EXTERNAL MEETINGS: STAFF MEETING WITH WORKING GROUP OF COMMERCIAL ENERGY FIRMS

WHEN:  8/28/2010 1:00 PM

Rulemaking:
I. Common
IV. Business Conduct Standards - Internal
V. Capital & Margin
XII. Joint Rules w/ SEC

CFTC Staff:
Eric Juzenas
Dan Berlovitz
Terry Arbel
George Water
Thelma Diaz
David Aron
Steffe Kane
Natlie M. Radakrishnan
Mark Faifer
Julia Hemmer
Rose Troia
Seoni Song
Chul Park
Jennifer Bauer
Jody Parmelee

Visitor(s):
Michael Sweeney
Joseph T. Keilhun
Kate Senger
Roxait Oppenheimer
Lael Campbell
Vince Johnson
Gregory Steton
Tiffany Silver
Brian Weiss
Ike Gibbs
James Allison
Benjamin Heard
Manu Anathana
Charles Cerna
Tom McGowan (SEC)
Mark Adar (SEC)

Organizations:
Hunton & Williams LLP
FPL Group
NextEra Energy
Vitol, Inc.
Constellation Energy
BP North America
DTE Energy Trading, Inc.
Lumental Power
MidAmerican Energy
ConocoPhillips
Direct Energy
Direct Energy Upstream
Hess Corporation

The attendees discussed the definitions of the terms: 1) swap dealer (third prong and de minimis); 2) major swap participant (systematic risk, commercial risk); and 3) swap (transport to be physically settled in forward exclusion). The attendees further discussed
implementation of mandatory margin and capital requirements, and documentation standards.
EXTERNAL MEETINGS: FOLLOW-ON MEETING WITH HESS ENERGY

WHEN: 11/3/2010 1:00 PM

Rulemaking(s): XXI, Joint Rules w/ SEC

CFTC Staff: Terry Arbitt
Julian Hammer
David Aron
Steve Kane
Rose Trosa
Sonni Seong

Visitor(s): Charles Cerris, Hess Energy
Mitchel Friedman, Hess Energy
Dennis J. Whiter, Hess Energy
Jonathan Flynn, McDermott Will & Emery
Scott Parson, Delta Strategies

Organization(s): Hess Energy
McDermott Will & Emery
Delta Strategies

Follow-on conference call regarding the swap definition.
EXTERNAL MEETINGS: PRODUCT DEFINITIONS MEETING WITH NOT FOR PROFIT ELECTRICITY END USERS

WHEN: 1/19/2011 2:30 PM

Rulemakings:
- Definitions
- Joint Rules w SEC

CFTC Staff:
- Dan Berntorf
- Julian Hammer
- Lee Ann Duffy
- Mark Fajler
- Jeff Burns
- Susan Nathan
- David Taylor
- Irina Leonova
- Tom Leahy
- Jeff Stalner
- Peter Sanchez

Visitor(s):
- Russell Wesson (National Rural Electric Cooperative Association)
- Jule Bekenreiter (National Rural Electric Cooperative Association)
- Susan Kelly (American Public Power Association)
- David Schryver (American Public Gas Association)
- Noreen Carter-Roche (Large Public Power Council)
- Jeffrey Walker (ACES Power Marketing)
- Patricia Donstanville (Schiff Hardin LLP)
- Paul M. Archibald (Wilmer Cutler Pickering Hale and Dorr LLP)
- Josh Kans (SEC)
- Peter Culley (SEC)

Organization(s):
- National Rural Electric Cooperative Association
- American Public Power Association
- American Public Gas Association
- Large Public Power Council
- ACES Power Marketing
- Schiff Hardin LLP
- Wilmer Cutler Pickering Hale and Dorr LLP

NFPEEU, as a whole, stressed that they are not financial entities, engage in no speculation and perform a public service. NFPEEU believes its members are in a special situation because they are all non-profit entities and any increased costs they bear must be passed directly to ratepayers (i.e., they do not have shareholders to absorb losses). Also, in terms of their use of swaps, they are required to enter into a variety of different types of customized swaps to reduce the risks of energy commodity price fluctuations because they are mandated to provide continuous electric service to their customers and must deal with a variety of volatile conditions, such as changing weather patterns and different sized consumer losses. The swaps they use are mostly energy commodity swaps. NFPEEU commented on several rulemakings—Definition of "Swap." What electricity transactions are physical forwards and which are swaps? How is "intended to take delivery" assigned in the market for electricity transmission? Are Financial Transmission Rights swaps? How would an exemption under section 6(c) of the Commodity Exchange Act (CEA) be handled for these transactions—Eligible Contract Participant (ECP)? In the past, some NFPEEU members have qualified as "eligible commercial entities" to enter into certain swaps, but new section 2(i) of the CEA has restricted or eliminated the exception for eligible commercial entities. NFPEEU would like the ECP definition to be amended to include eligible commercial entities. General: NFPEEU asked that the CFTC endeavor to provide consistent definitions of terms (e.g., "affirmative transactions") that appear in multiple rulemakings. They would like an opportunity to comment on all the rules after the last Dodd-Frank Act rulemaking has been proposed. They would like the opportunity to comment on the impacts under the Regulatory Flexibility Act and the Paperwork Reduction Act of all the rulemakings as a whole.
The meeting discussed the timing and implementation of the regulations under Dodd Frank in general, as well as the following points:
1. Definition of "swaps" - how to distinguish forwards from physical options, how to treat instruments that may be regulated by the Federal Energy Regulatory Commission, how to treat derivatives on emissions certificates.
2. Position limits - Shell asserted that swaps between affiliates that constitute "normal" risk mitigating transactions should be aggregated and treated together before applying position limits. Shell also asked for clarification regarding when a bona fide hedging exception from position limits would apply.
3. Definition of swap dealer - Shell asserted that participating in an electronic anonymous market for swaps should not be viewed as swap dealing unless the participation is intended as part of a swap dealing business. Overall, Shell said there should be a clear dividing line between activity that is considered to be dealing and activity that is not.
EXTERNAL MEETINGS: ENERGY MEETING

WHEN: 4/1/2011 1:00 PM

Rulemaking(s):
II. Definitions
V. Capital & Margin
XXI. Joint Rules w/ SEC

CFTC Staff:
Gary Gensler
Dan Berkovitz
John Riley
Terry Arlt
Tim Harpoff
Sarah Josephson
Julian Hammer
Tim Smith
David Aron
John Rutzenberg
Beverly Law
Rynne Miller

Visitees:
Lael Campbell, Constellation
Carl Coscia, Constellation
Liz Reichert, BP
Steve Provenzano, BP
Robert J. Gaudette, GenOn
Susan Cochran, Cargill
Bryan Darlem, Cargill
Matthew Picardi, Shell
Tom Michals, Shell
Catherine Krupka, Sutherland (for EPSA)
Dan Doan, Electric Power Supply Association (EPSA)

Organizations:
Constellation
BP
GenOn
Cargill
Shell
Electric Power Supply Association (EPSA)

Topics Discussed—Application of the proposed swap dealer definition, including the limited designation provision—Product definition rulemaking and the types of contracts in which parties engage that should not be included—Capital regulations and how they may apply to the operations of commercial firms as distinct from financial firms.
EX PARTE MEETING FOR PROPOSED RULE 76 FR 6095

View all comments for 76 FR 6095

Title:
Meeting with American Gas Association

Ex Parte No: 169
Date: 5/10/2011

Meeting Date:
Tuesday, May 10, 2011

Memo From:
Miller, Ryne

CFTC Staff:
Don Heitman
David Aron
Martin Murray
Jane Croessman
Nicole Aulerich
Ryne Miller

Organization(s):
American Gas Association
Consolidated Edison Company of New York
National Grid Distribution Companies
Baltimore Gas & Electric Company
Washington Gas Light
Puget Sound Energy
Perkins Coie
CenterPoint Energy

External Attendees:
Andrew Soto (AGA)
Scott Butler (ConEdison)
Stephen McCauley (National Grid)
Gary Guy (Baltimore Gas & Electric)
Rose Lennon, Washington Gas Light
Pamela J. Anderson (Perkins Coie & Puget Sound Energy)
Adam Pyles (CenterPoint)

Additional Information:
AGA and its members provided information on the natural gas distribution industry. Participants also discussed the commodity options segment of the Ag Swaps and Commodity Options rulemaking. Participants also discussed aspects of the proposed product definitions as they relate to options and certain transactions used by AGA's members in securing physical supply for their natural gas distribution obligations.
EXTERNAL MEETINGS: MEETING WITH AMERICAN GAS ASSOCIATION

WHEN:  5/10/2011 10:00 AM

Rulemaking(s):  XIX. Agricultural Swaps
                XXII. Joint Rules w/ SEC

CFTC Staff:  Don Holmen
              David Aron
              Martin Murray
              Jane Crossman
              Nicole Auerich
              Ryne Miller

Visitor(s):  Andrew Sato (AGA)
              Scott Butler (ConEdison)
              Stephen McCaulley (National Grid)
              Gary Guy (Baltimore Gas & Electric)
              Rose Lennon, Washington Gas Light
              Pamela J. Anderson (Perkins Coie &
              Pepet Sound Energy)
              Adam Pyles (CenterPoint)

Organization(s):  American Gas Association
                  Consolidated Edison Company of New York
                  National Grid Distribution Companies
                  Baltimore Gas & Electric Company
                  Washington Gas Light
                  Pepet Sound Energy
                  Perkins Coie
                  CenterPoint Energy

AGA and its members provided information on the natural gas distribution industry. Participants also discussed the commodity options segment of the Ag Swaps and Commodity Options rulemaking. Participants also discussed aspects of the proposed product definitions as they relate to options and certain transactions used by AGA's members in securing physical supply for their natural gas distribution obligations.
Participants discussed issues related to the swap dealer and major swap participant definitions. In particular, BG Americas takes the view that the swap dealer definition is too broad, and that it would be helpful if the Commissioners specified what activities do not constitute swap dealing. For the de minimis exemption, BG Americas recommended setting a higher notional amount at first, that could be modified in light of data received about the markets. BG Americas also expressed concern with footnote 128 of the proposing release (in connection with the major swap participant definition), which it believes too broadly describes what does not constitute hedging or mitigating commercial risk. Participants also discussed the forward contract exclusion from the swap definition.
EXTERNAL MEETINGS: MEETING WITH NFP ELECTRICS

WHEN: 7/25/2011 1:00 PM

Rulemaking(s): XXI Joint Rules w/ SEC
General

CFTC Staff: David Avon
Terry Abl
Thuy Dinh
Mark Fajt
Julian Hamner
Dan Helman
Erick Juzenas
Ryne Miller
Rick Stilts

Visitor(s): Russ Wesson (NRECA)
Rich Meyer (NRECA)
Jeff Walker (ACES Power)
Diane Moody (APPA)
John Winter (SIMPA)
Scott Schenken (NYPA)
Patty Doan Danville (Reed Smith)

Organization(s):
National Rural Electric Cooperative Association (NRECA)
American Public Power Association (APPA)
ACES Power Marketing (ACES Power)
Southern Minnesota Municipal Power Agency (SIMPA)
New York Power Authority (NYPA)
Reed Smith LLP (Reed Smith)

Participants discussed the public interest waiver process provided for in Section 722 (f) of the Dodd-Frank Act, and in particular as it applies to transactions between entities described in section 201 (c) of the Federal Power Act (50 U.S.C. section 437c (c)). Participants also discussed categories of transactions entered into by non-profit electric utilities, including fuel requirements contracts, capacity contracts, etc.
EXTERNAL MEETINGS: MEETING WITH CALIFORNIA UTILITIES

WHEN:  8/25/2011 2:00 PM

Rulemaking(s):  XXII. Joint Rules w/ SEC

CFTC Staff:  David Aron
              Matt Fajbr
              Julian Hammar
              Greg Kusert
              Neel Kumar
              Jason Shafer

Visitees(s):  Amy Pressler (Edison International)
              Tim Randell (Sempra Energy)
              Chris Bernard (Edison Mission Energy)
              Heather Harnson (Southern California Edison)
              De/Ana Dow (Ogletay Government Relations)
              Mary Anne Mason (Hogan Lovells)
              Leah Drennan (SEC)

Organization(s):  Edison International
                  Edison Mission Energy
                  Hogan Lovells
                  Ogletay Government Relations
                  Sempra Energy
                  Southern California Edison

Participants discussed the swap definition, and in particular as it relates to Resource Adequacy Agreements, Tolling Agreements, and Environmental Commodities.
EXTERNAL MEETINGS: CALL WITH NEXTERA ENERGY

WHEN: 11/15/2011 2:30 PM

Rulemaking(s): Joint Rules w/ SEC

CFTC Staff: David Aon
Julian Harmer

Visitor(s): Nicole Daggs (NextEra)

Organization(s): NextEra Energy Resources LLC (NextEra)

Participants discussed recordkeeping procedures for bookout transactions.
EXTERNAL MEETINGS: CALL WITH EEI CONTRACT DRAFTING COMMITTEE

WHEN: 11/30/2011 11:00 AM

Rulemaking(s): XXI. Joint Rules w/ SEC

CFTC Staff: David Aon
Julian Hansmar

Visitor(s): Nicole Evige (EEI Contract Drafting Committee)
Patricia Donohua (EEI Contract Drafting Committee)
Kathy Hewat (EEI Contract Drafting Committee)
David Therinan (EEI Contract Drafting Committee)
Tiffany Gile (EEI Contract Drafting Committee)
Jeff Walker (EEI Contract Drafting Committee)
Jeremy Weinstein (EEI Contract Drafting Committee)
Lara Parikh (EEI Contract Drafting Committee)
Aaron Trinh (EEI Contract Drafting Committee)

Organization(s): EEI Contract Drafting Committee

Participants discussed recordkeeping practices in the power industry as they relate to book out of forward contracts.
EXTERNAL MEETINGS: MEETING WITH AMERICAN GAS ASSOCIATION

WHEN: 2/2/2012 3:30 PM

Rulemaking(s): II. Definitions
   XXVI. Position Limits

CFTC Staff: Gary Genster
     Eric Juzenas
     John Rally

Visitor(s): Allison Lurton Covington & Burling LLP
     Susan Beglea-AGA
     Jim Stenziore-AGA
     Randy Rozalski-AGA
     Steve McCauley-AGA
     Mike Murray-AGA
     Arushi Sharma-AGA

Organization(s): Covington & Burling LLP
     American Gas Association

Participants discussed the definition of swap dealer, issues related to forward contracts used by gas companies, position limit and reporting issues.
EXTERNAL MEETINGS: MEETING WITH AMERICAN GAS ASSOCIATION

WHEN: 4/3/2012 3:30 PM

Rulemaking(s): II. Definitions

CFTC Staff: Gary Gersler, Dan M. Berkovitz

Visitor(s): Anuolu Sharma, Andrew Soto, Randy Routsis, Susan Borges, Jan Stanzone, Alton Lentz

Organization(s): American Gas Association

Participants discussed the classification of physical commodity options.
EXTERNAL MEETINGS: MEETING WITH AMERICAN GAS ASSOCIATION

WHEN: 4/3/2012 2:30 PM

Rulemaking(s): II. Definitions

CFTC Staff: Barv Chinon
Salman Bemafi

Visitor(s): Anush Sharma
Andrew Soto
Randy Ruzenski
Susan Berglas
Jim Stanlione

Organization(s): American Gas Association

Participants discussed physical commodity options as related to the Dodd-Frank Act.
EXTERNAL MEETINGS: MEETING WITH AMERICAN GAS ASSOCIATION

WHEN: 4/3/2012 1:30 PM

Rulemaking(s): II. Definitions

CFTC Staff: Mark Weljen
Joseph Cleseski
Terry Arbi
Scott Reinhardt

Visitor(s): Anush Sharma
Andreee Sato
Randy Rucznik
Susan Bergles
Jim Stanzone
Alison Lurton

Organization(s): American Gas Association

Discussions concerning commodity options.
EXTERNAL MEETINGS: MEETING WITH AMERICAN GAS ASSOCIATION

WHEN: 6/26/2012 2:46 PM

Rulemaking(s): II Definitions

CFTE Staff: Mark Weljen
Joseph Cisneros
Terry Arbik
Scott Rainhart

Visitor(s): Andrew Soto
Suan Banjara
Anusha Sharma
Alison Lutten

Organization(s): American Gas Association
Covington and Burling

Discussions concerning product definitions
EXTERNAL MEETINGS: PHONE CALL WITH NRECA

WHEN: 7/5/2012 10:00 AM
Rulemaking(s): CFTC/SEC

CFTC Staff: David Aron, Jakob Hammar, Eric Jones, Ryna Miller

Visitor(s): Russ Wasson (NRECA), Patty Donavan (Reed Smith)

Organization(s): National Rural Electric Cooperative Association (NRECA)

Participants discussed the swap definition and in particular the forward exclusion from the swap definition.
EXTERNAL MEETINGS: MEETING WITH SOUTHERN CALIFORNIA EDISON AND SOUTHERN

WHEN: 10/3/2012 2:00 PM

Ratemaking(s): XXI. Joint Rules w/ SEC

CFTC Staff: David Airan
Kathy Berman
Lee Ann Duffy
Mark Fajer
Julian Hammar
Kenneth McCracken
Robert Peese

Visitor(s): Heather Horton (SCE)
Connor Freenan (SCE)
Paul Hughes (Southern)
K.C. Harland (Batch & Bingham LLP)

Organization(s): Southern California Edison (SCE)
Southern Co. (Southern)
Batch & Bingham LLP

Participants discussed the CFTC’s interpretations in the product definitions final release regarding forwards with volumetric options and lease-like commercial transactions. SCE and Southern expressed concern about the 7th factor in the forwards with volumetric optionality interpretation, specifically the requirement that volumetric optionality be due to physical factors outside of the control of the parties. They asserted that contracting parties would not know at the point of execution of their contracts whether volumetric optionality would be due to physical factors, making the requirement impractical. They also believed that it was unclear what would be considered “outside the control of the parties.” SCE also stated its belief that resource adequacy arrangements should fall within the definition of non-financial commodity, rather than being considered forwards under the forwards with volumetric optionality interpretation. In addition, SCE and Southern expressed the view that the “however” paragraph (regarding certain 2-out-of-3 structures in agreements that would cause them to be considered commodity options) in the CFTC’s interpretation concerning lease-like commercial agreements would cause many of such agreements to be commodity options. With respect to the CFTC’s interpretation concerning oral bookings, Southern indicated that it believed that it generally would be in compliance with the requirement that an oral booking be followed by a confirmation in some type of written or electronic form consistent with the interpretation.
EX PARTE MEETING FOR PROPOSED RULE 77 FR 48207
View all comments for 77 FR 48207

Title:
Meeting with Southern California Edison and Southern

Ex Parte No: 744
Date: 10/3/2012

Meeting Date:
Wednesday, October 03, 2012

Memo From:
Hammar, Julian

CFTC Staff:
David Aron
Kathy Banar
Lee Ann Duffy
Mark Fajfar
Julian Hammar
Kenneth McCracken
Robert Pease

Organization(s):
Southern California Edison (SCE)

Southern Co. (Southern)

Balch & Bingham LLP
External Attendees:
Heather Harrison (SCE)
Connor Flanigan (SCE)
Paul Hughes (Southern)
K.C. Hairston (Balch & Bingham LLP)

Additional Information:

Participants discussed the CFTC’s interpretations in the product definitions final release regarding forwards with volumetric options and lease-like commercial transactions. SCE and Southern expressed concern about the 7th factor in the forwards with volumetric optionality interpretation, specifically the requirement that volumetric optionality be due to physical factors outside of the control of the parties. They asserted that contracting parties would not know at the point of execution of their contracts whether volumetric optionality would be due to physical factors, making the requirement impracticable. They also believed that it was unclear what would be considered “outside the control of the parties.” SCE also stated its belief that resource adequacy arrangements should fall within the definition of non-financial commodity, rather than be considered forwards under the forwards with volumetric optionality interpretation. In addition, SCE and Southern expressed the view that the “however” paragraph (regarding certain 2-part fee structures in agreements that would cause them to be considered commodity options) in the CFTC’s interpretation concerning lease-like commercial agreements would cause many of such agreements to be commodity options. With respect to the CFTC’s interpretation concerning oral bookouts, Southern indicated that it believed that it generally would be in compliance with the requirement that an oral bookout be followed by a confirmation in some type of written or electronic form consistent with the interpretation.
EX PARTE MEETING FOR PROPOSED RULE 77 FR 48207
View all comments for 77 FR 48207

Title:
Meeting with WSPP

Ex Parte No: 743
Date: 10/18/2012

Meeting Date:
Thursday, October 18, 2012

Memo From:
Hammar, Julian

CFTC Staff:
Terry Arbit
David Aron
Herminio Castro
Lee Ann Duffy
Julian Hammar
Kenneth McCracken
Gail Scott
Somi Seong
Jason Shafer

Organization(s):
WSPP, Inc. (WSPP)
Wright & Talisman, PC

External Attendees:
Arnold Podgorsky, Wright & Talisman PC
Patrick Morand, Wright & Talisman PC

Additional Information:

http://comments.cftc.gov/PublicComments/ViewExParte.aspx?id=743&SearchText=
3/13/2014
Participants discussed the interpretation in the product definitions concerning oral bookouts and the Brent Interpretation safe harbor for forward contracts. WSPP representatives indicated that WSPP members generally would be in compliance with the interpretation’s requirement that oral bookouts be followed within a commercially reasonable timeframe by a confirmation in some type of written or electronic form. WSPP raised a specific question about whether an electronic recording of a bookout would satisfy this requirement. In addition, WSPP representatives mentioned that members engage in volume bookouts, where multiple bookouts are documented in one transaction, rather than having to document each bookout separately, and inquired whether such volume bookouts would fall within the Brent Interpretation Safe Harbor. Finally, existing language in the WSPP Agreement defining a bookout was discussed.
The meeting discussed the seven factors listed in the rules further defining the term "swap" regarding whether an instrument with embedded volumetric optionality is a forward contract, a trade option or a swap. (See 77 FR at 48,236). In particular, the meeting focused on the seventh factor, which requires that "The exercise or non-exercise of the embedded volumetric optionality is based primarily on physical factors, or regulatory requirements. But are outside the control of the parties and are influencing demand for, or supply of, the nonfinancial commodity." The American Gas Association (AGA) members were of the view that this seventh factor should be tested at the time of signing the master contract in question, as opposed to at the time that a party to the contract makes its decision whether to exercise the embedded volumetric optionality. The AGA members referred to the comment letter AGA filed on this issue on October 12, 2012 (Comment No. 58773). Also, the AGA members thought that if an instrument such as a peak supply agreement relating to natural gas did not satisfy the seventh factor, it should be treated as a trade option. In this case, the parties to the contract should be required to report the trade option on the CFTC's Form TO on an annual basis. The AGA members also requested additional guidance regarding the sixth factor, which requires that both parties to the instrument are commercial parties. The AGA members asked for guidance whether a financial entity that is a marketer of natural gas, and buys and sells natural gas as part of its regular business, would be considered to be a commercial party. Last, the AGA members requested clarification that Part 48 of the CFTC's regulations (regarding reporting of legacy instruments) does not apply to trade options.
EXTERNAL MEETINGS: MEETING WITH AMERICAN GAS ASSOCIATION

WHEN: 11/15/2012 3:30 PM

Rulemaking(s): General

CFTC Staff: Mark Weljen
              Scott Reinhart

Visitor(s): Susan Bergles
            Kevin Frank
            Brian Wiese
            Randy Rusnak
            Andrew Sato
            Arupali Sharmat

Organization(s): AQA
                 Northwest Natural Gas Company
                 Atmos Energy Company
                 MidAmerican Energy Company
                 National Fuel Gas Distribution Company

Discussions concerning end-users.
EXTERNAL MEETINGS: MEETING WITH AMERICAN GAS ASSOCIATION

WHEN: 11/15/2012 2:00 PM

Rulemaking(s): XIX. Joint Rules w/ SEC

CFTC Staff: Chairman Ganetler
Eric Juzenas
Mark Faquier
Erik Remmert

Visitor(s): Susan B. Bergles (NW Natural)
Kevin C. Frank (Atmos Energy Corporation)
Randy C. Ryno (National Fuel)
Brian J. Wiese (MidAmerican Energy)

Acaphi Shanui (American Gas Association)
Andrew K. Sato (American Gas Association)

Organization(s): NW Natural
Atmos Energy Corporation
National Fuel
MidAmerican Energy
American Gas Association

The meeting discussed the seven factor test in the rules further defining the term "swap" regarding whether an instrument with embedded volumetric optionality is a forward contract, a trade option or a swap. [See 77 FR at 48736] In particular, the meetings focused on the seventh factor, which requires that "the exercise or non-exercise of the embedded volumetric optionality is based primarily on physical factors, or regulatory requirements, that are outside the control of the parties and are influencing demand for, or supply of, the nonfinancial commodity." The American Gas Association (AGA) members were of the view that the seventh factor should be tested at the time of signing the master contract in question, as opposed to at the time that a party to the contract makes its decision whether to exercise the embedded volumetric optionality. The AGA members referred to the comments letter AGA filed on this issue on October 12, 2012 (Comment No. 59673). Also, the AGA members thought that if an instrument such as a peak supply agreement relating to natural gas did not satisfy the seventh factor, it should be treated as a trade option. In this case, the parties to the contract should be required to report the trade option on the CFTC's Form TO on an annual basis. The AGA members also requested additional guidance regarding the seventh factor, which requires that both parties to the instrument are commercial parties. The AGA members asked for guidance whether a financial entity that is a marketer of natural gas, and buys and sells natural gas as part of its regular business, would be considered to be a commercial party. Also, the AGA members requested clarification that Part 46 of the CFTC's regulations (regarding reporting of legacy instruments) does not apply to trade options.
EXTERNAL MEETINGS: MEETING W/ SUTHERLAND

WHEN: 3/20/2013 3:00 PM

Rulemaking(s): General

CFTC Staff: Scott O’Mara
            Andy Menon
            Ali Hosseini

Visitor(s): Matt Picard
            Katherine Torres
            Mark Tourangeau
            Melanie Mitchell
            Anusha Sharma
            David Morinow
            Meghan Griebner

Organization(s): Shell
            AGL
            NextEra
            ESI
            EPSA
            AGA
            Sutherland

Participants discussed end-user requirements as it relates to Dodd-Frank