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1933 Act/3(a)(2)
1934 Act/3(a)(12)
1939 Act/304(a)(4)

April 15, 1987

PUBLIC AVAILABILITY DATE: 11-25-87

William E. Morley, Esq.
Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

ACT	SECTION	RULE
1933	---	131
1933	3(a)(2)	---
1934	3(a)(12)	---
1934	3(b)	3b- 5
1939	304(a)(4)	---

Re: Helena-West Helena-Phillips County Port Authority

Dear Mr. Morley:

Pursuant to our earlier conversations with you, this letter is submitted on behalf of our client, Prudential-Bache Capital Funding, a registered broker-dealer ("Prudential-Bache"), in connection with its proposed underwriting of the sale by the Helena-West Helena-Phillips County Port Authority (the "Port Authority"), of approximately \$100 million Securitized Revenue Bonds (the "Bonds"), as more fully described below. Friday, Eldredge & Clark, of Little Rock, Arkansas, bond counsel to the Port Authority, join in making this request on behalf of their client.

We hereby request, on behalf of our client and the Port Authority, that the Staff of the Division of Corporation Finance confirm that no action will be recommended to the Securities and Exchange Commission (the "Commission") if the Bonds, including the interests afforded the holders

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thereof in the hereinafter described Bond Fund, (i) are sold without being registered under the Securities Act of 1933, as amended (the "1933 Act"), (ii) are treated as exempted securities under the Securities Exchange Act of 1934, as amended (the "1934 Act") and (iii) are sold without qualification of the indenture relating to the Bonds under the Trust Indenture Act of 1939, as amended (the "1939 Act"). In this connection, we are also requesting the advice of the Staff to the effect that the application of Rule 131 under the 1933 Act and Rule 3b-5 under the 1934 Act do not result in the creation of a "separate security" within the meaning of such Rules requiring registration under such Acts.

I. THE PROPOSED OFFERING

The Port Authority is a public body corporate established pursuant to the Metropolitan Port Authority Act of 1961, as amended, Ark. Stat. Ann. §§21-1501-21-1517 (1968 & Supp. 1986) (the "Act"), and, as such, is a public instrumentality of the State of Arkansas. The Port Authority was formed for the express purpose of planning, developing, operating and maintaining a port facility complex in Phillips County along the lower Mississippi River. Pursuant to Section 1509 of the Act, the Port Authority has the authority to issue bonds to finance the study, planning, development and construction of port facilities in Phillips County.

The Port Authority is proposing to design and construct the Phillips County Marine Terminal, Slackwater Harbor and Industrial Park, a new slackwater harbor, public marine terminal, and associated utility and transportation improvements (the "Project") in Phillips County, Arkansas, five miles south of the port City of Helena, Arkansas along the west bank of the Mississippi River, approximately 70 miles south of Memphis, Tennessee. The proposed Project has been under consideration for over ten years and is derived from a concept developed by the U.S. Army Corps of Engineers, as described below, during 1972 through 1980. The Port Authority is currently proposing to undertake the planning, development and operation of the Project because it perceives the need for a harbor and waterfront terminal facilities along the lower Mississippi River for the facilitation of industry and commerce for the Phillips County area.

Mr. William E. Morley
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It is envisaged that the Project will entail the development and construction of a slackwater harbor, consisting of a linear waterway and a flood control levee, and a marine terminal, developed from 60 acres of elevated waterfront land to provide materials handling services, covered and open storage, and transshipment capacity to railroads and trucks. Material excavated from the harbor is also planned to be used to create up to 280 acres of flood-free waterfront land for industrial development purposes. (It presently is anticipated that the cost of the harbor and marine terminal facility will be partially defrayed through the sale of industrial park sites. Consideration may be given to leasing industrial park sites in lieu of sale if it is determined that such action would be more cost effective.)

The Project has been under active consideration for inclusion in a major federal waterway project currently being planned pursuant to federal and state law. The Project site lies within the United States Environmental Protection Agency designated "attainment" areas for air quality. Studies for the development of the Project Site were made by the U.S. Army Corps of Engineers over the period of 1972 to 1980. An initial feasibility study for such a project was financed by the United States Economic Development Administration for the Army Corps of Engineers and completed in June, 1977.

Because the Port Authority has determined that the Project should be currently developed due to the shortage of harbor and waterfront terminal facilities, as explained above, it is planning to offer and sell the Bonds for the purpose of generating the financing for all or a major part of the study, design and other preliminary (or "soft") costs for the Project. The Bonds will be limited obligations of the Port Authority and will impose no general liability upon the Port Authority for payment of the debt service thereon. Income on the Bonds will be subject to federal income taxation.

The Bonds will be issued pursuant to the terms of a trust indenture (the "Trust Indenture") between the Authority and a banking institution, as Trustee (the "Trustee"). The proceeds from the sale of the Bonds will be used for the following purposes: (1) to make a deposit into a Project Fund to be created under the Indenture (the "Project Fund"), from which the Trustee will disburse funds

for the payment of the study, design and other preliminary costs for the Project; (2) to deposit funds in a Bond Fund to be created under the Indenture (the "Bond Fund"), which will be immediately invested in a guaranteed investment contract to be obtained from an insurance company or other financial institution; and (3) to provide monies for the issuance costs of the Bonds.

The financing structure of the Bonds is designed so that the funding costs for the study, design and other preliminary costs for the Project will be derived from the differential between the proceeds of the planned offering and the cost of the guaranteed investment contract. Payment of the debt service on the Bonds will be completely dependent upon payments to be received pursuant to the guaranteed investment contract. It is anticipated that, in order to purchase a guaranteed investment contract yielding funds adequate to service interest and principal payments on the Bonds, the great preponderance of the proceeds from the initial issuance of the Bonds will be invested in the Bond Fund for investment in the guaranteed investment contract.

It is anticipated that, upon completion of the study, design and preliminary work on the Project (which is being financed by the subject Bonds), a subsequent offering of traditional tax-exempt bonds may be undertaken. The proceeds of such an offering, if undertaken, together with other available funds (including funds, if any, received from the federal government) would be used to fund the actual construction costs of the Project.

At the present time, the Authority intends to construct the above-described Project. However, it is possible (either because of conclusions derived from the study phase or because of other developments) that elements of the Project may be modified or deleted, or that the Project itself can never be constructed or completed. It is anticipated that, in any circumstances, the Bonds will nevertheless remain outstanding until their stated maturity.

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II. DISCUSSION

A. 1933 Act Considerations and Rule 131.

Although the Bonds are securities under Section 2(1) of the 1933 Act, they are exempt from the registration provisions of Section 5 under Section 3(a)(2) of the 1933 Act, which exempts "any security issued or guaranteed by... any political subdivision of a State or territory, or by any public instrumentality of one or more States or territories...." As described above, the Port Authority is a public instrumentality of the State of Arkansas. Thus, the Bonds are exempt under Section 3(a)(2) from the registration provisions of Section 5 because they are securities issued by a public instrumentality of a State.

Under Rule 131(a) of the 1933 Act, any part of an obligation issued by a governmental unit in Section 3(a)(2) that is "payable from payments to be made in respect of property or money which is or will be used, under a lease, sale or loan arrangement, by or for industrial or commercial enterprise," is deemed to constitute a "separate security" for purposes of Section 2(1) of the 1933 Act. Absent an exemption, such a separate security would require registration under the 1933 Act. Applying Rule 131(a) to the Port Authority's proposed sale of the Bonds, the issue arises whether payments derived from the guaranteed investment contract in the Bond Fund could be interpreted as being made under a lease, sale or loan arrangement, by or for commercial or industrial enterprise.

In the contemplated transaction, payments made from the Bond Fund, funded by a guaranteed investment contract, clearly are not payments within the purview of the conditions set forth in Rule 131(a). Such payments are not in respect of a "lease, sale or loan arrangement, by or for an industrial or commercial enterprise". Hence the proposed obligation does not involve a separate security within the meaning of Rule 131(a). In the Release proposing Rule 131(a), Securities Act Release No. 4896, Fed. Sec. L. Rep. ¶77,525 (67-69 Trans. Bdr.) (February 1, 1968), the Commission indicated that Rule 131 is directed to financing plans with respect to the activities of a private company. *Id.* at p. 83,094. The proposed transaction in no way represents such a financing. Rather, the sale of the Bonds represents a financing by a state instrumentality for a public purpose, as described above, with the investment of proceeds in the

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Bond Fund serving as an effective means of furthering the public purpose. In a recent no-action letter, the Staff adopted a no-action position regarding the inapplicability of Rule 131 in circumstances in relevant part analogous to the proposed offering. In Cache County, Davis County, Salt Lake, County Utah County and Weber County (available January 16, 1987), the Staff accepted the view that a bond retirement fund consisting of guaranteed investment contracts from one or more insurance companies, public utilities or similar triple A institutions would not constitute a "lease, sale or loan arrangement" deemed to be a separate security by Rule 131(a). That letter involved a transaction under which certain Utah counties proposed to issue zero coupon bonds, over half the proceeds of which were to be used to fund the bond retirement fund, with the remaining proceeds to be invested primarily in venture capital investments in new and developing non-public companies. See also Dunes Community Development District (available March 2, 1987). It is respectfully submitted that, in view of the clear public purpose and related circumstances of the proposed Port Authority financing, as well as the analysis of Rule 131 accepted in the recent Cache County no-action letter, the payments in respect of the guaranteed investment contract to be utilized in the Port Authority financing are not with respect to "a lease, sale, or loan arrangement, by or for industrial or commercial enterprise" within the parameters of Rule 131.

We believe that the grounds for the inapplicability of Section 131 and any related registration requirements are most correctly premised on the above analysis. However, it should also be noted that a secondary ground for exemption from registration can be found in the actual language of subsection (b)(2) of Rule 131. Rule 131(b)(2) provides that an obligation is not a "separate security" for purposes of Rule 131(a) if it "relates to a public project or facility owned and operated by or on behalf of and under the control of a governmental unit" specified in Section 3(a)(2).* Thus, even if the contemplated transaction could

* As noted earlier, it is anticipated that the cost of the harbor and marine terminal facility will be partially defrayed through the sale of industrial park sites situated on flood free waterfront land created through the harbor excavation. Consideration may be given to leasing industrial park sites in lieu of sale.
(Footnote continued)

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be interpreted to involve a "lease, sale or loan arrangement, by or for industrial or commercial enterprise," the exception provided by Rule 131(b)(2) is nevertheless applicable. As indicated above, the purpose of the proposed initial Bond financing is to make available funds which will be used to finance the study, design and other preliminary costs for a major port facility complex in Phillips County, Arkansas along the lower Mississippi River. In Dunes Community Development District, the Staff recently took a no-action position under Rule 131(b)(2) where there was a substantial degree of public ownership and control over a project. The governmental purpose and ownership of the port complex project contemplated by the Port Authority is even more pervasive than in Dunes and the no-action letters cited therein. Thus, the guaranteed investment contract contemplated by the proposed Port Authority financing comes within the specific exemptive language of Rule 131(b)(2), since such obligation is an integral part of the effectuation of a financing which relates to a project with clear public purpose and ownership.**

(Footnote * continued from previous page)

In any event, such sites will be used in a manner designed to provide the most cost effective means of providing partial additional funding for the cost of the overall harbor and marine terminal which, as indicated above, will remain under the overall control and ownership of the Authority and thus be within the ambit of Rule 131(b)(2).

** In this regard, it is relevant to note the language contained in the Commission's Securities Act Release No. 4921 (and recited again in Securities Act Release No. 5055) to the effect that

"[Rule 131] does not have the effect of requiring registration of revenue bonds issued by a state, a political subdivision, a municipality or a public instrumentality to finance a revenue producing public project operated by such issuer, such as toll roads, municipal water systems, transportation facilities and systems or municipal recreational facilities, or revenue bonds which are to be funded by payments under a lease,

(Footnote continued)

B. 1934 Act Considerations and Rule 3b-5.

Although the Bonds are securities as defined in Section 3(a)(10) of the 1934 Act, they are "exempted securities" within the meaning of Section 3(a)(12) of the 1934 Act. "Exempted securities" include "municipal securities," as defined in Section 3(a)(29) of the 1934 Act. Section 3(a)(29) of the 1934 Act defines "municipal security" as

securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof,....

As described above, the Bonds are obligations of the Port Authority, an instrumentality of the State of Arkansas. Thus, the Bonds are "municipal securities" under Section 3(a)(29) and therefore are "exempted securities" under Section 3(a)(12). The Staff in prior no-action letters has agreed that revenue bonds payable otherwise than from the

(Footnote ** continued from previous page)

sale or loan arrangement if the user of the facility or property is a state or a political subdivision or public instrumentality of a state or a municipality which is the lessee or obligor. New paragraph (b) of the rule is designed to remove all doubt as to the effect of the rule. In this connection, concern was expressed in many comments that the rule would have the effect of requiring registration of bonds issued to finance construction of airports, wharves, recreational and sporting facilities and convention facilities. Paragraph (b) would clearly make the rule inapplicable to the financing of such facilities that are owned by a municipality and operated by it or a public instrumentality."

Securities Act Release No. 49, Fed. Sec. L. Rep. ¶77,592 ['67-'69 Trans. Bdr.] (August 28, 1968).

general revenues of municipal issuers, as is the case in the proposed transaction, are municipal securities for purposes of Section 3(a)(29). See, e.g., Kidder, Peabody & Co. Incorporated (available July 17, 1984); Cache County.

Rule 3b-5 of the 1934 Act is the companion to Rule 131 in the 1933 Act and contains provisions substantially identical to Rule 131. We submit that for the reasons stated above with respect to Rule 131 that the Port Authority's proposed sale of the Bonds does not involve a "separate security" under Rule 3b-5 that would require registration under the 1934 Act.

C. 1939 Act Considerations.

Section 304(a)(4)(A) of the 1939 Act states that the Act does not apply to

any security exempted from the provisions of the Securities Act of 1933, as heretofore amended, by paragraph (2), (3), (4), (5), (6), (7), (8) or (11) of subsection 3(a) thereof....

As discussed above, the Bonds are exempt from the registration provisions under Section 5 of the 1933 Act under Section 3(a)(2) of the 1933 Act. Thus, the Bonds are exempt from the provisions of the 1939 Act under Section 304(a)(4)(A) of the 1939 Act. Furthermore, for the reasons stated above, the Bond Fund and the guaranteed investment contract are also exempt from the registration provisions of the 1933 Act under Section 3(a)(2) of 1933 Act because they do not constitute "separate securities" under Rule 131(a). Thus, the Bond Fund and the guaranteed investment contract also are exempt from the 1939 Act under Section 304(a)(4)(A) of the 1939 Act.

III. CONCLUSION

Based upon the foregoing, we respectfully request the advice of the Staff to the effect that (a) it will not recommend any action to the Commission if (i) the Bonds are offered and sold without registration under the 1933 Act, (ii) the Bonds are treated as exempted securities under the 1934 Act, and (iii) the Bonds are sold without qualifying the Indenture relating to the Bonds under the 1939 Act; and

Mr. William E. Morley
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April 15, 1987

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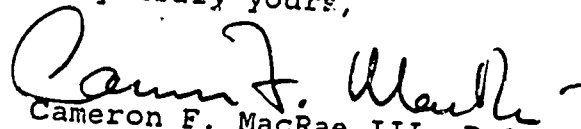
(b) no "separate security" is created under the foregoing facts within the meaning of Rule 131 under the 1933 Act or Rule 3b-5 under the 1934 Act that would require registration under such Acts, in reliance upon the opinion of our firm that such registration and qualification are not required and that such treatment is appropriate. Friday, Eldredge & Clark, bond counsel to the Port Authority, concur in the views and opinions set forth herein.

In accordance with the procedures outlined in Securities Act Release No. 6269 (December 5, 1980), we enclose seven extra copies of this letter for the convenience of the Staff.

The Port Authority expects shortly to offer and sell the Bonds. Accordingly, as discussed with you in preliminary telephone conversations, we respectfully request a response to this request as soon as practicable, and, if possible, a response within 30 days of your receipt of this letter.

If you have any comments or questions relating to this request, or if you anticipate formulating a response not consistent with our interpretation, please feel free to contact either the undersigned at (212) 715-8080 or Peter R. O'Flinn, Esq. of this office at (212) 715-8017. Please also feel free to contact James A. Buttry, Esq., of Friday, Eldredge & Clark at (501) 376-2011.

Very truly yours,


Cameron F. MacRae III, P.C.

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APR 16 1987
OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE

1933 Act/3(a)(2)
1934 Act/3(a)(12)
1939 Act/304(a)(4)

April 15, 1987

Mr. William E. Morley, Esq.
Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Confidentiality for No-Action Request
Filed April 15, 1987 for the Helena-West Helena-
Phillips County Port Authority

Dear Mr. Morley:

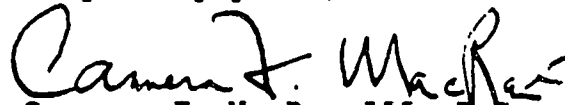
Pursuant to 17 C.F.R. § 200.81(b)(1986), we are submitting this letter on behalf of our client, Prudential-Bache Capital Funding ("Prudential-Bache"), to request that the staff of the Securities and Exchange Commission ("Commission") grant confidential treatment until 90 days after the expiration of 30 days from the date of the Staff's response to the no-action letter submitted on April 15, 1987 by this firm on behalf of our client relating to the Helena-West Helena-Phillips County Port Authority (the "Port Authority") proposed bond financing. Friday, Eldredge & Clark, of Little Rock, Arkansas, bond counsel to the Port Authority, join in making this request on behalf of their client.

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As more fully described in our no-action request, the proposed bond financing by the Port Authority, which involves the investment of a portion of the proceeds from the sale of the bonds in a guaranteed investment contract, is a relatively unique concept developed by Prudential-Bache. The disclosure of the Port Authority's no-action request and the Staff's response thereto without granting confidential treatment for 90 days after the expiration of 30 days from the Staff's response could jeopardize the highly proprietary nature of the concept and could detrimentally affect the success of the Port Authority's proposed offering.

If you have any comments or questions relating to this request, please feel free to contact either the undersigned at (212) 715-8080 or Peter R. O'Flinn, Esq. of this office at (212) 715-8017. Please also feel free to contact James A. Buttry, Esq. of Friday, Eldredge & Clark at (501) 376-2011.

Very truly yours,


Cameron F. MacRae III, P.C.

July 29, 1987

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RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE

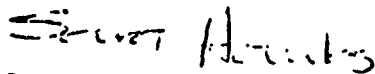
Re: Helena-West Helena-Phillips County Port Authority
Incoming letter dated April 15, 1987

Based on the facts presented, this Division will not recommend enforcement action to the Commission if the Port Authority, in reliance on your opinion that the exemptions afforded by Section 3(a)(2) of the Securities Act of 1933 (the "1933 Act"), Section 3(a)(12) of the Securities Exchange Act of 1934 (the "1934 Act") and Section 304(a)(4) of the Trust Indenture Act of 1939 (the "1939 Act") are available, offers and sells the Bonds (including the interests of the holders thereof in the Bond Fund) as described in your letter, without registering the Bonds under the 1933 Act or the 1934 Act, or qualification under the 1939 Act. It is also our view that payments from the Bond Fund would not be made in respect of property or money which is or will be used, under a lease, sale or loan agreement, by or for industrial or commercial enterprises, and would thus not be deemed separate securities under Rule 131(a) under the 1933 Act and Rule 3b-5 under the 1934 Act.

Because these positions are based on the representations made to the Division in your letter, it should be noted that different facts or conditions might require another conclusion. Moreover, this letter only expresses the Division's position on enforcement action and does not purport to express legal conclusions on the questions presented.

With regard to your request for confidential treatment for an additional 90 days pursuant to 17 CFR 200.81, please be advised that your request has been granted for that period.

Sincerely,



Sara Hanks
Attorney-Fellow