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June 19, 2012

**BY HAND DELIVERY**

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") wishing to create a 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 Antitrust Division's current enforcement intentions with respect to the planned activities of the proposed venture.<sup>1</sup>

The objectives of STARS shall be to achieve maximum efficiencies and the continued safe operation of nuclear power plants. The synergies gained through the alliance 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 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. The proposed strategies include:

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<sup>1</sup> 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."

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1. Sharing existing resources including personnel, parts, equipment, tools and expertise;
2. Coordinated joint planning and operational activities, including:
  - a. Sharing best practices relating to nuclear reactor plant operations for purposes of enhancing nuclear safety and plant performance;
  - b. Sharing of project experience for significant plant modifications or licensing activities such as obtaining license renewal and the associated plant aging management programs;
  - c. Joint contingency planning, including the potential for maintaining centralized inventory or spare parts for response to emergent needs or for purposes of enhanced emergency response, e.g., back up generators and other emergency safety equipment maintained for purposes of severe accident mitigation; and
  - d. Other joint operation of activities common to nuclear reactor operations at multiple sites, e.g., training, regulatory communications, processing industry operating experience, and responses to Nuclear Regulatory Commission ("NRC") requirements.

To facilitate the Division's review, this letter will set forth the background information necessary to analyze these strategies as well as the impact of the STARS' proposed activities on the domestic and world markets for goods and services supporting nuclear power generation.

A. Background

1. The Utilities Services Alliance and Prior Division Statement of Enforcement Intentions

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, including personnel, parts, equipment, tools, and expertise; jointly procuring selected goods and services; and consolidating internal functions such as accounting, materials management, and plant security. The activities of the USA were the subject of a Business Review Letter by the Division, dated July 3, 1996.<sup>2</sup> 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."

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<sup>2</sup> A copy of the USA's December 6, 1995 business review request and the July 3, 1996 response of the Department of Justice are attached as Exhibits 1 and 2, respectively.

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## 2. STARS

STARS is to be a limited liability company (“LLC”) organized under the laws of the State of Delaware. The identified Participants desire to form STARS for two purposes: (i) to continue the activities described in the USA’s business review request, regarding which the Division stated it had no present enforcement intentions at the time of its formation; and, (ii) to engage in additional cooperative activities focused on enhanced operational performance and joint planning and coordination regarding nuclear safety, obtaining licensing approvals from the NRC that enhance safety and/or performance, and joint nuclear power plant operational activities. STARS is to be a newly formed entity, and it 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. In addition, the STARS Participants plan to engage in additional activities focused on enhanced performance that may include maintaining joint inventory or engaging in joint operational activities that extend beyond the prior USA activities. By this request, STARS is seeking a statement of the Division’s current enforcement intentions regarding the cooperative activities set out below, and not any statement of the Division’s current enforcement intentions regarding USA and its activities.

While this business review request is under consideration pending the Division’s review, the STARS Participants plan to continue their existing coordinated activities, including joint procurements, as members of USA. The transition to coordinated activities through STARS Alliance LLC will not be initiated until receipt of a positive statement by the Division of its current enforcement intentions. Thus, the STARS Participants will limit their coordinated activities to those activities already initiated as part of their participation in USA. Each of the STARS Participants plans to continue limited membership in USA for 2012, pending receipt of a positive statement of its current enforcement intentions from the Division for STARS Alliance LLC. Thus, each of the STARS Participants will continue vendor contracts with USA, and may continue such procurements for the duration of 2012, even after STARS Alliance LLC is formed. The Participants plan to leave USA effective January 1, 2013.

Pending receipt of a positive statement of the Division’s current enforcement intentions regarding this business review request, the seven Participants will also continue the activities of 51 existing teams in various functional areas that are currently formed as part of USA to engage in peer review, resource sharing, and information sharing. However, to the extent that these teams currently include a broader group of USA members, they will be separated, and their activities will be limited to participation by the seven Participants that plan to join STARS Alliance LLC. Following receipt of a positive statement of current enforcement intentions by the Division and formation of STARS Alliance LLC, these activities will be transitioned to and coordinated through the new entity.

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Upon receipt of a positive statement of current enforcement intentions from the Division, STARS plans to undertake the activities described herein and other activities currently undertaken by the STARS Participants in conjunction with the other members of USA, as well as additional cooperative activities focused on enhanced operational performance and joint planning with respect to nuclear operations, nuclear safety, and obtaining licensing approvals from the NRC that enhance safety and/or performance. STARS believes that these activities 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 environment since provision of the Division's statement of then-current enforcement intentions to USA.

Over the past 16 years since the Division's statement of then-current enforcement intentions to USA, there has been considerable consolidation in the ownership and operation of nuclear reactors by large nuclear "fleet" operators. The largest operators are Exelon (22 units), Entergy (12 units), NextEra (8 units), Dominion (7 units), Duke (7 units), Southern (6 units), TVA (6 units), and Progress (5 units). Upon consummation of its pending merger, the combination of Duke and Progress will consolidate the operation of 12 units. 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 WCNOG (1 unit). STARS does not anticipate admitting any additional Participants.

STARS is to be organized as an LLC with both equity and non-equity membership. Non-equity memberships are being created so that STPNOC and WCNOG can assure that they comply with state law requirements unique to their organizations. All members are "Participants" with equal rights in the governance of STARS. In addition, the STARS organizational agreement provides for the possibility to create additional Series of membership. All STARS Participants will participate in the initial Series of the LLC (i.e., Series A). Each additional Series would be limited to a specific activity that a subset of STARS Participants may be authorized to pursue, where only some STARS Participants elect to participate in such activity.

The Participants in STARS do not intend that STARS will operate for the purpose of making a profit. Rather, collective STARS activities are intended to assist each Participant in reducing or avoiding operating costs. Therefore, it is intended that each equity and non-equity Participant is obligated to pay its fair proportionate share for STARS activities and receive a fair proportionate share of the economic benefits of STARS activities. If one or more additional Series is created, the economics within the Series will be managed in the same way, based upon the proportionate participation among the Participants electing to join the Series.

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STARS also anticipates requesting a business review letter in the near future that would state the Division's current enforcement intentions regarding the joint procurement of certain non-fuel fabrication related goods and services. We are proceeding in a bifurcated manner in order to receive the Division's prompt statement of current enforcement intentions for the cooperative activities set out below, in view of the immediate importance of coordinating responses by the Participants to the NRC's new recommendations relating to the Fukushima incident, as noted below.

## B. Strategies

### 1. Shared Resources

As they did within USA, the Participants in STARS will continue to share existing resources, including personnel, parts, equipment, tools, and expertise. The Participants in STARS each own millions of dollars worth of highly specialized assets. Under the USA agreement, member plants utilize a centralized computer network to request specialized resources from other members. If another member plant has suitable resources, e.g., parts or specialized technicians, the "loaning member" provides the resources to the requesting member pursuant to reciprocal agreements. Participants receive payments for resources they provide to other Participants and make payments for resources they borrow.

One example of how resources were shared under the USA, and which would continue to be shared under STARS, is the use of loaned personnel. In a typical provision of a loaned employee, the loaning Participant would retain responsibility for the base salary of the loaned employee, and the borrowing Participant would be responsible for paying an agreed upon hourly rate, overtime rate, and per diem. Participants are expected to reciprocate under the same terms and provide resources when other Participants require additional resources. Such an arrangement will result in efficiencies and maximum utilization of skilled employees among Participants in STARS, which is critical since the current age demographics of the nuclear industry work force indicate an aging workforce, and industry projections signal the need for skilled labor in the future.

### 2. Joint Planning and Operational Activities

STARS plans to engage in resource sharing activities focused on enhanced operational performance that go beyond activities previously engaged in under the auspices of USA, but which also properly should be considered procompetitive. For example, STARS plans to coordinate among the STARS Participants to enhance the sharing of best practices relating to nuclear reactor plant operations for purposes of enhancing nuclear safety and plant performance. The sharing and implementation of best practices and operating experience between and among the nuclear industry is strongly encouraged by the Institute of Nuclear Power Operations

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("INPO"),<sup>3</sup> and is evaluated periodically by INPO. The STARS Participants intend to further enhance nuclear safety and attain more efficient plant operations at the sites operated by STARS Participants by focusing their efforts on information-sharing regarding the STARS Participants' specific sites.

The STARS Participants are all involved in the operation of large (in excess of 1,000 megawatts electric), Westinghouse or Combustion Engineering designed, pressurized water nuclear reactors ("PWR"), that were all originally licensed by the NRC within twelve years of each other and which are all located in NRC Region IV.<sup>4</sup> Though spread across the western half of the country, the STARS sites are located in relatively close proximity to each other given the overall geographic distribution of U.S. commercial nuclear reactor sites.

STARS also plans to continue existing activities and enhance future activities involving the sharing of project experience for significant plant modifications or licensing activities, such as obtaining license renewal. The STARS Participants were previously successful working within USA to address the plant-aging management issues associated with NRC license renewal, and they desire to replicate this model to the extent practicable to address other issues or new issues that may arise. These may include joint contingency planning such as maintaining centralized inventory or spare parts for response to emergent needs or for purposes of enhancing emergency response capabilities. For example, STARS might acquire and maintain a centralized inventory of back-up generators and other emergency safety equipment. It would also make plans for emergency deployment of such equipment for purposes of severe accident mitigation to provide rapid response following an event at a STARS Participant site.

STARS also plans to identify other opportunities for joint operation of activities that are common to nuclear reactor operations at multiple sites. Such activities would be undertaken on a "not for profit" basis with a pass-through of costs and benefits from cost reduction. As such, these operational activities will only serve to enhance efficiency and reduce costs to consumers.

### 3. Standard Setting and Code of Conduct.

STARS is not intended to function as a standard-setting organization for the nuclear power industry. Any standard-setting activities of its Participants will be conducted outside the

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<sup>3</sup> The U.S. nuclear electric utility industry established INPO in 1979 to promote the highest levels of safety and reliability-to promote excellence-in the operation of its nuclear electric generating stations. The Institute is a nongovernmental corporation that operates on a not-for-profit basis and does not issue capital stock. Under United States tax law, the company is classified as a charitable organization that "relieves the burden of government."

<sup>4</sup> NRC has four regions and regional headquarters offices that execute established NRC policies and assigned programs relating to inspection, licensing, investigation, enforcement, governmental liaison, and emergency response within the regional boundaries. Region IV includes the states located in the western half of the United States.

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auspices of STARS through other appropriate industry organizations. For example, STARS will maintain a position for a nuclear regulatory issues liaison at the Nuclear Energy Institute (“NEI”)<sup>5</sup> in order to represent the STARS Participants’ interests in NEI’s formulations of the nuclear industry’s stakeholder positions. Additionally, STARS Participants will collaborate on preparations for and implementation of recommendations that follow evaluations and assessments performed by INPO, as described above.

In addition to the above principles, STARS will adopt other measures to ensure that its activities do not raise competitive concerns, including prohibitions on discussion or exchange of confidential information among Participants regarding plans by any Participant concerning potential marketing activities and related activities, and discussion or exchange of information regarding pricing for any service or product that a Participant charges to its customers. These principles, including a statement that membership in STARS and participation in any of its activities is voluntary by each Participant, will be incorporated in a code of conduct or similar document by STARS, which will be provided to each Participant.

### C. Antitrust Analysis

#### 1. Market Influence

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 the domestic reactors (roughly 15% of U.S. nuclear generating capacity) and 3% of the global reactors. There are 69 operating PWRs in the United States, of which the STARS Participants operate 13, thus constituting only 19% of the total number of U.S. units. The STARS Participants collectively account for 23.2% of the electric generation from this type of reactor in the U.S. There are, in addition, approximately 332 reactors operating in other nations, of which 152 are PWR reactors. STARS Participants thus operate only 13 of the 221 PWR reactors operating worldwide, constituting less than 6% of global PWRs.

In view of the locations of the STARS Participants, as noted in footnote 1, 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. Electric power

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<sup>5</sup> NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry. NEI’s members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear material licensees, and other organizations and individuals involved in the nuclear energy industry.

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generated from these facilities does not, in any event, set the market-clearing price for electricity in either Texas or California, or in any area encompassed by the Participants.

## 2. STARS Has Been Structured to Comply with Antitrust Laws

The proposed Agreement forming STARS was drafted to ensure that STARS' activities will comply with all applicable antitrust laws. As noted above, a code of conduct or similar document will be developed by STARS and distributed to each Participant which prohibits the sharing of confidential, competitively sensitive information among Participants, isolates STARS employees and loaned employees with access to sensitive information from Participants, and requires periodic antitrust compliance training.

## 3. STARS Will Benefit Competition

The activities of STARS, including the proposed activities beyond those regarding which the Division stated its then-current enforcement intentions in its letter to USA, will be procompetitive. Sharing resources should 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.<sup>6</sup>

For the above reasons, STARS requests that the Division issue a letter declaring that it has no present enforcement intentions under the antitrust laws should STARS undertake the activities described herein. As mentioned above, STARS anticipates separately requesting in the near future a letter setting out the Division's current enforcement intentions regarding certain potential joint procurement activities. STARS respectfully requests that the Division provide as expedited a response as possible, however, to this request in light of the urgent need to undertake formation and operation of STARS in order to enable coordination of STARS responses to the NRC's new recommendations relating to the Fukushima incident.<sup>7</sup>

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 review and response.

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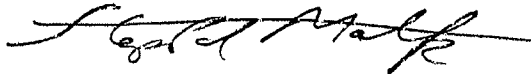
<sup>6</sup> See, e.g., 2000 Joint Venture Guidelines, ("A collaboration may allow its Participants to better use existing assets, or may provide incentives for them to make output-enhancing investments that would not occur absent the collaboration."); *Northwest Wholesale Stationers, Inc. v. Pacific Stationary & 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.").

<sup>7</sup> See, e.g., United States Nuclear Regulatory Commission, NRC to Issue Orders, Information Request as Part of Implementing Fukushima-Related Recommendations (March 9, 2012) *available at* <http://pbadupws.nrc.gov/docs/ML1206/ML120690627.pdf>; United States Nuclear Regulatory Commission, Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights From the Fukushima Dai-Ichi Accident (July 12, 2011) *available at* <http://pbadupws.nrc.gov/docs/ML1118/ML111861807.pdf>.



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Sincerely yours,



Stephen Paul Mahinka  
Counsel for STARS Alliance LLC

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cc: John E. Matthews