U.S. DEPARTMENT OF JUSTICE
Antitrust Division

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December 20, 2012

Stephen Paul Mahinka, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

Re: STARS Alliance LLC Second Business Review Request

Dear Mr. Mahinka:

This letter responds to your request for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. §50.6.[1] You have requested, on behalf of the STARS Alliance LLC and its member utilities (collectively "STARS"), a statement of the Department's present enforcement intentions regarding the planned cooperative activities of STARS, specifically its proposal to jointly procure certain goods and services.

The members of STARS previously requested a business review letter regarding the formation of STARS and its proposal to share existing resources, best practices, and coordinate joint planning and operational activities. On July 3, 2012, the Department issued a favorable business review letter noting that the proposed cooperative activities do not appear likely to restrict competition, and to the extent that such activities increase efficiencies, they could be procompetitive.[2]

For the reasons stated below, the Department has no present intention to challenge the proposed joint procurement that is the subject of this business review letter.

[1] October 17, 2012 Letter from Stephen Paul Mahinka to Acting Assistant Attorney General Joseph F. Wayland.
[2] July 3, 2012 Letter from Acting Assistant Attorney General Joseph F. Wayland to Stephen Paul Mahinka at 3, available at, http://www.justice.gov/atr/public/busreview/284858.pdf.

Background

You have made the following representations in your letter to the Department:

STARS is composed of seven electric utilities who operate nuclear electric generation plants.[3] Membership in STARS and participation in all activities will be on a voluntary basis. The members all operate similar large (in excess of 1,000 megawatts of capacity), Westinghouse or Combustion Engineering-designed, pressurized water nuclear reactors ("PWR"), all of which were originally licensed by the Nuclear Regulatory Commission within twelve years of each other. Together, the STARS members operate 13 of the 69 PWR units and 13 of the 104 total commercial reactor units in the United States.

The members of STARS currently participate in the Utilities Service Alliance, a joint venture of numerous nuclear power plant operators that share existing resources and jointly procure some goods and services.[4] The Department issued a favorable business review letter to Utilities Service Alliance on July 3, 1996.[5]

STARS proposes to jointly procure: (1) turbine maintenance services; (2) improved spent fuel pool instrumentation; (3) steam generator services (including eddy current testing); (4) radiation protection services provided by technicians; (5) on-site valve services; (6) health physics products (protective clothing); (7) low-level radioactive waste processing and disposal; and (8) reactor coolant pump maintenance (seal refurbishment/replacement).[6]

You represent that the members of STARS believe this joint procurement would replicate the economies of scale of a large nuclear utility with several reactors. You further represent that the members believe the proposed joint procurement will be procompetitive by reducing the costs of electricity to some consumers.

You represent that any joint purchasing activities by STARS will be entirely voluntary for its members. You further represent that STARS may request that its members commit to a voluntary minimum purchase requirement to obtain favorable terms, such as volume discounts, but that they are free to reject any such commitment.

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[3] The participants in STARS are: (1) Union Electric Company, with its Callaway plant in Missouri; (2) Arizona Public Service Company, with its Palo Verde plant in Arizona; (3) Luminant Generation Company LLC, with its Comanche Peak plant in Texas/ERCOT; (4) Pacific Gas and Electric Company, with its Diablo Canyon plant in California; (5) Southern California Edison Company, with its San Onofre plant in California; (6) STP Nuclear Operating Company, with its STP plant in Texas/ERCOT; and (7) Wolf Creek Nuclear Operating Company, with its Wolf Creek plant in Kansas. STARS does not anticipate admitting any additional participants.

[4] The STARS participants plan to leave the Utilities Service Alliance effective January 1, 2013.

[5] STARS does not request the Department's current enforcement intentions with respect to the Utilities Service Alliance and this business review letter does not address the Utilities Service Alliance letter, July 3, 1996 Letter from Assistant Attorney General Anne K. Bingaman to Ira H. Raphelson, available at, http://www.justice.gov/atr/public/busreview/0704.pdf.

[6] Some of these proposed joint procurement activities are also engaged in by the Utilities Service Alliance.

You represent that joint purchasing activities will be limited to those sponsored by STARS and that STARS will prohibit its members from discussing downstream electricity prices or exchanging information affecting such prices. You further represent that, other than for the purposes of joint procurement conducted by STARS, members will not discuss prices for procuring upstream goods and services. You also represent that STARS will require antitrust compliance training of its members as soon as practicable following receipt of this letter.

You represent that none of the contemplated activities involve the sale or purchase of electricity, nor do they involve the purchase of fuel fabrication products or services or control rod products or services.

You represent that for each of the eight goods and services it proposes to jointly procure, its share of the relevant antitrust market is less than 20 percent. Specifically, STARS submits that it has:

Less than 15 percent of a U.S. market for turbine maintenance services purchased by nuclear operators;

Less than 20 percent of a U.S. market for improved spent fuel pool instrumentation;

Less than 20 percent of a U.S. market for steam generator services (including eddy current testing);

Less than 20 percent of a U.S. market for radiation protection services;

Less than 20 percent of a U.S. market for on-site valve services;

Less than 20 percent of a U.S. market for health physics products (protective clothing);

Less than 10 percent of a U.S. market for low-level radioactive waste disposal; and

Less that 20 percent of a U.S. market for reactor coolant pump maintenance (seal replacement/refurbishment).

With respect to the electricity produced by the STARS plants, you represent that "there is no competition among the Participants with respect to the sale of electric power, other than limited competition within Texas from electric power generated from units operated by Luminant and STPNOC and limited competition between PGE and SCE in California." With respect to these two geographic overlaps, you further represent that electric power from members' units "does not set the market clearing price for electricity.

Analysis

Based on your representations, it does not appear likely that the proposed joint procurement will restrict competition in either the upstream markets for goods and services or the downstream markets for electricity.[7]

In the *Antitrust Guidelines for Collaborations Among Competitors*, the U.S. Department of Justice and the Federal Trade Commission (collectively "the Agencies") provide an "antitrust safety zone" under which, absent extraordinary circumstances, the Agencies will not challenge a competitor collaboration. In particular, the Agencies generally will not "challenge a competitor collaboration when the market shares of the collaboration and its participants collectively account for no more than 20 percent of each relevant market in which competition may be affected."[8]

Based on your representations that the STARS members collectively account for less than 20 percent of each relevant market in which STARS proposes joint procurement, the proposed joint procurement is inside the safety zone. If either the contours of the relevant market(s) or the shares are contrary to your representations, then further analysis would be required to determine whether the proposed joint procurement could produce anticompetitive effects.

With respect to downstream electricity markets, the STARS members, for the most part, are in different geographic markets and do not compete against each other. In those geographic markets where more than one STARS member participates (*i.e.*, California and Texas), the members' nuclear units are not likely to have an impact on electricity prices given the structure of the organized markets and the particular characteristics of the plants at issue.

In addition, the prohibitions on STARS members sharing competitively-sensitive information provide additional safeguards to avoid threats to competition.

To the extent that the proposed cooperative activities increase efficiencies that result in lower costs, the proposed conduct could have a procompetitive effect.[9]

The U.S. Department of Justice Antitrust Division has no present intention to challenge the proposed cooperative activities of STARS. This letter expresses the Department's current enforcement intentions and is predicated on the accuracy of the

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[7] The Department has not considered any proposed joint procurement beyond the eight categories specifically discussed in this letter. Therefore, the Department is not stating its enforcement intention with respect to any goods and services not specifically discussed in this letter.

[8] Dep't of Justice & Fed. Trade Comm'n, *Antitrust Guidelines for Collaborations Among Competitors*, § 4.2 (April 2000).

[9] *See, e.g.*, *id* at § 2.1 (noting the potential procompetitive benefits from competitor collaborations such as scale or scope economies).

information and assertions you have presented to us in your October 17, 2012 letter and in oral communications to the Department.

This statement is made in accordance with the Department's Business Review Procedure, 28 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 (30) days of the date of this letter, unless you request that any part of the material be withheld in accordance of Paragraph 10(c) of the Business Review Procedure.

Sincerely,

Renata B. Hesse