

802.5

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, January 22, 2014 10:54 AM
To: Verne, B. Michael; Walsh, Kathryn
Subject: 802.5 pipelines

Mike and Kate,

We have a transaction which involves the proposed acquisition by Company A of a natural gas gathering system from Company B. A and B are each their own UPEs. A is a pure midstream company – its sole business involves providing natural gas gathering, transportation, and storage services to entities not included within itself, including B. A transports and gathers natural gas provided by third parties from wellheads and other receipt points and moves it to transmission pipelines and third party processing facilities. Company B currently uses the system to gather natural gas for an entity owned by Company B’s UPE.

Rule 802.5 exempts acquisitions of investment rental property. According to informal interpretation 1202006, pipelines have been considered by the PNO to be investment rental property.

The draft PNPM includes an interpretation of Rule 802.5 that includes the following instructions for valuing non-exempt assets included in transactions involving investment rental property: “Note that in applying Section 802.5, one must access the portion of the Assets that Company A intends for its own use, and if that portion is larger than the portion of assets Company B attributed to its own use, then the fair market value of the nonexempt assets would need to be established based on the portion of the Assets that Company A intends to devote to its own (and not a third party’s) use.” As Company A is a pure midstream company that provides services solely to third parties, no portion of the pipeline system can be devoted to its own use or to the use of any entity within Company A.

The PNO has previously taken the view that, when a portion of the real property involved in a transaction is currently used by the Seller, the portion of assets available for the Rule 802.5 exemption is the smaller of the percentage of 1.) the assets currently made available to third parties by the Seller, and 2.) the assets intended to be made available to third parties by the Buyer (PNPM 201). However, because in this case Company A is limited to using 100% of the pipeline system to solely transporting third party product, is the first prong of this analysis relevant? Following for convenience are the interpretations referenced above. Please let me know if you need additional information.

As always, many thanks.
Best Regards,

[REDACTED]

<http://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/1202006>

Staff:

Michael B. Verne

Response/Comments:

– Pipelines are exempt as investment rental property.

[Original Image File \(100.76 KB\)](#)

The exemption clearly says that the property must be property currently rented, or property held for rent but not currently rented. All of it is currently being used internally by the seller, so the exemption is unavailable.

B. [Signature]
1/23/19

KW CONCURS