



United Steelworkers of America

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AFL-CIO/CLC

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George Becker
International President

January 4, 2000

Ms. Judith Johansen, Administrator
Bonneville Power Administration - PL-6
P.O. Box 3621
Portland, OR 97208-3621

Dear Ms. Johansen:

On behalf of the United Steelworkers of America, AFL-CIO-CLC ("the Steelworkers Union"), this letter is submitted as a public comment on a matter related to the 2001-2006 rate case, specifically, the general form of contract to be entered into by the Bonneville Power Administration ("BPA") for the sale of power after the year 2001 (the "Contract"). I write to urge that the Contract include a requirement that any direct purchaser of BPA power comply with a "Good Corporate Citizenship Clause."

The Steelworkers Union urges the BPA to contractually require direct purchasers of its power to observe basic standards of conduct as are embodied in federal, state, and local laws, regulations, and orders as a condition of receiving such power. We further urge the BPA to take steps to assure that breaches of this requirement be subject to a contractual remedy, as described below, including restriction of further BPA power to the fullest extent permitted by law.

The organization on whose behalf I speak, the United Steelworkers of America, is a labor organization with 750,000 members in the United States and Canada. Our Union seeks, among other things, to affect public policy at the international, federal, state, and local levels. The Steelworkers Union is party to collective bargaining relationships with various companies operating in the Northwest, including firms that purchase cost-based power from the BPA as direct service industrial customers (DSIC's). In addition, Steelworker members include thousands of residents in the Northwest who buy power distributed by the BPA to investor-owned or local governmental utilities.

The BPA contributes enormously to the well being of the Northwest, and it must balance an array of often competing interests and objectives. This letter is premised on the fact that, by offering continued access to low-cost federal power in the period following 2001, BPA can continue to promote the general economic, social, and environmental health of the Northwest. While we support much in the BPA's initial proposal, we believe at the same time that the BPA must apply an additional, indispensable requirement to purchasers of its power.

BPA power is a public good. It is made possible by public investment, it is limited in supply, and it is sold at typically below-market prices. It is, in short, a valuable public benefit. In conferring that benefit, the BPA should satisfy itself that the purchaser is complying with basic standards of conduct as are embodied in the range of our commercial and public integrity laws. Accordingly, we propose that the BPA include in each of its Contracts a requirement that the purchaser adhere to all applicable commercial and public integrity law and authority, whether civil or criminal. While we understand that the details of such an obligation might take various forms, this comment recommends the following.

Under the approach we urge, each BPA Contract for wholesale federal power would include an obligation requiring the contracting party (as well as any member in its control group) (hereinafter a "Purchaser") to comply in its domestic operations with all federal, state, and local laws and regulations as well as agency or judicial orders, decrees, or settlements applying in the areas of equal employment opportunity, the environment, labor, occupational safety and health, securities, antitrust, banking, and public integrity (hereinafter, "Legal Requirement(s)"), whether civil or criminal. This requirement would be known as the Good Corporate Citizenship Clause.

Either persistent violations of the Legal Requirements or a single or small group of egregious violation(s) of the Legal Requirements would constitute violations of Good Corporate Citizenship Clause. As used in the preceding sentence, "violations" would include those found by courts or agencies and/or any fines, assessments, or other remedial obligation applied by such courts or agencies pursuant to the Legal Requirements.

Such an approach would of course include a contractual mechanism for addressing and remedying violations, and the balance of this letter addresses these matters. In general, we recommend a system that allows persons or organizations doing business within the BPA service area to bring possible violations of the Good Corporate Citizenship Clause to the attention of the BPA; such entities would be required to present evidence to the BPA showing that the Purchaser violated the Legal Requirements making up the Good Corporate Citizenship Clause.

For a complaint to proceed to the Adjudication Procedure (described below), it would first be subject to initial review and investigation by an office

within the BPA fully subject to its Administrator. If that BPA office were to conclude there was no reasonable cause to believe a violation had occurred, the charge would be dismissed. On the other hand, if that BPA office found reasonable cause to believe that a violation of the Good Corporate Citizenship Clause had occurred, the BPA office would then refer the matter for adjudication in the Adjudication Procedure. In either event, a party aggrieved by the determination of the BPA office would be entitled to appeal that determination to the BPA Administrator, whose decision on the matter would be final.

In those cases where it is determined that a complaint should proceed to adjudication, we recommend that the Adjudication Procedure be conducted by a five-member Public Review Board composed of appointees of the Secretary of Energy with one chosen to represent each of the following five stakeholder groups: the environmental, consumer, labor, DSIC, and utility communities. On the basis of its findings and conclusions that a violation of the Good Corporate Citizenship Clause had occurred, the Public Review Board would be authorized to recommend to the Energy Secretary that he or she direct the BPA Administrator to take appropriate action, up to and including, to the fullest extent permitted by law, restricting or ceasing delivery of electric capacity or energy to the purchaser. Finally, all decision-making authority as to any such action would lie with the Energy Secretary.

Having urged the adoption of the Good Corporate Citizenship Clause as set forth above, I shall conclude this comment with three points. First, our urging of a Good Corporate Citizenship Clause is independent of the rates to be set in the 2001-2006 proceeding. That is, we encourage your agency to consider this type of requirement without regard to the precise rates ultimately set by the 2001-2006 case. Second, there are numerous precedents for an obligation like a Good Corporate Citizenship Clause, including a recent initiative of the Clinton Administration expanding the contracting practices of the U.S. Department of Defense (specifically its Federal Acquisition Regulations) to include consideration of a would-be contractor's record of business integrity. In addition, the following state agencies impose analogous requirements and include:

State of Washington, Department of Transportation (procurement): Bidders required to have "a satisfactory record of performance, integrity, judgment, and skills." Rev. Code Wash (ARCW) Section 47.28.070 (1999);

State of Oregon, Responsible Bidder Statute: recently amended to define "responsible bidder" requirement to involve bidder's financial resources, record of performance, record of integrity, and personnel resources. Senate Bill 1271, 1999 Ore. ALS 647; and

State of Illinois, Regulations governing procurement by Illinois EPA and defining responsible contractor as one who has, among other

considerations, “[d]emonstrated compliance or willingness to comply with civil rights, equal employment opportunity, labor law and other statutory requirements.” 44 Ill. Adm. Code Section 550.302(f)(5) (1999).

Finally, public support for a good citizenship requirement is high in the Northwest and is likely to increase further. In a recent poll commissioned by our Union among randomly sampled residents of the four Northwestern states served by BPA, 72% of respondents expressed support for this general approach.

The Good Corporate Citizenship Clause is a policy that makes sense, and we urge the BPA to consider it, invite public comment on it, and ultimately adopt such a requirement.

Sincerely,

A handwritten signature in black ink, appearing to read "George Becker". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

George Becker
International President

c: Ms. Phyllis Dowty
PBL Communications Specialist