

[REDACTED]

December 11, 1990

Federal Trade Commission  
Room 301  
7 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

This material may be subject to the confidentiality provision of Section 7A (h) of the Clayton Act which restricts release under the Freedom of Information Act.

Attention Mr. Patrick Sharp

Re: Advice Concerning Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act")

Dear Mr. Sharp:

This letter is to confirm the advice you gave me during our telephone conversation on December 4 regarding the position of the Federal Trade Commission ("FTC") with respect to the acquisition of a beneficiary's interest in a trust established in connection with a leveraged sale-leaseback transaction.

As I explained to you, our client, [REDACTED] is the lessee of an 80% interest in a power plant (the "Power Plant"). [REDACTED] which is not controlled by [REDACTED] is the lessee of a 20% interest in the Power Plant. As lessees, [REDACTED] and [REDACTED] are in operating control of the Power Plant. The Power Plant is owned by a trustee (the "Trustee"), which holds the Power Plant in a trust (the "Trust") for the benefit of several financial institutions (the "Beneficiaries"). The Trust purchased the Power Plant from a corporation controlled by [REDACTED] and [REDACTED] in connection with a leveraged sale-leaseback transaction. The Beneficiaries receive an income stream generated by the lease payments to the Trust.

The terms of the Trust are typical of those in a standard leveraged sale-leaseback transaction. In particular, the Trustee holds legal title to the Power Plant and performs certain functions with respect to the Trust and has certain duties to the Beneficiaries, but the Trustee is not responsible for managing the Power Plant and does not serve a policy-

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supermajority of the Beneficiaries may remove the Trustee, the Trustee is not elected annually or at any other periodic interval. Risk of casualty loss of the Power Plant during the term of the lease rests with [REDACTED] and [REDACTED]

[REDACTED] and [REDACTED] now propose to acquire from the Beneficiaries all or substantially all of the beneficial interests in the Trust. As a result of the proposed transaction, assuming all the beneficial interests are acquired, [REDACTED] and [REDACTED] would hold an 80% beneficial interest and a 20% beneficial interest in the Trust, respectively, and would continue to lease from the Trust an 80% interest and a 20% interest in the Power Plant, respectively. The question I asked you was whether the FTC takes the position that the beneficial interests in the Trust are voting securities or assets, the acquisition of which would be subject to the reporting requirements of the Act.

You advised me that you agreed with our analysis that the acquisition of the beneficial interests in the Trust would not be subject to the reporting requirements of the Act. You indicated that the analysis conforms with that of a standard leveraged sale-leaseback transaction in which the sale of the beneficial interest is in substance only the transfer of an income stream, which is neither a voting security nor asset under the Act.

I understand that the advice of the Justice Department's Antitrust Division need not be sought regarding the matters described above since it follows the FTC's advice on such matters.

The parties would like to consummate the transaction described above in the near future. Accordingly, if you are unable to concur with any part of the foregoing summary of our telephone conversation, or if you have any questions or further comments, I would appreciate it if you would contact me immediately. Thank you for your assistance.

Very truly yours,  
[REDACTED]

[REDACTED]