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May 9, 2001

BY TELECOPY AND FIRST CLASS MAIL

Mr. Mike Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
6th Street and Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Mike:

This letter confirms our conversations on May 3, 2001 and May 4, 2001, with respect to the premerger notification requirements of the Hart-Scott-Rodino Act, 15 U.S.C §18a ("the HSR Act"), as they apply to a certain transaction described below. Our client, Company A, is considering a transaction in which a subsidiary of Company A ("A Sub") will acquire the coal mining equipment and related production assets for, along with the exclusive right to operate and extract coal from, a certain coal mine, from Company C, the current operator of the mine.

As we set forth during our phone conversations, Company A currently leases coal reserves located in Louisiana jointly with another company, Company B. A and B also jointly own and operate a power generating plant that is located near these coal reserves. In March of 1982, Companies A and B entered into an agreement with Company C whereby Company C would construct and operate a mine to extract these coal reserves. At the same time, Companies A and B entered into a supply contract with Company C, pursuant to which Company C would deliver to the generating plant jointly owned by A and B, its coal requirements according to the terms specified in the supply contract.

As part of the operating agreement, the parties (A, B & C) agreed to a "Grant of Operating Rights," pursuant to which Company C was granted the

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exclusive right to mine the mineral interests and to design, develop, construct and operate a mine in these coal reserves. Company C was permitted, at any time it so desired, to sell or otherwise dispose of, to any person or entity other than Company A or Company B, coal produced from the mine so long as Companies A and B were provided with an option to buy the coal – essentially a right of first refusal to the coal -- at the location and price specified in the supply contract. The grant of operating rights was effective for a term of 25 years and was renewable for an additional period of twenty years or until the time that Company A and B could no longer economically utilize the coal from that mine – in other words, for the economic life of the coal reserves.

The companies have now decided to terminate the existing coal operating/mining and supply agreements. A subsidiary of Company A ("A Sub") now plans to purchase from Company C, for a purchase price of approximately $117 million in cash and reclamation liabilities, all the production assets and equipment along with in-pit coal from Company C. "A Sub" is also purchasing the right to operate the mine and to extract from the mine and sell the coal that Companies A and B lease in the ground. The rights that "A Sub" will acquire continue "until all economically surface mineable lignite reserves . . . have been depleted."

After the proposed transaction, "A Sub" would possess not only physical mining assets that it does not presently own, but also *rights to the reserves* in the ground that it does not presently own. Prior to this transaction, neither "A sub", nor A or B can extract, sell or otherwise dispose of the coal that is mined from the reserves that A and B lease in the ground. Currently, Company C has the exclusive right to extract, sell or otherwise dispose of the mined coal, subject to the supply contract and preferential option given to A and B. Post-transaction, "A Sub" will have the rights to the reserves formerly owned by C.

Based on these facts, you advised us that the transaction described above is not a reportable transaction under the HSR Act. Rule 802.3(b) of the HSR Rules provides that:

> "an acquisition of reserves of coal, *or rights to reserves of coal* and associated exploration or production assets, shall be exempt from the

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> requirements of the act if the value of the reserves, the rights and the associated exploration or production assets to be held as a result of the acquisition does not exceed $200 million." (emphasis supplied)

16 C.F.R. § 802.3(b). You advised that under the above facts, since Company A, through its "A sub," is acquiring rights to these reserves, in addition to associated production assets, this transaction would be exempt from the reporting requirements of that Act even though Company A currently holds a lease to these same reserves.

Please contact me at your earliest convenience if this letter does not accurately reflect your advice in this matter.

Sincerely,

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Enclosures

AGREE.
B. Michael Verne
5/10/01