

802-2

[Redacted]

Attorneys at Law

February 29, 2008

VIA EMAIL AND FAX

mverne@ftc.gov  
(202) 326-2624

Mr. Michael Verne  
Premerger Notification Office  
Federal Trade Commission

Dear Mr. Verne:

This letter summarizes our phone conversation on February 25, 2008, concerning a proposed transaction, the structure of which is outlined below. We are seeking written confirmation of the guidance that you provided to us during that conversation, that no HSR Filing is required in connection with the proposed transaction.

Purchaser's Business

The purchaser, [Redacted] (the "Purchaser") is a wholly owned subsidiary of [Redacted] which is a wholly-owned subsidiary of [Redacted] (NYSE). [Redacted] and its subsidiary companies provide a broad range of services to the nuclear industry, including providing solutions for the safe management, handling, transportation and disposition of radioactive materials. These services are typically performed pursuant to written services contracts.

Transaction Description

The structure of the proposed transaction is an innovative departure from Purchaser's typical decommissioning transaction, in which Purchaser would simply enter into an agreement with a client to perform decommissioning services. In this transaction, Purchaser will acquire from [Redacted] (the "Seller") title to substantially all of the buildings, facilities and equipment of its non-operating nuclear power plant near [Redacted] Illinois (the "Plant"), which has been shuttered for over 10 years. As the owner of the Plant and associated permits, licenses and other assets incidental to ownership of the Plant (the "Assets"), Purchaser will be eligible to acquire a license to decommission the Plant from the Nuclear Regulatory Commission ("NRC") and the rights to the Seller's decommissioning trust funds associated with the Plant, which are overseen by the NRC. Seller will retain ownership of the real property upon which the Assets are located and will lease the real property to Purchaser for the period during which Purchaser performs its decommissioning and decontamination activities. Purchaser is assuming contractual responsibility to decommission and decontaminate the Plant on a 10-year schedule.

This unique deal structure facilitates the decommissioning of the Plant at least 10 years ahead of the schedule that the Seller would otherwise expect to achieve in the absence of the proposed transaction. The Seller would otherwise schedule decommissioning to commence in November 2013 when the decommissioning trust funds contributed by electricity rate-payers are projected to have grown sufficiently through investment to cover the estimated cost of decommissioning the Plant. That schedule anticipates completion of Plant decommissioning in 2028, with a potential extension to 2058. Purchaser has the unique technology, expertise and assets necessary to begin decommissioning work in 2008 and

[Redacted]

[Redacted]

Mr. Michael Verne  
February 29, 2008

complete the decommissioning of the Plant during the next 10 years at a total cost not exceeding the available balance of the decommissioning trust funds (plus investment interest accruing during the 10-year decommissioning project). In order to accomplish this objective, however, it is essential that Purchaser have direct access to the decommissioning trust funds as the owner of the Assets and licensee of the NRC, enabling Purchaser to avoid several expensive and time consuming levels of administrative oversight. Purchaser is in the process of seeking NRC approval of the proposed transaction.

### Exemptions from HSR Filing Requirements

As we discussed in our conversation, we believe that the proposed transaction is exempt from making a Notification and Report Form filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Filing"). Our belief is based upon the following independent analyses:

1. *The "Acquisition Price" of the proposed transaction does not exceed the HSR Filing minimum transaction value.* There is no determined "Acquisition Price" for the Assets. Purchaser is not paying a purchase price to Seller for the Assets. In exchange for the Assets, Purchaser is agreeing to assume and be responsible for certain liabilities of the Seller in connection with the Plant, to be satisfied primarily by the decommissioning trust funds. These liabilities for which Purchaser will be responsible are not of a fixed or determined amount. Additionally, the Assets have a negative "Fair Market Value," since they are encumbered by the liability for decommissioning and have no useful value. Purchaser's board of directors has determined in good faith that the "Fair Market Value" of the Assets is a negative amount. Purchaser will receive consideration for its decommissioning work at the Plant through the Plant's decommissioning trust funds. As set forth above, the real property on which the Assets of the Plant are located is being retained by Seller and leased to Purchaser in order to perform the decommissioning work. Following completion of the decommissioning work, the real property will continue to be owned by Seller. Because there is no determined "Acquisition Price" of the Assets, and the Assets have a negative "Fair Market Value," the transaction value of the proposed transaction does not exceed the HSR Filing minimum.

2. *The Assets are "unproductive real property."* 16 CFR § 802.2(c) provides that "An acquisition of unproductive real property shall be exempt from the requirements of the act." "[U]nproductive real property is any real property, including raw land, structures or other improvements . . . and assets incidental to the ownership of the real property, that has not generated total revenues in excess of \$5 million during the thirty-six (36) months preceding the acquisition." We believe that the Assets are "unproductive real property" according to Section 802.2(c), since they are nearly entirely "structures or other improvements" to real property, including buildings and other structures associated with the real property on which the Plant is located. Other components of the Assets are the licenses and permits from the NRC related to the ownership of the Plant. These licenses and permits are "assets incidental to the ownership of the real property" since they are attached to the Plant and have no other value or use. None of subparagraphs (i), (ii) or (iii) of Section 802.2(c)(2) would cause the real property Assets not to qualify as "unproductive real property" under Section 802.2(c). Equipment, machinery and other personal property that constitute a portion of the Assets would not independently require an HSR Filing because the value of those assets is well below the HSR filing minimum.

### Informal Staff Opinions

We have located the following guidance, in the Premerger Notification Practice Manual (the "Manual") and FTC Informal Staff Opinion letters, which we believe is helpful to our analysis and conclusion that the proposed transaction is exempt from the HSR Filing requirements:

Mr. Michael Verne  
February 29, 2008

1. Section 122 of the Manual states that assumed liabilities of a determined amount must be included in the acquisition price. By implication, assumption of liabilities or obligations not of a determined amount are not included in the acquisition price.
2. Section 107 of the Manual states that, "in calculating the 'acquisition price,' future payments of a fixed amount must be included . . ." Again, by implication, assumption of liabilities or obligations not of a fixed amount are not included in the acquisition price.
3. Letter addressed to Ms. Nancy Ovuka, dated March 3, 1999 (Informal Staff Opinion 0012010). This letter states that (a) the Staff has interpreted Section 802.2 to apply to leases if the lease pertains to real property, the acquisition of which would be exempt if purchased outright, and (b) permits and agreements associated with real property are assets incidental to the ownership of real property. Please note that there was no FTC Staff response set forth on this letter, and the electronically coded "Response" is listed as "unknown".
4. Letter addressed to Mr. Michael Verne, dated January 15, 2007 (Informal Staff Opinion 0701010). In this letter, the Staff agrees that permits, contracts and agreements associated with a power plant are "assets incidental to the ownership of real property" for purposes of Section 802.2(c).
5. Letter addressed to Mr. Michael Verne, dated November 11, 2004 (Informal Staff Opinion 0411008). This letter assumes that contracts, permits, rights and other assets associated with a power plant are real property for purposes of Section 802.2(c).
6. Letter addressed to Mr. Michael Verne, dated November 13, 2001 (Informal Staff Opinion 0111003). This letter states that production sharing contracts, which gave the right to develop and drill a certain natural gas field and receive a share of such production, are viewed as the equivalent of the underlying gas reserves in the drill field, despite the fact that no title or other interest in the real property containing the reserves was held. The letter also states that if such gas reserves have not yet produced revenues, then the reserves (and therefore the production contracts) are exempted from the HSR Filing requirements pursuant to the unproductive real property exemption. The FTC Staff concluded, then, that agreements related to real property, as determined according to Section 802.2, are also considered real property for the purposes thereof.

These letters described in paragraphs 3 through 6 above demonstrate that the FTC Staff views the unproductive real property exemption as designed to include a wide variety of real property interests and related agreements and transactions, even to the point of including agreements that relate only to resources in real property, and not to the real property itself. As set forth above, the Real Property Assets meet the language of Section 802.2(c). Moreover, the inclusion of so many varied types of real property in the exemption, both in the rule (e.g., natural resources) and in Informal Staff Opinions (e.g., agreements relating to real property or resources in real property) provides additional support to our conclusion that the unproductive real property exemption applies to the proposed transaction and that no HSR Filing is required.

Our conclusion is, therefore, that the proposed transaction will not require an HSR Filing. Please contact me with any questions, concerns or requests for additional information that you may have. We appreciate your assistance in this matter.

Sincerely:

Asase -  
  
3/3/08