

[REDACTED]

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Section 7A (b) of the Clayton Act
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APR 12 1988
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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.

[REDACTED] is operating under a municipal charter adopted or amended as authorized by Article XI, Section 5, of the Constitution of the [REDACTED]. Under the [REDACTED] and all other incorporated [REDACTED] towns and villages are defined as [REDACTED]. In contrast, counties are defined as "legal subdivisions of the State". Regardless of this distinction, [REDACTED] is empowered and required by [REDACTED] 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 [REDACTED]. Furthermore, [REDACTED] law provides that [REDACTED] Charter, and ordinances (as adopted by the City Council [REDACTED] as permitted by its Charter and by applicable [REDACTED] and statutory provisions), have the force of law, and the City Council [REDACTED] is empowered to exercise legislative functions as a governmental body.

The context in which my question about [REDACTED] status arises concerns [REDACTED]. The [REDACTED] [REDACTED] as well as the [REDACTED] and [REDACTED] are owned [REDACTED] and the [REDACTED] is operated by the staff of the [REDACTED] which is under the supervision of the City Council, Mayor and City Manager. As a part of [REDACTED] is the owner of an undivided 16% interest in the [REDACTED] [REDACTED] a two-unit, [REDACTED] on which construction was commenced in the [REDACTED] [REDACTED] interest in [REDACTED] as well as its enti [REDACTED] is owned directly [REDACTED] and not by a separate corporation or other entity owned or controlled by [REDACTED]

[REDACTED] is not yet [REDACTED] at a commercial level, but the [REDACTED] issued a full power license for Unit 1 of [REDACTED] and Unit 1 of [REDACTED] is in the process of being readied for commencement of commercial operation pursuant to such license [REDACTED] has participated in the construction of [REDACTED] pursuant to a joint ownership Participation Agreement with [REDACTED] [REDACTED] executed as [REDACTED] as amended. [REDACTED] currently owns an undivided 30.8% interest in [REDACTED] and is the Project Manager responsible for planning, construction and operation of [REDACTED] under the terms of such Participation Agreement.

[REDACTED] have been engaged in litigation (the [REDACTED] since 1983 involving claims [REDACTED] with [REDACTED]

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respect to [redacted] conduct in connection with the Participation Agreement and the planning and construction of [redacted] Effective as of March 17, 1988, [redacted] entered into a Settlement Agreement providing for settlement of the [redacted] litigation and other disputed claims between such parties, subject to 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] on the [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] is a political subdivision of the [redacted] for purposes of the exemption from the requirements of the Act provided by subsection 7A(c)(4) of the Act.

Thank you for your helpful assistance and advice.

[redacted] Sincerely yours,
[redacted]

[redacted] 7A(c)(4) appears to apply.

Wayne Kaplan
4/12/88