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ONE HUNDRED SEVENTH CONGRESS

# Congress of the United States

## House of Representatives

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2157 RAYBURN HOUSE OFFICE BUILDING

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MAJORITY (202) 225-5074  
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February 5, 2002

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The Vice President  
The Eisenhower Executive Office Building  
Washington, DC 20501

Dear Mr. Vice President:

I have written on previous occasions to urge full disclosure of the communications from Enron and other energy companies to the White House energy task force. I have done so because congressional oversight of the executive branch is an essential part of our system of checks and balances. In pursuing these inquiries, I have been careful to avoid making allegations. My approach has been to seek the facts before reaching conclusions.

As part of my investigation, I have obtained a confidential memorandum from the Associate Administrator for Policy of the Environmental Protection Agency (EPA) to the Executive Director of the White House energy task force.<sup>1</sup> The memorandum is dated April 27, 2001, just a few weeks before the White House released the energy plan.<sup>2</sup> A copy of this document is enclosed.

The memorandum states that EPA's concerns about the energy plan "have not been addressed"; that the new language in the latest draft is "even more problematic" than earlier drafts; that "opinions are presented as factual"; and that the language is "inaccurate and inappropriately implicates environmental programs as a major cause of supply constraints." According to the memorandum, blaming supply shortages on environmental regulations is "overly simplistic and not supported by the facts," "misleading," and creates a "false impression."

In refusing my previous requests for information, you and others in the Administration

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<sup>1</sup>EPA memorandum from Tom Gibson, Associate Administrator to Andrew Lundquist, Executive Director, National Energy Policy Development Group (April 27, 2001) (*hereinafter* "EPA memorandum").

<sup>2</sup>*Id.*

have assured the public that the White House energy plan was developed through a balanced process and produced balanced conclusions. For example, you have described the task force process in the following manner: “We talked to all kinds of people. I talked to energy companies, I talked to labor members, talked to environmentalists. Other members talked to a wide variety of people, and folks came in and discussed with us and gave us advice and recommendations.”<sup>3</sup> You have called the resulting plan “a good, balanced report.”<sup>4</sup>

The April 27, 2001, memorandum from EPA indicates, however, that the Administration’s own environmental experts did not share this view. The memorandum states:

EPA has provided comments regarding the language on oil refineries and fuel infrastructure and supply issues in past rounds of the document review process, but our concerns have not been addressed. In the latest draft, new language has been added which is even more problematic. Costs of compliance with environmental requirements are overstated, several inaccurate statements and opinions are presented as factual, and no citations are provided for many of these statements. We are very concerned that this language is inaccurate and inappropriately implicates environmental programs as a major cause of supply constraints in the United States’ refining capacity. Such a conclusion, in our opinion, is overly simplistic and not supported by the facts.<sup>5</sup>

The memorandum proceeds to describe a number of additional criticisms in the draft plan. For example, the memorandum states:

Statements regarding refining capacity are oversimplified and misleading, and create the false impression that environmental regulations are the major cause of supply constraints. . . . To draw the conclusion that environmental requirements are a primary cause of this trend is, to our knowledge, not supported by any study.<sup>6</sup>

The memorandum further states that “[e]stimates of the capital cost required to comply with environmental regulations are overstated, and are not cited”<sup>7</sup> and that “[s]tatements regarding coal generated electricity create the false impression that environmental regulations are

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<sup>3</sup>*Fox News Sunday*, Fox News (Jan. 27, 2002).

<sup>4</sup>*Meet the Press*, NBC News (May 20, 2001).

<sup>5</sup>EPA memorandum, 1.

<sup>6</sup>EPA memorandum, 1-2.

<sup>7</sup>EPA memorandum, 2.

the sole cause of the decrease in investment in new coal generation.”<sup>8</sup>

One week after the memorandum from EPA was written, you convened a key meeting of the White House energy task force, according to a recent report in *Time Magazine*. According to *Time*:

Among the attendees were two lobbyists for electric utilities: former Montana Governor and now G.O.P. chairman Marc Racicot and former G.O.P. chairman Haley Barbour. Two weeks later, Cheney’s report gave the lobbyists much of what they wanted, including a re-evaluation of a costly clean-air rule, called the new-source review, which requires new pollution controls when power plants are expanded.<sup>9</sup>

*Time* also reported that while Mr. Barbour was lobbying for these energy interests, he was raising \$250,000 for a May 21 Republican gala and that you hosted a “glitzy reception at the vice-presidential mansion” for donors the night before the event.<sup>10</sup>

The April 27 memorandum from EPA is an analysis of a draft of the final plan, not the final plan itself. Some of EPA’s suggested changes were apparently made in the final plan. EPA objected to statements in the draft regarding “‘boutique’ fuel formulations,” particularly the statement that there are “50 unique fuel formulations.”<sup>11</sup> In response, the final energy plan dropped the reference to the specific number of fuel formulations and referred instead to “the proliferation of distinct regional and state gasoline and diesel product standards.”<sup>12</sup> EPA also objected to the estimate that making cleaner burning gasoline would cost \$8 billion in capital investments, pointing out that the correct figure was \$4.5 billion.<sup>13</sup> In response, the final energy plan says that the new requirements will require “substantial capital investments,” but does not give any specific dollar figure.<sup>14</sup>

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<sup>8</sup>EPA memorandum, 3.

<sup>9</sup>*Getting the Ear of Dick Cheney*, Time Magazine (Feb. 3, 2002).

<sup>10</sup>*Id.*

<sup>11</sup>EPA memorandum, 3.

<sup>12</sup>Report of the White House National Energy Policy Development Group, 7-13 (May 16, 2001).

<sup>13</sup>EPA memorandum, 2.

<sup>14</sup>Report of the White House National Energy Policy Development Group, 7-13 (May 16, 2001).

These changes appear to have been mainly cosmetic, however. EPA's fundamental objection to the draft energy plan was that it created "the false impression that environmental regulations are the major cause of supply constraints."<sup>15</sup> Despite EPA's objections, the final version of the White House energy plan continues to blame environmental regulations for energy shortages. In discussing the shortage of domestic refining capacity, for example, the final energy plan states:

While excess capacity may have deterred some new capacity investments in the past, more recently, other factors, such as regulations, have deterred investments. Refiners are subject to significant environmental regulation and face several new clean air requirements over the next decade.<sup>16</sup>

Similarly, in the discussion of coal, the plan describes environmental regulations as "barriers" to increased generation from coal.<sup>17</sup> Although the final White House energy plan acknowledges that other factors have played a role in reducing investment in coal generation, the emphasis is on the role of environmental regulations. The final plan states:

- "Production issues include the protection of public health, safety, property, and the environment, and the effectiveness of federal and state agencies implementing various laws governing coal mining. These issues have resulted in some coal resources becoming uneconomical to produce. Statutory, regulatory, and administrative difficulties also may limit or prevent the production of some coal resources."<sup>18</sup>
- "Uncertainty about future environmental controls is of particular concern for companies that operate existing coal power plants."<sup>19</sup>
- "This regulatory uncertainty discourages power producers from building coal power plants and is one reason the United States is relying so heavily on natural gas

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<sup>15</sup>EPA memorandum, 1.

<sup>16</sup>Report of the White House National Energy Policy Development Group, 7-13 (May 16, 2001).

<sup>17</sup>See Report of the White House National Energy Policy Development Group, 5-13 (May 16, 2001).

<sup>18</sup>Report of the White House National Energy Policy Development Group, 5-13 (May 16, 2001).

<sup>19</sup>*Id.*

generation.”<sup>20</sup>

Moreover, you and other Administration officials further emphasized the role of environmental regulations in impeding energy supplies in your statements to the public. In discussing energy policy last May, you stated:

[W]e have not built any new refineries in this country in 25 years. You know, the difficulties – on the one hand government comes along and loads a lot of additional requirements on the industry, things that have to be done because we value certain things, such as clean air, and on the other hand, we find ourselves then without the development of additional supplies. We put large areas of the country off-limits to any development.<sup>21</sup>

The policy recommendations in the final energy plan reflect the plan’s findings that environmental regulations have caused energy supply shortages. The chapter of the White House energy plan addressed by the EPA memorandum contains recommendations to revisit requirements for clean fuels and “streamline the permitting process.”<sup>22</sup> It also targeted for review the Clean Air Act’s “new source review” regulations, which require all major air pollution sources to modernize their pollution controls when they upgrade their facilities. The energy plan required federal agencies to review the impacts of new source review on industry and the environment.<sup>23</sup> As a result of this review, the Administration appears poised to announce changes in the new source review regulations that would greatly weaken the environmental and public health protections provided by these rules.<sup>24</sup>

You have no obligation, of course, to accept the advice of the government's environmental experts. But you do have an obligation, I believe, to disclose relevant facts to the American people. Unfortunately, the public had no way of knowing -- in evaluating the White House energy plan last year -- that EPA's comments were ignored during the process. And your refusal now to release the names of lobbyists who met with your task force and the positions they

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<sup>20</sup>Report of the White House National Energy Policy Development Group, 5-14 (May 16, 2001).

<sup>21</sup>*Meet the Press*, NBC News (May 20, 2001).

<sup>22</sup>Report of the White House National Energy Policy Development Group, 7-14 (May 16, 2001).

<sup>23</sup>*Id.*

<sup>24</sup>See *White House Warned on Easing Clean Air Rules*, Washington Post (Jan. 9, 2002); *Rollback on Clean Air*, New York Times (Jan. 9, 2002).

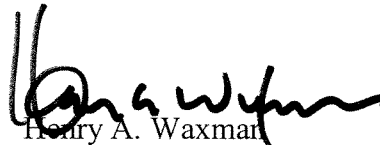
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advocated gives the public no opportunity to assess whether industry arguments were more persuasive than the arguments of government experts.

As a result of today's disclosure, we know now that important EPA objections were rejected by the White House in favor of positions that benefit the energy industry. We also know that H.R. 4 -- the House-passed energy bill that embodied the recommendations of the White House task force -- provided over \$30 billion in subsidies to the oil, gas, coal, electric utility, and nuclear industries. Viewed in terms of a return on investment, these subsidies provided a 50,000% return on the \$70 million in campaign contributions from these industries in the 1999-2000 campaign.<sup>25</sup>

Under these circumstances, it is even more important that you reconsider your decision not to release records from the energy task force. Congress and the public should have as much information as possible about who was influencing the process and why EPA believed its concerns were not being addressed.

Sincerely,



Henry A. Waxman  
Ranking Minority Member

Enclosure

cc: The Honorable David M. Walker  
The Honorable John D. Dingell

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<sup>25</sup>Minority Staff Report, House Committee on Government Reform, *Hitting the Jackpot: How the House Energy Bill (H.R. 4) Rewards Millions in Contributions with Billions in Returns* (Aug. 1, 2001).