

[REDACTED]

April 11, 1988

Wayne Kaplan, Esq.
Senior Attorney
Bureau of Competition

APR 12 1988

Washington, D. C. 20580

which restricts release under the
Freedom of Information Act

100

Re: Subsection 7A(c)(4) of the Hart-Scott-Rodino
Antitrust Improvements Act of 1976 (the "Act")

Dear Wayne:

Pursuant to our conversation on March 8, 1988, I am seeking your written confirmation of the position of the Federal Trade Commission (the "FTC") with respect to the exemption from the requirements of the Act provided by subsection 7A(c)(4) of the Act (15 U.S.C. §18a(c)(4)) for "political subdivisions of a state" as applied to

[REDACTED]

As you may recall, my inquiry arose because [REDACTED] distinguishes "municipal corporations" from "political subdivisions of the [REDACTED]" and I was concerned that the exemption from the requirements of the Act afforded by subsection 7A(c)(4) of the Act might not be available to [REDACTED] a [REDACTED]

[REDACTED] You verbally represented that a transaction involving [REDACTED] can use the subsection 7A(c)(4) exemption since the FTC views entities similar to [REDACTED] as political subdivisions of a state, notwithstanding such entities' label under state law. Your decision was based upon a brief description of the following facts.

_____ is operating under a municipal charter adopted

contrast, counties are defined as "legal subdivisions of the State". Regardless of this distinction, _____ is empowered and required by _____ law to levy and collect property taxes, sales taxes and other forms of taxes to support its public governmental and proprietary functions and is deemed to be a "political subdivision of the state" under the provisions of the _____. Furthermore, _____ law provides

Council _____ as permitted by its Charter and by applicable

The context in which my question about _____ status arises concerns _____. The _____ as well as the _____ and _____ are owned _____ and the _____ is operated by the staff of _____

part of _____ is the owner of an undivided 16% interest in the _____

interest _____ as well as its entire _____ is owned directly _____ and not by a separate corporation or other entity owned or controlled by _____

_____ is not yet _____ at a commercial level, but the _____ issued a full _____

_____ in the process of being readied for commencement of commercial operation pursuant to such license _____ has participated in the construction of _____ pursuant to a joint ownership Participation Agreement with _____

_____ executed as _____ as amended. _____ currently owns an undivided 30.8% interest in _____ and is the Project Manager responsible for planning, construction and operation _____ under the terms of such

Wayne Kaplan, Esq.
April 11, 1988
Page 3

respect to [redacted] conduct in connection with the Participation

satisfaction of various conditions to closing such as, for example, approval of the [redacted] and approval of the [redacted]. It is anticipated that the conditions to closing of the settlement pursuant to the Settlement Agreement will be satisfied prior to September 1, 1988, and that the closing will occur promptly after such conditions are satisfied.

Under the terms of the Settlement Agreement, at the closing [redacted] will convey to [redacted] entire 16% interest in [redacted] and related lands and properties and will release its claims against [redacted] + [redacted] litigation. In return, at the closing [redacted] will convey [redacted] a total of an undivided 27.78% interest (one half effective June 1, 1988, or the closing date, whichever is later, and the remaining one half effective January 1, 1990) in [redacted] existing [redacted]

[redacted] and operated by [redacted]. The total generating capacity [redacted] to be conveyed by [redacted] to [redacted] rated at 400 megawatts, equal to the rated generating capacity of [redacted] interest in [redacted]. Additionally, at the closing [redacted] will make cash payments to [redacted] aggregating approximately \$135 million. (The exact amount of such payments is dependent upon the date of closing and the amount of [redacted] investments in [redacted] after September 1, 1987; and the amount thereof is expected to increase above such estimated sum if the closing is deferred beyond June 1, 1988.) If the Settlement Agreement with [redacted] is closed, the interest in [redacted] to be conveyed by [redacted] at the closing, and the cash payments to be made by [redacted] at such closing, will be conveyed and paid to and owned directly [redacted]

Pursuant to these facts, I would like your written assurance of the FTC's view that [redacted]

subsection 1A(C)(4) of the Act.

Thank you for your helpful assistance and advice.

Sincerely yours,
[redacted]

7A(C)(4) a basis to ables.

W. Kaplan
4/12/88