

801.2
801.50
802.30
802.4

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, February 27, 2008 12:14 PM
To: Verne, B. Michael
Subject: HSR Inquiry

Mike, Thanks for returning my call. I hope you feel better soon. Per our discussion, I'm sending you the structure of the three related transactions for which I am seeking HSR guidance from you.

UPE1 owns two plants in Oregon and a subsidiary in California. UPE2 owns a subsidiary in Oregon and a subsidiary in California.

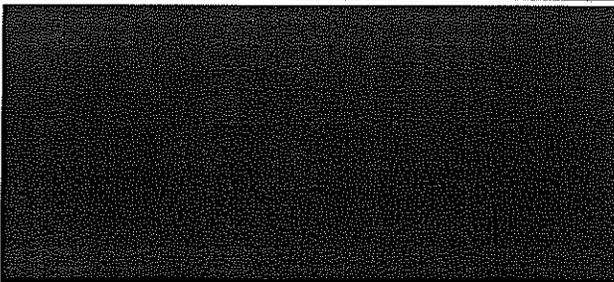
The three related transactions are as follows:

(1) UPE1 and UPE2 are forming a new California LLC. UPE1 is contributing \$200 million in assets from its California subsidiary to the new LLC and UPE2 is contributing \$52.5 million in assets from its California subsidiary to the new LLC. Each will own 50% of the new LLC.

(2) UPE1 and UPE2 are forming a new Oregon LLC. UPE1 is contributing nothing but is being given a 50% ownership interest in the Oregon LLC in consideration for UPE's contribution to the new California LLC. UPE 2 is contributing \$200 million in assets from its Oregon subsidiary to the new Oregon LLC, and will also own 50% of the new Oregon LLC.

(3) UPE1 is selling its two plants in Oregon to UPE2 for \$25 million. These plants will be owned directly by UPE2 and not by either of the two new LLC's. These plants are worth \$50 million but are being sold by UPE1 for only \$25 million to UPE2 to balance out the interests being conveyed between them in transactions #1 and #2 above.

Since these transactions are all related to one another, I would like to make just one filing if possible. I am struggling, however, with whether I have to make one or more filings, and who files what filing as an acquiring or acquired person. Any light you could shed on this would be greatly appreciated. Thanks, [REDACTED]



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18

My conclusion is that two of the transactions are reportable.

1) Analyze under 801.50. UPE 2 is the acquiring person. New CA LLC is the acquired person (no filing required). UPE 1's acquisition of 50% of New CA LLC is exempt under 802.4 (UPE 2 is only contributing \$52.5 MM in assets).

2) This is not an 801.50 transaction because there is only one person (UPE 2) contributing to the formation. UPE 2's formation of New OR LLC and the subsequent transfer of assets to it are exempt under 802.30. UPE 1's acquisition of 50% of New OR LLC, valued at \$100 MM (half the value of the assets put into New OR LLC by UPE 2) is reportable. UPE 1 files as the acquiring person. UPE 2 files as the acquired person.

3) UPE 2 is acquiring two plants valued at \$50 MM from UPE 1 in a non-reportable transaction. There is no aggregation required because all three of these transactions have different acquiring and acquired persons:

Transaction 1: Acquiring person UPE 2; Acquired person New CA LLC

Transaction 2: Acquiring person UPE 1; Acquired person UPE 2

Transaction 3: Acquiring person UPE 2; Acquired person UPE 1

Bm
3/3/08