Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

GENERAL COUNSEL

December 27, 2004

In reply refer to: L-7

Mr. Michael A. Goldfarb
1150 Market Place Tower
2025 First Avenue
Seattle, WA 98121

RE: FOIA Requests

Dear Mr. Goldfarb:

In your three letters dated November 16, 2004, you requested under the Freedom of Information Act (FOIA) all written and electronic documents, including communications between the Bonneville Power Administration, members of Congress (or their staffs) and the Department of Energy (including other power marketing administrations), concerning P.L. 106-377, Title III, §311 (Energy and Water Appropriations Act of 2001). I am enclosing with this response the material we have found which is relevant to your request and not withheld on the basis of an exemption.

Enclosed are non-exempt portions of records responsive to your request. I have redacted from the enclosed email communications material that is not encompassed within your request. In addition, the following material has been withheld as attorney-client communications, attorney work product or deliberative process communications able to be withheld under Exemption 5, 5 U.S.C. §552(b)(5):

1. Attorney-Client Communications/Attorney Work Product:
   a. June 22, 2000 email communication from Randy Roach (General Counsel) to Jeffrey Stier (Vice-President, National Relations) providing legal advice on proposed legislative language;
   b. June 22, 2000 email communication from Jeffrey Stier (Vice-President, National Relations) to Randy Roach (General Counsel) seeking legal advice on proposed legislative language;
   c. June 22, 2000 email communication from Randy Roach (General Counsel) to Jeffrey Stier (Vice-President, National Relations) with attachment of alternative proposals for legislative language;
   d. June 22, 2000 email communication from Jeffrey Stier (Vice-President, National Relations) to Randy Roach (General Counsel) requesting that Mr. Roach draft legislative language along the lines cited in the communication;

e. June 22, 2000 email communication from Jeffrey Stier (Vice-President, National Relations) to Randy Roach (General Counsel) requesting legal review of suggested change in legislative language.

2. Deliberative process communications:
   a. June 22, 2000 email communication from Stephen Wright (Senior Vice-President, Corporate) to Randy Roach (General Counsel) and Jeffrey Stier (Vice-President, National Affairs) providing his views and suggestion on various alternatives for legislative language.

In your original requests, you agreed to pay fees up to $100 per request. In accordance with our agency's FOIA regulations, fees to complete this request totaled $365.79. In accordance with your letters, we are limiting the fees to a total of $300. You will be invoiced for this amount under separate cover by our accounting department.

If dissatisfied with this response, you may make an appeal within 30 days of receipt of this letter to Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585. Both the envelope and the letter must be clearly marked "Freedom of Information Act Appeal."

If you have any questions regarding this appeal, you may contact me at (503) 230-4999.

Sincerely,

Stephen R. Larson
Special Assistant General Counsel

Enclosures

FAX TRANSMITTAL SHEET
(UNCLASSIFIED DATA ONLY)

2005 MAR 28 AM 6:53

OFFICE OF HEARINGS AND APPEALS
U. S. DEPARTMENT OF ENERGY
WASHINGTON, DC 20585-0107

ORIGINATOR:	ROBERT B. PALMER
TELEPHONE NO: (202) 426- 1449	FAX NO: (202) 426-1415

ADDRESSEE:	Joseph Bennett
FAX TELEPHONE NUMBER:	503-230-7405

Pages To Be Transmitted (Including This Transmittal Sheet):	9

REMARKS: Here is a copy of the FOIA decision that we issued to Public Utility District #1

CALL ORIGINATOR TO VERIFY RECEIPT:	YES		NO	X

AUTHORIZING OFFICIAL:	
DATE:	3/28/05

Department of Energy
Washington, DC 20585

MAR 2 4 2005

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner:	Public Utility District #1
Dates of Filing:	January 18, 2005 February 23, 2005
Case Numbers:	TFA-0084 TFA-0089

This Decision concerns two Appeals that were filed by the Public Utility District No. 1 of Snohomish City, Washington (hereinafter referred to as "the District"). The first Appeal (TFA-0084) was filed in response to a determination issued to the District by the Special Assistant General Counsel, Bonneville Power Administration (hereinafter referred to as "BPA"). In that determination, BPA replied to three requests for documents that the District submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the Department of Energy (DOE) in 10 C.F.R. Part 1004. BPA released certain documents in their entirety to the District, and withheld other material pursuant to Exemption 5 of the FOIA. This Appeal, if granted, would require that BPA release the withheld information. In the second Appeal (TFA-0089), the District contests BPA's assessment of fees for processing its requests in Case No. TFA-0084, and five other requests.

The FOIA generally requires that documents held by federal agencies be released to the public on request. However, Congress has provided nine exemptions to the FOIA that set forth the types of information that agencies are not required to release. The FOIA also provides for the assessment of fees for the processing of requests for documents. 5 U.S.C. § 552(a)(4)(A)(i); see also 10 C.F.R. § 1004.9(a). However, the DOE will grant a full or partial waiver of applicable fees if disclosure of the information sought in a FOIA request (i) is in the public interest because it is likely to contribute significantly to public understanding of the activities of the government, and (ii) is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii).

I. Background

In its FOIA requests, the District sought access to "all written and electronic documents, including communications between BPA, members of Congress (or their staffs) and the [DOE] or any other federal power marketing agencies concerning P.L. 106-377, Title III, § 311 (Energy and Water Appropriations Act of 2001) before and after passage." *See* November 16, 2004 letters from Michael Goldfarb, Counsel for the District, to Annie Eissler, FOIA Officer, BPA. In its response, BPA identified a number of e-mails and documents as responsive to the District's request. Portions of

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some of the e-mails were redacted from the material provided to the District because they consist of information that is not responsive to the request. In addition, five e-mails were withheld in their entirety under Exemption 5. */ Those e-mails, all sent on June 22, 2000, were from

1. Randy Roach, General Counsel, to Jeffrey Stier, Vice-President, National Relations, providing legal advice on proposed legislative language;

2. Roach to Stier, with attachment of alternative proposals for legislative language;

3. Stier to Roach, requesting that Roach draft legislative language along the lines cited in the communication;

4. Stier to Roach requesting legal review of suggested change in legislative language; and

5. Stephen Wright, Senior Vice-President, Corporate, to Roach and Stier providing Wright's views and suggestions on various alternatives for legislative language.

In its Appeal of BPA's FOIA determination (Case No. TFA-0084), the District challenges the adequacy of BPA's search for responsive documents and the adequacy of the agency's justification for withholding e-mails one through four. The District also contests BPA's decision to withhold portions of certain communications because they were found to be unresponsive to the District's requests. The District asks that it be provided with any responsive documents that are not properly subject to withholding under Exemption 5 and with an adequate justification for any withheld material.

In its submission in Case No. TFA-0089, the District contends that the BPA incorrectly classified it as a "commercial use" requester, and contests what it claims is BPA's rejection of its request for a fee waiver.

II. Analysis

A. Adequacy of the Search

We have stated on numerous occasions that a FOIA request deserves a thorough and conscientious search for responsive documents, and we have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Butler, Vines and Babb, P.L.L.C.*, 25 DOE ¶ 80,152 (1995). The FOIA, however, requires that a search be reasonable, not exhaustive. "[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord, Weisberg*

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*/ In its Determination Letter, BPA identified six e-mails as being withheld in full under Exemption 5. However, BPA has informed us that the e-mails identified as (b) and (e) are identical, and that, therefore, only five e-mails were withheld. BPA Response at 4.

v. *Department of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). In cases such as these, "[t]he issue is not whether any further documents might conceivably exist but rather whether the government's search for responsive documents was adequate." *Perry v. Block*, 684 F.2d 121, 128 (D.C. Cir. 1982).

In support of its claim that BPA's search was inadequate, the District points out that it did not receive copies of any communications between BPA and Congress or the DOE concerning the legislation in question. Because "[i]t is unlikely that BPA did not communicate with any members of Congress or with the [DOE] in formulating its plan to get [the] legislation passed," Appeal at 1, the District concludes that BPA's search was deficient. Moreover, the District points out that it did not receive copies of two responsive communications that were referred to in material that the District did receive.

In its February 25, 2005 Response to the District's Appeal (Response), BPA described the search that was performed. Because the subject of the District's requests involved the national legislative process, BPA stated, the number of BPA employees who "may have been involved is quite limited. These were the Administrator and Deputy Administrator; the staff of our Washington, D.C. Office in the Forrestal Building; the BPA General Counsel; [the author of the Response] (as the attorney working on RTO matters); and the two leaders of BPA's RTO project at that time. Personal files of these officials and employees, both electronic and hard copy, were reviewed as were official files." Response at 1-2.

BPA further responds that, contrary to the District's assertion, BPA provided copies of two communications with or from the DOE concerning the legislation in question. Those communications are (1) a July 14, 2000 memorandum about the legislation from Roger Seifert in BPA's Washington, D.C. office to various DOE officials, and (2) a May 16, 2000 memorandum from T.J. Glauthier, DOE Deputy Secretary. The absence of other such communications between BPA and Congress or between BPA and other parts of the DOE is not unusual, BPA states, because matters involving national legislation are handled through the Washington Office, and the practice of that Office is to avoid maintaining copies of informal written communications with congressional offices or DOE staff. BPA e-mails that are deleted from a user's computer are erased from the system after 90 days. Response at 2.

With regard to the District's contention that BPA's search was inadequate because two communications that were referenced in material provided to the District were not located, BPA replied that it conducted another search for these two communications, without success. *Id.* With regard to the second referenced communication, which was between Mark Maher of BPA and certain public utilities, BPA opined that what "likely happened was that Mr. Maher distributed, in person at a regular filing utility meeting, copies of the proposed legislative language (which is cited verbatim in the e-mail chain provided to [the District]) to the filing utility representatives without an accompanying memorandum or description." Response at 3.

After careful consideration of the Appeal and BPA's Response, we conclude that BPA's search was adequate. BPA's description of the scope of the search convinces us that it was reasonably calculated to locate the requested documents. Furthermore, the District's arguments do not lead us

to believe that a further search would be likely to result in the identification of additional responsive materials. We therefore reject the District's challenge to the adequacy of BPA's search.

B. BPA's Withholding of Non-Responsive Material

Next, the District contends that BPA lacked the authority to withhold portions of the e-mails provided to the District because they consisted of information that is not responsive to the FOIA requests. However, in *Northwest Technical Resources, Inc.*, 28 DOE ¶ 80,119 (2000), we upheld the withholding of non-responsive information from documents provided to a FOIA requester. The District has not convinced us that our holding in that case is incorrect. E-mail chains, such as those in question here, routinely contain information on a wide variety of subjects. We conclude that BPA properly redacted non-responsive information from the documents provided to the District.

C. BPA's Application of Exemption 5

Exemption 5 of the FOIA exempts from mandatory disclosure documents which are "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5); 10 C.F.R. § 1004.10(b)(5). The Supreme Court has held that this provision exempts "those documents, and only those documents, normally privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975) (*Sears*). The courts have identified three traditional privileges that fall under this definition of exclusion: the attorney-client privilege, the attorney work-product privilege, and the executive "deliberative process" or "pre-decisional" privilege. *Coastal States Gas Corporation v. Department of Energy*, 617 F.2d 854, 862 (D.C. Cir. 1980) (*Coastal States*). The District does not challenge BPA's withholding of e-mail five under the deliberative process privilege of Exemption 5. Moreover, BPA has now abandoned any reliance on the attorney work product privilege as a ground for withholding e-mails one through four. Response at 4. Therefore, only BPA's application of the attorney-client privilege is at issue here.

The attorney-client privilege protects from mandatory disclosure "confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice." *Mead Data Central, Inc. v. United States Department of the Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977). Although it fundamentally applies to facts divulged by a client to his attorney, the privilege also encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, *see, e.g., Jernigan v. Department of the Air Force*, No. 97-35930, 1998 WL 658662, at *2 (9th Cir. Sept. 17, 1998), as well as communications between attorneys that reflect client-supplied information. *See, e.g., Green v. IRS*, 556 F. Supp. 79, 85 (N.D. Ind. 1982), *aff'd*, 734 F.2d 18 (7th Cir. 1984) (unpublished table decision). Not all communications between attorney and client are privileged, however. *Clarke v. American Commerce National Bank*, 974 F.2d 127, 129 (9th Cir. 1992). The courts have limited the protection of the privilege to those communications necessary to obtain or provide legal advice. *Fisher v. United States*, 425 U.S. 391, 403-04 (1976). In other words, the privilege does not extend to social, informational, or procedural communications between attorney and client. *Government Accountability Project*, 24 DOE ¶ 80,129 at 80,570 (1994).

Applying these criteria to e-mails 1-4, it is apparent that they consist almost entirely of communications between an attorney (General Counsel Randy Roach) and his client (BPA) in which BPA asks for, and receives legal advice about a legal matter (*i.e.*, proposed legislative language). It is this type of communication that the privilege was designed to protect. However, our review of the e-mails reveals that there are portions that are social, informational or procedural in nature. These portions are not exempt from mandatory disclosure under the attorney-client privilege and must therefore be provided to the District. They are (i) the last two sentences of the 6:17 a.m. e-mail from Jeffrey Stier to Randy Roach (e-mail number three); (ii) the 3:21 p.m. e-mail from Roach to Stier (without the attachment containing the four legislative alternatives authored by Roach) (e-mail number two), and (iii) the first and last sentences of the 2:24 p.m. e-mail from Roach to Stier (e-mail number one).

In its Appeal, the District correctly points out that the privilege applies only to confidential communications, and that BPA's determination did not indicate whether these e-mails were in fact confidential. However, based on representations made to this Office by BPA, we conclude that these e-mails have been treated as confidential by BPA. *See* memorandum of March 18, 2005 telephone conversation between Steven Larson, BPA and Robert Palmer of this Office. With the exceptions noted above, we conclude that BPA properly applied the attorney-client privilege in withholding the e-mails in question.

D. The Assessment of Fees for Processing the District's FOIA Request

In its Appeal in Case No. TFA-0089, the District contests what it claims is BPA's January 26, 2005 denial of its request for a fee waiver. In the alternative, the District contends that BPA improperly classified it as a "commercial use" requester for purposes of calculating fees.

Contrary to the District's claim, our review of BPA's January 26 letter convinces us that it was not a final determination of the District's eligibility for a partial or full fee waiver, but was instead a request for more information. The letter states, in pertinent part that upon

> review of your FOIA requests, it does not appear that you have met the burden of establishing that you qualify for a reduction or waiver of fees for the requested information. *At this time, we are offering you the opportunity to provide additional information to demonstrate that you qualify for a reduction or waiver of fees.* The FOIA provides for a reduction or waiver of fees, but only if a requester shows that disclosure of the information (1) is in the public interest, because it is likely to contribute significantly to the public understanding of the operations or activities of the government; and (2) is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii).
>
> In order to satisfy the public interest, a requester must show each of the following:

> (A) The subject of the requested records concerns the operations or activities of the government;
>
> (B) Disclosure of the requested records is likely to contribute to an understanding of government operations or activities;
>
> (C) Disclosure of the requested records would contribute to an understanding of the subject by the general public; and
>
> (D) Disclosure of the requested records is likely to contribute significantly to public understanding of government operations or activiities.

10 C.F.R. § 1004.9(a)(8)(i). If a requester satisfies the four factors of the public interest, he must then satisfy the commercial interest factor by showing that disclosure of the information is not primarily in his commercial interest. 10 C.F.R. § 1004.9(a)(8)(ii). Factors to be considered in applying these criteria include but are not limited to:

> (A) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so
>
> (B) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.
>
> ***

We will not proceed further on your FOIA requests until (1) *you provide additional information so that we may evaluate your request for a waiver or reduction of fees, and if denied then* (2) your willingness to pay estimated processing fees, or (3) narrow the scope of your FOIA requests.

January 26, 2005 letter from Annie Eissler, BPA Freedom of Information Officer, to Michael Goldfarb, Counsel for the District (italics added).

Under section 1004.8(a) of the DOE's FOIA regulations, a requester may file an Appeal with the Office of Hearings and Appeals "when the Authorizing Official has denied a request for records in whole or in part or has responded that there are no documents responsive to the request consistent with Section 1004.4(d), or when the Freedom of Information Officer has denied a request for waiver of fees . . . ." Because BPA's FOI Officer has not denied the District's request for a fee waiver, the circumstances necessary for an Appeal do not yet exist in Case No. TFA-0089. We will therefore dismiss this Appeal without prejudice to refiling should BPA deny the District's request.

Accordingly, the District should attempt to demonstrate to BPA that its request satisfies each of the criteria that are set forth in its January 26 letter and reproduced above.

Because the issue of whether BPA properly categorized the District as a "commercial use" requester is likely to arise again in the event that BPA denies the District's fee waiver request, we will address that issue here. The FOIA delineates three types of costs--"search costs," "duplication costs," and "review costs"--and places requesters into one of three categories that determine which of these costs a given requester must pay. If a requester wants the information for a "commercial use," it must pay for all three types of costs incurred. In contrast, educational institutions and the news media are required to pay only duplication costs, and all other requesters are required to pay search and duplication costs but not review costs. 5 U.S.C. § 552(a)(4)(A)(ii); 10 C.F.R. § 1004.9(b).

The District argues that because it is a non-profit, publically owned utility, its requests are "not for a use or purpose that furthers a commercial, trade, or profit interest." Appeal in Case No. TFA-0089 at 2. Accordingly, the District contends that it falls under the "all other requesters" category. However, the District's status as a non-profit is not dispositive of this issue. Many non-profits engage in trade or commerce, and BPA could have properly concluded that the information requested would be put to a use that would further a commercial or trade interest. As a public utility, the District is engaged in the business of selling electricity and water to its customers. Depending on the manner in which the District intends to use the material that it requested, BPA could have properly concluded that the FOIA requests were made in furtherance of the District's commercial interests.

However, it is not clear that BPA considered the manner in which the District would use the requested information in concluding that the District is a commercial use requester. BPA has informed us that it reached this conclusion because "we know our customers." *See* memorandum of March 3, 2005 telephone conversation between Joseph Bennett, BPA and Robert Palmer, OHA Staff Attorney. It therefore appears that BPA may have based this decision solely on its knowledge of the District's business activities without considering the manner in which the District intended to use the material requested. Section 1004.2(c) of the DOE's FOIA regulations provides, however, that "in determining whether a requester properly belongs in [the commercial use] category, agencies must determine how the requester will use the documents requested." Therefore, if BPA denies the District's request for a fee waiver, it should also consider the use to which the District will put the information obtained in making its determination as to the proper fee category for the District's request.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by Public Utility District #1, OHA Case Number TFA-0084, is hereby granted as set forth in paragraph (2) below, and is in all other respects denied.

(2) BPA shall promptly release the following to the District: (i) the last two sentences of the 6:17 a.m. e-mail from Jeffrey Stier to Randy Roach; (ii) the 3:21 p.m. e-mail from Roach to Stier (without

the attachment containing the four legislative alternatives authored by Roach), and (iii) the first and last sentences of the 2:24 p.m. e-mail from Roach to Stier.

(3) The Freedom of Information Act Appeal filed by Public Utility District #1, OHA Case Number TFA-0089, is hereby dismissed without prejudice to refiling upon the issuance of a final fee waiver determination by BPA.

(4) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: MAR 2 4 2005

From: Hickok, Steven G - A-7
Sent: Thursday, April 06, 2000 9:44 AM
To: Olds, Peggy A - T-Ditt2; Stier, Jeffrey K - KN-DC; Maher, Mark W - T-DITT2; Meyer, Charles - TM; Roach, Randy A - L-7; Silverstein, Brian L - TM-DITT2; Wright, Stephen J - K-7
Cc: McElhaney, Judy - A-7; Stauffer, Nicki - A
Subject: RE: Study ban modification effort

If we had the opportunity to clarify the study ban, we'd take it, of course. If we don't, we won't. No big deal.

Our strategy is sound. We proceed on the assumption that we can come up with standards/monitoring/withdrawal so that we're on the right side of the DOEGC opinion. If, in the end, we can't come to agreement with the other owners and the stakeholders that would keep us on the right side of the DOEGC opinion, we'll then understand that we need to seek legislation and exactly what kind of legislation to seek. Then Congress has the say over what they clearly wanted to reserve to themselves.

We should make sure that everybody who may be assailed by the Earlys of the world understands this, especially, the Secretary and the Appropriations Committees and the NW delegation.

-----Original Message-----
From: Olds, Peggy A - T-Ditt2
Sent: Wednesday, April 05, 2000 8:03 PM
To: Stier, Jeffrey K - KN-DC; Hickok, Steven G - A-7; Maher, Mark W - T-DITT2; Meyer, Charles - TM; Roach, Randy A - L-7; Silverstein, Brian L - TM-DITT2; Wright, Stephen J - K-7
Subject: RE: Study ban modification effort

Thanks for the update Jeff. We really need to concentrate on this one. We've already heard publicly from an attorney representing the DSI's (Michael Early) that he's concerned about this issue. I believe he also has an agenda to stop RTO development efforts. Hate to hand him any ammunition. For now, will stick with our current strategy: DOE opinion gives us green light to participate as long as BPA doesn't turn over control (maintains standards, does monitoring and has right of withdrawal).

-----Original Message-----
From: Stier, Jeffrey K - KN-DC
Sent: Wednesday, April 05, 2000 8:27 AM
To: Hickok, Steven G - A-7; Maher, Mark W - T-DITT2; Meyer, Charles - TM; Olds, Peggy A - T-Ditt2; Roach, Randy A - L-7; Silverstein, Brian L - TM-DITT2; Wright, Stephen J - K-7
Subject: Study ban modification effort

The supplemental appropriations bill that we had hoped would include a modification on the study ban is dead. I am told it is not just dead dead, but stake-in-its-heart dead. Senate Majority Leader Trent Lott has said it shall not be, so though the House has passed its version, the bill will move no further.

I'm not sure I can identify a good back-up vehicle. The regular approriations process wouldn't get us anywhere before late summer or early fall. I'll put on my thinking cap.

[

REDACTED

]

-----Original Message-----
From: Stier, Jeffrey K - KN-DC
Sent: Thursday, June 01, 2000 6:52 AM
To: Maher, Mark W - T-DITT2; Wright, Stephen J - K-7; Olds, Peggy A - T-Ditt2; Roach, Randy A - L-7
Subject: RE: Modification of the 86 study ban

[

REDACTED

]

Also -- I think Phil is going to go with the following study ban modification -- slightly less restrictive than the one I sent you.

Section 208 of the Urgent Supplemental Appropriations Act, 1986(100 Stat. 710,749) is
amended by inserting ";or to activities relating to the participation of a Federal power marketing administration in a regional transmission organization" after "property".

-----Original Message-----
From: Maher, Mark W - T-DITT2
Sent: Wednesday, May 31, 2000 5:36 PM
To: Stier, Jeffrey K - KN-DC; Wright, Stephen J - K-7; Olds, Peggy A - T-Ditt2
Subject: RE: Modification of the 86 study ban

Thanks. I distributed this to the Filing Utilities this morning and described it as a "belt and suspenders" approach assuring our participation. Marc Wood cautioned that someone could make a big deal out of this in that BPA is requesting legislation. I also told them that we would be adding language to help our employees become more attractive to working for the RTO by getting a "fix" to the retirement issue. So, when you get a draft of that language I want to share with the Filers.

-----Original Message-----
From: Stier, Jeffrey K - KN-DC
Sent: Wednesday, May 31, 2000 9:14 AM
To: Wright, Stephen J - K-7; Olds, Peggy A - T-Ditt2; Maher, Mark W - T-DITT2
Subject: Modification of the 86 study ban

Here is the language we are seeking to include in the Senate's Energy and Water Approps bill:

Section 208 of the Urgent Supplemental Appropriations Act, 1986 (100 Stat. 710,749) is
amended by inserting "; or to activities relating to the participation of a Federal power marketing administration in the development of a regional transmission organization." after "property".

EXPLANATION

This amendment merely adds a fourth exception to section 208's prohibition on "soliciting proposals, preparing, or

viewing studies designed to tra fer out of Federal ownership, management or control in whole or in part the facilities and functions of Federal power marketing administrations...".

Roach,Randy A - L

From: Case, Ted [Ted.Case@nreca.org]
Sent: Tuesday, June 20, 2000 6:59 AM
To: 'coombes@webzone.net'

Ted, this is the information from BPA on the study amendment -- I was exceptionally clear with them about the sensitivity of the study ban language and how hard people work to that -- and keep that in place. Take a look at this language and let me know what you think. The Senate Energy markup has been postponed until Wednesday. Plane problems for Murkowski is the rationale.

Ted

> -----Original Message-----
> From: Morgado, Nicole K. - KN [SMTP:nkmorgado@bpa.gov]
> Sent: Tuesday, June 20, 2000 9:53 AM
> To: 'Case, Ted'
> Subject: FW:
>
> Ted - Here's the study ban limited exception for studying whether to turn
> control of transmission to an RTO. It's very limited. Let me know if you
> need more. Nicole.
>
> > -----Original Message-----
> > From: Stier, Jeffrey K - KN-DC
> > Sent: Tuesday, June 20, 2000 9:45 AM
> > To: Morgado, Nicole K. - KN
> > Subject:
> >
> > Here's the amendment to the study ban that Sen. Gorton is seeking to
> > include in this year's Energy and Water Appropriations Act:
> >
> > Section 208 of the Urgent Supplemental Appropriations Act, 1986(100
> Stat.
> > 710,749) is
> > amended by inserting ";or to activities relating to the
> > participation of a Federal power marketing administration in a regional
> > transmission organization" after "property".
> >
> >
> > EXPLANATION
> >
> >
> >
> > This amendment merely adds a fourth exception to section 208's
> > prohibition on "soliciting proposals, preparing, or reviewing studies
> > designed to transfer out of Federal ownership, management or control in
> > whole or in part the facilities and functions of Federal power marketing
> > administrations...".

>>
>> Here's the so-called study ban, which was included in the 1986 Urgent
>> Supplemental Appropriations Act:
>>
>> Sec. 208. no funds appropriated or made available under this or any
> other
>> Act shall be used by the executive branch for soliciting proposals,
>> preparing or reviewing studies designed to transfer out of Federal
>> ownership, management or control in whole or in part the facilities and
>> functions of Federal power marketing administrations located within the
>> contiguous 48 States, and the Tennessee Valley Authority, until such
>> activities have been specifically authorized and in accordance with
> terms
>> and conditions established by an Act of Congress hereafter enacted:
>> Provided, That this provision shall not apply to the authority granted
>> under section 2(e) of the Bonneville Project Act of 1937; or to the
>> authority of the Tennessee Valley Authority Act of 1933, as amended; or
> to
>> the authority of the Administrator of the General Services
> Administration
>> pursuant to the Federal Property and Administrative Services Act of
> 1949,
>> as amended, and the Surplus Property Act of 1944 to lease or otherwise
>> dispose of surplus property.
>>

Roach,Randy A - L

From: Wright, Stephen J - K-7
Sent: Wednesday, June 21, 2000 11:29 AM
To: Stier, Jeffrey K - KN-DC; Maher, Mark W - T-DITT2; Olds, Peggy A - T-Ditt2; Roach, Randy A - L-7; Michie, Preston D - L-7
Subject: FW: BPA's proposed amendment to study ban language

Untitled Attachment

I talked with Alan Richardson (the exec. director at APPA, not Pacificorp) about the concern among some extraregional public power interests about what we are trying to accomplish with the amendment to the study ban. His suggestion is that we consider a stand-alone, notwithstanding any other law, provision that would allow us to study RTO participation. His view is that amending Section 208 engages national public power folks, but by seeking to accomplish the same ends through different means we may be able to deflect the criticism. Reaction?

If this seems like a good idea, maybe Randy could draft a new provision with the same objective (which we would then share with the filing utilities).

-----Original Message-----
From: Richardson, Alan [mailto:ARichardson@appanet.org]
Sent: Wednesday, June 21, 2000 10:56 AM
To: 'sjwright@bpa.gov'
Subject: FW: BPA's proposed amendment to study ban language

> -----Original Message-----
> From: Nipper, Joe
> Sent: Wednesday, June 21, 2000 1:22 PM
> To: Richardson, Alan
> Subject: FW: BPA's proposed amendment to study ban language
>
>
>
> -----Original Message-----
> From: Eckl, Chris
> Sent: Wednesday, June 21, 2000 1:19 PM
> To: Nipper, Joe; Pickford, Lori; Nolan, Michael; DeFife, Scott;
> Cirrincione, Jane; Blood, Rebecca
> Subject: FW: BPA's proposed amendment to study ban language
>
> FYI
>
> -----Original Message-----
> From: coombes@webzone.net [SMTP:coombes@webzone.net]
> Sent: Wednesday, June 21, 2000 1:00 PM
> To: Christine Ryan; 'cprobert@scsn.net'; Deborah Sliz; Don Ouchley

> (E-mail); Edward Rampton (E-. .l); George Taylor; James M. Hendersc..
> (E-mail); 'Jeff Nelson'; Leroy Michael (E-mail); Leslie James (E-mail);
> Michael Curtis (E-mail); Mike Deihl; Robert Claussen (E-mail); Robert
> Lynch (E-mail); Roger Fontes (E-mail); Tom Graves (E-mail); saq@verner.com
> Cc: Ted Case
> Subject: BPA's proposed amendment to study ban language
>
> It has come to my attention that BPA intends to seek an amendment to
> Section 208 of the Urgent Supplemental Appropriations Act of 1986 -- the
> so-called "study ban" language that prohibits the Administration from
> spending any funds to study the sale, lease, or privatization of the
> PMAs. As you may recall, we fought a hard battle to get this legislation
> enacted, and for the past 4 - 5 years, numerous efforts have been made
> (primarily via the House Energy and Water Appropriations Subcommittee)
> to repeal the study ban language.
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> BPA is considering formation of a Western RTO and has expressed concern
> that the study ban language might inhibit this. I have attached their
> proposed amendment and their reasoning.
>
> I disagree strongly with any effort to amend the study ban language. Any
> amendment -- no matter how well intended -- opens this section to
> legislative mischieve, ranging from watering it down to total repeal or
> --even worse -- legislation directing that a privatization study be
> undertaken.
>
> If you agree, please let BPA, NRECA (Ted Case) and APPA (Chris Eckl)
> know. BTW, I would have sent this message to BPA, but I do not have any
> email addresses for anyone there. If one of you would be so kind as to
> forward this message to the appropriate person(s) at BPA, I would
> appreciate it...
>
> ...ted coombes at spra <<Untitled Attachment>>

****
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are addressed. If you have received this email in error please notify
the system manager at postmaster@APPAnet.org.

This footnote also confirms that this email message has been swept
for the presence of computer viruses.

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-----Original Message-----
From: Morgado, Nicole K. - KN
Sent: Wednesday, June 21, 2000 4:05 PM
To: Roach, Randy A - L-7; Wright, Stephen J - K-7
Cc: Stier, Jeffrey K - KN-DC
Subject: FW: BPA's proposed amendment to study ban language
Importance: High

Public power customers of the other PMAs are very upset about our amendment. They have strong feelings about BPA causing problems for them and they view this as another attempt by BPA to do that, regardless of the fact that it is DOE policy that all PMAs participate in RTO discussions. They also feel very strongly about not touching the study ban. I've talked to Ted Case, Debra Sliz and Chris Eckl about this. Ted Case said that his co-ops would rather that we did not seek an exception to the study ban but seek separate, stand alone authority to study participating in an RTO. Something along the lines of "Nothwithstanding any other law, BPA is authorized to study participation in . . ."

Will this work? As you can see from the message below, there is a serious campaign to kill our attempt at getting an exception to the study ban. Jeff and I have talked about this and we think that it would be good if we could come up with alternatives that works for the other PMAs' customers. Let me know what you think. Nicole.

-----Original Message-----
From: Case, Ted [mailto:Ted.Case@nreca.org]
Sent: Wednesday, June 21, 2000 2:07 PM
To: 'nkmorgado@bpa.gov'
Subject: FW: BPA's proposed amendment to study ban language

Let's talk about this.

> -----Original Message-----
> From: coombes@webzone.net [SMTP:coombes@webzone.net]
> Sent: Wednesday, June 21, 2000 1:00 PM
> To: Christine Ryan; 'cprobert@scsn.net'; Deborah Sliz; Don Ouchley
> (E-mail); Edward Rampton (E-mail); George Taylor; James M. Henderson
> (E-mail); 'Jeff Nelson'; Leroy Michael (E-mail); Leslie James (E-mail);
> Michael Curtis (E-mail); Mike Deihl; Robert Claussen (E-mail); Robert
> Lynch (E-mail); Roger Fontes (E-mail); Tom Graves (E-mail); saq@verner.com
> Cc: Ted Case
> Subject: BPA's proposed amendment to study ban language
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> It has come to my attention that BPA intends to seek an amendment to
> Section 208 of the Urgent Supplemental Appropriations Act of 1986 -- the
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> spending any funds to study the sale, lease, or privatization of the
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> --even worse -- legislation directing that a privatization study be
> undertaken.
>
> If you agree, please let BPA, NRECA (Ted Case) and APPA (Chris Eckl)
> know. BTW, I would have sent this message to BPA, but I do not have any
> email addresses for anyone there. If one of you would be so kind as to
> forward this message to the appropriate person(s) at BPA, I would
> appreciate it...
>
> ...ted coombes at

From: Stier, Jeffrey K - KN-DC
Sent: Monday, June 26, 2000 6:45 AM
To: Maher, Mark W - T-DITT2; Wright, Stephen J - K-7; Olds, Peggy A - T-Ditt2; Roach, Randy A - L-7; Michie, Preston D - L-7
Cc: Johansen, Judi A - A-7
Subject: RE: BPA's proposed amendment to study ban language

I want to make sure we're all on the same page. The following is the new provision we will be seeking to include in the Senate Energy and Water Appropriations bill. Since it doesn't touch the study ban, it should satisfy public power's concerns.

"Notwithstanding any other law, and without fiscal year limitation, each Federal Power Marketing Administration is authorized to engage in activities and solicit, undertake and review studies and proposals relating to the formation and operation of a regional transmission organization."

-----Original Message-----
From: Maher, Mark W - T-DITT2
Sent: Sunday, June 25, 2000 3:06 PM
To: Wright, Stephen J - K-7; Stier, Jeffrey K - KN-DC; Olds, Peggy A - T-Ditt2; Roach, Randy A - L-7; Michie, Preston D - L-7
Cc: Johansen, Judi A - A-7
Subject: RE: BPA's proposed amendment to study ban language

I met with Mike Hacskaylo (WAPA Administrator) in Montreal last week and discussed his concerns with any proposed legislation. His concern was that his customers and SEPA said that BPA was proposing language to overturn the ban on selling PMA's. I assured him that we had a limited interest in just getting a waiver from the study ban for RTO participation. I had Peggy send his the latest language, along with placeholder language on employee issues. I invited him to call me with any questions and I offered to meet with him and his customers at any time.

-----Original Message-----
From: Wright, Stephen J - K-7
Sent: Wednesday, June 21, 2000 11:29 AM
To: Stier, Jeffrey K - KN-DC; Maher, Mark W - T-DITT2; Olds, Peggy A - T-Ditt2; Roach, Randy A - L-7; Michie, Preston D - L-7
Subject: FW: BPA's proposed amendment to study ban language

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RE BPA's proposed amendment to study ban language.txt

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> Sent: Wednesday, June 21, 2000 1:19 PM
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> Subject: FW: BPA's proposed amendment to study ban language
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> Lynch (E-mail); Roger Fontes (E-mail); Tom Graves (E-mail); saq@verner.com
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> Subject: BPA's proposed amendment to study ban language
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> ...ted coombes at spra <<Untitled Attachment>>

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This footnote also confirms that this email message has been swept
for the presence of computer viruses.

From: Stier, Jeffrey K - KN-DC
Sent: Tuesday, July 11, 2000 7:25 AM
To: Roach, Randy A - L-7
Subject: RE: Most recent BPA Study Ban language

Here's the package:

"Notwithstanding any other law, and without fiscal year limitation, each Federal Power Marketing Administration is authorized to engage in activities and solicit, undertake and review studies and proposals relating to the formation and operation of a regional transmission organization."

Report language:

The Committee is aware that in response to FERC's Order 2000 respecting Regional Transmission Organizations (RTO), efforts are underway in the Pacific Northwest to explore and pursue formation of an RTO. The Bonneville Power Administration is actively participating in those efforts. We understand that if BPA ultimately participates in an RTO, the impacts on BPA employees could be significant. The Committee encourages the BPA Administrator to use whatever administrative authorities are at her disposal with regard to accrued leave, seniority, health and retirement benefits, and other related matters to ensure that BPA employees have an equitable opportunity to compete for jobs in the RTO. If it becomes apparent that existing administrative tools are inadequate to address these matters, legislative action may be necessary.

-----Original Message-----
From: Roach, Randy A - L-7
Sent: Monday, July 10, 2000 6:55 PM
To: Stier, Jeffrey K - KN-DC
Cc: Morgado, Nicole K. - KN
Subject: FW: Most recent BPA Study Ban language

Jeff, Kyle Sciuchetti is the PPC's attorney. Is it ok to share the language with him? The last I heard from you, the language was to be:

"Notwithstanding any other law, and without fiscal year limitation, each Federal Power Marketing Administration is authorized to engage in activities and solicit, undertake and review studies and proposals relating to the formation and operation of a regional transmission organization."

-----Original Message-----
From: Kyle Sciuchetti [mailto:kyle@ppcpdx.org]
Sent: Monday, July 10, 2000 2:40 PM
To: srlarson@bpa.gov
Subject: Most recent BPA Study Ban language

Steve,

Do you have a copy of the most recent proposed statutory language that deals with the study ban issue. Today in a conference call with Kristi Wallis, we were told that such language is being circulated.

Thanks,
Kyle Sciuchetti
Public Power Council
fax (503) 239-5959

From: Stier, Jeffrey K - KN-DC
Sent: Thursday, July 13, 2000 12:58 PM
To: Bennett, Ruth - TM-DITT1; Curtis, Jim - KG-2; Esvelt, Terry - A-7; Hickok, Steven G - A-7; Jackson, Melanie M - T-DITT2; Larson, Stephen R - LT-7; Maher, Mark W - T-DITT2; Meyer, Charles - TM-DITT2; Olds, Peggy A - T-Ditt2; Roach, Randy A - L-7; Silverstein, Brian L - TM-DITT2; VanZandt, Vickie - TO; Wright, Stephen J - K-7; Johnson, Frederick M- TF-DOB1
Cc: Ball, Crystal A. - KN-DC; Morgado, Nicole K. - KN; Seifert, Roger - KN; Stauffer, Nicki - A
Subject: Senate Energy and Water Appropriations bill

The subcommittee approved a bill this afternoon. We got most of what we were looking for. I haven't seen the bill and report yet, but Phil Moeller reports the following.

WHAT WE GOT:

We got the following bill language:

"Notwithstanding any other law, and without fiscal year limitation, each Federal Power Marketing Administration is authorized to engage in activities and solicit, undertake and review studies and proposals relating to the formation and operation of a regional transmission organization."

[

REDACTED

]

Please copy for Randy, Steve, Paul, and Preston.
Rtn orig to me.
Thx,
SB 7/17

done 7/18/00 pt

2

VILLE
NISTRATION

00 JUL 14 AM 10:53

, Liaison Office
ing, Room 8G-061
ence Avenue, S.W.
n, D.C. 20585

TO

Phone: 503-230-3031
Fax: 503-230-3811

COPY ALSO SENT TO:
(2) Sonya Baskerville
phone - 503-230-5904
Fax - 503-230 7405 (#2)

(3) cc Steve Wright (#6)
fax - 503-230-

Date: 7/14/2000 Friday
Number of Pages including cover sheet: 9

FROM:
- ☐ Jeff Stier
- ☒ Roger Seifert
- ☐ Nicole Morgado
- ☐ Crystal Ball
- ☐ Bill Marlowe
- ☐ Sheron Jones
- ☐ Niki Moore

Phone: (202) 586-5640
FAX: (202) 586-6762 or 6763
Internet: _____@bpa.gov

☐ *URGENT* ☐ *REVIEW/COMMENT* ☐ *REPLY ASAP* ☒ *FYI*

REMARKS: Veronica/Sonya — I personally delivered this material to Perin, Jerkel, Rabben, Glick and Schwartz today. Rabben and Schwartz were out but they will get it. (You will get file copies early next week)

Roger Seifert

(1 of 9)

United States Government

Department of Energy

memorandum

Bonneville Power Administration

DATE: July 14, 2000

REPLY TO ATTN OF: BPA-KN

SUBJECT: Draft Regional Transmission Organization (RTO) Personnel Litigation

TO: Steve Perin, Director, Personnel Policy & Program Division, MA-32
Pamela Jeckell, Supervisory, Management Analyst, MA-322
Robert Rabben, Assistant General Counsel for Legislation, GC-71

[

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]

I have also attached a copy of: (1) the portion of the 7/13/2000 Senate Energy and Water Development Subcommittee markup report language concerning both the contemplated Pacific Northwest RTO as well as bill language authorizing each Federal Power Marketing Administration "to engage in activities and solicit, undertake and review studies and proposals relating to the formation and operation of a regional transmission organization" and (2) a 5/16/2000 memo from DOE Deputy Secretary T.J. Glauthier to the Power Marketing Administrations endorsing the Federal Energy Regulatory Commission's (FERC's) RTO goals and directing the PMA's to fully participate in the FERC RTO process with the objective, if possibly, of joining an RTO.

[

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]

Pam, we appreciate your helping us to identify and analyze both the administrative actions and legislative authorities necessary to accomplish the above goals.

Bonneville staff is having a briefing meeting with Steve Wright (Bonneville Senior Vice President, Corporate) next Thursday (7/20/2000) on the attached draft bill language. We would appreciate any preliminary comments each of the three of you might be able to provide us before that meeting. My internet address is reseifert@bpa.gov. My phone number is (202) 586-5628.

Thank you for your help.

Roger Seifert

Roger Seifert
Special Assistant to the Vice President
Office of National Relations

cc:
R. Glick – S-1

The Deputy Secretary of Energy
Washington, DC 20585

May 16, 2000

MEMORANDUM FOR POWER MARKETING ADMINISTRATORS

FROM: **T. J. GLAUTHIER**

SUBJECT: **FERC Order No. 2000**

On December 20, 1999, the Federal Energy Regulatory Commission (Commission) issued its Final Rule, Order No. 2000, on Regional Transmission Organizations (RTOs). In Order No. 2000, the Commission found that independent, regionally operated transmission grids will be necessary in order to promote the continued development of competitive electricity markets. The Commission also found that to meet this objective, all transmission owners, including the Federal power marketing administrations (PMAs) should be included in RTOs.

The Department of Energy fully endorses the Commission's goals, as enunciated in Order No. 2000. Pursuant to the Secretary's request, I hereby direct the PMAs to fully participate in the process contemplated by Order No. 2000 with the objective, if possible, of joining an RTO. As the RTO process continues to unfold, I look forward to maintaining a close dialogue with you regarding these objectives.

Order No. 2000 specifically requires all public utilities that own, operate, or control transmission facilities to file with the Commission by October 15, 2000, or January 15, 2001, as appropriate, a proposal for an RTO to be operational by December 15, 2001. Alternatively, Order No. 2000 requires all such utilities to file a description of their efforts to participate in an RTO, any obstacles to RTO participation; and any plans to work toward RTO participation. I direct the PMAs to make such filings with the Commission by October 15, 2000.

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incurred. A similar provision was contained in the Energy and Water Development Act, 2000, Public Law 106–60.

Language is included under section 319 which allows the Power Marketing Administrations to engage in activities and solicit, undertake and review studies and proposals relating to the formation and operation of a regional transmission organization.

Report Discussion of Section 319 Bill Language re. RTO's and PMA's

Planning and Conservation Act (16 U.S.C. 839e) is amended by adding at the end the following:

"(n) LIMITING THE INCLUSION OF COSTS OF PROTECTION OF, MITIGATION OF DAMAGE TO, AND ENHANCEMENT OF FISH AND WILDLIFE, WITHIN RATES CHARGED BY THE BONNEVILLE POWER ADMINISTRATION, TO THE RATE PERIOD IN WHICH THE COSTS ARE INCURRED.—Notwithstanding any other provision of this section, rates established by the Administrator, under this section shall recover costs for protection, mitigation and enhancement of fish and wildlife, whether under the Pacific Northwest Electric Power Planning and Conservation Act or any other Act, not to exceed such amounts the Administrator forecasts will be expended during the fiscal year 2002–2006 rate period, while preserving the Administrator's ability to establish appropriate reserves and maintain a high Treasury payment probability for the subsequent rate period.".

SEC. 319. Notwithstanding any other law, and without fiscal year limitation, each Federal Power Marketing Administration is authorized to engage in activities and solicit, undertake and review studies and proposals relating to the formation and operation of a regional transmission organization.

RTO

RTO
B.71
Language

8

4 of 5

these matters, legislative action may be necessary."

[

REDACTED

]

Section 319 of the Senate bill contains the RTO bill language that we saw earlier. It reads as follows:

"Notwithstanding any other law, and without fiscal year limitation, each Federal Power Marketing Administration is authorized to engage in activities and solicit, undertake and review studies and proposals relating to the formation and operation of a regional transmission organization."

Veronica, have you talked to Pam after the 14th? Maybe you and I should call her again.

From: Stier, Jeffrey K - KN-DC
Sent: Wednesday, September 13, 2000 2:59 PM
To: Baskerville, Sonya L - LC-7; Bennett, Ruth - TM-DITT1; Hickok, Steven G - A-7; Larson, Stephen R - LT-7; Maher, Mark W - T-DITT2; Meyer, Charles - TM-DITT2; Olds, Peggy A - T-Ditt2; Roach, Randy A - L-7; Silverstein, Brian L - TM-DITT2; VanZandt, Vickie - TO; Wright, Stephen J - K-7
Cc: Ball, Crystal A. - KN-DC; Morgado, Nicole K. - KN; Seifert, Roger - KN; Stauffer, Nicki - A
Subject: RTO colloquoy

I don't know if Roger sent this back. Here's the colloquoy between Craig, Gorton and Domenici on our RTO language in the Senate Energy and Water bill which passed the Senate on Sept. 7.

FEDERAL POWER MARKETING ADMINISTRATIONS AND REGIONAL TRANSMISSION ORGANIZATIONS

Mr. CRAIG. Mr. President, I would like to engage in a colloquy with the Chairman of the Energy and Water Development Appropriations Subcommittee and the senior Senator from Washington to clarify the intent of legislative language in Section 319 of H.R. 4733.

Mr. DOMENICI. Mr. President, I would be pleased to discuss this provision with my friend, the Senator from Idaho.

Mr. GORTON. As would I, Mr. President.

Mr. CRAIG. Mr. President, one of the Power Marketing Administrations, the Bonneville Power Administration (BPA) is working with other transmission -owning electric utilities to file a document with the Federal Energy Regulatory Commission in October evidencing an intent to form a regional transmission organization in the Northwest. It is my understanding that this language would give BPA the authority to engage in the activities necessary to making that filing. Is that correct?

Mr. DOMENICI. Mr. President, the Senator from Idaho is correct.

Mr. GORTON. I concur, Mr. President.

Mr. CRAIG. It is also my understanding that the Department of Energy is currently of the opinion that no further legislation would be needed in order for BPA to actually participate in a Northwest regional transmission organization. However, issues may arise as a result of the October filing, or otherwise, that would necessitate further legislation before BPA participates in the Northwest regional transmission organization. If such legislation is necessary, would the Chairman and the Senator from Washington be willing to work with me to enact it expeditiously, so as to not delay the actual operation of the Northwest regional transmission organization?

[Page: S8184] GPO's PDF <http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2000_record&page=S8184&position=all>

Mr. DOMENICI. I would be pleased to work with the Senator from Idaho, the Senator from Washington, and other members of the Northwest delegation to assure expeditious enactment of any such necessary legislation.

Mr. GORTON. I too, am committed to prompt enactment of such legislation, if needed. I think it is crucial that Congress facilitate, rather than impede or delay, the formation of a regional transmission organization for the Northwest.

Mr. CRAIG. I thank the Senators.

Larson,Stephen R - L

Subject: FW: RTO West Activity

BPA has explicit statutory authority "without fiscal year limitation . . . to engage in activities and solicit, undertake and review studies and proposals relating to the formation and operation of a regional transmission organization." Energy and Water Appropriations Act of 2001, P.L. 106-377, Title III, Sec. 311.

-----Original Message-----
From: Hymer, Christina [mailto:Christina.Hymer@hq.doe.gov]
Sent: Wednesday, November 24, 2004 9:49 AM
To: Burns,Allen L - R; Larson,Stephen R - L
Subject: RE: RTO West Activity

That is fine with me.

-----Original Message-----
From: Burns,Allen L - R [mailto:alburns@bpa.gov]
Sent: Wednesday, November 24, 2004 12:45 PM
To: Larson,Stephen R - L
Cc: Hymer, Christina
Subject: RE: RTO West Activity

That's ok with me, if it's ok with Christina.

-----Original Message-----
From: Larson,Stephen R - L
Sent: Wednesday, November 24, 2004 9:34 AM
To: Burns,Allen L - R; Roach,Randy A - L
Cc: 'Hymer, Christina'
Subject: RE: RTO West Activity

[REDACTED]

-----Original Message-----
From: Burns,Allen L - R
Sent: Wednesday, November 24, 2004 9:28 AM
To: Roach,Randy A - L; Larson,Stephen R - L
Cc: 'Hymer, Christina'
Subject: RE: RTO West Activity

[

REDACTED

]

Thanks

-----Original Message-----
From: Hymer, Christina [mailto:Christina.Hymer@hq.doe.gov]

Sent: Wednesday, November 24, 2004 8:57 AM
To: Burns,Allen L - R
Cc: Roach,Randy A - L
Subject: RTO West Activity

Mr. Burns,

This email is in response to our earlier conversation regarding your participation with RTO West. Could you please provide me with more information regarding the composition of the organization (i.e. it's members)? Are you still the Director of this non-profit? While I understand that this is a part of your official work assignment as the Bonneville Power Administration member, could you provide me with the authority upon which you have to serve. For our purpose, we want to ensure that there are no 18 USC 208 (conflicting financial interest) problems.

Thank you for your help.

Tina Hymer

Attorney-Advisor

Office of the Assistant General Counsel for General Law

U.S. Department of Energy

1000 Independence Avenue, SW

Washington, DC 20585

202-586-1522

Larson,Stephen R - L

From: Larson,Stephen R - L
Sent: Tuesday, October 05, 2004 10:45 AM
To: Seifert,Roger E - DC
Subject: RTO study language

Energy and Water Appropriations Act of 2001, P.L. 106-377, Title III:

Sec. 311. Notwithstanding any other law, and without fiscal year limitation, each Federal Power Marketing Administration is authorized to engage in activities and solicit, undertake and review studies and proposals relating to the formation and operation of a regional transmission organization.