OFFICE OF THE VICE PRESIDENT

WASHINGTON

May 4, 2001

The Honorable W.J. "Billy" Tauzin, Chairman
The Honorable John D. Dingell, Ranking Minority Member
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

The Honorable Dan Burton, Chairman
The Honorable Henry A. Waxman, Ranking Minority Member
Committee on Government Reform
House of Representatives
Washington, D.C. 20515

Gentlemen:

This is in response to the letter of April 19, 2001 from the ranking minority members of your Committees to Mr. Andrew Lundquist, Executive Director of the National Energy Policy Development Group (NEPDG). The letter sought information regarding compliance with the Federal Advisory Committee Act (FACA)(5 U.S.C. Appx. 2) by the NEPDG. Please be advised that the FACA does not apply to the NEPDG, noting especially that FACA by its own terms does not apply to a group "composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government."

As a matter of comity between the legislative and executive branches, with due regard for the constitutional separation of powers and the rights of Americans to petition their government, and reserving all legal authorities and privileges that may apply, we are pleased to provide the enclosed information, which will enable you to conclude independently that the establishment and activities of the NEPDG are not inconsistent with the FACA.

Sincerely,

David S. Addington

David S. Addington
Counsel to the Vice President

Enclosure as stated

RESPONSES OF ANDREW LUNDQUIST, EXECUTIVE DIRECTOR
FOR THE NATIONAL ENERGY POLICY DEVELOPMENT GROUP
TO QUESTIONS FROM THE RANKING MINORITY MEMBERS OF THE
HOUSE COMMITTEE ON GOVERNMENT REFORM
AND THE HOUSE COMMITTEE ON ENERGY AND COMMERCE

COMMITTEE QUESTION (1): (1) It is our understanding that you are directing a task force charged with examining and formulating energy policy.

RESPONSE (1): The mission of the National Energy Policy Development Group established on January 29, 2001 is to develop a national energy policy designed to help the private sector, and as necessary and appropriate Federal, State and local governments, promote dependable, affordable, and environmentally sound production and distribution of energy. To carry out that mission, the Group gathers information, deliberates and makes recommendations to the President. Ultimately, the Group is to report its recommended national energy policy to the President.

COMMITTEE QUESTION (1)(a): (a) Please provide a complete list of task force members and staff assigned to the task force, identifying the employer of the member or staff. In the case of federal employees, please identify the department or agency for which the member or staff works.

RESPONSE (1)(a): The National Energy Policy Development Group consists of the following officers of the Federal Government: the Vice President, Secretary of the Treasury, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Transportation, Secretary of Energy, Director of the Federal Emergency Management Agency, Administrator of the Environmental Protection Agency, Assistant to the President and Deputy Chief of Staff for Policy, Assistant to the President for Economic Policy, and Assistant to the President for Intergovernmental Affairs. The Vice President may invite the Chairman of the Federal Energy Regulatory Commission to participate. The Vice President may invite the participation of the Secretary of State when the work of the Group involves international affairs and, as appropriate, other officers of the Federal government. The Vice President has invited the Director of the Office of Management and Budget to participate. The Vice President presides at the meetings of the Group and directs its work. The Group is supported by five professionals employed by the Department of Energy and assigned for this purpose to the Office of the Vice President: an Executive Director, a Deputy Director, two Senior Professional Staff Members, and a Professional Staff Member. In addition, an individual appointed as a White House Fellow who is assigned to the Office of the Vice President provides support to the Group.

COMMITTEE QUESTION (1)(b): (b) Please identify any task force members and staff who are not full-time federal employees. In the case of any member or staff who is a part-time federal

employee, identify the hours per week that person works for the federal government and when that person began working for the federal government.

RESPONSE (1)(b): The National Energy Policy Development Group consists solely of officers of the Federal Government. The six individuals identified in Response (1)(a) above who provide support to the Group (hereafter "Group support staff") are all full-time Federal employees. For brief periods the employment status of two of the six individuals (from February 1 through 12, 2001 in the case of the Executive Director, and from February 7 through 12, 2001 in the case of the Deputy Director) was as consultants to the Department of Energy while the Department was processing their entrance-on-duty papers; they had no employer other than the Department of Energy during those brief periods. Please note that the Government officers who are on the National Energy Policy Development Group have assistants at their individual departments and agencies who help them with review and drafting of materials and may attend Group meetings with them. Those departments and agencies could advise on the personnel status of those assistants if it were material.

COMMITTEE QUESTION (1)(c): (c) Please identify any task force member or staff who, at the time of any task force meeting, was serving as a contractor to, or temporary full time employee of, the federal government while on leave from non-federal employment. For each member or staff identified, please include the name of that person's non-federal employer.

RESPONSE (1)(c): None of the government officers who compose the National Energy Policy Development Group, nor any of the individuals on the Group's support staff, was, at the time of any Group meeting, serving as a contractor to, or temporary full time employee of, the federal government while on leave from non-federal employment.

COMMITTEE QUESTION (2): (2) It is our understanding that the task force has conducted a series of "stakeholder meetings" on energy policy and legislation at federal facilities over the past few months.

RESPONSE (2): The National Energy Policy Development Group has not held such meetings. Individuals on the Group support staff have met with many individuals who are not Federal employees to gather information relevant to the Group's work, but such meetings do not involve deliberations or any effort to achieve consensus on advice or recommendations. These meetings by the Group's staff were simply forums to collect individual views rather than to bring a collective judgment to bear. The Group's staff held such meetings with a broad representation of people potentially affected by the Group's work, including individuals involved with companies or industries (e.g., in the electricity, telecommunications, coal mining, petroleum, gas, refining, bioenergy, solar energy, nuclear energy, pipeline, railroad and automobile manufacturing sectors); environmental, wildlife, and marine advocacy; State and local utility regulation and energy management; research and teaching at universities;

research and analysis at policy organizations (i.e., think-tanks); energy consumers, including consumption by businesses and individuals; a major labor union; and about three dozen Members of Congress or their staffs.

COMMITTEE QUESTION (2)(a): (a) Please provide a list of all task force meetings held, including the date and location of each meeting.

RESPONSE (2)(a): The Vice President has convened the National Energy Policy Development Group on the following dates in the year 2001, and all such meetings have been in the White House Complex: January 29, February 9 and 16, March 12 and 19, April 3, 11, and 18, and May 2.

COMMITTEE QUESTION (2)(b): (b) Please describe in detail the purpose of these meetings. For each meeting, please explain if the meeting was conducted in order to obtain advice or recommendations about policy or proposed legislation. Please explain whether each meeting had a fixed agenda and/or a defined purpose.

RESPONSE (2)(b): The National Energy Policy Development Group, consisting only of Government officers, has met at each of its meetings for the purpose carrying out its mission to develop a national energy policy designed to help the private sector, and as necessary and appropriate Federal, State and local governments, promote dependable, affordable, and environmentally sound production and distribution of energy. At those meetings, to carry out its assigned mission, the Group has reviewed relevant information, deliberated, and formulated potential recommendations. With regard to meetings with individuals involving the Group's support staff, please see Response (2).

COMMITTEE QUESTION (2)(c): (c) Please describe the outcome of each meeting. Please explain to what extent each meeting resulted in the formulation of specific proposals or recommendations. Please specify to what extent the task force incorporated or adopted any suggestions or advice received at each meeting from non-federal "stakeholders", or to what extent it modified its proposals based on input received from non-federal "stakeholders" at the meeting.

RESPONSE (2)(c): Each of the National Energy Policy Development Group's meetings to date have advanced its mission as set forth in Response (1). Each of the meetings of the Group's support staff described in Response (2) gathered, in support of the Group's mission, information relevant to the Group's work.

COMMITTEE QUESTION (2)(d): (d) For each task force meeting that has occurred to date, please provide a complete accounting of all attendees. Please include the name and employer of each attendee as well as the name of all clients represented by each person for the purpose of any particular task force meeting. Please indicate if any participants received any compensation for their involvement in a meeting or meetings.

RESPONSE (2)(d): The officers of the Government constituting the National Energy Policy Development Group attended the Group's meetings. The Group's support staff attended the Group's meetings. Other employees on the staff of the Vice President attended the Group's meetings. The Government officers who constitute the National Energy Policy Development Group have assistants at their departments and agencies who attended the Group's meetings with them.

COMMITTEE QUESTION (3): (3) The Federal Advisory Committee Act (FACA) defines an advisory committee as "any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof . . . which is . . . established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for . . . one or more agencies or officers of the Federal government . . ." The Act requires that the meetings of such advisory committees be noticed in advance, open to the general public, and on the record, except under certain limited circumstances.

RESPONSE (3): Section 3(2) of the FACA provides that the term "advisory committee" as used in the FACA excludes "any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government." The National Energy Policy Development Group is composed wholly of full-time officers of the Federal Government. Accordingly, the FACA requirements to which Committee Questions (3)(a) through (3)(f) refer do not apply. See also Response (2).

COMMITTEE QUESTION (3)(a): (a) Was advance notice of these task force meetings provided to the general public?

RESPONSE (3)(a): See Response (3).

COMMITTEE QUESTION (3)(b): (b) How many of these task force meetings took place on federal property or involved the attendance of federal personnel?

RESPONSE (3)(b): See Response (3).

COMMITTEE QUESTION (3)(c): (c) Were these meetings open to the general public?

RESPONSE (3)(c): See Response (3).

COMMITTEE QUESTION (3)(d): (d) If these meetings were not open to the general public, why not and under what authority?

RESPONSE (3)(d): See Response (3).

COMMITTEE QUESTION (3)(e): (e) Were any transcripts or detailed minutes of these meetings kept by you or any other attendee or participant?

RESPONSE (3)(e): See Response (3).

COMMITTEE QUESTION (3)(f): (f) If no transcripts or minutes were kept, please explain why not and under what authority?

RESPONSE (3)(f): See Response (3).

COMMITTEE QUESTION (4): (4) As stated previously, we have been informed that only certain "stakeholders" were invited to participate in these meetings.

RESPONSE (4): The National Energy Policy Development Group has not held such meetings. To support the Group in the performance of its mission, one or more of the individuals on the Group's support staff have met with many individuals who are not Federal employees to gather from them information relevant to the Group's work. The non-Federal employees from whom the Group's support staff has thus far sought information constitute a broad range of sources of information; see Response (2).

COMMITTEE QUESTION (4)(a): (a) Was any executive branch agency or any of its personnel responsible in any way for determining who would or would not be invited to participate in these meetings?

RESPONSE (4)(a): See Response (4).

COMMITTEE QUESTION (4)(b): (b) Please provide a detailed explanation of the process by which each non-federal participant in these meetings was determine to be a "stakeholder" in energy policy.

RESPONSE (4)(b): See Response (4).

COMMITTEE QUESTION (4)(c): (c) Please provide a detailed explanation of the process by which the task force decided not to meet with any private citizens or groups.

RESPONSE (4)(c): See Response (4).

COMMITTEE QUESTION (4)(d): (d) Was the governor of any state invited to participate in these meetings? If so, which? If not, why not?

RESPONSE (4)(d): See Response (4).

COMMITTEE QUESTION (4)(e): (e) Were any state public utility commissioners invited to participate in these meetings? If so, which? If not, why not?

RESPONSE (4)(e): See Response (4).

COMMITTEE QUESTION (4)(f): (f) Were any representatives of organized labor invited to participate in these meetings? If so, which? If not, why not?

RESPONSE (4)(f): See Response (4).

COMMITTEE QUESTION (4)(g): (g) Were any representatives of consumer advocacy groups invited to participate in these meetings? If so, which? If not, why not?

RESPONSE (4)(g): See Response (4).

COMMITTEE QUESTION (4)(h): (h) Was the National Federation of Independent Businesses or any other small business representative invited to participate in these meetings? If not, why not?

RESPONSE (4)(h): See Response (4).

COMMITTEE QUESTION (4)(i): (i) Did the Department of Energy notify any Member of Congress about the task force's meetings prior to the first meeting or invite any Member or congressional staff to attend any of the "stakeholder" meetings?

RESPONSE (4)(i): To the best of my knowledge, no such notifications or invitations by the Department of Energy occurred with regard to any Group support staff meetings with non-Federal employees, nor would the Department of Energy have had a role with regard to such meetings that would have called for the Department of Energy to make such notifications or invitations.

Andrew Lundquist, Executive Director
National Energy Policy Development Group

5/4/01
Date