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TARRY of The Control Act which reduceds the Freedom of Information release under the Act.



March 31, 1998

Richard B. Smith, Esq.,
Federal Trade Commission,
Premerger Notification Office,
Room 303,

6th Street & Fennsylvania Ave., N.W., Washington, D.C. 2058C.

Re:

Dear Mr. Smith:

I am writing to memorialize our tolephone conversation of this merning involving you. He and concerning the applicability of the S 7A(c) (9) and S 802.9 investment exemption to the purchase of common stock by various independent power producers ("IPPs"). The facts we discussed are as follows:

a Mon Vork utility has antored into a

\$3.6 billion in cash, 42.9 million shares of Common Stock and a series of fixed price swap contracts. This pool of consideration is allocated among the various IPPs on terms unknown to the as well as the individual IPPs. Although the line in inaware of which IPPs are acquiring Common Stock, it does know that twelve IPPs will be receiving stock

and that no IPP will own, following the closing of the MRA, more than 5% of the then outstanding Common Stock, except for one group of affiliated IPPs which will hold not more

remited to file a shalf and the the

Stock. has been told that approximately half of the IPPs presently plan to sell their shares immediately. Common Stock is presently trading in the \$12-13 range.

and the IPPs believe that, assuming the IPPs

Obviously, should any individual IPP's investment intent subsequently change, a filing would be required prior to the acquisition of any additional shares. In furtherance of the conclusion that no filings will be required, we additionally noted the following:

- 1. Each IPP who will receive 2% or more of the Common Stock pursuant to the MRA is required to sign a 5 year standstill prohibiting them from seeking to acquire control of the control of
- 2. In approving the MRA, the New York Public Service Commission (the "PSC"), in its written order dated March 20, 1998, stated, in response to the objections of one intervenor to issuing Common Stock to the IPPs, that the "proponents have convincingly demonstrated that the [IPPs] cannot use their combined interests in the company to improperly influence its operations. Were they to attempt

- - - man be subject to the - - - - Coustance of seption - - - or - - Anti-which restricts - - - ne thereom of Information to do so, we would investigate any such circumstances and take proper steps to preclude improper manipulations of the competitive market."

As with other New York State utilities,

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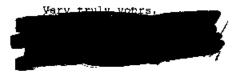
analyzing other proposals regarding its nuclear facilities including feasibility of an auction, transfer and/or divestiture. Thus, the PSC is requiring to exit the

4. As we finally noted on our call, the MRA did permit the following IPP input into the selection of two directors to fill two vacancies on s board: the IPPs jointly selected a nationally recognized executive search firm who developed a list of qualified individuals unaffiliated with either or any IPP. While the IPPs were free to make suggestions, the search firm had the sole determination of which individuals were on the list. From that list, and the IPPs mutually agreed on a final list of 10 individuals, with to fill its two vacancies from that list (which | us going, although the identity of the two individuals is unknown to the IPPs). Once elected for a three year term at the 1998 annual meeting, there is no further agreement with the IPFs with respect to directors. Both and the IPPs feel this limited input into the selection of totally unaffiliated genines should not affice the commettee annitetie and

Based on the above facts, you expressed the initial view, subject to review of this letter, that the IPPs' acquisitions of common stock pursuant to the MRA

Richard B. Smith, Esq.

would be exempt from Hart-Scott filing requirements under § 7A(c)(9) and § 802.9. Please call me at or if you disagree with the conclusion that the acquisitions would be exempt.



Telepase under The Treatment of Information Act.