



DEPARTMENT OF JUSTICE  
Antitrust Division

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November 20, 1997

Jesse W. Markham, Jr., Esq.  
Jackson Tufts Cole & Black, LLP  
650 California Street  
San Francisco, California 94108-2613

Dear Mr. Markham:

This letter responds to your request on behalf of the California Large Electric Power Purchasing Association ("CLEPPA") for the issuance of a business review letter pursuant to the Department of Justice's business review procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department's current enforcement intentions regarding a proposal by California-based cement and steel manufacturers to purchase some or all of their electric power needs through a joint purchasing agent. Based on the information that you have provided, the Department has no current intention to challenge the proposed joint purchasing of electric power by CLEPPA on behalf of its members.

According to your representations, the proposed joint purchasing is a response to deregulatory actions taken by the State of California. To date, California consumers of electric power, in most cases, purchase their electric power needs from a public utility whose rates are regulated. Generation, transmission and, in some cases, local distribution are supplied by integrated firms that are regulated at the state and/or federal level. As of January 1, 1998, however, California consumers will have an alternative to purchasing from their local distribution utility; they will have the option to enter into direct access contracts with third party power generators and suppliers with whom they will be able to negotiate rates and other terms and conditions. Moreover, the statewide transmission grid will be operated by an independent system operator who will be required to provide for and open access to the grid.

The members of CLEPPA will be all eight cement manufacturers located in California and

three California-based steel manufacturers.<sup>1</sup> You indicate, however, that the latter three are not competitors of one another because they produce different types of steel products. CLEPPA's individual members will remain free to purchase all, or part, of their electric power requirements independent of the joint venture. Moreover, the members will continue to conduct all other aspects of their production, marketing, and sales operations independent of one another.

You indicate that power generators can lower their costs of generation by entering into large and level demand contracts that give them greater planning assurance than is possible in selling in spot sales markets. Consequently, you suggest that customers, such as CLEPPA, who are willing and able to purchase power in a manner that enables generators to operate more efficiently (by reducing risks of underutilization of generating capacity and increasing the units over which fixed costs can be spread) can be expected to negotiate better prices than individual purchasers with smaller or less regular needs. Through joint purchasing, CLEPPA's members thus will be able to obtain lower prices for electric power.

You also claim that joint purchasing through CLEPPA will create benefits to its members in the form of reduced transaction costs in negotiating with generation and transmission providers. In the past, the existence of rate regulation meant that purchasers did not need to know anything about generation or transmission costs -- the regulatory authority argued about such issues with their regulatees that provided power generation or transmission. In the new deregulated environment, purchasers will have to amass such information if they want to negotiate effectively with generation and transmission suppliers. CLEPPA asserts that it can reduce information costs for its individual members and negotiate more effectively for them, completely independent of the savings attributable to the aggregation of the demand for electric power.

CLEPPA will adopt several operational safeguards designed to ameliorate the anticompetitive potential of joint purchasing arrangements. An independent purchasing agent ("P.A.") will collect from individual members information about their electric power needs and will negotiate on behalf of the group. The members will not communicate any information amongst themselves; all information will be provided to the independent purchasing agent who will only provide aggregated information to the individual members, and only such information as is necessary for the latter to determine whether they want to participate in particular joint purchases. Information provided by the PA to potential suppliers will be made the subject of confidentiality agreements prohibiting disclosure. The PA will also coordinate load management for its members for the purpose, among others, of avoiding the sort of simultaneous plant closures that would harm the group's overall load profile. The PA will arrange plant closures with each member separately,

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<sup>1</sup> CLEPPA's members will include Riverside Cement Co., Mitsubishi Cement Corp., TAMCO, California Steel Industries, Inc., Calaveras Cement Co., Kaiser Cement Corp., SOUTHDOWN, RMC Forester, Schnitzer Steel Products, National Cement Co. of California, and California Portland Cement Co.

however, there will be no direct coordination between members.

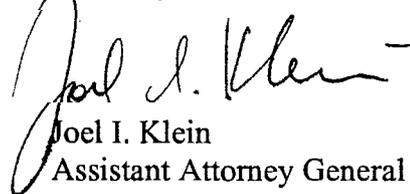
On the basis of the information that you have provided to the Department, it does not appear that the aggregation of its members' purchases would give CLEPPA any market power with respect to the purchase of electric power. Even if CLEPPA purchased all of its members' needs, it would account for less than one percent of all electric power consumed in California and less than four percent of electric power consumed for industrial use in the state. Nor is the contemplated joint purchasing likely to reduce horizontal competition amongst CLEPPA's members by eliminating rivalry with respect to such a large input that output price rivalry might be reduced. You indicate that the aggregate electric power purchases of all CLEPPA members constituted but five percent of their revenues, a percentage too small, under general antitrust analysis, to raise concerns about adverse effects on price rivalry. Finally, the prophylactic measures that will be adopted by CLEPPA to prevent potentially anticompetitive information exchanges between its members, if effective, should substantially reduce any risk that the joint purchasing of electric power will adversely affect competition in the various cement and steel markets.

To the extent that the contemplated joint purchasing reduces the costs of electric power to CLEPPA's members, it could have the procompetitive effect of increasing output to the benefit of consumers.

This letter expresses the Department's current enforcement intentions, and is predicated on the accuracy of the information and assertions that you have presented to us. In accordance with its normal practice, the Department reserves the right to bring an enforcement action in the future if the actual operation of the proposed information exchange proves to be anticompetitive in any purpose or effect.

This statement is made in accordance with the Department's business review procedure, 29 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within thirty days of the date of this letter, unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the business review procedure.

Sincerely,



Joel I. Klein  
Assistant Attorney General

Enclosure