801.40
802.40

[redacted]

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

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] 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 [redacted] 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 [redacted] entity

pursuant to an overall plan for the purpose of ... transmission assets into it so that it can provide transmission services to the existing members [redacted] in the

As we discussed, the formation of this new entity is not subject to Hart-Scott- entit...

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voting securities, so that 16 C.F.R. § 801.40 does not apply. Even if these membership [redacted] pursuant to an overall plan for the formation of this new EMC and thus should not be subject [redacted]

Sincerely,

[redacted]

[redacted]

[redacted] that [redacted]
the asset transfer [redacted]
of a formation of an entity that
does not have voting securities
not reportable.

TH RS - concur

called [redacted] 9/10/96