

[REDACTED]

July 22, 1991

John M. Sipple, Jr.
Chief, Premerger Notification Office

Federal Trade Commission
Room 306
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Jul 23 8 53 AM '91
FEDERAL TRADE COMMISSION
NOTICE OF RECEIPT

Dear Mr. Sipple:

In pursuance of our telephone conversation of this morning, I am writing to set forth the circumstances pursuant to which the [REDACTED] seeks a determination of whether it is obligated to file a disclosure statement under

[REDACTED] wells to serve [REDACTED] municipalities -- and specifically, whether [REDACTED] is required to do so with respect to its prospective acquisition of a royalty override interest in gas from [REDACTED]

18a(c)(4) exempts "transfers to or from . . . a State or political subdivision thereof"; that 15 U.S.C. § 18a(c)(1) exempts transactions "in the ordinary course of business": and

these exemptions.

[REDACTED] was created by the State of [REDACTED] as "an institution of purely public charity performing an essential governmental function" -- specifically that of obtaining gas supplies for and

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associated financing for [redacted] municipalities that operate gas distribution systems. (A copy of [redacted] chartering legislation is enclosed.) While [redacted] is not itself technically a "political subdivision" of [redacted], it is declared to be an "instrumentality" of the state, [redacted] and each of the participants whose representatives govern [redacted] is a political subdivision of [redacted]. [redacted] authorizing legislation provides that, "the General Assembly finds that certain political subdivisions of the state now own and operate gas distribution systems . . . and if such political subdivisions are to furnish, and if the members of the public in the areas they serve are to receive adequate service, such political subdivisions must have adequate, dependable and economic sources of gas supply." The legislation goes on to authorize the creation of [redacted] as a "public body, corporate and politic."

Notably, there is an electrical counterpart of [redacted], the [redacted], which, in a recent antitrust case, was held exempt from the antitrust laws with respect to carrying out its functions, and

1/ As indicated throughout its chartering legislation, [redacted] has the attributes of a state subdivision and agency and serves only state political subdivisions. However, the reason it is declared to be an instrumentality rather than a subdivision is that, prior to the creation of [redacted] had in [redacted] created an electrical counterpart, the [redacted] ([redacted]). The first chartering bill described [redacted] as a state political subdivision, but a concern [redacted] was raised that [redacted]

format was followed for the later legislation creating [redacted]

"doubly vested in implementing what is in the public interest: it is a state instrumentality with defined purposes and accreditation, and it acts on behalf of the

state."

██████████ statutes are virtually identical, except that one concerns gas and the other electricity.

It is also worth noting that the gas supplies that ██████████ requires are not productive capital assets. Rather, the gas is

Although there are a number of forms by which ██████████ can secure gas supplies, i.e., through various sizeable contracts specifying quantities or minimum quantities, including "take or pay" provisions and so forth, ██████████ has, on the advice of bond counsel, made its purchases in the form of a "royalty override

We believe that if ██████████ were required regularly to file premerger notification statements under the Hart-Scott-Rodino Act each time it makes a large gas purchase, it would serve no

purpose of federal antitrust enforcement activities and would

There is some urgency to this as ██████████ was quite unaware that its gas purchases would create any need to report under HSR, and ██████████ is on the verge of approving and completing a ██████████

and its municipal participants, from ██████████ which is in the business of selling gas at wholesale. It had been

2/ The contemplated transaction is structured as an asset

██████████
the Internal Revenue Code of 1986 for transactions financed with municipal bonds.

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anticipated that the contract would be submitted to the governing board on July 25, 1991 for approval and that the

information you may need. Please feel free to supply you promptly with any further

Called on 7/24/91 -

... policy ... of ...
other things, for ~~local~~ political subdivisions of the state. For purposes of H SR, only, the municipal authority would be treated as ~~not~~ ^{are} exempt

... 31A(C)(4) of MRSCT, (the MRC creating the municipal authority was reviewed in connection with the matter).