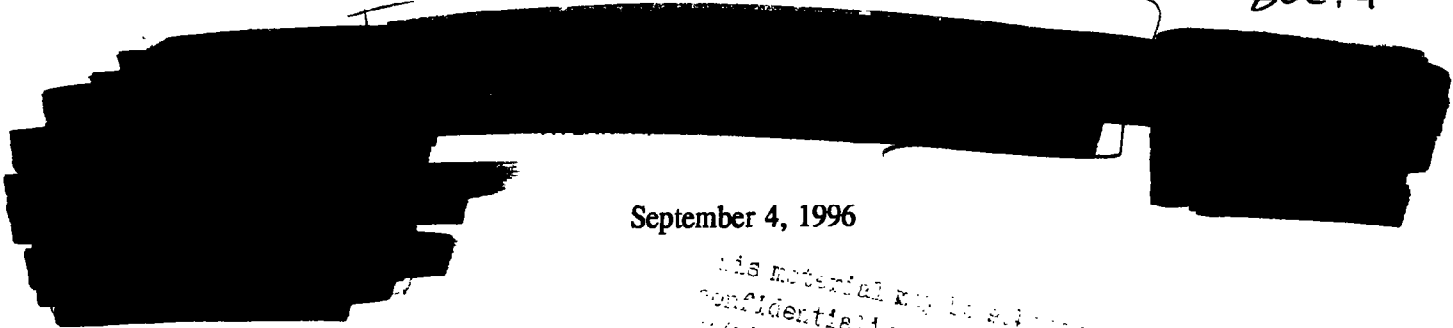


801.40
802.40



September 4, 1996

VIA FAX and U.S. MAIL

Mr. Patrick Sharpe
Premerger Notification Office
Bureau of Competition - Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

This material may be subject to
confidentiality provisions of
b(7)(h) of the CFR under the Freedom of Information Act

SEP 10 10 50 AM '96
PREMERGER NOTIFICATION OFFICE
FEDERAL TRADE COMMISSION

Re: Formation of Electric Membership Corporation

Dear Mr. Sharpe:

Pursuant to the telephone conversation yesterday which [redacted] and I had with you, we are writing to describe to you the facts of a pending transaction involving the formation of a new electric cooperative. Our client [redacted] is a generation and transmission electric membership corporation [redacted] owned by 39 electric distribution [redacted] in the state of [redacted]. Due to deregulation in the electric industry and other considerations, the decision has been made to form a new [redacted] which will obtain the transmission-related assets of [redacted] with [redacted] retaining the generation assets. You have tentatively indicated that this overall transaction may be exempt from filing requirements. We are writing to confirm this tentative advice and assure that you have received full disclosure of the relevant facts.

For tax and other reasons, the formation of the new transmission [redacted] EMC will be structured as follows. The existing generation and transmission EMC will make certain cash distributions to patronage capital to its members. All or the great majority of these members will then contribute an equivalent amount to the capital of the new transmission EMC, which was organized solely for this purpose as a shell EMC several months ago. The new EMC will then technically purchase the transmission assets from the old EMC. The new EMC will retain more than \$10 million of cash after acquiring the assets. All of this is taking place pursuant to an overall plan for the purpose of forming this new cooperative and placing the transmission assets into it so that it can provide transmission services to the existing members of [redacted].

As we discussed, the formation of this new entity is not subject to Hart-Scott-Rodino filing requirements. Memberships in the new electric cooperative are not technically

potentially reportable but it is a step in the formation of an entity that has no vote securities

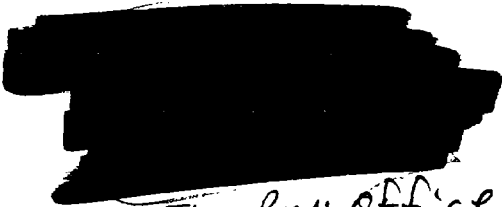
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Mr. Patrick Sharpe
September 4, 1996
Page 2

voting securities, so that 16 C.F.R. § 801.40 does not apply. Even if these membership interests were somehow deemed to be voting securities, the formation would nevertheless be exempt under § 802.40, since this new EMC will be not for profit within the meaning of section 501(c)(12) of the Internal Revenue Code. The transfer of the transmission assets is pursuant to an overall plan for the formation of this new EMC and thus should not be subject to separate HSR filing requirements.

We appreciate your willingness to provide advice in connection with this matter. If it is at all possible, it would be extremely helpful if you could provide a response by the end of this week.

Sincerely,



The PMN Office has determined that the asset transfer comes under the umbrella joint venture of a formation of an entity that does not have voting securities not reportable.

(PS)

(TH) (RS) - CONCUR

called



9/10/96