

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:)	CHAPTER 11
SEMCRUDE, L.P., et al.,)	Case No. 08-11525 (BLS)
)	Jointly Administered
Debtors.)	Docket Reference No. 2853

MEMORANDUM ORDER

1. The matter before the Court is the Motion for Reconsideration of this Court's January 9, 2009 Opinion and Order Regarding Contractual Netting (the "Motion for Reconsideration") [Docket No. 2853] filed by Chevron Products Company ("Chevron"). FPL Energy Power Marketing, LLC, and several other entities have filed briefs in support of Chevron's Motion for Reconsideration as amici curiae. [See Docket No. 3144]. The Debtors and numerous other parties have objected to the Motion for Reconsideration [Docket No. 3142].

2. By the Court's Opinion and Order dated January 9, 2009 (collectively referred to hereinafter as the "January 9 Opinion"), the Court denied Chevron's Motion for Relief from the Automatic Stay to Allow for Setoff of Mutual Obligations (the "Setoff Motion"). Chevron had sought relief from the stay under the Setoff Motion to effect a "triangular setoff" pursuant to 11 U.S.C. § 553. The January 9 Opinion denied the Setoff Motion on the ground that, under § 553, debts must be "mutual" in order to be set off against one another, and Chevron had neither established mutuality of the debts in question nor established a recognized exception to the mutuality requirement. January 9 Opinion at pp. 19, 23.

3. Pursuant to the Motion for Reconsideration, Chevron asks this Court to alter its prior ruling on the ground that its request is not governed by § 553, but instead by §§ 556, 557 and 561. More specifically, Chevron now contends for the first time that the contracts at issue here are forward contracts or swap agreements subject to the "safe harbor" provisions of § 561. Debtors have objected to reconsideration on the grounds that, inter alia, the "safe harbor" issue

was not originally raised by Chevron, has been waived, and cannot be raised at this late hour by Chevron.

4. Chevron has moved for relief under Bankruptcy Rules 59(e) and 52(b).¹ The applicable standards are not in dispute. A motion to amend under Rule 59(e) must be based on (1) an intervening change in controlling law; (2) the availability of new or previously unavailable evidence; or (3) the need to correct clear error or prevent manifest injustice. N. River Ins. Co. v. CIGNA Reins. Co., 52 F.3d 1194, 1218 (3d Cir. 1995). Similarly, a motion to amend factual findings under Rule 52(b) must show that the amendment is “necessary to correct manifest errors of law or fact,” which showing is construed the same as “the need to correct clear error to prevent manifest injustice” under Rule 59(e). In re Reading Broadcasting, Inc., 386 B.R. 562, 566 (Bankr. E.D. Pa. 2008).

5. Chevron’s Motion for Reconsideration must be denied because there has been no intervening change in controlling law², and there is no meaningful allegation of newly available evidence or a need to correct clear error by the Court.

6. The record in these cases clearly supports that Chevron filed and prosecuted its Setoff Motion pursuant to § 553; at no point was it ever alleged that the agreements at issue were governed by the different statutory scheme pertaining to “safe harbored” agreements. The Setoff Motion makes no mention of § 561, and recites § 553 as the asserted basis for relief no fewer than 6 times.³ Consequently, the January 9 Opinion construes only § 553, does not construe §§

¹ Chevron has also moved under Fed. R. Civ. P. 60(b), made applicable through Bankruptcy Rule 9024. The Court finds that this request is unavailing because (i) the January 9 Opinion is not a final order and (ii) the criteria listed in the Rule have not been met by Chevron.

² Chevron cites the recent decision by the United States Court of Appeals for the Fourth Circuit in Hutson v. E.I. du Pont de Nemours and Co. (In re Nat’l Gas Distribus., LLC), 2009 WL 325436 (4th Cir. 2009). The Court has carefully reviewed the decision in National Gas and finds that it is not controlling upon this Court, and that, in any event, it is not a sufficient development in the law to warrant regarding consideration of this Court’s ruling. See North River Ins., 52 F.3d at 1218-19.

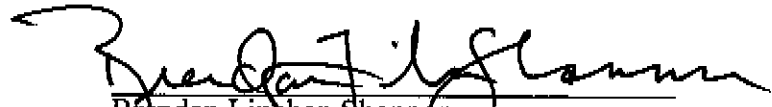
³ Counsel for Chevron specifically noted at the hearing on the Setoff Motion that the “safe harbor” was not at issue before the Court. See Tr. of October 9, 2008 hearing at pp. 64-65.

556, 557 or 561, and does not address directly any issue relating to "safe harbored" contracts.

7. The Court has ruled upon the Setoff Motion, and Chevron seeks at this point to change its legal theory. The applicable Bankruptcy Rules do not permit reconsideration to allow a party a "second bite at the apple" to assert grounds for recovery that could have been raised in the first instance.

Based upon the foregoing, and following a hearing held on March 12, 2009, it is hereby ORDERED, that the Motion for Reconsideration is denied.

Dated: Wilmington, Delaware
March 19, 2009


Brendan Linahan Shannon
United States Bankruptcy Judge