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March 10, 1991

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Federal Trade Commission
Room 301
7 Pennsylvania Avenue, NW
Washington, DC 20580

Attention: Mr. Patrick Sharp

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

Dear Mr. Sharp:

This letter is a follow-up to a letter dated December 11, 1990 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. It is intended to confirm the advice you gave me during our telephone conversation on March 13, 1990 concerning two variations to the transaction structure outlined in the December 11 letter.

As I explained in the December 11 letter, 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 institutional investors (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

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duties to the Beneficiaries, but the Trustee is not responsible for managing the Power Plant and does not serve a policy-making function with respect to the Trust. Also, while a super majority of the Beneficiaries may remove the Trustee, the Trustee is not elected annually or at any other periodic interval. In the event of removal of the Trustee, a majority in interest of the Beneficiaries may select a successor or, if a successor is not selected within 30 days, the successor may be appointed by a court. The Trustee must be a bank or trust company meeting specified financial requirements. The Trustee has never been removed during the existence of the Trust. Risk of casualty loss of the Power Plant during the term of the lease rests with [redacted] and [redacted].

In the December 11 letter, I stated that [redacted] and [redacted] have proposed to acquire from the Beneficiaries all or substantially all of the beneficial interests in the Trust. Since December 11, one of the institutional investors with a 13% interest in the Trust has decided that it wishes to continue to hold its interest for up to two years. As a result, [redacted] and [redacted] expect to hold a 69.6% beneficial interest and 17.4% beneficial interest, respectively, following the initial closing. The remaining institutional investor will be contractually obligated to sell its interest to [redacted] and [redacted] within the next two years, at which time the respective percentage ownership of [redacted] and [redacted] would rise to 80% and 20%. The purchase contract will obligate the remaining institutional investor, during the two-year period, to take action under the leveraged lease documents, at the request of [redacted] and [redacted] with an option on the part of [redacted] and [redacted] to accelerate the purchase in the event the action is not taken.

The second variation to the original proposal involves payoff of outstanding debt of the Trust. At the current time, the Trustee is debtor under a bond indenture pursuant to which bonds have been issued. The parties now contemplate redeeming the outstanding indebtedness owed by the Trust, either by cash payments or, if acceptable to the bondholders, by substitution of bonds of [redacted] and [redacted] for the bonds issued by the Trust.

You advised me in connection with the December 11 letter that you agreed with our analysis that the acquisition of the beneficial interests in the Trust would not be subject

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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. In our March 13, 1991 call you confirmed my conclusion that the two proposed changes from the original plan outlined in the December 11 letter do not alter the prior analysis in any way.

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]

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