



Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208

OFFICE OF GENERAL COUNSEL

In reply refer to: APG

February 14, 1986

Mr. Craig Doupe, General Counsel
Washington Public Power Supply System
3000 George Washington Way
Richland, WA 99352

Dear Craig:

Several recent events have led us to conclude that the legal arguments for separation of the Supply System projects into separate utility systems should be given greater attention. Mark Rutzick has agreed to undertake a comprehensive review of the basis for separation of the Supply System projects into separate systems. Mark is examining the arguments which best can be used and will share his analysis with you. I know that you and your staff, as always, will cooperate fully with Mark.

We are concerned over Judge Quackenbush's order in Washington Public Power Supply System v. Pittsburgh-Des Moines Corp. (PDM), No. C-84-344-5LQ. Judge Quackenbush's ruling on PDM's motion No. 10 for summary judgment on claims for work performed on WNP No. 5 may affect the interests of the Bonneville Power Administration. Mark is reviewing Judge Quackenbush's order to determine what actions are necessary to protect BPA's interests. Mark already has contacted Randy Squires and asked him to inform the Bond Fund Trustee for WNP 3 and the counsel for the Bond Fund Trustees for WNP 1 and 2 of Judge Quackenbush's ruling. They may wish to take some action.

I would like you to provide Mark and myself with the opportunity to review and comment on motions and memoranda which raise the issue of the separation of the Supply System projects into separate utility systems prior to the filing of such documents and with adequate time to analyze the documents. I know that your staff is under pressure and has not been able to draft some briefs well in advance of the date they must be filed. However, this practice is of great concern to me because it denies Mark and I, as well as you, a meaningful opportunity to make sure that the arguments are complete, effective, and integrated with the "Chinese Wall" defenses we may need to make in other cases. My request applies to all cases where this issue has been or may be raised. These cases include PDM, Lampson, American Air Filter, Johnson-March, and University Nuclear Systems.

Both PDM and American Air Filter involve attempts by contractors with liquidated claims for work performed on WNP-5. Both contractors claimed that the contract modification liquidating the claim is ambiguous as to the source

of funds to pay such claims. I request that the Supply System review claims release forms in current use and remove any ambiguities as to the source of funds for payment. Other liquidated claims and the resulting contract modifications should be reviewed for language similar to the modifications in FDM and American Air Filter.

Please let me know if there are additional ways Mark or I can assist you in preserving the separate funds of the Supply System projects.

Sincerely,

ORIGINAL (sfd)

Harvard P. Spigal
General Counsel

LKitchen:jm (WP-APG-3192G)

cc:

M. Rutzick - AP-18

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