

802.1(c)  
current supplies

September 4, 2002

Mr. Patrick Sharpe  
Premerger Notification Office  
Bureau of Competition  
Room 303  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

2002 SEP -5 P 2:37

FEDERAL TRADE COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

Re: Ordinary Course of Business Exemption

Dear Mr. Sharpe:

This letter is to confirm the substance of our telephone discussion on August 30, 2002, regarding the application of the "Ordinary Course of Business Exemption" under Section 7A(c)(1) of the Hart-Scott-Rodino Antitrust Improvements Act (the "Act") and 16 C.F.R. § 802.1 to the following proposed transaction (the "Transaction").

The seller ("Seller") is engaged in the energy production, storage and trading business. Seller owns large quantities of natural gas stored in multiple storage facilities, each operated by a third party. Our client ("Purchaser") is engaged in the energy trading business and proposes to purchase a significant quantity of stored natural gas from Seller for approximately \$150 million. As part of the Transaction, Seller will assign to Purchaser its rights to the storage capacity for the amount of gas purchased. No pipelines, storage facilities or equipment will be purchased in connection with the Transaction. The natural gas being purchased is stored in multiple locations and does not account for all or substantially all of the assets of Seller operated as a business undertaking in any particular location or for particular products or services.

Simultaneously with the Transaction, Purchaser and Seller will execute an agreement whereby Purchaser will deliver an equivalent quantity of natural gas to Seller over the course of six months at the market rate in effect at the time of each delivery.

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You indicated to me during our telephone conversation that, based on the facts stated above, the Transaction falls within the "Ordinary Course of Business" exemption and, therefore, no filing under the Act is required. Specifically, the Transaction is an acquisition of goods or realty transferred in the ordinary course of business because (i) it is an acquisition of goods acquired and held solely for the purpose of resale to an entity not within the acquiring person and (ii) it is not the acquisition of all or substantially all of the assets of an operating unit of Seller.

§02.1(c)

Should you disagree with the foregoing analysis or believe that I have misunderstood the position of the staff of the Premerger Notification Office, please give me a call as soon as possible. Thank you for your assistance in reviewing this matter.

Very truly yours,

[REDACTED]

[REDACTED]

No phone number to call back [REDACTED]  
This is exempt in the ordinary course of  
business - §02.1(c). 9/5/02 (PS)  
On 9/5/02 I talked to  
[REDACTED] I concur with letter