



U.S. DEPARTMENT OF JUSTICE
Antitrust Division

Joseph F. Wayland
Acting Assistant Attorney General

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July 3, 2012

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

Re: STARS Alliance LLC 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 proposed STARS Alliance LLC and its proposed member utilities, a statement of the Department's present enforcement intentions regarding the planned cooperative activities of the STARS Alliance, specifically its proposal to share existing resources, best practices, and coordinate joint planning and operational activities among its members. For the reasons stated below, the Department has no present intention to challenge the stated conduct.

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

The proposed members of STARS are seven electric utilities who operate nuclear electric generation plants.² 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 electric), Westinghouse or Combustion Engineering designed, pressurized

¹ June 19, 2012 Letter from Stephen Paul Mahinka to Acting Assistant Attorney General Joseph Wayland.

² The participants in the proposed 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.

Stephen Paul Mahinka, Esq.

July 3, 2012

2

water nuclear reactors (“PWR”), all of which were originally licensed by the NRC within twelve years of each other. Together, the STARS members operate thirteen of the 69 PWR units and thirteen of the 104 total commercial reactor units in the United States.

The members of STARS currently participate in the Utilities Services Alliance, a joint venture of numerous nuclear power plant operators that share existing resources and jointly procure goods and services.³ The Department issued a favorable Business Review Letter to United Services Alliance on July 3, 1996.⁴

The members propose to form STARS to operate as a “resource sharing organization” with the objectives of achieving “maximum efficiencies and the continued safe operation of nuclear power plants.” Specifically, STARS proposes to engage in the following conduct: (1) sharing existing resources including personnel, parts, equipment, tools, and expertise; and (2) coordinating joint planning and operating activities such as (a) sharing best practices related to nuclear plant operations; (b) sharing project experience for significant plant modification or licensing activities; (c) joint contingency planning, and (d) other joint operation of activities common to nuclear operations at multiple sites.⁵

You represent that the members believe the cooperative activities described above would be procompetitive by enhancing the efficiency of the members’ operations, resulting in lower costs and the continued safe operation of nuclear plants. Your letter provides examples of the types of efficiencies STARS expects to achieve, such as using a centralized computer network to track and share specialized resources, sharing personnel with needed expertise with other members, sharing best practices relating to nuclear reactor plant operations to enhance safety and plant performance, sharing project experience on issues such as plant modifications and licensing requirements, and coordinating emergency contingency planning.

You represent that none of the contemplated activities involve the procurement of goods and services or the sale or purchase of electricity and that STARS will not function as a standard-setting organization for the nuclear power industry.

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.” You represent that STARS will adopt measures to prevent

³ The STARS participants plan to leave the Utilities Services Alliance effective January 1, 2013.

⁴ STARS does not request the Department’s current enforcement intentions with respect to the Utilities Services Alliance and this Business Review Letter does not address the United Services Alliance letter.

⁵ Some of these proposed activities are also engaged in by the Utilities Services Alliance. The STARS members also contemplate certain joint procurement which you state is likely to be the subject of a future business request.

Stephen Paul Mahinka, Esq.

July 3, 2012

3

any anticompetitive exchanges of information, including prohibitions on the discussion or exchange of (1) confidential information among participants regarding plans by any participant concerning potential marketing activities and related activities and (2) information regarding pricing for any service or product that a participant charges to its customers. These principles will be incorporated into a code of conduct or other similar document and provided to each participant.

Based on your representations, it does not appear likely that the cooperative activities that STARS proposes to undertake will restrict competition. The STARS members, for the most part, are in different geographic markets and do not compete against each other for the sale of electricity. 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. 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, increased output (such as reductions in nuclear reactor outages that result in less downtime), or increased safety, the proposed conduct could have a procompetitive effect.⁶

The Department has no present intention to challenge the proposed cooperative activities of the STARS Alliance. This letter expresses the Department's current enforcement intentions and is predicated on the accuracy of the information and assertions you have presented to us in your June 19 letter, April 17 email,⁷ and in oral communications to the Department.

⁶ See, e.g., 2000 Antitrust Guidelines for Collaborations Among Competitors at §2.1 (noting the potential procompetitive benefits from competitor collaborations such as allowing participants to better use existing assets and allowing participants to combine different capabilities and resources).

⁷ Email from Sean Duffy to Chan Mazumdar on April 17, 2012, at 3:03 p.m.

Stephen Paul Mahinka, Esq.

July 3, 2012

4

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,

A handwritten signature in black ink, appearing to read "J. Wayland", with a long horizontal flourish extending to the right.

Joseph F. Wayland