

802.2

Verne, B. Michael

From: [REDACTED]
Sent: Friday, May 02, 2008 1:01 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: 802.2(h) exemption - natural gas storage facility

Dear Mike:

The purpose of this email is to confirm our telephone conference on April 29, 2008, relating to the staff of the Federal Trade Commission's interpretation of the exemption under Rule 802.2(h) of the rules promulgated under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"). In our conversation you concluded that, under the facts described below, the acquisition of an underground natural gas storage facility and related business was within such exemption. The relevant facts, as we discussed them, are as follows:

"A is contemplating acquiring all of the outstanding membership interests of B, an entity engaged in the underground natural gas storage business. B stores natural gas for independent third parties through the injection of the customer's gas in depleted oil and gas reservoirs owned by B. B receives monthly payments from its customers in exchange for providing storage services in its underground storage facilities.

In addition to its non-affiliated customers, B stores gas for a wholly-owned subsidiary on similar terms and at similar market rates to those paid by third party customers. This subsidiary engages in minor trading activity with respect to its gas storage rights, but the revenues are minor in light of B's overall business. The value allocated to this part of the transaction is less than \$63.1 million.

B is required to maintain a quantity of natural gas (known as pad gas) in the storage facilities to provide sufficient pressure to permit the extraction of customer gas from the storage facilities. A third party pays B fixed monthly payments for the right to borrow excess pad gas (as permitted by B's FERC tariff) if and to the extent excess pad gas is operationally available.

Both A and B and the proposed acquisition price satisfy the jurisdictional requirements of the Act."

We discussed the applicability of the exemption under Rule 802.2(h) to the proposed transaction. That rule exempts the acquisition of warehouses and assets incidental to the ownership thereof from the reporting requirements of the Act. Based on these facts, you concluded that the acquisition of the natural gas storage facilities and related business would be exempt under Rule 802.2(h).

Please let me know if I have accurately stated our conversation. As always I appreciate very much your assistance and helpful advice on this matter.

Best regards,

AGUE
B
5/2/08

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