

Statement of Gregory H. Friedman

Inspector General

U.S. Department of Energy

Before the

Committee on Oversight and Government Reform

U.S. House of Representatives

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Mr. Chairman and Members of the Committee, I appreciate the opportunity to testify at your request on the Office of Inspector General's (OIG) July 2013 Management Alert concerning alleged whistleblower retaliation and prohibited personnel practices at the Bonneville Power Administration.

Bonneville, a component of the Department of Energy, was established in 1937 as a self-funding agency that covers its approximately \$4.4 billion in annual costs by marketing electric power to all or parts of eight states in the Pacific Northwest. This electric power is generated by 31 Federal hydroelectric projects operated by the U.S. Army Corps of Engineers and the Bureau of Reclamation, one non-Federal nuclear plant and several small non-Federal power plants. Bonneville is responsible for the sale and transmission of nearly one-third of the electric power used in the region it serves. These responsibilities are carried out by nearly 3,100 Federal employees.

Allegations of Retaliation

The OIG is currently conducting a review of allegations that Bonneville engaged in inappropriate hiring practices. Specifically, it has been alleged that the rights of applicants for Federal positions were violated, most notably applicants entitled to veterans' preference. During the course of this review, as a result of several interviews, we learned that Bonneville employees who had raised questions to their management regarding violations of personnel practices may have been subjected to retaliation. We were told that several of these individuals had already filed retaliation complaints with the U.S. Office of Special Counsel.

We found these allegations to be troubling. Our concern intensified when, in late June and early July of this year, Bonneville employees indicated that additional retaliatory actions were imminent. We deemed the sources of the allegations to be credible. Thus, we chose to bring the matter to the attention of the Department's senior leaders in a July 16, 2013, Management Alert.¹ The

¹ Management Alert on *Allegations Regarding Prohibited Personnel Practices at the Bonneville Power Administration* (DOE/IG-0891, July 2013), available at: <http://energy.gov/sites/prod/files/2013/07/f2/IG-0891.pdf>.

Management Alert is a reporting mechanism that we use in time-sensitive situations which, in our judgment, require immediate management consideration. Given the circumstances, we concluded that the threshold had been met in this case and that protecting the involved Bonneville employees was of paramount importance. In the Management Alert, we recommended that:

1. All ongoing disciplinary actions of the Bonneville Human Capital Management staff should be suspended until our inquiry has been completed and the final results have been provided to the Department for full consideration; and
2. In the case of individuals removed or on administrative leave pending removal, those employees should be temporarily restored to their positions.

We provided a draft of the Alert to the Department on July 11, 2013. On July 15, 2013, we received comments in which the Department expressed its concurrence with the facts, conclusions and recommendations provided in the Alert. The Department outlined a list of corrective actions that either had been taken or were to be taken. These included: (1) a request to Bonneville for all documentation related to proposed adverse actions against two Bonneville employees; (2) suspension of Bonneville's authority to take any adverse actions against another employee; and, (3) direction to Bonneville to stop any proposed removals and to provide the Department with all information on any adverse actions in process or under consideration. The Department informed us that the Deputy Secretary directed the Administrator of Bonneville to take no adverse personnel actions against employees and to immediately convey to all Bonneville employees that they could cooperate freely with the OIG and other investigations without fear of retaliation.

Hiring Reform and Authorities

As background, on May 11, 2010, the President issued a memorandum, *Improving the Federal Recruitment and Hiring Process*, requiring all executive Federal agencies to use "category rating" for personnel recruitment and hiring. This approach had several objectives, one of which was to increase the candidate selection pool while still complying with merit system principles and other requirements of Title 5, United States Code, including veterans' preference. The Office of

Personnel Management (OPM) delegated the competitive hiring authority to the Department of Energy and the Department, in turn, delegated this same authority to Bonneville. Effective November 1, 2010, Bonneville was required to use category rating to rate and rank candidates for competitive positions. Although category rating has many nuances and subtleties, one critical component is that the quality category definitions, the basis for formulating the applicant “best qualified list” at Bonneville, must be developed before the vacancy announcement goes public and cannot be changed once the vacancy is opened. This is to ensure that all candidates are treated fairly and equitably.

Allegations Concerning Personnel Practices

I would like to address the status of our work with regard to the core allegations that Bonneville had engaged in prohibited or inappropriate hiring practices, specifically by changing the quality category definitions. The complainants raised the concern that these practices had effectively disadvantaged job applicants, most notably those entitled to veterans’ preference under both OPM and Department of Energy policies and regulations. We found that the Department had received the same allegations and initiated a review designed to examine relevant hiring actions and related vacancy announcements, and to evaluate Bonneville’s policies and procedures. In February 2013, the Department furnished its findings to the OIG. The Department concluded that the allegations had merit and identified systemic, prohibited personnel practices.

The OIG promptly initiated a review to determine the underlying causes of the alleged prohibited personnel violations. Our preliminary findings validated the Department’s conclusion that Bonneville had engaged in potential prohibited personnel practices by adjusting quality category definitions after vacancy announcements were closed and applications were reviewed. We noted that Bonneville employees responsible for rating and ranking applicants relied on informal, undocumented procedures in this regard. Bonneville claimed that its goal was to present selection officials with “manageable” applicant pools.

Our emphasis was, and remains, establishing the proximate cause of the improper practices. Let me stress, as noted in our Management Alert, that our work with regard to the substance of these allegations is not complete. Any information that was provided in the Alert or any information that is included in my testimony today is based on preliminary work products that have yet to be finalized. Additional interviews and document searches are underway. We intend to complete this effort as promptly as possible.

In addition to our own work and the review by the Department cited previously, this situation has been the subject of internal reviews by Bonneville itself and an examination by OPM. Final results of the OPM review have yet to be released in a formal report. Taken collectively, these examinations have been very revealing. For example, Bonneville's own data shows that it had engaged in inappropriate personnel practices in 65 percent (95 of 146 cases) of its competitive recruitments conducted from November 2010 to June 2012. The data, in essence, confirmed the allegation that the best qualified lists had been modified after applications were received, which was in direct contravention of OPM and Department policy. As a result, veterans and other applicants were inappropriately excluded from consideration for job selection. We were told that Bonneville changed its work processes and issued new guidance in May 2012 to stop these practices. However, it appeared that Bonneville failed to take required action to notify the negatively affected applicants and address the impact associated with the prohibited practices.

As of late June 2013, Bonneville's hiring authorities have been suspended. These actions were taken because both OPM and the Department concluded that there were major errors in the vast majority of the Bonneville files reviewed.

These are serious matters. As indicated, our work in this area continues and we will complete a report of our findings as quickly as possible.

Mr. Chairman and Members of the Committee, that concludes my statement and I will be happy to answer any questions you may have.