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Congress of the United States

House of Representatives

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July 17, 2013

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STAFF DIRECTOR

The Honorable Daniel B. Poneman
Deputy Secretary
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, D.C. 20585

Dear Mr. Poneman:

Yesterday I wrote to you regarding allegations associated with the Bonneville Power Administration (BPA). Specifically, these allegations concerned improper and illegal hiring practices to the detriment of veterans returning from the war theater, as well as retaliation against employees who reported these illegal practices to the Office of Inspector General. Today I learned that on Monday, you verbally instructed Elliot Mainzer, the individual you chose to serve as Acting Administrator of BPA, that no BPA employees were to talk with anyone regarding these allegations, including congressional investigators. The Department's focus should not be on muzzling its employees or retaliating against them, but instead on finding and disclosing the truth behind these allegations as soon as possible.

The Committee's goal is to determine what happened at BPA and, if the allegations prove true, to prevent similar problems from happening at BPA and the Department of Energy. Forbidding employees to speak with investigators suggests that the Department has something to hide.

Obstructing a congressional investigation is a crime.¹ Additionally, denying or interfering with employees' rights to furnish information to Congress is against the law.² Taxpayer dollars may not be used to pay the salaries of federal officials who deny or interfere with employees' rights to furnish

¹ 18 U.S.C. § 1505 states, in pertinent part:

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—
Shall be fined under this title, imprisoned not more than 5 years. . . .

² 5 U.S.C. § 7211 states:

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

information to Congress.³ Finally, BPA personnel, and all Department of Energy personnel, have the right to express their concerns to Congress under the First Amendment.⁴

BPA employees have the right to talk with Congress and to provide Congress information free from interference by the Department of Energy. These employees also have a right to be free from fear of retaliation for sharing information with Congress. The Inspector General is already investigating possible retaliation against BPA employees for blowing the whistle on improper hiring practices. Such retaliation by the Department must end immediately.

Please issue specific written guidance to all BPA employees making them aware of their right to communicate directly and independently with Congress – in particular about matters relating to waste, fraud, and abuse – as well as of whistleblower protections available to them. In addition, this guidance should make it abundantly clear that the Department, including BPA, will not retaliate against any employee who chooses to exercise this right. I expect to receive a written update on your compliance with these requests as soon as possible, but by no later than noon on July 24, 2013. If you have any questions, please contact Jennifer Barblan or Tyler Grimm of the Committee Staff at (202) 225-5074.

Sincerely,



Darrell Issa
Chairman

³ P.L. 111 -117 § 714 states:

No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who –

- (1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee; or
- (2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, states, pay, or performance of efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any other officer or employee of the Federal Government, or attempts or threatens to commit any of the foregoing actions with respect to such other officer or employee, by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress as described in paragraph (1).

⁴ U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”).

The Honorable Daniel B. Poneman

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cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Ernest J. Moniz, Secretary
U.S. Department of Energy