

7A(c)(1)

[REDACTED]

October 5, 2007

Mr. Michael Verne  
Premerger Notification Office, Room H-314  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Dear Mr. Verne:

I am writing to confirm our telephone discussion of October 5, 2007, involving you, me and [REDACTED] regarding the application of the "Ordinary Course of Business Exemption" under Section 7A(c)(1) of the Hart-Scott-Rodino Antitrust Improvements Act to the following proposed transaction.

Our client, the seller, is engaged in energy-related commodity trading involving multiple business lines, including the trading of crude oil, gasoline, distillates, liquefied petroleum gases, natural gas and electric power, as well as financial derivatives related to these commodities. It plans to sell to an unrelated third party all of the natural gas it currently owns and holds in United States storage inventory and to transfer to that third party purchaser eight associated interstate storage service agreements, one interstate pipeline firm transportation service agreement, two interstate pipeline transportation precedent agreements related to the firm transportation service agreement, and the benefit of various financial contracts related to the seller's storage position. The seller is pursuing these sales and transfers in order to liquidate a portfolio it assembled in furtherance of a natural gas trading strategy it now plans to discontinue in order to redeploy its capital and assets. The sale of these natural gas related assets represents a relatively small portion of the seller's overall annual revenues. The seller intends to continue to engage in energy-related commodity trading in its other business lines.

The third party purchaser has advised that it also is engaged in the energy-related commodity trading business, including, in the case of natural gas, the trading of physically-settled and financially-settled natural gas contracts (including both new contracts and existing contracts), and of financial derivatives related to that commodity. The third party purchaser further has advised that, as part of its overall business strategy, it does take physical possession of natural gas from time to time, and contracts with others for its storage and transmission; and, that these natural gas related assets represent a relatively small portion of the purchaser's overall energy purchases (or natural gas trading volume).

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As we discussed, this transaction is exempt from the Hart-Scott-Rodino reporting requirements as a transaction in the ordinary course of business. See 15 U.S.C. § 18a(c)(1) (exempting from reporting requirements acquisitions of goods or realty transferred in the ordinary course of business). This transaction falls within the ordinary course of business exemption because the seller will continue to remain in the energy-related commodity trading business following this transaction. Indeed, this transaction is akin to one discussed in Informal Staff Interpretation No. 0512015, dated December, 2005, which found the exemption applicable.

As I explained in our call, the seller has filed a petition with the Federal Energy Regulatory Commission ("FERC") requesting that FERC grant certain limited waivers with regard to the proposed transaction. In its petition to FERC, the seller has represented that, for purposes of one aspect of such FERC waivers, its disposition should be regarded by FERC as comparable to a company's "disposition of its natural gas contract portfolio in connection with its planned exit from the natural gas marketing business." However, as we discussed, and consistent with the 2005 Informal Staff Interpretation, it is our understanding that the transaction would be viewed as a change in one aspect of the seller's broader energy-related commodity trading business strategy for purposes of applying the Hart-Scott-Rodino "ordinary course of business" exemption.

If you or any other members of the staff of the Premerger Notification Office have any additional questions regarding the transaction or the applicability of the ordinary course of business exemption to it, or if you believe that [REDACTED] and I have misunderstood the 2005 Informal Staff Interpretation, please let me know. As always, we appreciate your willingness to make yourself available to us to discuss this matter.

Very truly yours,

[REDACTED]

cc: [REDACTED]

AGREE -  
Bv  
10/10/07