

802.2

Verne, B. Michael

From: [REDACTED]
Sent: Monday, September 25, 2006 8:38 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: HSR Advice

Hi Mike - I would be grateful for your advice on the following fact pattern:

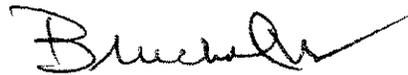
Company A will acquire 2 "wind projects " from Company B. At the time the acquisition agreement is signed, one of the projects will be operational. The other may still be under construction. Total consideration for the transaction is \$350 million. The value of the operational project is \$50 million. The value of the larger project, which may be under construction is \$300 million. It is possible that the larger project may sell energy generated in the testing process prior to completion (and prior to the closing) or it could be operational for a couple of weeks after completion, but before the closing.

Any possibility that there is an exemption here under 802.2?

I look forward to hearing from you. Thanks

[REDACTED]

It could be exempt under 802.2(a) if Company B constructed the project with the intent to sell it. The exemption is not compromised if the only income was from the sale of energy produced in testing, but if the project becomes operational before closing, it is not available.



9/25/06