802.4

Verne, B. Michael

From: [redacted]
Sent: Wednesday, May 30, 2007 10:20 PM
To: Verne, B. Michael
Cc: [redacted]
Subject: HSR Question

Michael,

Thank you for returning my call so promptly. I thought it might be useful, as a follow-up to my voicemail from Tuesday, to briefly outline the transaction and our specific questions as follows:

1. Assume the acquiring party ("Company A") and the ultimate parent entity of the issuer whose membership interests are being acquired ("Company B") meet the size of the person test.

2. Company A is acquiring all of the membership interests of Company B for $85 million and in addition, at the closing, Company A will pay, directly to a third party lender, debt owed by Company B of $20 million.

3. The only assets owned by Company B (based on its 12-31-06 balance sheet) are cash and prepaid expenses of $10 million, property and equipment of $22,000, and project development costs, permit development costs and loan fees of $7 million, for a total of approximately $17 million. Company B is also a party to several mineral leases that are not reflected on the balance sheet.

4. The mineral leases owned by Company B are the assets with the greatest value. We believe these leases constitute unproductive real property that are exempt under Section 802.2. Although the parties have not allocated the purchase price to the specific assets, they will agree upon such an allocation prior to the closing and we anticipate that the largest portion of the purchase price will be allocated to the leases.

5. We believe the transaction is exempt under Section 802.4 because an acquisition of voting securities is exempt if the acquisition of the assets owned by the issuer is exempt.

We are seeking confirmation from you that:

A. The size of the transaction is $85 million - i.e. we do not include the debt of $20 million - even when looking at the value of the underlying assets to determine if the exemption under Section 802.4 applies, and

B. The acquisition of the assets of Company B, which consist primarily of cash, development costs and leases, would be exempt because cash and unproductive real estate - i.e., the mineral leases - are both exempt (under Section 802.2) and the value of the remaining assets (even assuming they are all non-exempt) is less than $59.8 million. Therefore the acquisition of the membership interests is also exempt (under Section 802.4).

Please feel free to send me an email or call me at [redacted] if you have any questions or need any additional information. We appreciate your assistance with this matter.

AGREE
BV 5/31/07

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