

802.2(b)

May 27, 2003

17317.00571

Nancy Ovuka  
Premerger Notification Office  
Federal Trade Commission  
601 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

2003 MAY 28 11:56  
PREMERGER NOTIFICATION  
OFFICE  
FEDERAL TRADE  
COMMISSION

Re: Acquisition of Undivided Interest Subject to Sale-Leaseback Arrangement

Dear Nancy:

This will summarize our telephone conversation on May 23, 2003 in which you advised that it is the Premerger Notification Office's view that a filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), would not be required in connection with the transaction described below.

Approximately 20 years ago, Company A, an electric power generator, acquired a less than 50% undivided interest in certain assets of a new power generating plant then being constructed. (The undivided interest in such assets of the power plant is hereinafter referred to as the "Undivided Interest".) Upon completion of the plant, as part of a lease financing transaction, a trust (the "Trust") acquired the Undivided Interest and immediately leased it back to Company A pursuant to a lease between Company A and the Trust (the "Lease"), the term of which will expire approximately 15 years from now, unless extended. Company A has at all times since the plant was constructed retained use of the Undivided Interest, which it uses in connection with its power generation business.

The sole beneficiary and settlor of the Trust, the corpus of which consists of the Undivided Interest, is our client, Company B, which provides lease financing in the ordinary course of its business. The Trust is revocable at the option of Company B, which retains a reversionary interest in the Undivided Interest, although revocation of the Trust by Company B would require the consent of certain parties including Company A.<sup>1</sup>

Company A and Company B now desire to enter into a transaction pursuant to which Company B will sell its beneficial interest in the Trust (the "Beneficial Interest") to Company A, effective upon the expiration of the Lease, except in certain limited

<sup>1</sup> As the settlor of a revocable trust, we believe that Company B should be deemed the holder of the Undivided Interest pursuant to Section 801.1(c)(4) of the Rules under the Act. However, whether Company B or the Trust holds the Undivided Interest should not be relevant to the analysis of reportability of the transaction described herein.

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circumstances. Under the terms of the sale, Company A will make a lump sum payment to Company B at the time the sale contract is entered into, and the actual transfer of the Beneficial Interest will occur upon the expiration of the Lease, except in certain limited circumstances. The Lease will remain in place without change, and Company A will continue to be required to perform all of its obligations as lessee thereunder, including its obligation to make rent payments.

As we discussed, the proposed transaction should be exempt from filing under the Act pursuant to Section 802.2(b) of the Rules under the Act. The acquisition by Company A of the Beneficial Interest will be an acquisition of an interest in a grantor trust, whose only asset is an undivided interest in a used facility, from a lessor that has held title to the Undivided Interest for financing purposes in the ordinary course of its business. Company A will have had sole and continuous possession and use of the Undivided Interest since the power plant was first constructed as a new facility.

On the basis of this understanding, Company A and Company B intend to proceed with the transaction without filing under the Act.

Very truly yours,

[REDACTED]  
[REDACTED]  
[REDACTED] P

cc: [REDACTED]  
[REDACTED]

5/28  
Advised  
writer that  
transaction is  
exempt. nmo  
MV concurs

[REDACTED]