



Tom Shoaf  
Vice President and Controller



LETTER OF COMMENT NO. 10

September 21, 2007

Mr. Russell G. Golden  
Director of Technical Application and Implementation Activities  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

Re: File Reference: Proposed Issue E23

Dear Mr. Golden:

NuStar Energy, L.P. is a publicly traded master limited partnership based in San Antonio, Texas. It is one of the largest independent terminal and petroleum liquids pipeline operators in the United States. We would like to comment on the Exposure Draft of the Proposed Statement 133 Implementation Issue No. E23 (DIG E23), "Hedging – General: Issues Involving the Application of the *Shortcut Method* Under Paragraph 68."

We recognize that application of the shortcut method has caused confusion among financial statement preparers and has been a cause for many financial statement restatements. Therefore, we support the FASB's efforts to provide additional implementation guidance and clarification. Generally, we support the clarifications contained in the proposed DIG E23. However, for the reasons noted below, we request that the FASB reconsider its conclusion that a fair value hedging relationship that begins subsequent to the initial recognition of the hedged item (late hedging) would not meet the requirements of paragraph 68(e).

In the basis for conclusions of the proposed DIG E23, the FASB asserts two principal reasons that late hedging would not meet the requirements of paragraph 68(e). The first reason noted deals with the fact that subsequent to the date of the initial recognition of the hedged item, its fair value does not equal its par value. This difference will change with changes in benchmark interest rates, which would result in inefficiency, thus preventing the assumption of no inefficiency as required by paragraph 68(e).

We noted in the alternative views section of proposed DIG E23 that three board members disagreed with this specific aspect of the proposed DIG E23. For the reasons specified in that alternative views section, we agree that late hedging should not violate the requirements of paragraph 68(e).

The second reason asserted by the FASB justifying its conclusion that late hedging violates paragraph 68(e) is its belief that its conclusion is consistent with the requirements of Statement 133 Implementation Issue No. E15 (DIG E15), "Continuing the Shortcut Method after a Purchase Business Combination." DIG E15 states, in summary, that, the consummation of a purchase business combination results in a new determination date for application of the shortcut method. DIG E15 concludes that continuing application of the shortcut method subsequent to a purchase business combination would be very unlikely because the fair value of the swap would not be zero at that new determination date, as required by paragraph 68(b).

Preparers and users of financial statements recognize that purchase business combinations result in a new basis of accounting for the acquired assets and liabilities. Accordingly, the FASB's conclusion that a purchase business combination would result in a new determination date for purposes of applying the shortcut method stands to reason. However, by analogizing to DIG E15, the FASB is implying that the issuance of implementation guidance – in this case the proposed DIG E23 – would logically result in a new determination date for application of the short cut method. We fail to see the similarity between the two situations as many FASB standards are only applied prospectively and specifically exempt application to transactions completed prior to the effective date of the standard. Therefore, we do not believe that most preparers and users of financial statements would expect that the issuance of implementation guidance would logically result in a new determination date. In fact, we believe this requirement could cause confusion among the users of financial statements trying to discern the reason underlying a change in accounting for a transaction entered into years ago and properly accounted for under the existing rules. Moreover, DIG E15 mentions the fact that the fair value of the swap would likely not be zero, but is silent with respect to the fair value of the hedged item.

Additionally, we note that the purpose of Implementation Issues issued by the Derivatives Implementation Group is to provide guidance on questions companies would face as they implemented Statement 133. In Example 2 of Appendix B of Statement 133, the FASB specifically stated that the trade date of the swap and the borrowing date of the debt "need not match for the assumption of no ineffectiveness to be appropriate." The guidance contained in this example is clear and straightforward in allowing use of the shortcut method for a late hedging relationship. In other sections of Statement 133 set forth in the alternative views section of proposed DIG E23, the FASB discussed the requirements for application of the shortcut method. In all of these discussions, the FASB never mentioned a requirement that the fair value of the hedged item must equal its par value. It is clear that FASB staff did not intend for the fair value of the hedged item to equal its par value in order to qualify for the shortcut method. Therefore, we fail to see how the issue of late hedging would be a source of questions faced by companies in implementing Statement 133, and need additional clarification through the issuance of proposed DIG E23.

We believe prohibition against late hedging contained in the proposed DIG E23 exceeds the purpose of providing implementation guidance and actually supersedes existing

authoritative literature. Accordingly, we believe the final DIG E23 should not contain the prohibition against late hedging. However, if the FASB intends to supersede the existing guidance with the issuance of this implementation guidance, we do not believe that should result in a new determination date for purposes of determining compliance with the shortcut method requirements. To do so would require many companies to discontinue use of the shortcut method despite having previously applied it appropriately under the existing authoritative literature. That strikes us as unfair to the companies and, as mentioned above, potentially confusing to the readers of the financial statements. Instead, we believe it would be preferable if the FASB applied these new requirements only to transactions entered into subsequent to its effective date (prospective application). This approach would be consistent with many FASB pronouncements that are only applied prospectively.

Thank you for the opportunity to comment on the proposed guidance. We would be pleased to discuss any of our comments in more detail. If you have any questions, please contact me at 210-918-2894 or [tom.shoaf@nustarenergy.com](mailto:tom.shoaf@nustarenergy.com).

Respectfully,

A handwritten signature in black ink, appearing to read 'T. Shoaf', written in a cursive style.

Thomas R. Shoaf  
Vice President and Controller