

Nancy M. Ovuka

From: [REDACTED]
Sent: Monday, May 19, 2003 12:21 PM
To: Nancy M. Ovuka
Subject: HSR Question

Dear Nancy,

As we previously discussed, my client is considering entering into a transaction with the following facts scenario:

A power generating plant is owned by a limited partnership ("LP"). A separate but affiliated corporation ("OpCo") operates and maintains the power generating facility for the owner pursuant to a long-term operation and maintenance agreement between the LP and OpCo. The OpCo has operated and maintained the generation facility since it was first built. Both the LP and OpCo are subsidiaries of Company A (the UPE). Company A, both directly and indirectly through various wholly owned subsidiaries, owns 60% of the partnership interests in the LP, including the 1% general partnership interest. The remaining 40% of the partnership interest is owned by a limited liability company ("LLC"), which is a wholly owned subsidiary of the seller. (The only asset held by the LLC is its 40% partnership interest.) Company A or its affiliate (but not an entity affiliated with seller) would like to purchase the LLC from the seller, and thus acquire the 40% interest in the LP held by the LLC.

As you may recall, we discussed whether the "Used facilities" exemption (Section 802.2) would apply in this case. Based on our telephone conversation, I understand that while the "Used facilities" exemption may not have been directly written with this type of scenario in place, you agreed that the Section 802.2 exemption could apply in this limited situation.

Please let me know if this e-mail correctly reflects my understanding of our discussion.

Thanks very much for your help.

[REDACTED]

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If you have received this electronic transmission in error, please notify us by telephone [REDACTED] by electronic mail [REDACTED], immediately.

5/20
Confirmed w/ writer
that 802.2 could be
used in this case

nmo

MB & MV COXCOR