

801.1

March 8, 2011

**VIA ELECTRONIC MAIL  
ORIGINAL BY U. S. FIRST CLASS MAIL**

Mr. Michael B. Verne  
Federal Trade Commission  
Premerger Notification Office  
Bureau of Competition  
600 Pennsylvania Avenue, N.W., Room 303  
Washington, DC 20580

**RE: Hart-Scott-Rodino Premerger Notification**

Dear Mr. Verne:

This letter confirms our telephone call of March 4, 2011, and our understanding regarding application of the Hart-Scott-Rodino Act's (the "HSR Act") exemption involving a client's acquisition of a natural gas-fired combined cycle electric generating facility.

As you know, the client we represent (the "Client") is an Ohio nonprofit corporation formed, organized, and operated by its members, each of which is a political subdivision (e.g. city, village, borough or town) of Ohio or another state as contemplated by Treas. Reg. Sec.1.103-1 ("Political Subdivision") for the sole purpose of benefiting its members (the "Members"). For the reasons set forth below and as you confirmed in our telephone call, Client is treated as a political subdivision for HSR Act purposes and, therefore, is exempt from the requirements to file a premerger notification with the Federal Trade Commission and the Department of Justice and to comply with the applicable HSR Act waiting period. You confirmed on November 7, 2007 (Informal Staff Opinion #0711008) that this very Client is a government "agency" and not an "entity" and thereby is neither a "person" nor an "acquiring person" under CFR § 801.1. Similarly, you found in Informal Staff Opinion #1011009 (November 24, 2010) that a local government corporation which was purchasing assets of an electrical power generating plant in West Texas was a government agency rather than an entity subject to HSR application.

Description of Transaction

The transaction at issue involves Client's acquisition, on behalf of its Members, of a natural gas-fired combined cycle electric generating facility (the "Facility") being constructed by

the Ohio corporation which currently owns the Facility. The Facility will provide a portion of the future power supply needs of the Members. If the Facility has output capacity greater than that needed by the Members, Client may enter into long-term contracts to sell the excess output to non-Member public and private entities. Any resulting income from any such contracts with private entities will inure to the benefit of the Members.

#### Description of Client

The Members of Client must be either (1) political subdivisions of the State of Ohio or another state that own or are in the process of initiating electric, natural gas, or communication utility systems, or (2) or a joint action agency or similar organization whose membership consists, at all times, only of political subdivisions. Client's powers have been confirmed by several IRS Letter Rulings specifically to include the right to issue tax exempt debt on behalf of its Members.

Client was organized, *inter alia*, to assist in procuring the most economic and reliable wholesale electric power supplies and transmission services for its Members both on an individual basis and on a "pool" basis for groups of Members. Client generates and buys, or otherwise arranges for, electric power for its Members for use in their individual municipal electric utility systems. It also arranges for the transmission of power to the Members. Some of the Members obtain all of their power supply through Client, while others purchase only a portion of their needs through Client. In every situation, however, Client's activities are vitally important to the operations of the Members. The Client's Articles of Incorporation, its Code of Regulations, and the IRS Letter Rulings, under all of which it operates, recognize that Client will be operated for the benefit of its Members.

#### Authorizing Statutes and Powers

Client is organized by specific legislative act of its Members, all political subdivisions. Any political subdivision interested in becoming a Member must take legislative action to do so. That is, acceptance of membership in Client is formally approved and typically memorialized by such Member's adoption of an ordinance or resolution or other administrative action.

Client is a Municipal Power Agency under the laws of the State of Ohio and has the power of eminent domain.

#### Taxation

Client is not subject to any Ohio or local income tax. Interest on bonds issued by Client is exempt from Ohio and local income tax. Ohio recently enacted a commercial activity tax on all receipts of Ohio businesses. Client is exempt from such tax. Client is subject to Ohio property taxes and is subject to sales tax on purchases of its non-utility related property. Client is also afforded the treatment of political subdivisions by the IRS. In addition to its tax exempt status under section 501(c)(12) of the Internal Revenue Code of 1986, as amended, Client has received several rulings that essentially treat it as a political subdivision.

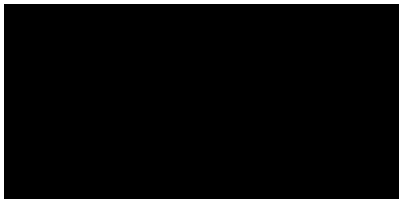
Governance

Client is governed by a board of trustees currently consisting of nineteen of its Members. Each Member elected as a Trustee designates, usually through legislative action, a representative to exercise its duties as a Trustee. No individuals, non-Member municipalities, or other entities or organizations are eligible to serve as trustees. The president and general counsel serve as non-voting, *ex officio* trustees. One hundred percent of the control of Client is held by Political Subdivisions. Although the definition of control in CFR § 801.1(b) refers to the ability to designate 50 percent or more of the directors, the Members are entitled to designate all of the directors.

Conclusion

In light of these facts and consistent with our discussion, Client is exempt from the HSR Act. Client is a Political Subdivision and is not an "entity" under section 801.1(a)(2) of the regulations. If your understanding of our telephone call differs from what has been stated herein, please let me know.

Very truly yours



AGREE -  
BW  
3/9/11