

**From:** [Gillis, Diana L.](#)  
**To:** [REDACTED] [Walsh, Kathryn E.](#)  
**Cc:** [REDACTED] [Storm, Evan](#); [Shaffer, Kristin](#)  
**Subject:** RE: Rule 802.2(c)  
**Date:** Tuesday, May 10, 2016 2:25:00 PM

---

[REDACTED]

Given the lack of additional capital investment required and the expected timeframe and requirements to becoming operational, we believe the power plant you describe is substantially complete, making it a facility that is excluded from the exemption in 802.2(c).

-Diana

---

**From:** [REDACTED]  
**Sent:** Tuesday, May 10, 2016 7:44 AM  
**To:** Walsh, Kathryn E.; Gillis, Diana L.  
**Cc:** [REDACTED]  
**Subject:** Rule 802.2(c)

Kate and Diana:

I am counsel to the acquiring person, and [REDACTED] is counsel to the acquired person, in connection with the acquiring person's proposed acquisition of a solar electric power plant now under construction by the acquired person. A newly formed LLC included within the acquiring person would purchase from the acquired person 100% of the non-corporate interests of the holding company that owns the project company (the actual owner of the project).

We are seeking your guidance on whether the proposed acquisition would be eligible for exemption as unproductive real property under Rule 802.2(c), via Rule 802.4.

At the time of the acquisition, the project will have reached a stage of completion close to the tipping point beyond which the unproductive real property exemption clearly would not be available. As you explained in PNO #1511001, the key to the Rule 802.2(c) analysis is whether the project is complete enough to be called a "facility". If it is, or if it has generated any revenues (other than arising from the testing and debugging process or from any equipment preservation activities that may be needed), then the unproductive real property exemption could not apply.

As you may know, there are several different milestones in the construction of a new solar electric power plant. Unlike the situation described in PNO #1511001, in our case the acquisition would occur before the project has achieved what commonly is known as "substantial completion". In our case, the acquisition would be at "mechanical completion", which means that all applicable design, engineering, procurement, assembly, construction and installation will have been completed, and the project will be ready for testing, debugging and commissioning.

At the time of the acquisition, the testing and debugging process will only have just begun; and, once that process is completed, the commissioning process will be needed before the project is ready to begin commercial operation. Testing, debugging and commissioning involve, among other things, commissioning of the substation, medium voltage and electrical circuit testing, load and directional testing, and final performance testing. It is anticipated that, at the time of the acquisition, the project will not have received final inspection by the relevant municipality, will not have been granted permission to operate by the third-party transmission provider, and will not have been "placed in service". Only after all of that has been accomplished could the project begin commercial operation.

The construction of power plants inherently involves uncertainties that might not apply in the construction of other types of non-manufacturing facilities. The testing, debugging and commissioning process, critical steps in a power plant's construction, typically can take anywhere from several weeks (assuming all goes well) to several months or more (if things don't go as anticipated). In our case, the process is targeted to take approximately 5-6 weeks, and the construction contractor (an entity included within the acquired person) will begin to incur financial penalties under the parties' construction contract if the process takes longer than 8 weeks. Given this inherent uncertainty, and notwithstanding that the additional capital investment required after "mechanical completion" is anticipated to be minimal, we believe it is fair to say that, at "mechanical completion", the solar electric power plant under construction is not yet a "facility" within the meaning of Rule 802.2(c). Please let us know if you agree.

Thanks.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---