ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

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January 11, 2012

The Honorable Steven Chu
Secretary of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Dear Mr. Secretary:

The Committee on Oversight and Government Reform (the Committee) requested information from the Department of Energy (DOE) on November 2, 2011, regarding all loan guarantees issued under the 1705 program. To date, DOE has only partially responded to the Committee's request. I expect a complete response to that request (and all other outstanding requests) as soon as possible. The purpose of this letter is to seek information about a loan guarantee awarded to Nevada Geothermal Power Company (Nevada Geothermal), which enabled Nevada Geothermal to refinance the Blue Mountain Geothermal Project (Blue Mountain) through John Hancock Financial Services (John Hancock). DOE's awarding of this loan guarantee raises questions about why DOE was investing significant taxpayer resources in an entity with well-established financial difficulties.

I. Background

On June 15, 2010, DOE announced that it would issue conditionally a $98.5 million partial loan guarantee for the purpose of financing Blue Mountain.[1] In the press release for the project, both you and Senate Majority Leader Harry Reid touted Blue Mountain's potential, with Senator Reid saying that "I am glad to see economic recovery funding being used to put Nevadans to work on a project that will help us achieve energy independence. Northern Nevada is the Saudi Arabia of geothermal energy and I thank Secretary Chu for recognizing the Silver State's enormous job-creating potential to produce plenty of clean and affordable energy."[2]

The loan guarantee issued to John Hancock was the first of DOE's "Financial Institution Partnership Program" (FIPP) loan guarantees, under Section 1705, where private investment groups worked with DOE to provide financing to energy projects.[3] Less than three months after

[1] "Energy Department Offers Conditional Commitment to Support Nevada Geothermal Development with Recovery Act Funds," Department of Energy, June 15, 2010. *Available at:* https://lpo.energy.gov/?p=805.
[2] *Id.*
[3] "Department of Energy Issues Loan Guarantee Supported by Recovery Act for Nevada Geothermal Project," Department of Energy, September 7, 2010. *Available at:* https://lpo.energy.gov/?p=787.

the conditional approval, DOE finalized this loan guarantee, enabling Nevada Geothermal to refinance a loan from TCW through John Hancock.[4]

The poor financial condition of Nevada Geothermal, the stated purpose of the funds, the substantial negative cash flow generated by Blue Mountain, the inadequate contractual protections for taxpayers, and the speed with which DOE finalized the deal, all raise significant questions about whether DOE considered the best interests of American taxpayers when it issued this loan guarantee.

II. Misuse of the DOE Loan Guarantee as a Tool to Bailout Creditors

Nevada Geothermal has a well documented history of major financial problems. In fact, at the time the DOE conditionally approved the loan guarantee, Nevada Geothermal was in violation of contract terms and debt covenants relating to financing from its primary lender, TCW. Nevada Geothermal would have formally defaulted on the TCW loan had DOE not swooped in to save the failing company with taxpayer money.

On October 2, 2011, *The New York Times* ran a story about the financial difficulties of Nevada Geothermal relying partially on a September 2011 Deloitte & Touche audit of the company which stated "significant doubt about the company's ability to continue as a going concern."[5] In response, DOE dismissed the financial problems of Nevada Geothermal and instead pointed to the alleged financial health of Blue Mountain to argue that the loan guarantee would be repaid.[6] Given that Nevada Geothermal's principal operation is Blue Mountain's Faulkner I Power Plant, such a distinction has questionable merit.[7]

As mentioned above, at the time DOE approved the conditional loan guarantee, Nevada Geothermal already violated terms to the loan agreement with its primary creditor, TCW. Based on financial disclosures, Nevada Geothermal avoided default as a result of TCW's granting a waiver and extension in anticipation of the John Hancock financing backed by the DOE loan guarantee. The resulting DOE bailout of Nevada Geothermal was planned out in advance, as made clear by Nevada Geothermal's March 31, 2010, Financial Statements:

> The Company has engaged John Hancock to provide long term debt up to $95 million which will be used to pay down the TCW loan and to fund additional drilling. However, this potential John Hancock loan is subject to due diligence and final credit committee approval by John Hancock. There is no certainty that the anticipated debt financing through John Hancock will be obtained. **Failure to obtain the John Hancock loan, or a similar loan from another lender, and/or unsuccessful drilling may result in a default under the terms of the TCW loan agreement. In the event of a default TCW may**

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[4] *Id.*

[5] Eric Lipton and Clifford Krauss, "A U.S.-Backed Geothermal Plant in Nevada Struggles," *The New York Times,* October 2, 2011. *Available at:* http://www.nytimes.com/2011/10/03/business/a-us-backed-geothermal-plant-in-nevada-struggles.html?pagewanted=all.

[6] Peter Urban, "DOE remains confident in Nevada geothermal plant," *Las Vegas Review-Journal,* October 4, 2011. *Available at:* http://www.lvrj.com/news/doe-remains-confident-in-nevada-geothermal-plant-131035678.html.

[7] *See* Nevada Geothermal Power Inc., Consolidated Financial Statements, June 30, 2010 at p. 6. *Available at:* http://www.nevadageothermal.com/i/pdf/Annual_Financials_2010.pdf.

> **elect to call the loan and execute upon the security, which would result in a material adverse effect on the Company**, including delay or indefinite postponement of operations and further exploration and development of our projects with the possible loss of such assets.[8]

The story continued to unfold in Nevada Geothermal's June 30, 2010, Financial Statements, where the plan to bailout their lender, TCW, was successfully executed by DOE:

> **As at June 30, 2010, the Company was not in compliance with the terms of the TCW loan**. The non-compliance results from the Company having exceeded the maximum loan amount of $180 million, and having exceeded the drilling expenditure budget by more than $3.8 million, as well as some instances of technical non-compliance with other loan terms .... **As a result, for balance sheet purposes, the TCW long-term loan has been classified as a short-term liability.** On November 20, 2009, TCW agreed in principle to waive the non-compliance until March 31, 2010 in return for 4.5 million NGP Inc. warrants exercisable at CAD 1.50 (Note 21(f)). Subsequently, **TCW agreed to extend the agreement in principle, without change, until the John Hancock loan [guaranteed by DOE[9]] closed. The John Hancock loan was closed on September 3, 2010, and a repayment of $81,076,669 was made on the TCW loan.**[10]

Confirming this troubling misdirection of taxpayer funds, the Summary of Proposed Terms and Conditions for the Conditional Loan Guarantee, signed by you, provides that the "proceeds of the Guaranteed Obligation will be used for following: (i) Partial repayment of intercompany loan from HoldCo [Blue Mountain], in the amount of approximately 80 million;..."[11] This intercompany repayment would ultimately flow to TCW as described above. The remaining amount of the loan went to the posting of cash collateral to NV Energy, Inc.,

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[8] Emphasis added. *See:* Nevada Geothermal Power, Inc., Consolidated Financial Statements, March 31, 2010 at p. 11. *Available at:* http://www.nevadageothermal.com/i/pdf/Q3_March_31_2010.pdf.

[9] Explanation of John Hancock loan guaranteed by DOE: "On October 13, 2009 the Company [Nevada Geothermal] announced that it appointed John Hancock Life Insurance Company ("John Hancock") to be the exclusive debt provider for up to $95 Million 20-year term loan. Further to the above, on October 7, 2009, the DOE announced its Financial Institutions Partnership Program ("FIPP"), a program supported by the 2009 ARRA. The FIPP program is designed to facilitate long term financing for renewable development projects using commercial technology and applies to up to 80 percent of the loan amount. John Hancock, as Lender for the Blue Mountain 'Faulkner 1' geothermal project, made an application to the DOE for a Loan Guarantee under the FIPP. The loan guarantee was conditionally approved on June 15, 2010, and the loan closed on September 3, 2010....At the closing of the John Hancock/DOE loan after paying associated fees and funding reserve accounts for drilling, interest and plant maintenance the Company paid the TCW loan down to approximately $86.9 million. The Company plans to apply for a second ARRA grant based upon work, to increase power production, subsequent to the first grant that will be partially funded by the John Hancock/DOE loan." *See:* Nevada Geothermal Power, Inc., Consolidated Financial Statements, June 30, 2010, at p. 55. *Available at:* http://www.nevadageothermal.com/i/pdf/Annual_Financials_2010.pdf.

[10] Emphasis added. *See:* Nevada Geothermal Power, Inc., Consolidated Financial Statements, June 30, 2010. *Available at:* http://www.nevadageothermal.com/i/pdf/Annual_Financials_2010.pdf.

[11] "United States Department of Energy Loan Guarantee LGPO Loan Number: F1001," Department of Energy, June 15, 2010. Terms and Conditions at p. 4. On file with Committee.

funding a debt service reserve account, funding a maintenance reserve account, funding a drilling expenditure account (which included already incurred costs), and other fees. As these numbers total to around $98 million, it appears that little, if any, of the loan went to fund new drilling or construction.[12]

These financial statement disclosures make clear that, as its first action utilizing broad section1705 FIPP authority to fund clean energy innovation, DOE instead chose to bailout the creditors of a failing company.

III. Apparent Violations of Law and Regulation

a. This Bailout Appears to Violate the American Recovery and Reinvestment Act of 2009

Not only does it appear that DOE purposely directed taxpayer funds at a failing enterprise, DOE's action robbed taxpayers of genuine investment toward renewable energy. This loan guarantee bailed out lenders (TCW) and provided no assurance that TCW would apply the money that it recovered toward the economy or jobs as required by the American Recovery and Reinvestment Act of 2009.

Title XVI, Section 1602 of the American Recovery and Reinvestment Act of 2009, requires that "[R]ecipients shall also use grant funds in a manner that maximizes job creation and economic benefit." Paying off a creditor clearly does not maximize job creation and economic benefits. In fact, it provides an opportunity for private industry to exit an investment, deleverage and transfer the extraordinarily high default risk to taxpayers.

For this reason, it appears DOE, in its very first FIPP section1705-based loan guarantee, violated the spirit and, quite possibly, the letter of the law.

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[12] Page 4 of the Summary of Terms and Conditions of the Conditional Loan Guarantee states: "USE OF PROCEEDS: The proceeds of the Guaranteed Obligation will be used for following:

(i) Partial repayment of intercompany loan from HoldCo in the amount of approximately $80 million;
(ii) Funding security requirements under the power purchase agreement signed on August 18, 2006 with NV Energy, f/k/a Nevada Power Company (***"PPA"***), either by posting cash collateral, cash collateralizing one or more letters of credit, or otherwise in accordance with the PPA in amount of $3.8 million (the ***"PPA Credit Support"***);
(iii) Funding of the Debt Service Reserve Account in the amount of approximately $5.5 million, Major Maintenance Reserve Account in the amount of $125,000, and Drilling Expenditure Account in the amount of approximately $8,400,000 (less amounts applied to reimburse the Borrower for Project Costs incurred prior to the Closing Date in connection with the Additional Wells (as defined below));
(iv) The payment of certain fees and transaction expenses associated with the Guaranteed Obligation which are permitted to be paid with such proceeds under the Solicitation as set forth in Schedule 1; and
(v) Initial funding of the Operating Account with all remaining proceeds of the Guaranteed Obligation."

b. The Terms of the Loan Guarantee May Fail to Comply Fully with the DOE's Eligibility Requirements and FIPP Objectives[13] under the DOE's Loan Guarantee Solicitation Announcement

In the DOE Loan Guarantee Solicitation Announcement, Solicitation No. DE-FOA-0000166, DOE provides certain eligibility requirements for DOE loan guarantees under FIPP. Specifically DOE states:

> In addition to Section 609.7(a) of Attachment G, an application will be denied if ... (ii) the Guaranteed Obligation is not expected to have (whether structured on a project finance or a corporate finance basis) a credit rating from a nationally recognized rating agency of at least a credit rating equivalent of 'BB' from Standard & Poor's or Fitch or 'Ba2' from Moody's as evaluated, in each case, without the benefit of any DOE loan guarantee or any other credit support which would not be available to DOE.

Considering the poor financial condition of the parent company and the project, it is hard to believe that either would have received a BB, or Ba2 credit rating or better from S&P or Moody's, respectively.

c. Given the "Pari Passu" Deal Terms and the Required Consent of all Lenders to Reorder Priority, the Terms of the DOE Loan Guarantee Appear to Violate the Requirement of Superiority under Title XVII, Section 1702(g)(2)(B)

The Summary of Terms and Conditions in the Conditional Loan Guarantee signed by you that relate to the Blue Mountain loan guarantee, at page 8, provides for a pari passu and pro-rata right of payment for senior creditors.[14] This means that the unguaranteed senior lenders stand equal to DOE in terms of recovering a share of their loss in the event of default. The Summary of Terms also requires the consent of all Lenders in the event that DOE seeks to "change to the priority of payment in the payment waterfall."[15] The combination of the pari passu credit terms ranking the unguaranteed lenders as equal to DOE, with DOE's inability to reorder priority in case of a default, disables the potential of DOE to rely on its superiority as required under Section 1702(g)(2)(B).

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[13] U.S. Department of Energy, Loan Guarantee Program Office, FEDERAL LOAN GUARANTEES FOR COMMERCIAL TECHNOLOGY RENEWABLE ENERGY GENERATION PROJECTS UNDER THE FINANCIAL INSTITUTION PARTNERSHIP PROGRAM, Solicitation Number: DE-FOA-0000166, OMB Control Number: 1910-5134, Issue Date: October 7, 2009, provides that:

> The extent to which the proposed project meets the objectives for this FIPP Solicitation in accordance with the following parameters:
>
> (a) the Guaranteed Obligation is fundamentally structured as a fully private, market-based project or corporate finance loan and is expected to achieve a credit rating from a nationally recognized rating agency of at least a credit rating equivalent of 'BB' from Standard & Poor's or Fitch or 'Ba2' from Moody's, as evaluated without the benefit of any DOE loan guarantee or any other credit support which would not be available to DOE;

[14] Conditional Loan Guarantee, Summary of Terms and Conditions at p. 8.

[15] Conditional Loan Guarantee, Summary of Terms and Conditions at p. 25-26.

As I described in my letter to you dated December 7, 2011, Section 1702(g)(2)(B), *Superiority of Rights* ("*Superiority*") provides for the superiority of DOE's claims relative to all other claimants. Specifically, it states "[t]he rights of the Secretary, with respect to any property acquired pursuant to a guarantee[16] or related agreements, shall be superior to the rights of any other person with respect to the property."

This law requires that DOE maintain superiority with regard to the assets acquired pursuant to the original guarantee and related agreements. *Pari passu* credit terms, which place DOE on equal footing with the unguaranteed lenders, appear to violate the requirement of superiority.

DOE argues in its regulation that 1702(g)'s provisions are "designed to govern post-default rights of the Secretary,"[17] Whether or not this is the case, the Secretary's rights and the taxpayer protections attach to the property as acquired pursuant to the original guarantee. Given that "guarantee" is defined in the legislation, DOE cannot simply redefine or ignore "guarantee," to reduce taxpayer protections by regulatory fiat.[18]

To enable the Committee to understand better the multiple legal and regulatory concerns associated with this loan guarantee, I request that you provide responses to the following requests for information, producing documents as requested and as necessary to sufficiently support your answers as soon as possible, but no later than 5 p.m. on January 25, 2012. Please directly respond to each request as numbered herein. Please provide any documents requested, **in electronic format**, for the time period from January 1, 2009, to the present, unless otherwise specified. To the extent you are unable to provide documents in electronic format, please fully explain the barriers to electronic production and perform a cost-benefit analysis that considers the cost of paper, additional labor cost, and environmental consequences of your voluminous paper productions:

1. The Superiority provision at 1702(g)(2)(B) provides "the rights of the Secretary, with respect to any property acquired pursuant to a guarantee or related agreements, shall be superior to the rights of any other person with respect to the property."[19]

   Interpret the meaning of "property acquired pursuant to a guarantee or related agreements" as it is used in 1702(g)(2)(B). In your interpretation, be sure to rely on defined terms (see note 16).

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[16] For the purposes of Section 1702, "guarantee" is defined in 1701(4) (A) and (B) as "loan guarantee" and "loan guarantee commitment" as those terms are defined within 2 U.S.C 661(a). 2 U.S.C. 661(a) provides, in part: (3) The term "loan guarantee" means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions. (4) The term "loan guarantee commitment" means a binding agreement by a Federal agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

[17] Federal Register, Vol. 74, No. 232, December 4, 2009: 63545. *Available at:* https://lpo.energy.gov/wp-content/uploads/2010/09/FR-1703-Dec4.pdf.

[18] See *supra* note 16.

[19] *Id.*

2. The June 15, 2010, Conditional Commitment signed by you and agreed to by John Hancock and Nevada Geothermal provided and referenced Annex A; The Summary of Terms and Conditions, which at p. 24 specifically provides amendments and waivers to the DOE's rights. Specifically, part (iii) of Waivers and Amendments, at p. 25-26, requires the consent of all lenders for "any change to the priority of payment in the payment waterfall." If the DOE cannot change priority of payment without consent of all lenders, then it cannot fully exercise its rights of superiority.

   This language seeks to disable the DOE's ability to rely on 1702(g)(2)(B) to exercise superiority over all assets acquired pursuant to the original guarantee. The need to include terms that disable superiority reflects recognition of the DOE's rights to superiority under 1702(g)(2)(B).

   Explain which party or parties drafted this language or demanded its inclusion. Provide all related communications and related legal analysis.

3. Explain why you accepted contract terms with regard to the John Hancock loan guarantee that sought to disable the DOE's ability to exercise superiority in the case of subrogation.

4. Explain how a bailout of TCW, via the loan guarantee to John Hancock, would maximize job creation and economic benefit.

5. Provide all legal analysis and communications that you relied on in determining a bailout of TCW was consistent with the American Recovery and Reinvestment Act of 2009.

6. As explained in Part II above, at the time the DOE provided the conditional loan guarantee, Nevada Geothermal was in non-compliance with the TCW loan, and, as a result, the TCW loan was reclassified as short term. Explain how a company in non-compliance with the terms of its TCW loan, was eligible for a DOE loan guarantee.

7. Provide all credit ratings and related analysis provided to DOE or relied upon by DOE for the purpose of complying with the DOE requirement that the Guaranteed Obligation is "expected to achieve a credit rating from a nationally recognized rating agency of at least a credit rating equivalent of 'BB' from Standard & Poor's or Fitch or 'Ba2' from Moody's, as evaluated without the benefit of any DOE loan guarantee or any other credit support which would not be available to DOE...." (see note 13).

8. Provide all internal DOE communications referring or relating to Nevada Geothermal.

9. Provide all internal DOE communications referring or relating to Blue Mountain.

10. Provide all communications between DOE personnel and Nevada Geothermal directors, officers, and employees.

11. Provide all communications between DOE personnel and Blue Mountain directors, officers, and employees.

12. Provide all communications between DOE personnel and TCW directors, officers, and employees.

13. Provide all communications between DOE personnel and John Hancock directors, officers, and employees.

14. Considering that very little, if any, of the guaranteed loan went to new drilling or construction, a complete written explanation of how, according to DOE's website,[20] this loan guarantee created 200 construction jobs.

15. Considering that very little, if any, of the guaranteed loan went to new drilling or construction, a complete written explanation of how, according to DOE's website,[21] this loan guarantee created or saved 14 permanent jobs.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers to receive all documents in electronic format.

If you have any questions about this request, please contact Peter Haller or Mike Whatley of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,

Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

[20] "Nevada Geothermal Power Company, Inc.," U.S. Department of Energy, Loan Programs Office. *Available at:* https://lpo.energy.gov/?projects=nevada-geothermal-power-company-inc.
[21] *Id.*

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

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Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

   (b) Document numbers in the load file should match document Bates numbers and TIF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.

8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157of the Rayburn House Office Building and the Minority Staff in Room 2471of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.