

802.2(c)

January 15, 2007

B. Michael Verne
Federal Trade Commission
Premerger Notification Office
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Real Estate Exemption/Section 802.2(c)

Dear Mike:

I am writing to confirm the conversation that we had last week concerning the applicability of the exemption in Section 802.2(c) to a proposed transaction.

As I described it on the telephone, as a result of the proposed transaction, the buyer will hold all of the interests in three LLC's, all of which have the same ultimate parent entity. As a group, the LLCs have the right to develop a transmission line and power generation facility. The power generation project LLC owns rights to the land on which the project is to be built, as well as the right to use the transmission line. Assets owned by the power generation project LLC include a power purchase agreement for sale of the power to be generated by the project as well as all other permits and contracts associated with the project. In addition, a turbine purchase contract entered into by an affiliate of the LLCs will be assigned to the buyer. At the time the transaction closes, no construction will have taken place on the real estate¹ owned by the power generation LLC and no revenues will have been generated by the LLCs to be acquired. We agreed on the telephone that the exemption in Section 802.2(c) does apply; i.e. the real estate being acquired is "unproductive real property" as defined in that section and the agreements and permits are "assets incidental to the ownership of real property."²

I hope I have correctly conveyed our discussion, and, if not, please do let me know. Thank you very much for your assistance.

Sincerely,

AGNE
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1/15/07

¹ Construction on the transmission line may have begun, but that fact does not change the analysis in this letter since no revenues have been generated by the project.

² I referred you to a 2000 letter to Nancy Ovuka, No. 0012010, posted on the FTC website and you agreed that the view of the Premerger Office has not changed since that letter was written.