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December 3, 2009

via e-mail

Michael B. Verne
Premerger Notification Office
Federal Trade Commission
6th Street & Pennsylvania Avenue, NW
Room 310
Washington, DC 20580

Re: Hart-Scott Rodino Act Interpretation

Dear Mr. Verne:

The purpose of this letter is to obtain an informal opinion regarding the applicability of the unproductive real property exemption under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act") to the proposed transaction described below.

Company A proposes to acquire certain producing and non-producing oil and gas reserves assets (the "Assets") from the target company (the "Target") for approximately \$780 million subject to certain purchase price adjustments (the "Acquisition"). The Assets consist solely of (i) developed and producing oil and gas reserves and associated exploration and production assets related to such properties; (ii) proved and unproved non-producing oil and gas reserves (certain of the non-producing reserves are adjacent to various of the producing reserves); and (iii) certain assets other than reserves of oil and natural gas, rights to reserves of oil and natural gas, and associated exploration and production assets.

As noted above, certain of the proved and unproved non-producing oil and gas reserves are adjacent to the developed and producing oil and gas reserves. Specifically, the Assets include proved and unproved non-producing oil and gas reserves located between 10,000 and 12,000 feet under a certain tract of land and proved producing oil and gas reserves located at 7,000 feet under the same tract of land. The proved and unproved non-producing oil and gas reserves have produced no revenue to date.

We believe the following general principles apply:

1. Reserves of oil and gas that are presently producing are included in the \$500 million carbon-based mineral reserves exemption under 16 C.F.R. §802.3(a).
 2. Reserves of oil and gas that have not yet generated any revenues (or have not generated revenues in excess of \$5 million during the 36 months preceding the Acquisition) are
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exempt with no dollar limit as unproductive real property under 16 C.F.R. §802.2(c), and, therefore, do not count towards the \$500 million carbon-based mineral reserves exemption limit.

3. Non-producing oil and gas reserves are exempt with no dollar limit as unproductive real property even if they are adjacent to producing reserves that are part of the transaction as long as the adjacent producing reserves qualify for the carbon-based mineral reserves exemption.

4. Non-producing oil and gas reserves should be treated separately from producing oil and gas reserves that are located at different depths under a single tract of land. The producing oil and gas reserves under such tract will count towards the \$500 million carbon-based mineral reserves exemption limit and the non-producing reserves under such tract will fall under the unproductive real property exemption and have no dollar limit.

Based on the above, we have determined the following:

1. The developed and producing oil and gas reserves and associated exploration and production assets related to such properties are valued at less than \$500 million and therefore are exempt pursuant to 16 C.F.R. §802.3(a). In determining whether the terms of 16 C.F.R. §802.3(a) are met, Company A need focus only on the value of Target's assets. In other words, the \$500 million figure in the exemption provided in 16 C.F.R. §802.3(a) relates only to the Assets of Target being acquired and not to the existing assets of Company A (assuming Company A did not acquire its currently held assets from Target within the time period and manner that would require aggregation under 16 C.F.R. §801.13).

2. The proved and unproved non-producing oil and gas reserves are exempt pursuant to 16 C.F.R. §802.2(c). Although 16 C.F.R. §802.2(c)(2)(iii) provides that the unproductive real property exemption does not apply to real property that is either adjacent to or used in conjunction with real property that is not unproductive real property and is included in the acquisition, this limitation is limited to circumstances where unproductive real property is adjacent to non-exempt property. Additionally, the non-producing oil and gas reserves should be treated separately from the producing oil and gas reserves that are located at different depths under a single tract of land. Therefore, despite the fact that the non-producing reserves are adjacent to the producing reserves that are otherwise exempt under 16 C.F.R. §802.3(a) and are located at a different depth than the producing reserves, the non-producing reserves fall within the exemption for unproductive real property under 16 C.F.R. §802.2(c).

3. The assets other than the reserves of oil and natural gas, rights to reserves of oil and natural gas, and associated exploration and production assets are valued at less than \$65.2 million and therefore do not trigger the notification requirements under the Act.

Based on the foregoing, Company A may acquire the Assets from Target in reliance on the exemptions set forth in 16 C.F.R. §802.3(a) and 16 C.F.R. §802.2(c) without the need to make a filing under the Act. Please let me know as soon as possible if you disagree with any of the conclusions outlined above. Thank you for your assistance in this matter.



Sincerely,

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cc:

[Redacted recipient list]

AGREE
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