

Carleton, Norman

From: Hammer, Viva
Sent: Monday, October 01, 2001 3:09 PM
To: Carleton, Norman
Subject: RE: Discussion with Ken Raisler about Enron Product



Retail Swaps.doc

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-----Original Message-----

From: Carleton, Norman
Sent: Saturday, September 08, 2001 1:10 PM
To: Ball, Stella; DeMarco, Edward; Ejdema, Matthew; Elliott, Martha; Fisher, Peter; Gabilondo, Jose; Gross, Jared; Hammer, Viva; Hughes, Gerry; Nickoloff, Peter; Noves, Michael; Roseboro, Brian; Schulthess, HeidiLynne; Smith, Amy; Sutton, Gary
Subject: Discussion with Ken Raisler about Enron Product

On Friday, September 7, I discussed the retail energy swap issue with Ken Raisler. He is a partner at Sullivan & Cromwell who represents Enron. In the mid 1980s, he was the general counsel of the CFTC.

I asked Ken if Enron opposed state regulation of retail energy derivatives if the CFTC were to grant an exemption for this product. The first answer to this question was yes, but that answer was modified as we further discussed the issue.

I asked Ken if he thought that there was a preemption argument that could be made because of CFTC exclusive jurisdiction. He said he thought there was. He said Enron would not make such a legal argument because it is regulated in some states as a utility company, but that others might make such an argument.

I told Ken that the Treasury had not come to a conclusion about the retail energy swap issue but that we were unlikely to support a result that would mean no federal regulation and would not allow state governments to regulate this product if they chose to do so. He asked me what regulatory issues might be of concern. I answered that such issues as advertising, pricing, and assurances that the company offering the product had the financial ability to meet its obligations might be subjects that governments would be concerned about. Ken said he thought that this was a reasonable position.

I asked Ken whether he thought that the CFTC could exempt retail energy swaps from the exclusive jurisdiction provision of the CEA, thus precluding any arguments about state jurisdiction. He said he thought that might be possible.

At the end of the conversation, Ken indicated he would talk to his client about the issues I had raised.

[(b)(5)]