

Sheinberg, Samuel I.

From: HSRHelp
Sent: Thursday, December 12, 2024 2:32 PM
To: HSR Auto Forward List
Subject: FW: Request for Informal Interpretation

From: Walsh, Kathryn E.
Sent: Thursday, December 12, 2024 2:31:48 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp
Subject: FW: Request for Informal Interpretation

Assuming that both the Irrigation District and Energy Center Authority are agencies as well, we agree with your analysis.

From: [REDACTED]
Sent: Wednesday, December 11, 2024 2:31:03 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp
Subject: Request for Informal Interpretation

Dear HSR Help: Please confirm our understanding that the acquisition described below is not subject to the HSR Act because the seller is an agency of a state, and thus not a “person” under 16 CFR 801.1(a)(2).

The assets to be acquired comprise a wind electric power generation facility owned by a California Wind Power “Authority” (the “WPA”). The WPA is a “joint powers authority” formed pursuant to a state statute that grants two or more public agencies the power to form such an entity for one of the public purposes enumerated in, and subject to, the statute. (link: [Codes Display Text \(ca.gov\)](#))

The forming agencies were an Irrigation District and an Energy Center Authority. The WPA formation document provides that “There is hereby created pursuant to the Law, a *public agency* to be known as [the WPA]” (emphasis added) and that it was “established . . . to provide for the joint exercise of powers common to the [Irrigation District and Energy Center Authority].” Thus, by its enabling legislation and formation document, the WPA is a “public agency.”

Additional factors supporting the WPA as being an agency (and not a corporation or unincorporated entity engaged in commerce) are:

- The WPA is administered by a “Commission” required to be comprised of members of the board of the Irrigation District “sitting *ex officio*.” The members of board of the Irrigation District are directly elected by the public and is “the legislative body” of the Irrigation District. Thus, the governing body of the WPA are all publicly elected officials.
- The WPA has no employees.
- The WPA joint powers agreement under which it was formed states that upon dissolution or termination of WPA, all of its assets and surplus cash shall be transferred to the Irrigation District.
- WPA issued bonds are considered “municipal bonds.”
- All power generated by the WPA is and has been purchased by the Irrigation District pursuant to a Power Purchase Agreement.

Based on these factors we believe that the WPA is not a “person” under the HSR Act.

Please let me know if you have any questions or need additional information.

Thank you,

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]