

7(A)(c)(2)  
801.15  
801.21

[Redacted]

November 7, 2002

[Redacted]

Via E-Mail and U.S. Mail

Mr. Patrick Sharpe  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Re: Section 7(A)(c)(2) Exemption Under the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended (the "Act")

Dear Mr. Sharpe:

We represent a company engaged in power project development and the trading of electric power and natural gas. The company has also engaged in the exploration and production finance business through a subsidiary. The company now seeks to divest the subsidiary's loan portfolio. This divestiture will result in the exit by the company of the exploration and production finance business. The loan portfolio consists of (i) mortgages and related credit agreements, (ii) warrants and (iii) royalty interests.

for carbon-based reserve

The purpose of this letter is to confirm our telephone conversation on August 26, 2002, in which we discussed the application of Section 7(A)(c)(2) of the Act to this transaction. During this call, we discussed the electronic correspondence from me to you outlining the facts of the transaction, a copy of which is attached for your convenience.

You confirmed that rules 801.21 and 801.15 exclude from the size of the transaction analysis the mortgages (obligations which are not voting securities pursuant to Section 7(A)(c)(2)) and the warrants, respectively. Thus, for purposes of determining the applicability of the Act to this transaction, the size of the transaction would be limited to the value of the royalty interests. Unless the royalty interests were valued in excess of \$500 million, such acquisition would not be subject to the Act pursuant to Section 802.3. Finally, you indicated that the sale of all assets limitation applies to Section 7(A)(c)(1) and would not apply to Section 7(A)(c)(2) as relied upon under these facts despite the transaction constituting the sale of substantially all of the assets of the acquired entity. Therefore, you agreed that no filing under the Act would be required under these circumstances.

If I have omitted or misstated any material portion of our conversation, please advise me as the parties are relying on this interpretation to proceed with the transaction.

Thank you for your prompt and courteous assistance in helping assure the parties that they are in full compliance with all applicable pre-merger reporting obligations.

Called Dawn [Redacted]  
11/7/02 - I concor  
with this letter.  
(PS)

Very truly yours,  
[Redacted]

[Redacted]

[Redacted]