

September 24, 2008

Via First-Class Mail and Email

B. Michael Verne
Federal Trade Commission
Bureau of Competition
Premerger Notification Office, Room 303
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Sale-Leaseback Transactions and the HSR Act

Dear Mike:

This letter follows our conversation on Tuesday, September 16, 2008, regarding the analysis of filing requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act"), for transactions that will undo a sale/leaseback arrangement involving a power plant facility in a sale to a single Buyer.

In 1990, five common law trusts (the "Trusts") were formed to facilitate a sale/leaseback arrangement through which the owner/operator (a "Partnership") transferred title to a power plant facility, its land, and related assets (the "Facility") to the Trusts, and the Partnership became the lessee/operator of the Facility. The Trusts hold undivided ownership interests aggregating to 100% in the Facility and a right to receive lease payments from the Partnership. The Partnership operates the Facility, holds certain property related to the operation of the Facility, and holds contracts for the production of power by the Facility.

In the proposed transactions, the sale/leaseback will be unwound, and the Trusts will either transfer their beneficial interests in the Trusts or, alternatively, sell their undivided ownership interests in the Facility. The partners in the Partnership will sell their respective partnership interests. It is expected that the same Buyer will purchase both the Trusts' interests and the Partnership interests. Four of the five Trusts (with an aggregate 94.8% ownership interest in the Facility) and the Partnership do not share the same ultimate parent entity ("UPE"). One of the Trusts (Trust 2) has the same UPE as the Partnership.

B. Michael Verne
September 24, 2008
Page 2

We would like to confirm the following regarding the proposed transactions:

- For HSR Act purposes, because the UPEs of four of the five Trusts (with an aggregate ownership of 94.8%) and the Partnership differ, the sale of those Trusts' interests and the sale of the Partnership interests should be treated as different transactions.
- For HSR Act purposes, in a sale/leaseback arrangement, the transfer of the beneficial ownership interests in a common law trust (i.e. not a business trust) should be treated as merely the transfer of an income stream, which is exempt from HSR Act notification requirements.
- For HSR Act purposes, the sale of the undivided ownership interests in the Facility held by the Trusts also would not be reportable as this sale is part of an unwinding of a sale/leaseback arrangement. It is our understanding that the PNO's position with respect to sale/leaseback arrangements is that beneficial ownership of the underlying assets remains with the original owner/lessee of the assets despite title passing to the lessor.
- For HSR Act purposes, any fees that will be paid by the Trusts from the purchase price for the Trusts' interests to the Partnership for the Partnership's efforts to close the proposed transactions should not be aggregated with the purchase price for the Partnership interests.
- For HSR Act purposes, any expenses and fees of a seller that will be paid by a buyer should not be added to the total purchase price for a transaction.

Please let us know if our understanding is incorrect or if you need additional information to confirm this analysis. If you have any questions, please call me at [REDACTED]

Very truly yours,

[REDACTED]

AGREE
BM
9/24/08

cc:

[REDACTED]