THE WHITE HOUSE

WASHINGTON

June 29, 2001

The Honorable Henry A. Waxman
Ranking Minority Member
House of Representatives
Committee on Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Congressman Waxman:

I am writing in response to your letter of June 15, 2001 to Karl Rove and your letter of June 25, 2001 to me. We appreciate the opportunity to clarify the matters raised in your letters.

As you note, at the beginning of his service in the Administration, Mr. Rove owned a portfolio of individual stocks. Mr. Rove no longer owns any of those stocks, having divested himself of them promptly upon receipt of certificates of divestiture from the Office of Government Ethics. He received the certificates from OGE on June 6, 2001 and sold all of his holdings the next day.

Mr. Rove originally determined to divest himself of those stocks in January during the transition in order to avoid any potential ethical complications that might arise by virtue of continued ownership. He was advised by transition counsel that, as long as he complied with applicable conflict of interest regulations in the interim, the sale of his securities should await a review of his finances and receipt of certificates of divestiture. As you know, such certificates allow individuals entering into government service who are obliged to sell stock as part of the ethics program to defer the recognition of capital gains from such sales. *See generally* 5 C.F.R. § 2634.1001 *et seq.* (2000); 26 U.S.C. § 1043. The law entitles individuals such as Mr. Rove to receive such certificates "to minimize the burden of Government service resulting from gain on the sale of assets for which divestiture is reasonably necessary because of the conflict of interest laws, in order to attract and retain highly qualified personnel in the executive branch and to ensure the confidence of the public in the integrity of Government officials and decision-making processes." *Id.* § 2634.1001(c).

Mr. Rove followed this advice and took care to comply with applicable conflict of interest rules while he awaited the completion of his security and financial disclosure file and the preparation and processing of his request for certificates of divestiture from OGE. Due to the enormous volume of clearance work and other difficulties attendant upon the beginning of a new Administration, combined with an abbreviated transition period, this process took longer than either Mr. Rove or I would have wished, or than it would have taken at other times during a presidential term.

During the period in which Mr. Rove was awaiting completion of his paperwork, he, like all members of the White House staff, received ethics training. For example, on January 29, 2001, slightly more than one week into the new administration, lawyers from my office briefed Mr. Rove and other staff members on applicable ethics rules, including conflict of interest rules. Several weeks later, on February 15, 2001, Mr. Rove attended an ethics training session organized by my office, at which senior lawyers from the Office of Government Ethics reviewed the conflict of interest requirements again. On both occasions, Mr. Rove was advised that, with respect to personal financial holdings, a government official may not personally and substantially participate in particular matters that would have a direct and predictable effect on his or her financial interests. *See id.* § 2635.402(a).

Pending the divestiture of his stockholdings, Mr. Rove took care to avoid any such impropriety. Accordingly, he did not seek a waiver pursuant to 18 U.S.C. § 208(b)(1) or an authorization pursuant to 5 C.F.R. § 2635.502(d), and our office made no determination concerning any such request. With respect to the March 12, 2001 meeting with Intel executives at which the subject of a merger application was raised, Mr. Rove did not participate personally and substantially in any discussion or decision relating to that merger. Ethics regulations make clear that such participation "requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue." *See id.* § 2635.402(b)(4). Involvement must be "direct[]," and it must be "of significance to the matter." *Id.* The examples given in the regulations include such things as "decision, approval, disapproval, recommendation, investigation, or the rendering of advice in a particular matter." *Id.* Mr. Rove did not play such a role in the merger review in question. Instead, when Intel executives raised the subject with Mr. Rove during their meeting, Mr. Rove was noncommittal and offered no substantive response. Responsibility for that matter rested with an interagency review panel on which Mr. Rove did not sit and in which he played no part. In my opinion, this does not constitute personal and substantial involvement in the merger review; rather, Mr. Rove's passing contact with this subject would at most constitute the sort of "administrative or peripheral" contact that is outside the scope of the conflict of interest regulations. *Id.*

With respect to your questions concerning Mr. Rove's holdings in Enron, Mr. Rove was not a member of the National Energy Policy Development Group, and he did not attend any of its meetings. He did participate in a number of other meetings at which the contours of the Administration's energy policy were discussed. General policy discussions do not, however, concern a "particular matter" within the meaning of the conflict of interest regulations. The regulations make clear that "[t]he term particular matter encompasses only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons." *Id.* § 2635.402(b)(3). Such matters include "a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest." *Id.* They expressly do *not* include "the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons." *Id.* The formulation of national energy policy is a classic example of the sort of broad policy discussion that is expressly excluded from regulatory coverage. Indeed, one of the examples cited in the regulation – "[a] legislative proposal for broad health care reform" – makes clear that policy proposals of this kind, which affect an entire sector of the economy, are not "particular matters" within the meaning of the conflict of interest regulations.

Id. § 2640.103 (example 8); *see also id.* (example 6) (discussion of economic growth policies among economic advisers).

For similar reasons, general discussions of national energy policy did not have a "direct and predictable effect" on the value of Mr. Rove's holdings in Enron, as the regulations require. *Id.* § 2635.402(a). Even if the formulation of energy policy had been a "particular matter," Mr. Rove's participation in energy-related discussions still would not have presented a conflict of interest unless there was "a close causal link" between those discussions and the value of Mr. Rove's stock. *Id.* § 2635.402(b)(1)(i). Such a link does not exist where "the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter." *Id.* The gap between discussions of overall national energy policy and concrete impact on an individual company's share price is simply too wide to meet this standard. Even the final policy recommendations of the NEPDG were general in nature, setting forth broad proposals for action but leaving the specifics to the governmental actors further downstream that would be responsible for reviewing and implementing the proposals. And none of the policy proposals was self-executing: all required further action by the President, executive branch departments or agencies, the Congress, or some combination of these, on an uncertain timetable. No discussions concerning these proposals could have had a "direct and predictable" impact on Mr. Rove's shares in an individual company such as Enron.

In summary, in connection with the matters raised in your letter to Mr. Rove, Mr. Rove either had passing, inconsequential contacts or participated in broad policy discussions, neither of which presents an ethical problem under applicable regulations. Nonetheless, I wish to assure you that this Administration remains committed to ensuring that all members of the White House staff adhere to the highest ethical standards. I hope this satisfactorily resolves your concerns. If I may be of any further service, please do not hesitate to contact me.

Sincerely,

/s/ A. Gonzales

Alberto R. Gonzales
Counsel to the President

cc: The Honorable Dan Burton