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June 20, 2008

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Mr. B. Michael Verne
Premerger Notification Office
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Sale of a Wind Development Project and a 24 MW Wind Farm

Dear Mr. Verne:

We are counsel to the holders of interests of several limited liability companies which hold in the aggregate the assets and related contractual rights relating to a (i) 3,100 megawatt wind development project (the "Project") which will be constructed in phases over the next 8 to 10 years and (ii) 24 megawatt turbine wind farm which has not achieved full commercial operations (the "24 MW Wind Farm"). We are submitting this letter in order to seek confirmation of our view that the sale of membership interests under the facts and circumstances as described below would not necessitate a filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act").

With regard to the Project, our view that a filing under the Act is not necessary in connection with the sale of membership interests is premised upon 16 CFR § 802.4 and § 802.2(c). More specifically § 802.4 provides an exemption for the acquisition of the membership interests of unincorporated entities holding certain assets the acquisition of which would be exempt under 16 CFR § 802.2(c). It is our understanding that 16 CFR § 802.2(c) would in turn exempt from the Act's filing requirements acquisitions of unproductive real property and assets incidental to the ownership of the real property. The Project consists of the following assets:

1) Development rights consisting primarily of (a) land rights covering in excess of 32,000 acres consisting of fee interests, leases, options to acquire fee interests, options to enter into leases and applications to the U.S. Bureau of Land Management ("BLM") for right of way grants (additional negotiations are continuing to procure additional land rights to add approximately 10,000 additional acres to the Project), (b) permits and permit applications, (c) environmental, wind, transmission and other studies relating to the development of the Project, (d) meteorological towers and devices for wind measurement, and (e) wind data.

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- 2) Interconnection applications and related queue positions which could allow the export upon completion of the Project of more than 3,100 MW of electricity;
- 3) a 1,550 MW Master Power Purchase Agreement with Southern California Edison;
- 4) firm pending purchase orders for 100 1.5 MW wind turbines and advanced negotiations of the purchase of additional wind turbines;
- 5) a 50% interest in a joint venture whose sole business is assisting in the development and managing the construction and operation of the Project and the 24 MW Wind Farm. It should be noted the Seller's joint venture partner has no ownership interest in the Project or the 24 MW Wind Farm.¹

At the time the transaction closes, other than with respect to the 24 MW Wind Farm, no construction will have taken place and no revenue will have been generated by the Project. We believe the leasehold interests and other real estate rights being acquired are "unproductive real property"² as that term is defined in 16 CFR § 802.2(c) and the various agreements, permits and other development rights associated with the Project as mentioned above are "assets incidental to the ownership of real property."

With regard to the 24 MW Wind Farm, it is our understanding that the value of the unincorporated interests attributable to the 24 MW Wind Farm and the various contracts and agreements pertaining to the operation of the 24 MW Wind Farm is less than \$63.1 million³.

¹ We note the Staff of the Premerger Notification Office ("PNO") in the past has agreed that "interests in partnerships established to develop or acquire" rental housing communities were exempt pursuant to 16 CFR § 802.2. Please see Informal Staff Opinion No. 0709014 dated September 20, 2007. By analogy seller's interest in a joint venture formed as a limited liability company for the purpose of developing and constructing the Project should be deemed an asset incidental to the ownership of the land. In Informal Staff Opinion 0311009 dated November 24, 2003, the Staff agreed with the author's view that the Staff of the PNO takes the position that the nature of an asset is the most important factor in determining incidental assets for the purpose of determining compliance with § 802.3.

² It is our understanding that the Staff of the Premerger Notification Office interprets § 802.2 to apply to leases if the lease pertains to real property. Please see Informal Staff Opinions No. 0311009 (mentioned in Note 1) and No. 0012010 dated December 14, 2003.

³ Alternatively, we believe that the sellers may also rely upon 16 CFR § 802.2(a) which would also exempt the sale of the 24 MW Wind Farm. Although the 24 MW Wind Farm has generated a small amount of revenue, this wind farm has not achieved full commercial

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We believe under the facts and circumstances as described above⁴ the filing of Premerger Notification Forms under the Act will not be necessary. We would appreciate knowing if you concur or do not concur with our analysis. Please do not hesitate to contact me at the above number if you have need of further information.

On behalf of our client we thank you for your time and assistance.

Very truly yours,

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cc: [REDACTED]

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operations and is currently undergoing testing and elimination of defects. It is our understanding that the current owner of the 24 MW Wind Farm acquired this facility with the intent to re-sell it. The current owner of the 24 MW Wind Farm is a Delaware limited liability company. The terms of the limited liability agreement require the manager to offer the 24 MW Wind Farm for sale no later than 12 months after the 24 MW Wind Farm has begun selling power and receiving revenue pursuant to a power purchase agreement or earlier at any time after the aforementioned criteria have been achieved if 50% or more of the members vote to require the manager to offer the 24 MW Wind Farm for sale.

⁴ For purposes of this letter, please assume that both the "size of persons" and "size of the transaction" criteria have been satisfied.

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