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7A (c)(i)

October 28, 2009

CONFIDENTIAL

VIA EMAIL

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

Re: Size of Transaction Test and Ordinary Course Of Business Exemption

Dear Mike:

This letter follows our telephone conference Monday relating to a proposed asset acquisition consisting primarily of a portfolio of wholesale natural gas purchase/sales contracts and natural gas park and loan agreements, natural gas inventory and related records. Based on the hypothetical fact pattern that I described to you, you agreed that 1) the parties' methodology for determining HSR Size of Transaction was reasonable; and 2) the acquisition would be exempt under the ordinary course of business exemption.

Based on our discussion noted above and the analysis set forth below, the parties intend to complete the transaction without making an HSR filing. I note in advance that the fact pattern below may contain some additional detail than we discussed by telephone, but I do not believe that additional information changes the HSR filing analysis. Please advise me as soon as possible if you have any questions regarding the analysis set forth below, or if you believe a filing is required under the facts described in this letter.

Facts

Buyer is a natural gas supply company which, among other things, purchases and sells natural gas, natural gas contracts, and gas swaps and derivatives to hedge its gas positions.

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Seller is an integrated wholesale and retail power company and retail gas company which, among other things, buys contracts for commodity natural gas and natural gas contract hedges, and sells wholesale and retail power and retail gas to customers.

Seller also has a natural gas trading business, which holds a portfolio of wholesale natural gas purchase/sales contracts and natural gas park and loan agreements. Seller intends to sell in this transaction 12 "trading books" of such wholesale natural gas purchase/sales contracts and natural gas park and loan agreements, while retaining 8 trading books of such contracts and agreements, although Buyer will have an option to purchase some of these remaining trading books, and those trading books not sold to this Buyer will likely be sold elsewhere or otherwise liquidated by 2011 under current plans. Other assets being transferred include a storage inventory of natural gas, gas storage contracts and the assignment to Buyer of trading account "deposits" on account with various commodity exchanges, which deposits permit Buyer to execute contract trades and can be recovered from these exchanges by closing out open trading positions.

For accounting purposes, Seller carries the contracts and agreements in these trading books as assets and liabilities for monthly balance sheet purposes. The accounting valuations for these contracts, and the hedges associated with the agreements, fluctuate with the current market prices for gas. As a result, a "buy" contract obligating Seller to purchase a certain amount of gas at a fixed price on a fixed date in 2010 could be carried as a liability on a current monthly balance sheet if the current price of natural gas is below the purchase price under the contract, while that same contract could be a balance sheet asset in a future month depending on the then current market price for natural gas. A "gas loan" agreement, pursuant to which Seller has "borrowed" a quantity of gas, subject to an obligation to replace that quantity of gas at some future date and to pay a fee determined in part by the gas price change over a negotiated period, will typically be matched by a hedge agreement that will also fluctuate in value for accounting purposes based on the fluctuating price of gas.

The estimated cash proceeds from the transfer of these trading books and related assets -- what Buyer is paying Seller to step into the shoes of Seller to acquire these assets and take on post-closing the benefits and obligations under the contracts and agreements -- will be well below $65.2 million (based on current gas prices).

HSR Analysis

As we discussed, under these facts you concurred that in this context the acquisition price can reasonably be viewed as the premium being paid by Buyer to step into Seller's shoes as to the overall portfolio of contracts, agreements and related assets being conveyed. You confirmed that none of the contracts and agreements discussed to be assigned to Buyer would be regarded as assumed liabilities for HSR valuation purposes, regardless of the fact that some of these contracts and agreements are treated as liabilities on Seller's balance sheet for accounting purposes. You further concurred that the assignment to Buyer of trading account "deposits" on account with various commodity exchanges can be treated as the transfer of "cash equivalents." *See* 16 CFR § 801.21; 15 U.S.C. §18a(c)(2)(securities and cash not considered assets when acquired).

You also concurred that the acquisition of a significant portion, but not all, of Seller's portfolio of wholesale natural gas purchase/sales contracts and natural gas park and loan agreements would be exempt as a transaction in the ordinary course of business. *See* 16 CFR §802.1; 15 U.S.C. §18a(c)(1) (exempting from filing "acquisitions of goods or realty transferred in the ordinary course of business"). You concluded that this transaction would be exempt in the ordinary course of business because, among other things, Buyer is a natural gas supply company which regularly purchases and sells natural gas, natural gas contracts, and gas swaps and derivatives to hedge its gas positions, and Seller will retain (at least through 2011 as currently planned) a portion of the contract books. Moreover, Seller (by itself or through a subsidiary) will continue its business of the retail delivery of natural gas (including buying, selling and trading physical and financially-settled natural gas contracts for that retail business) following this transaction.

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Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. Thank you for your assistance in this matter.

Sincerely,

[redacted]

Agree
BN
10/29/09