

Chronology of the GAO's Attempts to Obtain Information from the National Energy Policy Development Group

On April 19, 2001, Representatives John D. Dingell and Henry A. Waxman, Ranking Members of the House Committee on Energy and Commerce and the House Committee on Government Reform, respectively, asked the General Accounting Office to obtain certain factual information regarding the process by which the National Energy Policy was developed.

On May 7, 2001, a GAO Assistant Director called the Deputy Counsel to the President to discuss the request and to ask how best to proceed and arrange an initial meeting. The Deputy Counsel routed the call to the Counsel to the Vice President.

On May 8, 2001, the Vice President's Counsel called the Assistant Director and discussed GAO's specific needs. He asked GAO to fax a copy of the request letter or portions of it so that he would have a sense of the area of focus in order to have appropriate people attend the initial meeting.

On May 8, 2001, at the request of the Vice President's Counsel, the Assistant Director faxed information about the work requested by Representatives Dingell and Waxman. The fax also contained requests for an initial meeting, to interview knowledgeable officials, and for relevant documents.

On May 10, 11, 14, 15, and 17, 2001, GAO attempted to talk with the Vice President's Counsel to arrange a meeting.

On May 17, 2001, the Vice President's Counsel left a voice mail message with a GAO Associate General Counsel that he was not authorized to set up a meeting. He stated that on May 16, he had sent a letter that was "self explanatory."

On May 21, 2001, the GAO received a letter dated May 16, 2001 from the Vice President's Counsel to the GAO General Counsel, asking the Comptroller General to determine whether the proposed GAO inquiry was appropriate, in compliance with the law, and a productive use of resources. The letter further asked the GAO General Counsel for a statement of GAO's legal authority to conduct its proposed inquiry.

On June 1, 2001, the GAO General Counsel sent a letter advising the Vice President's Counsel that GAO's review and request for information are appropriate and authorized under 31 U.S.C. §§ 712, 716, and 717.

On June 7, 2001, the Vice President's Counsel wrote to the GAO General Counsel, arguing that GAO lacked authority under 31 U.S.C. § 717 because the words "existing law" in section 717 do not include the Constitution. He also argued that 31 U.S.C. § 712

applies only to cost information regarding the use of public money. Thus, the Office of the Vice President would only search for documents responsive to the GAO question regarding the direct and indirect costs of the Group.

On June 21, 2001, the Vice President's Counsel forwarded 77 pages of miscellaneous documents purporting to be responsive to the GAO question regarding the direct and indirect costs of the Group.

On June 22, 2001, GAO sent to the Vice President's Counsel a letter explaining GAO's broad authority to review activities under 31 U.S.C. §§ 712 and 717.

On June 29, the GAO General Counsel called the Vice President's Counsel to try to arrange a meeting to discuss issues. Later that day, the Special Counsel, Office of Legal Counsel, Department of Justice (DOJ) returned the GAO General Counsel's call at the request of the Vice President's Counsel. The GAO General Counsel emphasized that GAO was trying to be reasonable, was not interested in deliberative process, was flexible in how information could be provided, and that GAO had already scoped down the review. The DOJ Special Counsel continued to assert that GAO had no authority to conduct the review.

On July 3, the General Counsel called the Vice President's Counsel to try to set up a meeting to address how to proceed, and was directed to call the DOJ Special Counsel in the future.

On July 5, the DOJ Special Counsel set up a meeting at DOJ to discuss GAO's request.

On July 9, 2001, a meeting was held with the Deputy White House Counsel, the DOJ Special Counsel, the GAO General Counsel and three other GAO officials, at DOJ headquarters. The Deputy White House Counsel and the DOJ Special Counsel questioned what statutory program GAO was reviewing and the purpose of the inquiry. At the end of the meeting, the Deputy White House Counsel agreed to determine if any information would be provided to GAO, and agreed to call GAO by close of business July 10.

On July 12, the GAO General Counsel called Deputy White House Counsel to see if a decision had been reached on whether the NEPDG would be providing information to GAO. No decision had been reached.

On July 17, the GAO General Counsel again called the Deputy White House Counsel to ask whether any information would be forthcoming. The General Counsel noted that other members of the NEPDG had provided GAO with information. The Deputy White House Counsel indicated that nothing would be forthcoming from the Vice President's Office or the NEPDG staff.

On July 18, 2001, under 31 U.S.C. § 716(b), the Comptroller General issued a demand letter to the Vice President as Chair of the National Energy Policy Development Group. The July 18 letter requested the following records:

“1. Your counsel identified nine meetings conducted by the National Energy Policy Development Group (NEPDG) in his May 4, 2001, letter to the Chairmen and Ranking Minority Members of the House Committee on Energy and Commerce and the House Committee on Government Reform (hereinafter May 4 letter). We request records providing the names of the attendees for each meeting, their titles, and the office represented.

“2. In the May 4 letter, your counsel indicated that six professional staff, referred to as the group support staff, were assigned to the Office of the Vice President to provide support to the NEPDG. We request records providing their names, titles, the office each individual represented, the date on which each individual began working for such office, and the responsibilities of the group support staff.

“3. In the May 4 letter, your counsel indicated that various members of the group support staff met with many individuals to gather information relevant to the NEPDG work. We request records providing the following information with regard to each of these meetings: (a) the date and location, (b) any person present, including his or her name, title, and office or clients represented, (c) the purpose and agenda, (d) any information presented, (e) minutes or notes, and (f) how members of the NEPDG, group support staff, or others determined who would be invited to the meetings.

“4. We request records providing the following information with regard to any meetings the Vice President as chair of the NEPDG had with individuals to gather information relevant to the NEPDG: (a) the date and location, (b) any person present, including his or her name, title, and office or clients represented, (c) the purpose and agenda, (d) any information presented, (e) minutes or notes, and (f) how the Vice President or others determined who would be invited to the meetings.

“5. We request any records containing information about the direct and indirect costs incurred in the development of the National Energy Policy. To date, we have been given 77 pages of miscellaneous records purporting to relate to these direct and indirect costs. Because the relevance of many of these records is unclear, we continue to request all records responsive to our request, including any records that clarify the nature and purpose of the costs.”

On July 30, 2001, the Comptroller General called the Vice President to discuss the issues and try to find a solution to the impasse. The Comptroller General was unsuccessful in his attempt to reach the Vice President.

On July 31, 2001, the Counsel to the Vice President returned the call to the Comptroller General for the Vice President. The Comptroller General, in the interest of comity, and out of respect for the Vice President, took the call and offered to eliminate our requests that the Vice President and the NEPDG staff provide notes and minutes and information presented at the meetings. The Counsel for the Vice President indicated that he would inform the Vice President and it was agreed that the GAO General Counsel would call him the following day to discuss the matter further.

On August 1, 2001, the GAO General Counsel and the Counsel to the Vice President spoke by telephone regarding the Comptroller General's letter of July 18, 2001, to the Vice President and the July 31st conversation. The GAO General Counsel reiterated the accommodation offered by the Comptroller General. Counsel to the Vice President again asserted that GAO had no authority to perform this review. No accommodation was reached.

On August 2, 2001, the Vice President sent a letter to the Senate and the House of Representatives to inform them of what he alleged were "actions undertaken by an agent of the Congress, the Comptroller General, which exceeded his lawful authority and which if given effect, would unconstitutionally interfere with the functioning of the executive branch."