeping and reporting contain a number of issues with respect to what records the CFTC expects non-financial entities to be retaining at this juncture for pre-enactment, and as of December 17, 2010, post-enactment "transition swaps".
4. I'm not sure which or any of Tom Leahy, Jeff Steiner, David Taylor, Irina Leonova, Jeff Burns or Adedayo Banwo -- all are noted as the "for further information contact" points at the CFTC on various of the record-keeping and reporting NOPRs issued by the CFTC in late November and December. Again, our members read all the CFTC's NOPRs solely from the perspective of non-financial end users of "nonfinancial" energy "commodities" (and "swaps" based on such nonfinancial commodities, depending on the definition "swap"), who look at the data record-keeping and potential reporting rules, in particular as they may apply to end-user-to-end-user non-cleared Energy Commodity Swaps). The coalition is very concerned about understanding how the CFTC expects their members to comply with electronic record-keeping and "real-time" reporting requirements, as if they were dealers, banks, hedge funds or other financial entities.

The upcoming MOUs with the FERC and capital & margin topics are (still) on our list of key concerns, but we await further CFTC developments on those issues.

If you could invite Eric and Dan (or let me know and I would be happy to do so) to the meeting? And, if Terry Arbit is available, the definition of "swap" is really THE "gating item" for so many of the natural gas and power industry's issues and for many, if not most, of our members.

If others on the list above are available, they would be welcome as well, and we could help them understand, or answer questions they may have, about our transactions, our members and our energy markets -- as well as highlight some of the NFP EEU issues in 'their' NOPRs. But I don't want to impose on you to arrange our meetings or impose on your time, since I know we have spoken with you before about the Not-For-Profit Energy End Users. Please let me know in advance who will attend from the CFTC staff, and we can focus our discussion on the NOPRs "represented" in the meeting to make the most of the time you can allow us.

Thanks, and I look forward to seeing you next week.

Patty Dondanville

From: Dondanville, Patricia
Sent: Monday, January 10, 2011 3:52 PM
To: Fajfar, Mark
Cc: Wasson, Russell D.
Subject: Proposed Meeting with Not-For-Profit Energy End User Coalition

Dear Mark -

I left you a voicemail, but I thought it might be easier for you to respond to an email rather than play phone tag. I have copied Russ Wasson of NRECA on this email as Russ is my main point of contact in Washington DC for the Coalition of trade associations described below.

The coalition that refers to itself as the "Not-For-Profit Energy End Users" (and which includes NRECA, APPA, APGA and LPPC -- basically public power and public gas utilities, as well as electric cooperatives) **would like to schedule a meeting with you and others you may suggest at the CFTC** to discuss:

1. Issues in the definition of "eligible contract participant" (and the interface between that definition and "eligible commercial entity") -- we plan to raise these issues in a comment letter on the NOPR on the definitions of swap dealer, major swap participant and eligible contract participant (75 FR 80,174), although they will also be relevant in defining "special entity" in 75 FR 80,637. We raised these issues earlier in our comments on the Definitions ANOPR, and we discussed them at the October 29, 2010 meeting at which I think you were present. We are trying to develop a proposal that will help the CFTC rationalize the way in which these three definitions apply to our members and their energy commodity swaps hedging activities.

2. Issues faced by our members in connection with the end user exception. We plan to comment on these issues in response to the End User Exception NOPR (75 FR 80,747). We filed pre-NOPR comments with the End User Task Force, and these issues too we discussed at the meeting you attended on October 29. We had previously communicated with George Wilder, but we now understand from the End User Exception NOPR that you are the contact person for these issues. Russ tried last week to contact George, but George has not as yet returned the messages.

As you may recall from our earlier meetings and comment letters, our members expect to utilize the end user exception with respect to ALL the energy commodity "swaps" in which they engage. None of our members are financial entities, and all of our members use energy commodity swaps solely to hedge the commercial risks associated with their not-for-profit public service activities (the delivery of reliable and affordable energy to American consumers and businesses). The energy commodity swap transactions in which our members engage are more often with physical energy counterparties than with financial entities, and so the majority of our transactions are not reflected at all in ISDA or OCC surveys.

Are there days in the coming weeks when you might be able to meet with us? If you can give me several dates/times that you might be available, I will coordinate with the NFP EEU coalition members and get back to you as soon as possible on the time when most of their representatives can also be available. We would suggest sometime early afternoon on January 18, 19, 21, 24, 25, 28 or 31.

We look forward to hearing from you.

Best regards.

Patty Dondanville
Schiff Hardin LLP