

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Thursday, May 13, 2021 5:01 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Musick, Vesselina
Subject: FW: 802.2(c)

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Thursday, May 13, 2021 5:00:28 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: 802.2(c)

As long as the leased property is not adjacent to or used in conjunction with real property that is not unproductive real property and is included in the acquisition, we agree.

From: [REDACTED]
Sent: Thursday, May 13, 2021 10:55:21 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: 802.2(c)

Hi PNO,

Can you confirm our understanding that in a transaction involving the acquisition of solar projects, 802.2(c) applies to projects where:

- 1) the assets consist of lease options, power purchase agreements, interconnection agreements, permits, property tax abatements, and documents related to the development of the projects;
- 2) the construction on the projects will not have begun at the time of closing; and
- 3) none of these assets will have generated \$5 million in revenues in the 36 months preceding closing.

We believe the lease options are "unproductive real property" as that term is defined in 16 CFR 802.2(c) and the various agreements, permits, and documents associated with the projects are "assets incidental to the ownership of real property. See [PNO Informal Interpretation 0806023](#).

Is our understanding correct?

[Redacted]

[Redacted]

[Redacted]

[Redacted] (V)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]