

802.3
801.40

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, December 05, 2013 12:52 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Questions regarding (1) 801.40 formation analysis for pre-IPO transactions, and (2) "associated exploration and production assets" for purposes of 802.3

Dear Mike,

Company A currently owns oil and gas properties and related gas gathering systems and other miscellaneous assets as well as a 50% interest in a joint venture LLC with Company B. The joint venture holds oil and gas properties and related gas gathering systems

The owners of Company A plans to contribute their interests in Company A (along with its assets and its 50% interest in the joint venture LLC) into a newly formed corporation ("Newco") in exchange for Newco stock. Company B will also contribute its 50% interest in the joint venture LLC to Newco in exchange for Newco stock. Newco will then issue its shares to the public in an IPO.

First, even though this transaction involves an IPO, we believe the initial steps of the transaction (the contribution of assets and the joint venture company to the Newco by Companies A and B) which would happen an instant before the IPO would be analyzed as a formation of a joint venture company under rule 801.40. If that is correct, we believe Company A would not have any HSR filing obligation applying rules 802.4(a) and 802.30(c), the intraperson exemption. Please confirm that you agree with this analysis.

Second, we believe that Company B may not have to file for its acquisition of Newco shares as a result of rules, 802.2(c), 802.3(a), and 802.4(a), but needed some clarification on the application of 802.3 in this context. As noted above, the assets being contributed to Newco by Company A consist of producing and non-producing oil and gas properties, some gathering systems, and some other miscellaneous assets such as office furniture, oil field equipment, etc. We understand that the PNO's position is that the non-producing properties qualify for the 802.2(c) unproductive real property exemption. The fair market value of the producing properties is less than \$500 million so that the acquisition of those assets would qualify for the 802.3(a) exemption. The fair market value of the miscellaneous assets is far below \$70.9 million. The only remaining issue is whether the gathering systems qualify as part of the 802.3(a) exemption as "associated exploration and production assets" as defined in 802.3(c).

All of the gas that is transported on the gathering systems owned by Company A is produced from wells operated by Company A and, likewise, all of the gas that is transported on the gathering systems owned by Company B is produced from wells operated by Company B. Within the field, the gas passes through two sets of meters. At the point of sale to a third party, the gas flows through "sales meters." Upstream of that (at each wellhead), there are other meters that are used solely for internal accounting purposes.

We understand based on 802.3(c) that "associated exploration or production assets" ("AEPA") include assets that are "integral and exclusive to . . . production activities." Subpart (1) carves out from the definition of AEPA, pipelines or pipeline systems that transport gas after it passes through the meters of a producing field located within the reserves being acquired. We would expect that the sales meters would be the

appropriate meters to use for these purposes. We do not believe the subpart (2) carve-out applies in this situation because the gathering systems in this instance are all contained within the producing field and are transporting gas before it passes through the sales meters also located within the producing field as explained above. As the PNO noted in a prior informal interpretation, "[a]ssociated exploration and production assets that would qualify for the Oil and Gas Exemption would include field pipelines that exclusively serve reserves being acquired as a part of the transaction." See Federal Trade Commission, Informal Staff Opinion 0708006 (August 22, 2007). We would therefore consider the pipes upstream of the sales meters to be AEPA and thus part of the carbon-based mineral reserves at issue.

If this is the correct analysis, Company B would not have to file for its acquisition of Newco stock because the Newco assets being contributed by Company A would qualify for the 802.3 and 802.2(c) exemptions (through the application of 802.4(a)).

Please let us know if you agree.

Thanks for your help,

[Redacted]

cc: [Redacted]

[Redacted]

AGREE THAT THE SALES METERS
ARE THE APPROPRIATE METERS
TO USE IN THE 802.3
ANALYSIS.

Bm
12/5/13

KW CONCURS

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