Rockville Pike, MD 20852–2738, telephone 301/415–6677.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) is conducting a program of site characterization to gather enough information, about the Yucca Mountain (Nevada) site, to be able to evaluate the waste isolation capabilities of a potential geologic repository. Should the site be found suitable, DOE will apply to the NRC for permission to construct and then operate a proposed geologic repository for the disposal of spent nuclear fuel and other high-level radioactive waste at Yucca Mountain.

As with other licensing decisions, NRC's decision to grant or deny a license for a proposed repository will be based on a combination of fact and judgment, as set forth by DOE in any potential license application. The subjective judgments of individual experts and, in some cases, groups of experts, will be used by DOE to interpret data obtained during site characterization and to address the many technical issues and inherent uncertainties associated with predicting the performance of a geologic repository system for thousands of years.

NRC has traditionally accepted, for review, expert judgment to evaluate and interpret the factual bases of license applications. Judgment has been used to complement and supplement other sources of scientific and technical information, such as data collection, analyses, and experimentation. In NUREG–1563, the NRC staff has developed specific technical positions that: (1) provide general guidelines on those circumstances that may warrant the use of a formal process for obtaining the judgments of more than one expert (i.e., expert elicitation); and (2) describe acceptable procedures for conducting expert elicitation when formally elicited judgments are used to support a demonstration of compliance with NRC's geologic disposal regulation, currently set forth in 10 CFR Part 60.

Current NRC policy is to encourage the use of probabilistic risk assessment (PRA) state-of-the-art technology and methods as a complement to the deterministic approach in nuclear regulatory activities (60 FR 42622). Although routinely used in deterministic analyses that do not involve PRA (or performance assessments, in the case of waste management systems), expert judgment can, and frequently does, provide information essential to the conduct of probabilistic assessments. Consistent with the Commission's policy, the NRC staff has developed this BTP to identify acceptable procedures for the use and formal elicitation of such judgments in the area of HLW.

Although there are several examples of the use of expert elicitation in a nuclear regulatory context, no formal Agency guidance on this subject exists. Thus, in developing this BTP, the Division of Waste Management staff has drawn upon the prior experience of other NRC program offices with the use of expert judgment and has relied on various Agency resource documents to help formulate its position statements. Consequently, the staff believes that this BTP is largely consistent with these other resource documents in substance.

On February 28, 1996, the NRC published a ''Notice of Availability'' in the Federal Register of the draft BTP (61 FR 7568) and solicited public comments. As a result, about 20 twenty comments, questions, and recommendations were received from three parties —DOE, the State of Nevada, and the U.S. Nuclear Waste Technical Review Board—which resulted in some changes and clarifications to the guidance. These changes and clarifications are documented in Appendix D of the NUREG. On August 22, 1996, the staff briefed the Advisory Committee on Nuclear Waste on the staff's final position statements. As a result of this briefing, further clarifications were requested and these clarifications are documented in Appendix F of the NUREG.

Finally, in its comments on the draft BTP, DOE indicated that it is in ''substantial agreement'' with the NRC staff's technical positions on the formal use of expert elicitation in the HLW program. Therefore, the staff is inclined to believe that with publication of the BTP, there is a sufficient basis to recommend that NRC's 1989 Site Characterization Analysis Comment (SCA) 3, concerning DOE's use of expert judgment in the HLW program, be closed, at the staff level. Appendix E of the NUREG contains the staff's views with regard to a possible course of resolution for SCA Comment 3.

Dated at Rockville, Maryland, this 16th day of December 1996.

For the Nuclear Regulatory Commission

John H. Austin,

Chief, Performance Assessment and High-Level Waste Integration Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–32350 Filed 12–19–96; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer That Contributes to a Multiemployer Plan; Dunham-Bush, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from Dunham-Bush, Inc. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Sheet Metal Workers National Pension Fund. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for the five- plan-year period beginning after the sale. The PBGC is authorized to grant individual and class exemptions from this requirement. Before granting an exemption, the PBGC is required to give interested persons an opportunity to comment on the exemption request. The purpose of this notice is to advise interested persons of the exemption request and solicit their views on it.

DATES: Comments must be submitted on or before February 3, 1997.

ADDRESSES: All written comments (at least three copies) should be addressed to: Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street, N.W., Washington, D.C. 20005–4026, or hand-delivered to Suite 340 at the above address between 9:00 a.m. and 4:00 p.m., Monday through Friday. The non-confidential portions of the request for an exemption and the comments received will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, at the above address, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Thomas T. Kim, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, D.C. 20005–4026; telephone 202–326–4028 (202–326–4179 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, (''ERISA'' or the ''Act''), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1) (A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contributions base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation (''PBGC'') to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S. 1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1). Such questions are to be decided by the plan sponsor in the first instance, and any disputes are to be resolved in arbitration. 29 U.S.C. 1382, 1399, 1401.

Under the PBGC's regulation on variances for sales of assets (29 C.F.R. Part 2643, recodified at 29 C.F.R. Part 4204), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (sections 4204.12–4204.13) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the three regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of section 552(b)(4) of the Freedom of Information Act.

Under section 4204.22 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the Federal Register, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from Dunham-Bush, Inc. (the ''Buyer'') for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of certain of the assets of Allagash Fluid Controls, Inc., which was formerly known as Dunham-Bush, Inc. (the ''Seller'') on January 6, 1995. In the request, the Buyer represents among other things that:

1. The Buyer was established on January 6, 1995.

2. Included among the assets purchased was a plant in Harrisonburg, Virginia, for which the seller had an obligation to contribute to the Sheet Metal Workers' National Pension Fund (the ''Plan'').

3. The Buyer has assumed the Seller's obligation to contribute to the Plan at the purchased operations, and continues to make contributions for substantially the same number of contribution base units as the Seller.

4. The Seller has agreed to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations (if not for section 4204) should the Buyer withdraw from the Plan within the five plan years following the sale should the Buyer withdraw and fail to pay withdrawal liability.

5. The estimated amount of the unfunded vested benefits allocated to the Seller with respect to the operations sold is $3,000,000.

6. The amount of the bond/escrow required under section 4204(a)(1)(B) is $545,409.29.

7. On December 29, 1995, the Buyer placed in escrow an amount equal to the amount required under 4204(a)(1)(B).

8. The Buyer submitted its financial statement as of January 26, 1996. According to that statement, the Buyer's net tangible assets are just over $20 million.

9. A copy of the request, excluding the financial statements of the Buyer, was sent to the Plan and to the collective bargaining representative of the Seller's employees.

Comments

All interested persons are invited to submit written comments on the pending exemption request to the above address. All comments will be made a part of the record. Comments received, as well as the relevant non-confidential information submitted in support of the request, will be available for public inspection at the address set forth above.

Issued at Washington, D.C., on this 16th day of December, 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96–32360 Filed 12–19–96; 8:45 am]

BILLING CODE 7708–01–P

POSTAL RATE COMMISSION

[Order No. 1145; Docket No. C96–1]

Complaint of Coalition Against Unfair USPS Competition; Declaratory Order Finding Complaint to be Justified and Providing For Further Proceedings

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice-