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United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES

WASHINGTON, DC 20510-6150

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December 5, 2013

The Honorable Gregory H. Friedman
Inspector General
U.S. Department of Energy
1000 Independence Avenue, SW
Washington D.C. 20585

Re: Continued BPA Retaliation Against Employee Who Blew Whistle on Violations of
Veteran's Hiring Requirements.

Dear Mr. Friedman:

I respectfully request that the Office of the Inspector General (OIG) immediately resume its investigation of retaliation against whistleblowers who helped uncover the violation of veterans' hiring preference by the Bonneville Power Administration (BPA). These whistleblowers stood up to protect the rights of America's veterans and deserve support for speaking out, not punishment.

I have obtained credible evidence of continued retaliation against a BPA Human Capital Management (HCM) staffer that occurred as late as November 2013, well after the IG issued a Management Alert on July 16, 2013 that stated "...the primary reason for the urgency of this management alert..." was retaliation against "certain employees who cooperated with our review."

This apparent misconduct also occurred following the issuance of the OIG Special Report in early October 2013 and many months after repeated commitments by BPA and DOE senior management to protect, rather than persecute, those who blew the whistle on violations of veterans' hiring preference. I have heard that other BPA whistleblowers have also been subject to continued retaliation, but have yet to come forward, perhaps out of fear of further retaliation.

According to the IG's Special Report, this HCM staffer, a veteran, helped expose unlawful personnel practices concerning the hiring of veterans by BPA to your office and others and was concerned about retaliation. I am troubled to learn that retaliatory action appears to continue against this staffer and perhaps others who have blown the whistle on violations of veterans' preference. If this retaliation is continuing, it must stop. Now.

The evidence indicates that there is a pattern of retaliation against the staffer by his HCM supervisor, with some incidents having occurred as recently as November 2013.

The HCM staffer had a bout with cancer earlier this year and took leave under the Family and Medical Leave Act (FMLA) for treatment. After he returned from FMLA leave to work on or around July 15, 2013—at virtually the same time the IG issued a Management Alert regarding retaliation against whistleblowers—it is my understanding that the following actions were taken by his supervisor:

- After a remodeling of the HCM Office, the staffer was relocated to a work space situated as far as possible from his supervisor's office.
- From July through September, the staffer was given no assignments even though his counterpart in HCM was overworked.
- Around August 10, 2013, after informing his supervisor of a potential prohibited personnel practice, the supervisor attempted to transfer the staffer from HCM to the Freedom of Information Act Office and later the Employee Relations Section.
- After disclosing what the staffer uncovered during a quarterly audit in a memorandum, the supervisor repeatedly warned the staffer that he should not "throw around" words such as "prohibited personnel practices" when reviewing such practices and told him to stop working on the audit file.

These actions were followed by what appears to be a much more serious action by the supervisor against the staffer that, if accurate, lends very strong support to a finding of an overall pattern of retaliation. It is my understanding that in his 2013 performance review of the staffer—prepared in November 2013—the supervisor gave the staffer the lowest rating possible—"Unacceptable," which is a prelude to removal of a Federal employee. It is my understanding that the staffer complained to senior BPA officials, Mr. John Hairston, Acting Executive Vice President for Business Services, and Acting Administrator Mainzer, about the "Unacceptable" rating. Apparently in response to a suggestion from Mr. Mainzer and/or Mr. Hairston, on November 28, 2013, the supervisor changed the staffer's rating to "Acceptable." It is my understanding that in his 15 years of Federal service, the staffer has never received a rating as low as "Acceptable," let alone an "Unacceptable" rating.

While I am pleased that it appears BPA's top management took steps to at least partially remedy the retaliatory actions against the HCM staffer, the pattern of apparent retaliatory action in this case suggests there is a deep-seated cultural problem at BPA when it comes to the compliance with the mandate to protect whistleblowers from retaliation. In light of this, I request that the OIG do the following:

- Determine whether the facts support a conclusion of retaliatory action against the staffer by his supervisor, notwithstanding BPA and DOE commitments that such behavior will not be tolerated.
- Determine whether other whistleblowers in HCM or elsewhere in BPA have been retaliated against since issuance of the OIG Special Report in October 2013 for their role in exposing BPA's violation of the veterans' hiring preference.
- Commence this review immediately and provide a written supplement to the original OIG Special Report no later than 30 days following receipt of this letter.

I want to make clear that this request should not be construed by either the Office of Inspector General or the Department of Energy as license to interfere with BPA policy and business decisions that are best made by BPA management in consultation with regional stakeholders. Instead, I am making this request to you because the particular nature of this problem—the violation of veterans' preference and associated retaliation against whistleblowers—makes it difficult for BPA to effectively investigate itself.

Ultimately, only BPA has the capacity to solve these serious problems regarding its hiring practices and retaliation against whistleblowers. I will continue to press them to do so for as long and as hard as it takes. Achieving this goal is vital to both our nation's veterans and the future of BPA.

Thank you for your consideration of this request.

Sincerely,



Ron Wyden
Chairman

cc: Elliot Mainzer, Acting Administrator, BPA
Daniel Poneman, Deputy Secretary, Department of Energy