

6 802.3

[REDACTED]

April 9, 1996

VIA FACSIMILE

Mr. Richard B. Smith
Ms. Melea R.C. Epps
Federal Trade Commission
Room 303
6th Street & Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Characterization of Pipelines Under New Rule 802.3

Dear Mr. Smith and Ms. Epps:

A U.S. issuer is acquiring the voting securities of another U.S. issuer substantially all of whose assets are located in a foreign country. The foreign assets consist of [REDACTED]

[REDACTED] As we mentioned in our telephone conversation with you on April 5, the concession owners constructed the [REDACTED] and owned them until they had recovered their construction costs, at which time ownership transferred to the government. To follow-up on our telephone conversation, my client and I found out the following facts preliminarily. In the case of the [REDACTED] which is not dedicated to the acquired person's concession, but services several concessions, we believe that the owner of the concession has a first call on capacity up to a certain limit, but that with respect to unused capacity, the government that owns [REDACTED] has the right to sell such unused capacity to others. Thus, the acquired person may use the capacity only for the [REDACTED] under the Concession Agreement and does not "own" or "control" [REDACTED] in the conventional sense. [REDACTED]

With respect to [REDACTED] the government also owns it. [REDACTED] is dedicated to [REDACTED] in the concession. The concession is owned and operated as a joint venture of three privately owned companies and the government [REDACTED]. No person other than the concession operators uses [REDACTED] other than the concession's [REDACTED] is transported through [REDACTED] from the concession's central facility (described below) and then transports [REDACTED] 0 or 60 kilometers.

[REDACTED]

[REDACTED]

All of [REDACTED] transported through [REDACTED] is delivered directly to [REDACTED] which is the end user of [REDACTED]. There is also [REDACTED] at the central processing facility located on the concession where [REDACTED] is separated from [REDACTED]. All of the facilities, including [REDACTED] were designed only to separate and deliver [REDACTED] produced by [REDACTED] on the concession.

From having read the Statement of Basis and Purpose and based on our telephone conversation on April 5, it is my understanding that the reason for excluding certain [REDACTED] from exempt assets is the concern that such assets could be a business in and of themselves rather than just an asset incidental to [REDACTED] being acquired. Furthermore, implicit in Section 802.3 is the notion that the person acquiring [REDACTED] would control them as well. We would appreciate your confirmation that the above-described [REDACTED] are not excluded assets under Section 802.3(c)(1) and (2) and that regardless of whether [REDACTED] are included as "associated. . . assets", the mere non-exclusive right to use [REDACTED] for one's own [REDACTED] production is an "associated. . . asset."

Very truly yours,

[REDACTED]

[REDACTED]

5/11/96 Advised writer that U.S. issuer's right (even though non-exclusive) to use foreign government [REDACTED] a [REDACTED] which transports [REDACTED] after it passes through the [REDACTED] of a [REDACTED] located within the reserves that are being acquired is not the acquisition of an associated asset and, as such, the value of such asset must be given a fair market value determination. If it exceeds \$5MM, then the transaction is reportable.
RBS

[REDACTED]