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October 17, 2012

Joseph Wayland
Acting Assistant Attorney General
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Wayland:

Pursuant to Title 28 of the Code of Federal Regulations §50.6 and the Antitrust Division's expedited business review policy, seven nuclear power plant operators (collectively "Participants," and each a "Participant") that are establishing a joint resource sharing organization to be called STARS Alliance LLC ("STARS") request that the Antitrust Division of the Department of Justice ("Division") provide them with an expedited Business Review Letter stating the Division's antitrust enforcement intentions with respect to certain proposed joint procurement activities.¹

On June 19, 2012 STARS requested a Business Review Letter stating the Division's present enforcement intentions with respect to formation of STARS and proposed non-procurement joint activities by its participants.² As STARS indicated in that letter that it anticipated doing, STARS now requests the Division provide it with a Business Review Letter stating the Division's present enforcement intentions with respect to certain proposed joint

¹ The member participants in STARS are: (1) Union Electric Company, a Missouri corporation doing business as Ameren Missouri (Ameren); (2) Arizona Public Service Company, an Arizona corporation (APS); (3) Luminant Generation Company LLC, a Texas limited liability company (Luminant); (4) Pacific Gas and Electric Company, a California corporation (PGE); (5) Southern California Edison Company, a California company (SCE); (6) STP Nuclear Operating Company, a Texas corporation (STPNOC); and (7) Wolf Creek Nuclear Operating Corporation, a Delaware corporation (WCNOC). Each company will have an equity or non-equity membership interest in STARS and be known as a "Participant."

² A copy of STARS' June 19, 2012 formation request letter is attached as Exhibit A and a copy of the Division's statement of present enforcement intentions of July 3, 2012 is attached as Exhibit B.

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procurement activities. The additional synergies gained through joint procurement are intended to reduce the cost to consumers of nuclear power generation, make nuclear power more competitive with other forms of electrical generation for customers of STARS' Participants, enhance the ability of STARS Participants to efficiently coordinate purchasing and location of assets necessary to ensure effective responses to potential disruptions in operation, and collectively drive each Participant to achieve the highest levels of excellence in the safe and efficient generation of electricity from nuclear power for the long term.

A. Background

All of the Participants in STARS are currently part of an electric cooperative known as the Utilities Service Alliance ("USA"). USA is engaged in many of the same activities contemplated by STARS, namely sharing resources; jointly procuring selected goods and services; and consolidating certain internal functions. The activities of the USA were the subject of a Business Review Letter by the Division, dated July 3, 1996. The Division concluded, "[t]o the extent that the proposed joint activities reduce the costs of producing electricity for USA's members and those savings are passed on to consumers, the proposed conduct could have a procompetitive effect."

STARS is a newly formed entity, which was formed on July 12, 2012, following receipt of the Division's Business Review letter of July 2, 2012, and represents a smaller group than the USA organization. However, as a new and independent legal entity, STARS would not have the benefit of relying upon the USA Business Review Letter with respect to any joint procurement activities. STARS believes that undertaking the joint procurement activities set out below would be procompetitive, by enhancing the efficiency of the Participants' activities, and would enable more efficient operation of the Participants in meeting potential operational concerns in the changed industry environment since the Division's statement of enforcement intentions to USA.

Over the past 16 years since the Division's letter to USA, there has been considerable consolidation in the ownership of nuclear reactors and operation of nuclear reactors by large nuclear "fleet" operators. In contrast, the STARS Participants collectively operate 13 units, with each operating 1 to 3 units as follows: Ameren (1 unit); APS (3 units); Luminant (2 units); PGE (2 units); SCE (2 units); STPNOC (2 units); and WCNO (1 unit). STARS does not anticipate admitting any additional Participants.

Moreover, the proposed joint procurement activities of STARS will not involve purchase or sale of electricity, but rather are limited to joint procurement activities or to operational matters (resource sharing, nuclear safety and performance improvement). With respect to procurement activities, STARS potentially will have only the same position in the market that is comparable to other large fleet operators. In any event, any such buying power should be

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considered presumptively either less than that of USA, or comparable to that of USA, *e.g.*, if STARS engaged in coordinated procurement activities with USA.

B. Proposed Joint Procurement Activities

By jointly procuring certain products and services, STARS would be able to replicate the same economies of scale enjoyed by a large nuclear utility with several operating reactors. The seven Participants in STARS each operate nuclear units at just one site that have one, two, or three units and, as such, individually do not wield the buying power that is enjoyed by larger "fleet" operators. Collectively, the STARS Participants operate 13 units. The Participants intend for STARS to act as an agent for any two or more Participants who wish to obtain common goods or services. These joint procurements may include contracts, for example, for professional services or craft labor, the purchase of plant parts or materials, or the purchase or lease of tools.

On an interim basis, the STARS Participants will continue to operate under the existing agreements with vendors which they had with USA, in order to ensure no lapse in the supply arrangements for the remainder of 2012, even after STARS Alliance LLC formation, because this is necessary either to avoid disruption of existing supply arrangements or to enjoy volume discounts and/or rebates that are calculated on a calendar year basis.

Assuming receipt of a positive statement of enforcement intentions by the Division, STARS plans to maintain existing contracts on a transitional basis and then enter into new long-term arrangements with key suppliers to provide specific goods or support services at several Participants' plants. Because STARS Participants plan to leave USA effective January 1, 2013, it is imperative for STARS to receive the Division's statement of present enforcement intentions as early as possible during the fourth quarter of 2012 in order to effectively negotiate long-term arrangements with vendors for calendar year 2013 and avoid making a substantial monetary payment to USA to continue as part of its current joint procurement arrangement with USA into 2013.

The proposed joint procurement activities by STARS could take a variety of forms and relate to several clusters of activities. STARS requests a statement of the Division's present enforcement intentions with respect to the following eight areas of proposed activity:³

- **Turbine Maintenance Services** - During each re-fueling outage, the main turbine rotor undergoes detailed inspection and repair. This includes disassembly and reassembly of the rotor and stationary blades enclosed in the turbine shrouds, which involves removal of the outer casing and inner casings,

³ A detailed memorandum, providing proprietary information for which confidential treatment is requested, describing the areas of proposed joint procurement contemplated by STARS is attached as Exhibit C.

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and then removal of the main turbine rotor for inspection and repair. The main turbine rotor is subjected to ultrasonic testing in order to identify cracks, and then the identified cracks are repaired. Based upon STARS' experience, the estimated cost per outage is \$4 million per year. The market for such services is international. STARS estimates that its annual spending for such services constitutes less than 15% of the relevant market in the U.S., and less than 5% of the international market. There are at least four major vendors of such services.

- **Improved Spent Fuel Pool Instrumentation** - The requirements for spent fuel pool instrumentation enhancements were established in response to the tragic earthquake and tsunamis that struck the northeast coast of Japan in March 2011 and its effects on the Fukushima area reactors. These requirements were imposed by Nuclear Regulatory Commission (NRC) Order EA-12-051, dated March 12, 2012 and must be implemented within two refueling outage cycles after submittal of an integrated plan (required by February 18, 2013) or December 31, 2016, whichever comes first. In order to implement this Project, most plants will need to hire an engineering services provider that has the specialized ability to design an instrument system capable of functioning in a post accident environment, likely including a Quality Assurance (QA) Program that meets NRC requirements. STARS estimates that its annual spending for such products is less than 20% of the U.S. relevant market. There are at least five major vendors of such products.
- **Steam Generator Services (including eddy-current testing)** - During refueling outages, steam generators undergo inspection, testing, cleaning and repair (plugging of defective steam generator tubes). The Steam Generator Service provider supplies the personnel and specialized equipment to conduct the tests and then to interpret the complex data that is collected during the testing. The steam generator tube testing is specialized to pressurized water reactors (PWRs). The market for such services is international. Based on STARS' experience, the cost per outage is \$5 million per unit. STARS estimates its annual spending for such services is less than 20% of the U.S. market and less than 10% of the global market. There are at least seven major vendors who provide these services.
- **Radiation Protection Services** - Radiation protection services are performed by technicians supplied by a vendor to conduct specialty labor services inside the reactor containment building, primarily during plant outages, which includes unscheduled outages as well as planned refueling outages. Radiation safety technicians monitor radiation levels and dose, and decontamination technicians

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conduct cleanup activities to reduce radioactivity. Dosimetry technicians monitor dosimeters which measure the radiation dose received by workers conducting activities in areas that have radioactive contamination. The dosimetry is used and monitored by skilled technicians, in order to assure that the work being performed is managed within these worker dose limits. STARS estimates that its annual spending for such services constitutes less than 20% of the U.S. market and less than 10% of the global market. There are at least four major firms that provide radiation protection services.

- **On-Site Valve Services** - Valve services are specialty labor services provided to conduct preventive maintenance, corrective maintenance, and diagnostic testing of valves and valve systems that are safety-related and/or non safety related. The valves include motor operated valves, air operated valves, and check valves, and the services include testing and repairs. STARS estimates that it constitutes less than 20% of the U.S. market for such services and less than 10% of the global market. There are at least five major vendors that provide such on-site valve services.
- **Health Physics Products** – Health physics products include protective clothing used by workers to reduce radioactive doses when they enter into radioactively contaminated areas of the plant. The same protective clothing is also used for various research and industrial purposes. STARS estimates that it constitutes less than 20% of the U.S. market for such products and less than 10% of the global market. There are at least five major vendors of these products.
- **Low Level Radioactive Waste Processing and Disposal** - Low level radioactive waste is generated by various activities in the nuclear industry, including filters that become contaminated, contaminated metals, contaminated equipment, contaminated consumable supplies such as protective clothing, gloves, safety glasses, tools, etc. Liquid and solid wastes are processed to reduce volume using methods such as cleaning, decontamination techniques, filtration, and incineration. STARS estimates that it constitutes less than 10% of the U.S. market for such services. There are at least five major vendors of such low level radioactive waste processing and disposal services.
- **Reactor Coolant Pump Maintenance (seal refurbishment/replacement)** - Reactor coolant pumps (RCPs) pump water through the reactor cooling system of PWRs. RCP maintenance, including repair and refurbishment work, is similar to the same type of work performed on other industrial pumps, except that nuclear operators will require that the manufacture or work must be performed

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under a QA Program. STARS estimates that it constitutes less than 20% of the U.S. market for purchase of such products and services for PWRs and less than 10% of the global market for PWRs. There are at least eight major vendors that provide seal refurbishment/replacement and reactor coolant pump maintenance.

STARS ordinarily will use a traditional competitive bid process in conducting such joint procurements. Joint purchasing activities by Participants will be limited to those sponsored by STARS. Beyond formally sponsored activities, STARS will not serve as a forum for its Participants to discuss prices prevailing in the industry or conduct other exchanges of information affecting price. Other than joint procurement activities conducted through STARS, Participants will not discuss with each other the prices which it would be willing to pay for goods or services. STARS is to be established as a free-standing limited liability company and, as such, it will function as an independent administrator in handling each individual Participant's proprietary information and ensuring that information is not communicated to other Participants in STARS. The Alliance and its Participants will develop appropriate antitrust compliance policies and guidelines for joint activities, as discussed below.

Joint purchasing activities of STARS will be entirely voluntary for its Participants. No Participant will be obligated to make any purchase of goods or services through STARS. At all times, each Participant will retain the right to deal with whomever it chooses, on whatever terms and conditions the Participant desires. Participants may be requested to commit to purchase a voluntary minimum requirement so that a volume discount or other favorable terms can be negotiated. Participants are free to reject such requests. No Participant will coerce or threaten another Participant to participate in joint purchasing activity. No Participant will be required to purchase one product or service as a condition for purchasing or obtaining a second product or service.

C. No Adverse Competitive Impact

As described in STARS' June 19, 2012 letter, the Participants in STARS collectively operate 13 of the 104 commercial reactor units in the United States and 13 of 433 commercial reactor units operated worldwide. This represents collective operation of less than 13% of U.S. domestic reactors (constituting approximately 15% of U.S. nuclear generating capacity) and 3% of the global reactors. These plants also represent the procurement of approximately the same percentages of total goods and services procured by operating nuclear units. Because the STARS Participants comprise such a small percentage of the U.S. and global market for each of the eight areas of proposed joint procurement, STARS would be unable to have a significant impact on the prices of the nuclear industry goods and services set out above.

STARS estimates that the total amount its Participants spend on outside procurement of materials and services (excluding nuclear fuel) averages approximately \$750 million per year.

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The U.S. nuclear industry collectively spends approximately \$4.5 billion annually on outside procurement of materials and services (excluding nuclear fuel). Therefore, STARS Participants' spending is approximately 17% of the U.S. industry's total spending on outside procurement of materials and services. Each Participant's purchasing through STARS is expected to be a fraction of the total purchasing by each of the STARS Participants; however, even if all of the STARS Participants spend all of their outside procurement of materials and services through STARS purchasing agreements, STARS purchasing will represent less than 20% of the total domestic market. As the U.S. market is less than one third of the global market, the STARS outside procurement activities easily can be expected to be less than 10% of the global market for goods and services to nuclear facilities.⁴

STARS' Operating Agreement was drafted to ensure STARS' activities will comply with all applicable antitrust laws. In particular, STARS' Code of Conduct specifically addresses antitrust concerns. The Code of Conduct prohibits sharing of confidential, competitively sensitive information among Participants, isolates STARS employees and loaned employees with access to sensitive information from Participants, and requires antitrust compliance training.

D. Joint Procurement Activities by STARS Will Benefit Competition

Based on the information set out above, we believe that the activities of STARS will be procompetitive. Engaging in the joint purchasing activities set out above can reasonably be expected to lead to more efficient asset utilization and curtail increases in power production costs, which should result in savings that will ultimately benefit consumers of electric power.⁵

For the above reasons, STARS requests that the Division issue a letter declaring that it has no present enforcement intention under the antitrust laws regarding undertaking the proposed joint procurement activities set out above.

⁴ See U. S. Department of Justice and Federal Trade Commission, Antitrust Guidelines for Collaborations Among Competitors (April 2000), reprinted in 4 Trade Reg. Rep. (CCH) ¶ 13,160 ("2000 Joint Venture Guidelines") ("If the nature of the agreement and absence of market power together demonstrate the absence of anticompetitive harm, the Agencies do not challenge the agreement.").

⁵ See, e.g., 2000 Joint Venture Guidelines, ("A collaboration may allow its Participants to better use existing assets, or may provide incentives for them to make output-enhancing investments that would not occur absent the collaboration."); *Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co.*, 472 U.S. 284, 295 (1985) (noting that purchasing cooperatives are "designed to increase economic efficiency and render markets more, rather than less, competitive.").

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We would be pleased to meet with Division officials to discuss the above request, or to provide any additional information necessary for the Division's prompt review and response.

Sincerely yours,



Stephen Paul Mahinka
Counsel for STARS Alliance LLC

cc: John E. Matthews