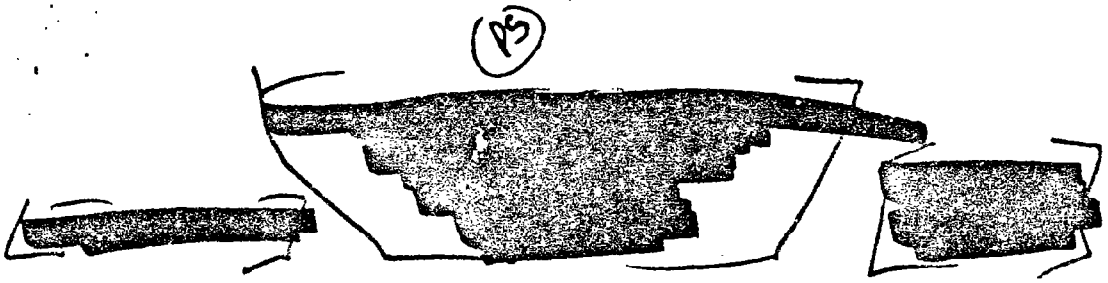

April 4, 1984

BY HAND

Patrick Sharpe, Esq.
Premerger Notification Office
Federal Trade Commission
Room 301
7th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

This material may be withheld from the public under the Freedom of Information Act

Dear Mr. Sharpe:

On March 30, 1984, I wrote you requesting an informal interpretation that the hypothetical transaction described therein need not be reported under the Hart-Scott-Rodino ("HSR") Premerger Notification and Waiting Requirements. This supplements my previous letter to you and more fully describes the nature of the transaction and the preexisting relationship between the parties.

On December 16, 1974, Company A and an electric utility which has since been merged into Company B entered into a General Agreement to jointly construct, own and operate an electric power generating plant ("generating plant") and related lignite mining facilities and equipment ("mining facilities"). Each of the parties to the General Agreement owns an undivided percentage interest in the unincorporated venture and shares in the construction and operating costs in proportion to their respective ownership interests. As discussed in our previous letter, under the terms of this General Agreement, Company B has a right of first refusal to purchase Company A's interest. It is pursuant to this right of first refusal that Company B intends to purchase Company A's minority interest in the joint venture. Upon consummation of this transaction, the General Agreement governing the unincorporated joint venture will terminate and Company A will no longer be involved in the business of constructing or operating the planned facilities.

We believe that this transaction is not subject to the Premerger Notification and Waiting Requirements of HSR because it is in substance an acquisition of a minority interest in an unincorporated joint venture. We understand that the Commission takes the position that the acquisition of partnership or unincorporated joint venture interests is not a reportable

transaction under HSR. While the parties to the General Agreement creating this relationship each own an undivided percentage interest in the assets of the joint venture, the substance of the transaction is that of one party to an unincorporated joint venture buying out the other party's interest.

I hope that this letter clarifies the transaction previously described. If you need any additional information or have any further questions, please feel free to contact me.

Sincerely,

BERGSON, BORKLAND, MARGOLIS & ADLER

To: PMN staff

From: Patrick

I would think that the acquisition of an unincorporated joint venture would be treated the same as a partnership (which is an unincorporated joint venture).

It would be consistent with our past interpretations to say that since B is acquiring all of the interest in an unincorporated joint venture it is the same as acquiring all of the assets.

Practically speaking I don't see how this transaction could present an anti trust problem since be already holds 70% of the unincorporated joint venture.

Wayne Kaplan once posed a question to me that fits this situation. What if one party holds 99% of a partnership interest and acquires the remaining 1%. If we are to be consistent with our past interpretation a filing may be required. Perhaps we should say that if the minority share is valued at $15 mm, it is reportable as an asset acquisition

Any comments will be appreciated

To: Wayne

From: Patrick

Re: Comments on memo dated April 5, 1984

stockholders #	held After transaction	value
2	20%	$23.2 mm
3	20	$ 23.2 mm
4	15	$ 17.4
5	15	$ 17.4
6	15	$ 17.4
7	15	$ 17.4

The value of # 1's 50% share is $116 mm (Total consideration paid) (see §01.10(c),(2) - Acquisition price, which includes assumption of liabilities)

116 × .2 = 23.2

116 × .15 = 580 + 16 = 17.40

Section 7(A)(a)(3)(B) is satisfied, that is the value is in excess of $15mm. for stockholders 2-7. Consequently, 802.30b does not apply and a filing should be required for stock