801.2

[redacted]

July 17, 2009

Via E-mail

Mr. B. Michael Verne
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Verne:

[redacted] and I appreciated the opportunity to speak with you on July 10, 2009 concerning a proposed transaction. The factual circumstances we discussed are as follows:

> Company X is a corporation and owns a limited liability company ("LLC") which indirectly owns the assets of an operating interstate natural gas pipeline.
>
> Group Y is a group of three investment funds, each of which is a limited partnership. None of these three limited partnerships has any one partner with a fifty percent or greater interest in profits or a fifty percent or greater interest in assets on dissolution. Even though one entity ("Group Y GP") is the general partner of each of the three funds and that general partner is managed by an affiliate of Group Y GP, each of the three funds would be considered its own Ultimate Parent Entity under the HSR rules.
>
> The three Group Y investment funds in the aggregate will acquire a fifty percent membership interest in the LLC in exchange for other interests valued at $145 million. Fund A will acquire a 17.615 percent interest in the LLC, Fund B will acquire a 6.82 percent interest, and Fund C will acquire a 25.565 percent interest.
>
> The membership interests to be held by Funds A, B and C will represent an aggregate investment of $145 million and initially will be entitled to a 15% preferred return on such investment. As a result, all of the profits from the pipeline each year will be paid first to Funds A, B, and C until they receive their fifteen percent annual return. Any LLC profits for the year above the preferred return paid to Funds A, B, and C would go to Company X. If

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certain conditions related to the development of another pipeline are not satisfied and Funds A, B, and C elect to retain their interests in the LLC, Fund A, B and C's membership interests will convert to common units and the profits would thereafter be split 50/50, with Company X receiving half and Funds A, B, and C in the aggregate receiving the other half. In the event of a dissolution while Funds A, B, and C still held preferred interests, Funds A, B, and C in the aggregate would receive their investment of $145 million plus any unpaid dividends before Company X received anything. Next, Company X would receive the remaining proceeds from the sale of the LLC. If there were a dissolution of the LLC after Funds A, B, and C had converted their preferred interests into common interests, Funds A, B, and C in the aggregate and Company X would just receive the payout in equal amounts.

Based upon our discussion with you of the foregoing facts, we understand that no HSR filing is required. First, for purposes of the HSR "control" test, the 15 percent preferred return which Funds A, B, and C will receive is considered a "debt" of the LLC within the meaning of 16 C.F.R. § 801.1(f)(1)(ii) rather than a form of profit or assets to be received by Funds A, B, and C on liquidation. Second, Funds A, B, and C are separate persons for HSR purposes and no one of such funds will have a right to 50 percent of more of the LLC's profits or, in the event of dissolution, a right to 50 percent or more of its assets after payment of its debts.

We appreciate your assistance in this matter. Should you disagree with the conclusions expressed above, please let us know.

Sincerely yours,

[redacted]

cc: [redacted]

AGREE -
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7/20/09