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ONE HUNDRED EIGHTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

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May 7, 2004

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BERNARD SANDERS, VERMONT,
INDEPENDENT

Mr. Gregory H. Friedman
U.S. Department of Energy
Office of Inspector General
1000 Independence Avenue, SW
Washington, DC 20585

Dear Mr. Friedman:

I am writing to request that you investigate the veracity and completeness of recent responses that the Department of Energy sent me and 12 other members of the Government Reform Committee pursuant to the "Seven Member Rule." These responses deserve investigation because they are suspect on their face and have been contradicted by other evidence.

On January 15, 2004, we wrote to Energy Secretary Spencer Abraham under the Seven Member Rule (5 U.S.C. § 2954) to request information about any communications between the Department and the energy industry since November 21, 2003, that related to H.R. 6, the Energy Policy Act. The responses we received claimed that with the exception of one meeting given by Deputy Secretary Kyle McSlarrow, there had been no communication between any official of the Department of Energy and any representative of the energy industry about this bill.

On its face, this claim seems doubtful. The energy bill was the subject of active lobbying by representatives of the oil, gas, nuclear, and other energy industries during the period in question. It would be extraordinary if none of these interest groups made any attempt to contact the Department during this critical period. Moreover, there is information from the Department's own web site that contradicts the responses we received. This information indicates that Energy Secretary Abraham attended at least two meetings composed of energy industry representatives and spoke on the topic of the energy bill. These communications were not disclosed in the Department's responses.

It is a serious matter to mislead members of Congress or to provide them with erroneous information. For this reason, I am requesting that you investigate whether the Department responded truthfully and completely when it asserted there were no contacts between Department officials and energy industry representatives relating to the energy bill.

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Background

On November 21, 2003, the Senate failed to end debate on H.R. 6, the Energy Policy Act of 2003. The legislation was quite controversial and proponents of the legislation lacked two votes to end debate and proceed to final passage.

On December 13, 2003, the *National Journal* reported that the American Petroleum Institute, the National Mining Association, the Nuclear Energy Institute, and other trade groups were readying a grassroots “lobbying blitz” in six states aimed at pushing Senators to reverse their position and support the energy bill. The article stated that lobbyists from these groups met with DOE Deputy Secretary Kyle McSarrow to discuss ways to gain support for the bill. According to the article, DOE officials “stressed that they want to work with lobbyists to ‘put pressure’ on lawmakers.”¹

On December 22, 2003, Rep. John D. Dingell, the ranking member of the Energy and Commerce Committee, and I wrote to Secretary Spencer Abraham seeking information about this reported lobbying blitz and other contacts between the Department of Energy and outside groups concerning H.R. 6.² In this letter, we indicated that any effort by the Department to coordinate or encourage lobbying could violate (1) the Department’s current appropriations law, which specifically bans using Department funds to influence congressional action on legislation, and (2) 18 U.S.C. § 1913, which prohibits federal officials from engaging in campaigns about pending legislative matters.

On January 6, 2004, Lee Liberman Otis, DOE General Counsel, responded to this letter, but did not provide the information we requested.³ The response described Deputy Secretary McSarrow’s presentation to energy lobbyists and stated that the presentation did not violate federal law.

On January 15, 2004, I joined twelve other members of the House Government Reform Committee in writing to Secretary Abraham to request the same information pursuant to the

¹ *Lobbyists Ready Blitz for Energy Bill*, National Journal (Dec. 13, 2003). See also, *Yuletide Greetings from Bush, Cheney Families*, Washington Post (Dec. 15, 2003) (online at <http://www.washingtonpost.com/wp-dyn/articles/A265-2003Dec14.html>).

² Letter from Rep. Henry A. Waxman and Rep. John D. Dingell to Spencer Abraham, Secretary of Energy (Dec. 22, 2003).

³ Letter from Lee Liberman Otis, General Counsel, DOE, to Rep. Henry A. Waxman (Jan. 6, 2004).

Seven Member Rule.⁴ Specifically, we requested that the Department provide copies of all communications (whether written, electronic, or oral) relating to H.R. 6 since November 21, 2003, between (1) DOE or other executive branch officials and (2) industry lobbyists, representatives of trade associations or interest groups, or other persons outside of the executive branch.

We received a response to this request on January 15, 2004,⁵ and an additional response on February 4, 2004.⁶ These responses stated that in addition to the speech given by Mr. McSlarrow, the Department had had only four contacts with persons outside of the executive branch or Congress about H.R. 6. In their entirety, the four contacts were:

- A December 15, 2003, letter from the U.S. Conference of Mayors inviting Secretary Abraham to speak at an Energy Policy Standing Committee meeting on January 22, 2003;
- Four issues of *Restructuring Today*;
- A newsletter from the Alliance to Save Energy; and
- A press inquiry from a Canadian publication.⁷

Questions about the Responses

On their face, the Department's responses seem unlikely to be true or complete. H.R. 6 is legislation of intense interest to the energy industry. It provides \$23.5 billion in energy-related tax breaks with an overall cost exceeding \$140 billion. The energy bill would significantly affect the coal, oil, gas, nuclear, geothermal, solar, and hydropower industries and each of these industries have lobbied the Department. For example, according to lobbying disclosure forms, nine of the ten biggest energy companies lobbied DOE between July and December 2003,

⁴ Letter from Reps. Henry A. Waxman, Tom Lantos, Major R. Owens, Carolyn B. Maloney, Bernard Sanders, Eleanor Holmes Norton, Elijah E. Cummings, Dennis J. Kucinich, Chris Van Hollen, William Lacy Clay, Chris Bell, Danny K. Davis, and Linda T. Sanchez to Energy Secretary Spencer Abraham (Jan. 15, 2004).

⁵ Letter from Eric J. Fygi, Acting General Counsel, Department of Energy, to Rep. Henry A. Waxman (Jan. 15, 2004).

⁶ Letter from Lee Liberman Otis, General Counsel, Department of Energy, to Rep. Henry A. Waxman (Feb. 4, 2004).

⁷ *Id.*

spending millions of dollars. It seems dubious, to say the least, that not even one lobbyist or energy industry representative tried to contact the Department about the fate of the legislation.

Moreover, the Department's own web site indicates that the Energy Secretary himself had at least two contacts with energy industry representatives that were not disclosed. The Department's web site contains a speech that Secretary Abraham gave to the United States Energy Association on December 17, 2003.⁸ The United States Energy Association is made up of energy companies, trade associations, manufacturers, engineering companies, professional societies, government organizations, professional service firms, universities, and educational and informational organizations. Secretary Abraham's prepared comments praised the energy bill and emphasized the importance of congressional action:

All of this underscores the need for Congress to pass a comprehensive energy bill. The legislation being considered by Congress right now contains many important provisions that will assist in strengthening our long-term energy position. Not the least of these are measures to boost production and bolster our aging energy infrastructure.

If Congress passes the energy bill, we can look forward to a day when the likelihood of these price spikes is greatly alleviated.⁹

The Department's website also contains a speech that Secretary Abraham gave to the National Coal Council in Washington, D.C., on December 4, 2003.¹⁰ The National Coal Council is a 501(c)(6) business organization and a federal advisory committee with approximately 100 members. Its members include representatives of some of President Bush's biggest campaign supporters, including Southern Company, CSX Corporation, and TXU Corporation. As the text of the speech makes clear, Secretary Abraham talked extensively about the energy bill with these energy industry representatives:

⁸ *Welcoming Remarks by Secretary of Energy Spencer Abraham*, LNG Ministerial Summit (Dec. 17, 2003) (online at http://www.energy.gov/engine/content.do?PUBLIC_ID=14666&BT_CODE=PR_SPEECHES&TT_CODE=PRESSSPEECH); *Keynote Address by Secretary of Energy Spencer Abraham*, LNG Ministerial Summit (Dec. 18, 2003) (online at http://www.energy.gov/engine/content.do?PUBLIC_ID=14667&BT_CODE=PR_SPEECHES&TT_CODE=PRESSSPEECH).

⁹ *Id.*

¹⁰ National Coal Council, *National Coal Council News Notes* (Dec. 2003) (online at <http://www.nationalcoalcouncil.org/NewsNotes/vol56Dec2003.pdf>); *Remarks by Secretary of Energy Spencer Abraham*, National Coal Council (Dec. 4, 2003) (online at http://www.energy.gov/engine/content.do?PUBLIC_ID=14543&BT_CODE=PR_SPEECHES&TT_CODE=PRESSSPEECH).

When I accepted the invitation to join you here today, I anticipated that my remarks would focus on the first comprehensive energy bill enacted in more than a decade — and a discussion of its coal technology provisions. . . . Unfortunately, as you know, Congress will not pass the energy bill this year. While I am deeply disappointed, I understand the challenge the congressional leadership faces.

Passing comprehensive energy legislation is an extremely difficult undertaking. There are many competing considerations among consumers, producers, energy sectors, and regions of the country that must be addressed. . . . But, as I've noted, the energy bill before Congress contains significant provisions to address almost every energy-related concern Americans have — from reducing our reliance on foreign oil, to developing new technologies, to promoting energy efficiency, to finding cleaner, more efficient fuels. . . .

Add all these provisions together and you have a common-sense, practical — and at the same time visionary — comprehensive energy bill that enjoys the bipartisan support of majorities in both houses of Congress.

Majority Leader Frist has indicated that the energy bill will be at the top of the Senate's agenda when Congress returns early next year. Senator Frist and the President understand that our nation's energy security is tightly interwoven with our economic and national security. . . .

And the American people deserve an up or down vote by the Senate on this key issue.¹¹

Disclosure of both the speech to the United States Energy Association and the speech to the coal industry representatives would have been responsive to the Seven Member request. Yet the official responses from the Department indicated that no such contacts occurred. This obviously raises doubts about the veracity and completeness of the responses.

Request for an Investigation

It is apparent that the official responses that the Department provided to the Seven Member Rule request do not withstand even cursory scrutiny. I consider these deficiencies a serious matter. Misleading members of Congress or withholding information from members of Congress can never be tolerated. Under some circumstances, it is also potentially illegal conduct.

For these reasons, I request that you immediately undertake an investigation to assess the adequacy of the Department's responses to the Seven Member request. Such an investigation

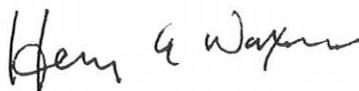
¹¹ *Id.*

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should include an examination of how the Department's responses were researched and reviewed and provide a full answer to the congressional inquiries of December 22, 2003, and January 15, 2004.

Please contact Greg Dotson of my staff at (202) 225-3976 should you have any questions. Thank you for your attention to this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry A. Waxman". The signature is fluid and cursive, with the first name "Henry" being more prominent.

Henry A. Waxman
Ranking Minority Member