RESPONSE OF THE OFFICE OF
PUBLIC UTILITY REGULATION

Our Ref. No. 03-7-OPUR
Tri-State Generation and
Transmission Association, Inc.,
Et Al.

DIVISION OF INVESTMENT MANAGEMENT

File No. 132-3

Based on the facts, circumstances and representations described in your letter of September 23, 2003, and without necessarily agreeing with your legal analysis, we would not recommend any enforcement action to the Commission against IEA-TRI Trust ("Trust") under section 2(a)(3) of the Public Utility Holding Company Act of 1935 ("Act"), solely because of its holding legal title to an 8 percent undivided interest in the Craig Station, Unit No. 3 generating facility, or against Tri-State Generation and Transmission Association, Inc. ("Tri-State") under section 2(a)(7) of the Act, solely as a result of Tri-State's beneficial ownership of the Trust.

You should note that facts or conditions different from those presented in your letter might require a different conclusion. Further, this response expresses only the Division's position on enforcement action. It does not purport to express any legal conclusion on the questions presented.

David G. LaRoche
Special Counsel

September 23, 2003

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
PUBLIC UTILITY REGULATION

September 23, 2003

Steven A. Adducci, Esquire
Dorsey & Whitney LLP
1001 Pennsylvania Avenue, N.W.
Suite 400 South
Washington, D.C. 20004-2533

Re: Tri-State Generation and Transmission Association, Inc., et al.
File No. 132-3

Dear Mr. Adducci:

Enclosed is our response to your letter of September 23, 2003. By incorporating our answer in the enclosed copy of your letter, we avoid having to recite or summarize the facts involved.

Very truly yours,

David G. LaRoche

David G. LaRoche
Special Counsel

Enclosure

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1001 PENNSYLVANIA AVENUE, N.W.
SUITE 400 SOUTH
WASHINGTON, D.C. 20004-2533
TELEPHONE: (202) 442-3000
FAX: (202) 442-3199
www.dorsey.com

Steven A. Adducci
(202) 442-3570
adducci.steven@dorsey.com

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September 23, 2003

Ms. Catherine Fisher
Assistant Director
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Request for No-Action Assurance by Tri-State Generation and Transmission Association, Inc.

Dear Ms. Fischer:

On behalf of Tri-State Generation and Transmission Association, Inc. ("Tri-State") and a certain grantor trust (referred to herein as the "IEA-TRI Trust") which Tri-State is the beneficial owner of, all as more fully described below, we respectfully request that the Staff of the Office of Public Utility Regulation ("Staff") of the Division of Investment Management (i) concur in our view that the grantor trust beneficially owned by Tri-State is not an "electric utility company" within the meaning of Section 2(a)(3) of the Public Utility Holding Company Act of 1935, as amended, (the "1935 Act") as a result of its holding passive legal title to an 8 percent undivided interest in the Craig Station, Unit No. 3 generating facility in Colorado, (ii) concur in our view that Tri-State will not be considered a holding company within the meaning of Section 2(a)(7) of the 1935 Act solely by virtue of its beneficial ownership of the subject grantor trust, and (iii) recommend no enforcement action against Tri-State and/or the IEA-TRI Trust be taken on account of the facts described herein.

As discussed below, it is our position that the subject IEA-TRI Trust should not be considered an "electric utility company" pursuant to Section 2(a)(3) since it does not possess the essential characteristics (*i.e.*, active ownership, control, and dominion over the subject electric generating facility) commonly attributable to an entity in the electric utility business. Moreover, we believe that classifying the trust as a statutory "electric utility company" is neither required by the plain meaning of the 1935 Act nor consistent with public policy considerations.

Background.

A. Tri-State Generation and Transmission Association, Inc.

Tri-State is an electric generation and transmission cooperative corporation organized under the laws of Colorado. Tri-State is a non-profit wholesale power supply and transmission cooperative that provides electricity to forty-four member distribution systems serving major parts of Colorado, Nebraska, New Mexico and Wyoming. Tri-State was organized in 1952 by its members/customers, which consist of rural electric cooperatives and public power districts, and is owned by these systems. Tri-State is governed by a board of directors comprised of one representative from each of the forty-four member systems. The forty-four member systems provide service to approximately 1,000,000 consumers.

Tri-State's principle purpose is providing wholesale electric service on a cooperative basis to its member/customers. Tri-State's resources and operations include approximately 1,502 Megawatts ("MW") of owned capacity, 1,100 MW of purchased power and approximately 5,000 miles of transmission lines. Tri-State's transmission system lies within the control areas of the Western Area Power Administration, PacificCorp, Nebraska Public Power District, Public Service Company of Colorado, and Public Service Company of New Mexico. Tri-State is not a control area operator. Tri-State is a member of the WECC and MAPP power pools.

Tri-State's funding is provided by its members/customers and long-term debt payable to, among other institutions, the Rural Utilities Service ("RUS"), formerly the Rural Electrification Administration. Each of Tri-State's members is a rural electric cooperative or a public power district owned by the consumers it serves. Tri-State's forty-four member distribution systems (18 in Colorado, 12 in New Mexico, 8 in Wyoming and 6 in Western Nebraska) directly supply electricity to rural residences, farms and ranches, cities, towns and suburban communities, as well as large and small commercial businesses and industries. Combined, Tri-State's members serve more than 502,000 meters in a 250,000-square mile area.

Tri-State's electric rates are constructed so as to generate only enough revenue to cover its cost of service and to generate margins sufficient to establish reasonable reserves, meet certain financial coverage ratios, and to increase members' equity. Member rate decisions require concurrence of the RUS. Revenues in excess of costs are designated as net margins. Retained net margins are treated as advances of capital by the members which are allocated to each member based on the proportionate share of their electricity purchases from Tri-State. Net losses are not allocated to members, but are offset by future margins. The by-laws of Tri-State do not permit the payment of interest or dividends on any capital contributed to Tri-State by members.

Membership in Tri-State is nontransferable. In general, membership in Tri-State entitles a member to (i) purchase electric energy, (ii) vote on all matters on which members may vote according to law, and (iii) receive a credit for any capital contributed to Tri-State and to receive payment for any patronage capital contributed to Tri-State in the event the Board of Directors of Tri-State authorizes any such payment. Each Tri-State member has one vote. Capital credited to

the account of a member is assignable only on the books of Tri-State and only to successors in interest to the business or physical assets of the member.

B. Craig Station Facilities.

The Craig Station generation facilities are comprised of three separate generation units (*i.e.*, Unit Nos. 1, 2, and 3) located near Craig, Colorado. Unit Nos. 1 and 2, known as the Yampa Project, are owned by its five participants and operated by Tri-State. Tri-State, one of the participants, owns a 24 percent undivided interest in the jointly owned Yampa Project facilities. The remaining undivided ownership interests in the Yampa Project are held by four other non-affiliated entities (*i.e.*, the Salt River Project, PacificCorp, the Platte River Power Authority, and the Public Service Company of Colorado). Tri-State receives a portion of the total output of the Yampa Project, which approximates its percentage ownership of 24 percent. The installed capacity of Unit Nos. 1 and 2 is 428 MW each.

C. Craig Station Unit No. 3.

Craig Station Unit No. 3 is a 408 MW facility which is leased to and operated by Tri-State. Unit No. 3 is owned on an undivided basis by five separate and individual trusts which are considered owner lessors of the facility. Unit No. 3 is comprised of specific generation assets and is not a stand-alone entity, corporate or otherwise. The Colorado-Ute Electric Association ("Colorado-Ute"), the former operating agent of Unit No. 3, constructed the facility to meet anticipated power demand during the 1980s. Unit No. 3 began commercial operation in 1984. In 1990, Colorado-Ute filed for bankruptcy protection and, in 1992, the power supplier's assets and operations were acquired by Tri-State, Public Service Company of Colorado, and PacificCorp. In addition, Tri-State assumed Colorado-Ute's interest as lessee under the five separate leases relative to Unit No. 3.

The five separate and individual trusts which own Unit No. 3 were created as part of the sale and leaseback transaction established to finance the cost of constructing Unit No. 3 and the related common facilities. In general, Colorado-Ute sold to five Owner Participants an undivided percentage ownership interest in Unit No. 3 and certain related common facilities. Simultaneously, each Owner Participant leased back to Colorado-Ute its percentage interest in Unit No. 3 and the related facilities under five separate lease agreements. In consideration for their percentage interests, the Owner Participants paid Colorado-Ute approximately $523 million in the aggregate comprised of (i) equity contributions and (ii) the issuance of certain non-recourse notes. *See Colorado-Ute Electric Association, Incorporated*, SEC No-Action Letter, 1984 WL 45638 (Sept. 7, 1984) (general background discussion of Unit No. 3 financing). Prior to the last quarter of 2002, the five Owner Participants and their percentage ownership of Unit No. 3 and the related facilities were as follows: IBM Credit Corporation (successor to IBM Credit Leasing Corporation) – 50%; Palo Verde Leasing Corporation (successor to Brown & Williamson Tobacco Corporation) – 20%; GELCO Corporation (successor to DKF Leasing) – 20%; IEA-TRI, LLC (successor to Dana Lease Finance Corporation) – 8%; and TSL Holding, Inc. (successor to Inspiration Leasing, Inc.) – 2%. *See* Attachment A hereto for an ownership chart of Unit No. 3 prior to the fourth quarter of 2002.

Immediately following the sale and leaseback closing in 1984, the Owner Participants transferred their interests in Unit No. 3 and the Unit No. 3 leases to five separate owner trusts with the United States Trust Company of New York (now known as the Bank of New York) ("Owner Trustee"). The owner trusts were created under five separate trust agreements between the respective Owner Participants and the Owner Trustee (each a "Trust Agreement"). The Owner Trustee, among other things, assumed the non-recourse obligations of the Owner Participants relating to the non-recourse notes.

D. The Dana Lease Finance Corporation Trust.

In late 2002, Tri-State acquired 100 percent of the Owner Participant/beneficial interest previously held by IEA-TRI, LLC pursuant to the related Trust Agreement (the "IEA-TRI Trust"). *See* Attachment B hereto for a current ownership chart of Unit No. 3. The IEA-TRI Trust holds the legal title to an eight percent (8%) undivided interest in Unit No. 3. The IEA-TRI Trust also holds a 5.688% ownership interest in certain common facilities used in connection with Unit No. 3 and the two other Craig Station generating units (*i.e.*, Unit Nos. 1 and 2) and a 4.214% ownership interest in certain other common facilities used in connection with Unit Nos. 1, 2, and 3.

Tri-State is the lessee and operator of Unit No. 3 through 2018, with an option to purchase the facility at no less than the then current fair market value. As a result of Tri-State's acquisition of the beneficial ownership in the IEA-TRI Trust, Tri-State now holds, in addition to its lessee and operator interest, all of the right, title and interest in and to (i) 100% of the beneficial interest in the IEA-TRI Trust estate, which includes, without limitation, the Owner Trustee's right, title and interest in and to the eight percent (8%) undivided interest in Unit No. 3 and the related lease, and (ii) in its capacity as owner of the beneficial interest and in its own right, all contractual rights and obligations, if any, to the IEA-TRI Trust estate.

By acquiring the beneficial interest of the IEA-TRI Trust and its related eight percent (8%) undivided ownership interest, Tri-State obtained, among other things, compensatory rights and privileges to proceeds equal to its ownership in Unit No. 3. The owner trusts, as lessors, are obliged to pay the principal and interest on non-recourse debt from the proceeds of the lease payments paid by Tri-State in its capacity as lessee. Semi-annual lease payments from Tri-State, as lessee, are for an amount at least equal to the non-recourse debt service payments. The semi-annual lease payments are independent of and not tied to revenues generated from the sales of electricity from Unit No. 3. Total non-recourse debt associated with the Unit No. 3 lease is approximately $102 million.

Pursuant to the Trust Agreement, the Owner Trustee is not permitted to manage, control, use, sell, dispose of or otherwise deal with the facility or any other part of the trust estate except in the event of default and as expressly provided in written instructions from the owner lessors. The Owner Trustee's primary duties are to distribute monies and payments and provide notice in the event of default by the lessee. In substance, under the Trust Agreement's terms and conditions, the Owner Trustee has no control over Unit No. 3 or any entitlement to the energy generated thereby or any right to enjoy the benefit thereof. As between the Owner Trustee and

Tri-State, only Tri-State, as the operator and lessee of Unit No. 3, has any such control and entitlement. The sole purpose for the existence of the five owner trusts, including the IEA-TRI Trust, is to continue compliance with the requirements of the original sale and leaseback financing transaction established by Colorado-Ute in 1984 when constructing Unit No. 3.

By virtue of the Trust Agreement and the Owner Trustee's limited duties, it is our view that the IEA-TRI Trust should not be considered an "electric utility company" within the meaning of Section 2(a)(3) of the 1935 Act and, thus, Tri-State should not be considered an electric utility holding company within the meaning of Section 2(a)(7). Tri-State acknowledges that it qualifies as an electric utility company within the meaning of Section 2(a)(3) of the 1935 Act. Accordingly, this request for no-action assurance is focused solely on the issue of whether (i) the IEA-TRI Trust should be considered a statutory "electric utility company" within the meaning of Section 2(a)(3) given its passive 8 percent ownership of Unit No. 3, and (ii) Tri-State should be considered a public utility holding company, within the meaning of Section 2(a)(7), solely by virtue of its beneficial ownership of the IEA-TRI Trust.

Application of the 1935 Act.

A. Section 2(a)(3) of the 1935 Act.

Section 2(a)(3) of the 1935 Act provides, in pertinent part, that: "'Electric Utility Company' means any company which owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale, other than sale to tenants or employees of the company operating such facilities for their own use and not for resale." A passive interest such as that of the IEA-TRI Trust, involving no control over the operation of the facilities in question or over the disposition of such facilities or the output thereof, is the type of interest which the Staff and/or the Commission has, on previous occasions, deemed insufficient to warrant the entity in question being considered an "electric utility company" under Section 2(a)(3) of the 1935 Act. Each of the issues of operation, ownership, and energy output are addressed in order below.

Operation. The Staff has previously found that a company which was to perform operating, maintenance and repair services on a generating facility under a service contract would not "operate" jurisdictional facilities within the meaning of Section 2(a)(3) since the company (i) would have no investment in an electric utility company or its facilities, (ii) would not assume full operating responsibility for such facilities, by contract or under a lease, and (iii) would not be paid a fee related to the utility's revenues or income. *See Ebasco Services, Inc.*, SEC No-Action Letter, (August 17, 1982) ("Ebasco").

Since *Ebasco*, the Staff has agreed not to recommend enforcement action in situations where the company in question had even greater responsibilities under a service contract. *See Kenetech Windpower, Inc.*, SEC No-Action Letter, (April 15, 1994) (where the responsibilities included operation, maintenance and assisting in the administration of certain agreements); *Bechtel Power Corporation*, SEC No-Action Letter, (May 22, 1991) (where the responsibilities included the daily dispatching of the generating facility's electrical output, as well as

coordinating deliveries of fuel to the respective facilities); *Colstrip Energy Limited Partnership*, SEC No-Action Letter, (September 23, 1987) (where the responsibilities included project development services, assistance in fuel procurement, financing, construction, and operation).

Based on the Staff's previous interpretations, we submit that the Owner Trustee of the IEA-TRI Trust should not, in any manner, be considered an operator of Unit No. 3. As discussed above, the Owner Trustee is not permitted to operate or control the facility unless expressly provided for in written instructions from the Owner Participants in the event of default.

Ownership. We are aware of only one instance in which the Commission or the Staff has addressed the scope of ownership in the definition of "electric utility company" in a circumstance similar to that of the IEA-TRI Trust. In *Tucson Electric Power Co.*, SEC No-Action Letter (Sept. 27, 1995), Tucson Electric Power Company ("TEP") sought concurrence with their opinion that, among other things, San Carlos Resources Inc. ("San Carlos"), a wholly owned subsidiary of TEP, would not be considered an electric utility company within the meaning of Section 2(a)(3) of the 1935 Act notwithstanding its legal ownership of Unit No. 2 of the Springerville Generating Station ("SGS 2"). San Carlos was the owner of title to SGS 2 and lessee, jointly and severally with TEP, of an undivided one-half interest in certain facilities used in common with both SGS 1 and SGS 2 of the Springerville Generating Station. TEP stated that if San Carlos were deemed to be an electric utility company within the meaning of Section 2(a)(3) of the 1935 Act, it would be necessary to obtain the approval of the Commission under Section 9(a)(2) of the 1935 Act prior to effecting a statutory share exchange resulting in Unisource being the sole holder of outstanding shares of TEP since, by virtue of this exchange, Unisource would be an affiliate of both TEP and San Carlos.

TEP argued that where San Carlos would (i) not operate the facility, (ii) not have any sales of electric energy or revenues, and (iii) only hold a passive ownership interest in a facility leased to an affiliated public utility, the Commission and the Staff should not deem it necessary, in terms of the public interest or the interest of consumers and investors, to treat such an entity as a statutory utility company. TEP also noted the limited ability to make SGS 2 capacity available to customers other than TEP's retail customers located in its local service area. Based on these facts and representations, the Staff did not recommend any enforcement action under the 1935 Act, including Sections 2(a)(3) and 9(a)(2), to the extent TEP and Unisource effectuated the subject statutory share exchange.

We submit that the same essential characteristics of passive ownership, lack of control or dominion, lack of electricity sales activity, and limits on Tri-State's rates and services as a cooperative selling energy to its members, are all present with respect to the IEA-TRI Trust and, as such, the IEA-TRI Trust should be treated in the same fashion as San Carlos and should not be considered a statutory utility company under the 1935 Act. Specifically, the IEA-TRI Trust, as well as the other owner trusts, were established solely for facilitating the financing and construction of Unit No. 3. In this connection, the Owner Participants'/beneficial owners' involvement with Unit No. 3 is solely to receive a net economic return. Moreover, the Owner Trustee is not in the business of producing, selling or transmitting electric power either from Unit No. 3 or otherwise. In sum, as with the findings associated with San Carlos, although the IEA-

TRI Trust will have legal title to an undivided eight percent (8%) interest in Unit No. 3, it does not control, operate, or have a voice in the decisions regarding the operation of the generating facility. That is, neither the IEA-TRI Trust nor the Owner Trustee, similar to San Carlos, are permitted to manage, control, use, sell, dispose of or otherwise deal with Unit No. 3. Moreover, the Owner Trustee, like San Carlos, is not entitled to the energy generated by Unit No. 3 or to enjoy the benefit thereof.

As further justification for finding that the IEA-TRI Trust should not be considered a statutory utility company under the 1935 Act, we reference (i) the Commission's policy and purpose associated with the adoption of Rule 7(d) which exempts certain legal and beneficial owners from being considered statutory utility companies, and (ii) Commission and the Staff determinations finding that certain non-voting, equity interests in "public utility companies" do not constitute "voting securities" under Section 2(a)(17), with the result that holders thereof are not deemed to be "holding companies" under Section 2(a)(7) of the 1935 Act solely by virtue of its beneficial ownership of the IEA-TRI Trust. In brief, Tri-State submits that a finding that the IEA-TRI Trust should not be considered a statutory public utility company within the meaning of Section 2(a)(3) is consistent with both of these Commission policies.

Commission Rule 7(d), subject to the various conditions specified therein, exempts from the definitions of "electric utility company" and "gas utility company" in Sections 2(a)(3) and 2(a)(4), respectively, certain legal and beneficial "owners" of facilities described in such Sections when such facilities are leased to a public utility company and, among other things, the terms of the lease are authorized or approved by a regulatory authority having jurisdiction over the rates and service of such public utility company. As expressed in Release No. 35-17843 (the "Proposing Release"), the Commission did not deem it necessary, in terms of the public interest or the interest of consumers and investors, to treat such entities as statutory utility companies in cases in which the transaction is authorized or approved by the appropriate regulatory authorities and the other conditions of the Rule are satisfied. Thus, the Proposing Release states that "[t]he rule in effect defines the term 'own' in Sections 2(a)(3) and 2(a)(4) by specifying that the property interest of the lessor in a facility subject to a long-term net lease is not the kind of ownership to which these sections apply", and that "[t]he rule is directed to the substance of ownership, not only to the technicalities of title."

The Staff Report of the Division of Corporate Regulation appended to the Proposing Release states, among other things, that "[t]he conditions in the proposed rule are designed to assure against dominion or control [over the facility] by the owner". In addition, the Staff Report states that "[t]he second overall objective is to stress that the exception is based on the premise that the lease is a financing technique, with the owners assuming a passive role after the utility facilities are delivered and are installed in place by the public utility company. . . ." The purpose of the rule is to maintain an insulating distance between owner and utility operator. If an ostensible owner should seek to cross the distance that keeps them apart, he thereby ceases to be a mere owner, and the exception under the rule would no longer apply."

In the context of the IEA-TRI Trust, Tri-State, as the Owner Participant/beneficial owner and the operator, is not seeking a determination that it is not an electric utility company within

the meaning of Section 2(a)(3) of the 1935 Act. Rather, Tri-State is merely seeking assurance and a determination that, due to the passive nature of the IEA-TRI Trust's legal title to a portion of Unit No. 3, the IEA-TRI Trust will not be considered a statutory electric utility company within the meaning of Section 2(a)(3) of the Act, thereby relieving Tri-State from potentially being considered a public utility holding company pursuant to Section 2(a)(7) of the Act solely by virtue of its beneficial ownership of the IEA-TRI Trust. As it respects the objectives of Rule 7(d) as set forth in the Staff Report, neither the IEA-TRI Trust nor the Owner Trustee have or will assert dominion or control over Unit No. 3 in light of their sole purpose of facilitating the original financing for the generating facility. Tri-State is merely seeking the same determination as that provided to IEA-TRI, LLC when it filed its Form U-7D on July 26, 2002 (*i.e.*, that the property interest of the trust in a facility (*i.e.*, Unit No. 3) subject to a long-term net lease is not the kind of ownership to which section 2(a)(3) applies). *See IEA-TRI, LLC*, SEC Form U-7D, SEC File No. 32-529 (July 26, 2002), *see also Palo Verde Leasing Corp.*, SEC Form U-7D/A, SEC File No. 32-432 (May 31, 2000).

The Staff has also found certain non-voting, equity interests in "public utility companies" not to constitute "voting securities" under Section 2(a)(17), with the result that the holders thereof were not deemed to be "holding companies" under Section 2(a)(7), where the holders of such interests have limited rights to vote or otherwise exercise control over such companies. *See Cabot Corporation*, SEC No-Action Letter, (July 6, 1994) (where a company owned more than 10 percent of the shares of a public utility but agreed, among other things, to convert the excess over 9.99% into non-voting shares); *Pinnacle West Capital Corporation*, SEC No-Action Letter, (April 23, 1990) (where right to vote pledged stock arose only in the event of default); and *In the Matter of Kaneb Pipe Line Company*, 43 SEC 976 (1968) (where a company held greater than 10 percent of the voting stock, but upon agreeing to certain restrictions was not deemed to be a "holding company" under the 1935 Act).

The Staff has also agreed not to recommend enforcement action where limited partnership interests had similarly limited rights to vote or otherwise exercise control over the management of the facilities in question. *See Nevada Sun-Peak Limited Partnership*, SEC No-Action Letter, (May 14, 1991) (where the approval of the limited partnership interests would be required only for certain major business decisions); *Colstrip Energy Limited Partnership*, SEC No-Action Letter, (June 30, 1988) (same); *Ocean State Power*, SEC No-Action Letter, (February 16, 1988) (where general partnership interests would not have the power to veto any major partnership decisions and would hold mainly non-voting interests); *Dominion Resources, Incorporated*, SEC No-Action Letter, (January 21, 1988) (where approval of the limited partner was required only for certain major events having a material effect on their investment); and *John Hancock Mutual Life Insurance*, SEC No-Action Letter, (June 23, 1986) (where limited partnership interests were not deemed voting securities). In the instant matter, the IEA-TRI Trust and the Owner Trustee have no voting rights and are unable to exercise control over Unit No. 3 and thus should not be considered a statutory electric utility company within the meaning of Section 2(a)(3) of the Act.

Energy Sales and Revenue. Neither the IEA-TRI Trust nor the Owner Trustee will have any sales of electric energy or revenues. Section 2(a)(3) of the 1935 Act and Rule 7(a)

promulgated thereunder set forth concepts associated with an exemption from the definition of "electric utility company" for certain companies engaged in de minimus sales of electric energy. Rule 7(a) provides that certain companies with no greater than $5,000,000 in average annual sales of electricity over the preceding three years are not "electric utility companies" within the meaning of Section 2(a)(3). As previously noted, pursuant to the Trust Agreement, neither the IEA-TRI Trust nor the Owner Trustee has any sales of electric energy or electric revenues. Moreover, the IEA-TRI Trust is not engaged in any businesses other than passively holding legal title to an undivided 8% ownership interest in Unit No. 3. The revenue received by the IEA-TRI Trust and the other owner trusts is limited to semi-annual rental payments which are designed to provide revenues sufficient to meet debt service requirements associated with the non-recourse notes and provide the Owner Participants with an agreed upon rate of return on their monetary contributions. If an exemption is available for companies with only de minimus electricity sales and revenues, then, *a fortiori*, an exemption should be available for a grantor trust with no electricity sales or revenues at all.

Conclusion.

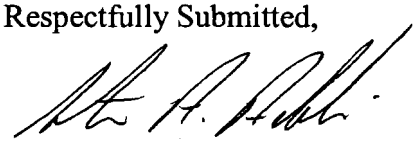
The IEA-TRI Trust has no rights or responsibilities whatsoever with respect to the operation or control of Unit No. 3. Tri-State has the exclusive responsibility, as the operator and lessee of Unit No. 3, for the operation and maintenance of the facility, and all the benefits and burdens of ownership lie with Tri-State. The Owner Trustee does not exercise any control over Unit No. 3 nor does it benefit from its operation in any way. The IEA-TRI Trust is simply one of the undivided owners of legal title to Unit No. 3. Neither the IEA-TRI Trust nor the Owner Trustee engages in any sales of electric energy and derives no revenues from its passive position as a partial title holder of Unit No. 3. Thus, the IEA-TRI Trust has the same, if not fewer, of the attributes of an "owner" or "operator" than San Carlos or any of the other companies involved in any of the situations described above.

Analysis of the concepts of ownership, operation and sales with respect to the IEA-TRI Trust, all as discussed above, clearly permit a finding that the IEA-TRI Trust has none of the characteristics commonly attributable to an entity in the electric utility business. The IEA-TRI Trust should not be deemed to "own" or "operate" Unit No. 3 for purposes of the definition of an "electric utility company" in Section 2(a)(3) of the 1935 Act and, as such, Tri-State should not be deemed to be an "electric utility holding company", within the meaning of Section 2(a)(7), solely by virtue of its beneficial ownership of the IEA-TRI Trust.

Based on the foregoing, we request the concurrence of the Staff of the Commission with our view that the IEA-TRI Trust is not an electric utility company within the meaning of Section 2(a)(3) of the 1935 Act and that Tri-State is not, within the meaning of Section 2(a)(7), a holding company solely by virtue of its beneficial ownership of the IEA-TRI Trust. We further request the advice of the Staff that it will not recommend any enforcement action to the Commission based on the facts presented herein.

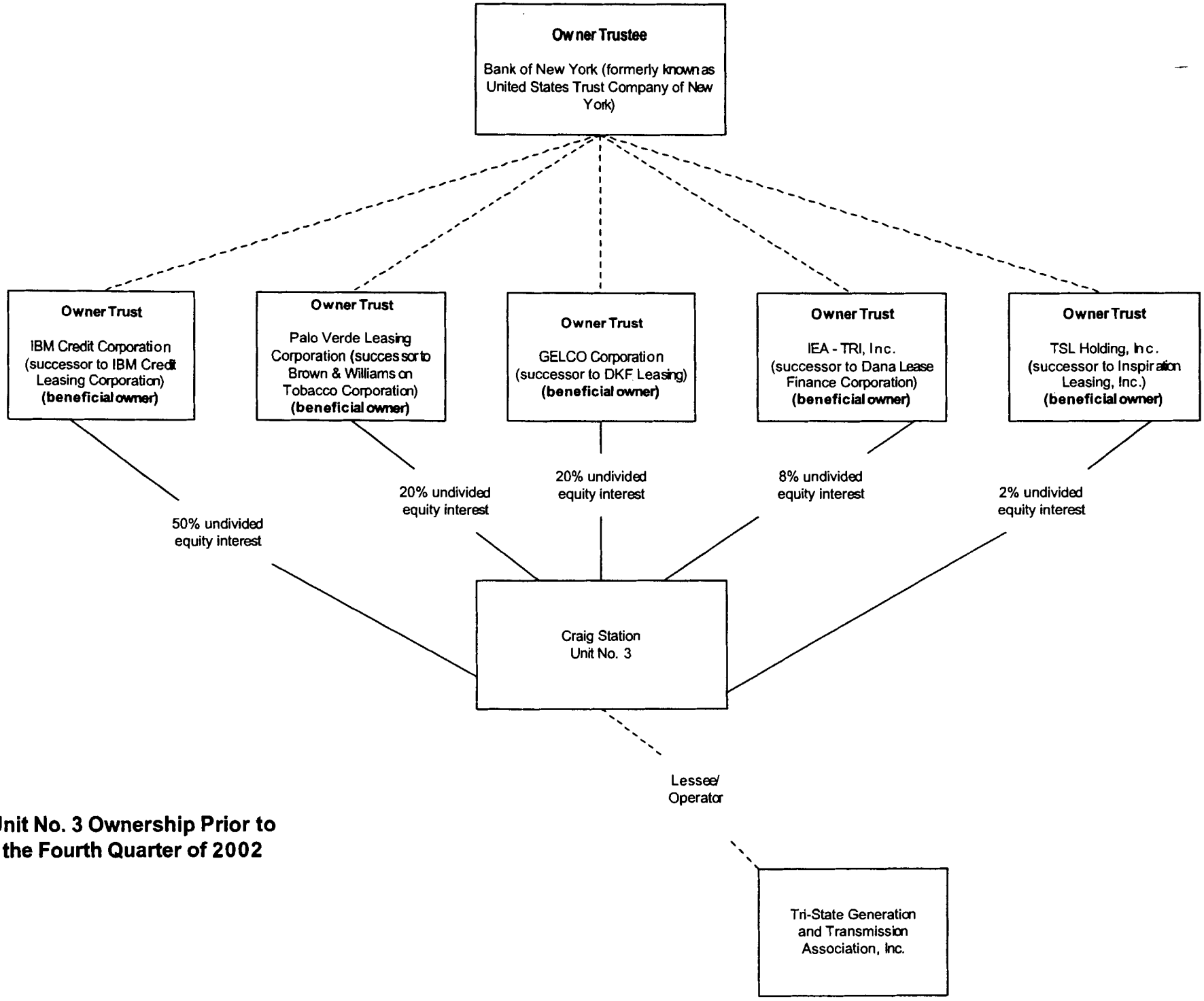
To the extent there are any questions regarding any of the above, please do not hesitate to contact the undersigned at your earliest convenience. We would appreciate an opportunity for a conference in advance of the adoption by the Staff of any position contrary to the views expressed herein.

Respectfully Submitted,

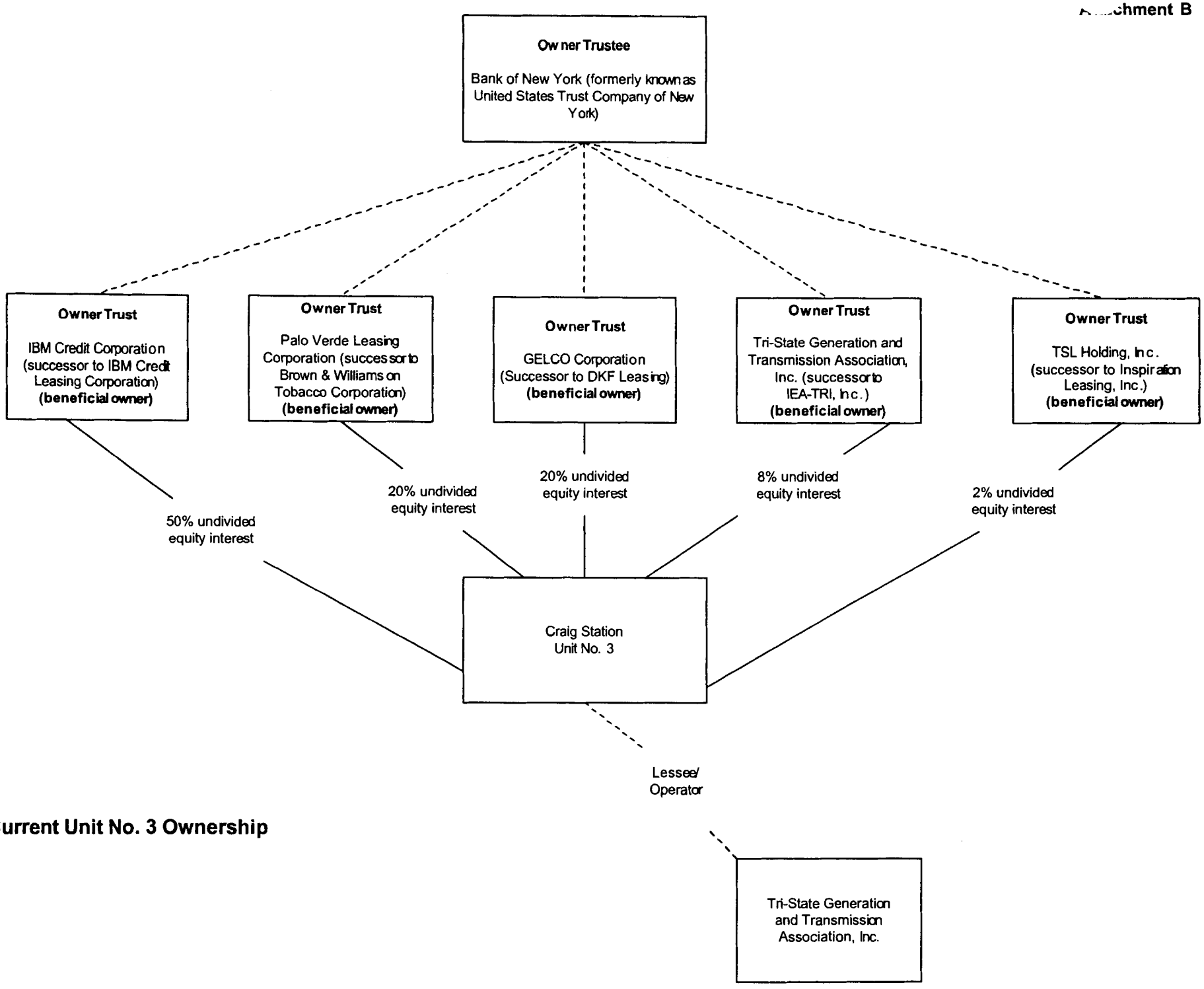


Steven A. Adducci
Dorsey & Whitney LLP
1001 Pennsylvania Ave., N.W.
Suite 400 South
Washington, D.C. 20004-2533

Counsel for Tri-State Generation and Transmission Association, Inc.



Unit No. 3 Ownership Prior to the Fourth Quarter of 2002



Current Unit No. 3 Ownership