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Beneficial
ownership.

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[Redacted]

[Redacted]

[Redacted]

December 3, 1991

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mr. Patrick Sharp
Premerger Specialist
Premerger Notification Office
H-303
Federal Trade Commission
Washington, DC 20580

THIS DOCUMENT CONTAINS UNCLASSIFIED INFORMATION EXCEPT WHERE SHOWN OTHERWISE

Dear Mr. Sharp:

Thank you for discussing with me last week my questions regarding the interpretation of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"). As we discussed, our firm has a client that is engaged in the business of developing and operating [Redacted] which are facilities that produce [Redacted] and [Redacted]. In 1984 our client, through a wholly-owned subsidiary, commenced construction of three such facilities. The construction of these facilities was financed with the proceeds of construction loans provided by a financial institution. Upon completion of construction, title to these facilities was transferred to an owner trustee for the benefit of such financial institution in a sale/leaseback financing transaction. Our client, through its subsidiary, has been the operator of these facilities.

Our client, through another wholly-owned subsidiary, plans to reacquire title to these three cogeneration facilities by purchasing all the assets relating thereto held by the owner trustee. In connection with this purchase, the above-described lease financing would be terminated and replaced by senior and subordinated credit facilities to finance the purchase price.

Based on our telephone conversation, I understand that the Premerger Notification Office of the Federal Trade Commission (the "Office") has taken the position that transactions such as the purchase described in the immediately preceding paragraph are not subject to the requirements of the Act. I also understand from our conversation that this position is based in part upon the Office's view that for purposes of the Act, such a transaction does not result in a change in the beneficial ownership of the related assets. Accordingly, our client does

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The FTRU
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not plan to file a notification under the Act in connection with the above-described purchase, and neither the owner trustee referred to above nor the parent of the financial institution referred to above plans to file such a notification.

I would appreciate it very much if you would sign the enclosed copy of this letter acknowledging its receipt and return the acknowledged copy in the enclosed stamped self-addressed envelope. Thank you again for your assistance. *I cannot sign the letter.*

Very truly yours,

[Redacted signature]

[Redacted]

cc:

[Redacted]

Receipt of this letter is confirmed:

Patrick Sharp

called [Redacted] firm and informed a cast of thousands in a conference call that my answer was over-simplified. After explaining John Sipple's letter of 11-21-90, the parties decided to file and did so on 12-12-92.

The attached letter dated 12-3-91 involves two parties that had a sale/leaseback financial transaction. The lessee/operator would like to buy the assets back that it originally owned. Based on a note that I have in the margin of my rules, I gave the advice that this acquisition is not reportable. It is technically the same operator in the market and only title passes. Beneficial ownership remains with the lessee/operator. Consequently, this is a nonreportable event. Wrong!

In the past, the advice by the PMN Office for the above scenario was to file for the buy-back of the assets. However, the PMN office has made an exception. In a lengthy letter dated November 21, 1990 (see attached), to John Sipple, John concluded that a similar transaction was not reportable because the indicia of beneficial ownership remained with the lessee. This advice was limited to this fact situation. The letter showed in detail that beneficial ownership remained with the lessee. Because of the letter to John and his notes, I determined my advice for the letter dated 12-3-91 was not good enough. I should have asked for more details.

After a conference call with several attorneys involved in my transaction, I determined that beneficial ownership remained with the lessor. As a result, I advised the parties to file.