

801-10

December 1, 2006

Michael B. Verne
Federal Trade Commission
Premerger Notification Office
Bureau of Competition
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Informal Interpretation Regarding LLC Interest Acquisition

Dear Mike:

I am writing to confirm the conversation that [REDACTED] and I had with you yesterday regarding the reportability of a proposed acquisition of a 50% interest in an existing LLC that is constructing a wind farm. Your advice was that the acquisition price of the following transaction was not determined and that a fair market valuation should instead be used. Using the fair market value approach, as we described to you, you agreed that the deal would not be reportable.

Party A owns 100% of the membership interests in an existing LLC that is constructing a wind farm. Party A has or will have made capital contributions of \$50 MM as of closing to fund equipment, materials and construction for the LLC. In the proposed transaction, Party B will receive a 50% interest in the wind farm and, as a consequence of its 50 percent ownership, Party B will be required to pay for equipment, materials, and construction for the LLC until Party B has made an equivalent \$50 mm contribution. These "catch-up" payments are projected to be paid over the next six months as bills for construction, equipment, etc. come due. Once both Party A and Party B have contributed equal amounts, future funding requirements will be funded 50% by Party A and 50% by Party B -- subject to late stage funding of the premium amount as detailed in the next paragraph.

To compensate Party A for its risk in developing the Project, Party B will effectively pay a Premium of \$17m in the form of an additional contribution to the LLC. The total contribution of Party B pursuant to the Premium will be \$34m (\$17m contribution to the LLC in lieu of the premium which would otherwise be paid to Party A and a matching \$17m as required to maintain a 50/50 matching of contributions). Contribution of the premium is contingent upon

successful completion of the project. As such, the premium will be earned on a turbine-by-turbine basis as each turbine achieves substantial completion and is capable of transmitting power into the grid. To transmit power to the grid, the substation must also be completed and meet specifications outlined in the interconnection agreement. In addition, if the turbines are not constructed in a timely manner as required to qualify for Production Tax Credits ("PTC"), the premium would be forfeited for each turbine that failed to qualify for the tax credits. (To qualify for PTC's, turbines must be completed prior to year-end 2007 unless current PTC legislation is extended.)

The project is exposed to permit and other challenges, a risk which Party A and Party B would share in equally as owners of the LLC. These challenges could result in cancellation of the project. If the project were cancelled, and Party B had not contributed sufficient funds to match Party A's contribution, then Party B would be required to contribute the remaining outstanding requirement to the LLC. Party A and Party B would then liquidate the LLC.

Party B believes that the fair market value of the 50% LLC interests that it is receiving this transaction are represented by the \$17 million that it is contributing to the LLC in lieu of payment to Party A upon successful completion of the project. This fair market valuation is supported by the fact that Party A paid less than \$15 million for 100% of the LLC interests in April of this year.

Please let me know if you have any further questions or comments or if this letter does not accurately reflect yesterday's conversation.

*Agree
B. [unclear]
12/1/06*

Thanks,



cc: [redacted]