

Sheinberg, Samuel I.

From: HSRHelp
Sent: Tuesday, December 11, 2018 10:31 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Sheinberg, Samuel I.; Whitehead, Nora
Subject: FW: Request for Advice: 802.2(c)

From: Shaffer, Kristin
Sent: Tuesday, December 11, 2018 10:30:43 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Request for Advice: 802.2(c)

[REDACTED]

Confirmed.

Best regards,
Kristin

From: [REDACTED]
Sent: Friday, December 7, 2018 8:21:02 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: Request for Advice: 802.2(c)

Dear PNO Team,

We would appreciate your confirmation that we have analyzed correctly the reportability of the two proposed transactions described below.

In the proposed transactions, A plans to acquire a 50 percent interest in each of four project companies held by B. Three of the project companies own lease areas suitable for wind farms. Although some of these three project companies have been awarded Power Purchase Agreements for the future delivery of power, construction has not yet begun on any such wind farms and none of such project companies has generated revenue in the past thirty-six months. The fourth project company holds an operating wind farm. No lease area of the three non-operating project companies is adjacent to or used in conjunction with the lease area held by the fourth (operating) project company. For business reasons unrelated to HSR, A plans to complete the above in two transactions, by entering into two Share Purchase Agreements, not conditional upon each other. In the first transaction, A plans to acquire the interests in the three non-operating project companies. In the second, A then plans to acquire the interest in the fourth (operating) project company after filing for and receiving clearance under the HSR Act and receiving other regulatory approvals. Although

the parties have not yet decided whether to proceed with the second transaction and valuation and other terms are still being assessed, please assume that the relevant HSR thresholds would be met with respect to the fourth (operating) project company should that transaction proceed.

Please confirm our analysis that:

- The acquisition of the interests in the three non-operating project companies is exempt as an acquisition of “unproductive real property” (802.2(c))
- A may close the acquisition of the interests in the three non-operating project companies before expiration or termination of the HSR waiting period for the acquisition of the interest in the fourth (operating) project company. This also would be the case if the transactions were to be related, rather than distinct. (PNPM (5th) Interp. 227)

As always, thank you for your help.

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