



DEPARTMENT OF JUSTICE
Antitrust Division

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Ira H. Raphaelson, Esquire
Shaw, Pittman, Potts & Trowbridge
2300 N. Street, N.W.
Washington, D.C. 20037-1128

Dear Mr. Raphaelson:

This is in response to the request of the Utilities Service Alliance ("USA"), on behalf of its member utilities, 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 of Justice's antitrust enforcement intentions with respect to the proposed formation of a joint-venture -- USA -- that would enable its nuclear power utility members to share existing resources, jointly procure goods and services, and consolidate selected internal functions and activities.

You indicate that recent economic developments are forcing electric utilities that operate nuclear plants to reduce production costs in order to remain competitive with other producers of electric power, and that the proposed activities of USA are viewed by its organizers as a means to that end. Membership will be limited to nuclear power generators. The eight initial utility members are geographically dispersed and account for about 7 percent of nuclear power in the U.S., whether measured by number of reactors or megawatt output, and about 2 percent of world-wide nuclear power production. Nuclear power plants, in turn, account for only about 21 percent of all electric power generated in the U.S.. Membership in USA is expected to grow; it will be open to any firm with an operating domestic nuclear power reactor until membership owns 38 nuclear reactors -- 35 percent of the 109 operating nuclear power reactors in the U.S. -- at which point membership will be closed.

The members propose to utilize USA to share existing resources, including personnel, parts, equipment, tools and expertise among its members. A computer system will be established through which a member could notify other members of its need for a particular type of skilled employee or equipment and other members could indicate their willingness to loan the needed resource. Compensation for the loaned resource would take the form of cash or credit in a computerized trading system in which the lender would be given credit against which it could draw when it needed to borrow a resource from another member. It is believed that USA members will be able to save considerable resources in this manner; they will be able to borrow personnel or equipment for temporary needs at considerably less than the cost of purchasing the equipment or hiring full-time employees or consultants.

USA's proposed joint procurement activities will be designed to give its members the ability to obtain economies of scale in purchasing. Members, however, will remain free to pursue any or all of their purchasing independently.

There are a number of internal functions that USA's members must engage in to operate electric power plants. Examples are accounting, materials management, and security and these functions may not vary much from one member's plant to another. USA plans to develop a menu of potential consolidation projects in which members could choose to participate on a voluntary basis.

On the basis of the information and assurances that you have provided us, the Department has no current intention of instituting antitrust enforcement action against USA's proposed operations. The fact that the initial members of USA account for only 7 percent of U.S. nuclear power generation and 2 percent of world production indicates that, as initially constituted, USA is not likely to be able to exercise monopsony power in the joint purchase of goods or services utilized in nuclear power production. The applicants estimate that they account for approximately 8 and 3 percent of U.S. and world-wide procurement by nuclear power producers. While membership may grow, it will not be allowed to result in a greater than 35 percent market share, the safe harbor criterion that the Antitrust Division has employed in reviewing joint-purchasing ventures. Moreover, even if one assumed that the initial members would do all their needed procurement jointly through USA, the common costs would constitute only 3 percent of finished product/service revenues, well below the 20 percent safe harbor employed by the Division in determining when joint-purchasing is likely to reduce competition amongst the joint purchasers in their sales markets.

USA's Operating Agreement contains a number of provisions designed to prevent its activities from raising antitrust concerns. Membership is open until it accounts for 35 percent of nuclear power productions, and members retain the right to act independently in all respects. (§ 1.1, 1.4 and 4.1). USA's Code of Conduct prohibits its members from exchanging or discussing any information about electric power pricing, the prices they would pay for goods and services outside their joint purchasing activities, or their marketing or output plans. Moreover, member-specific information as to costs or pricing will not be disclosed by USA. In view of these provisions, and the limited market shares of USA members, the proposed voluntary sharing of resources and consolidation of internal functions should not have any adverse effect on competition.

To 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.

This letter expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right to bring any enforcement action in the future if the actual operation of any aspect of the proposed joint and cooperative activities proves to be anticompetitive in any purpose or effect.

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 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10 (c) of the Business Review Procedure.

Sincerely,

/s/

Anne K. Bingaman
Assistant Attorney General