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OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

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(Senate)

## STATEMENT OF ADMINISTRATION POLICY

### H.R. 6 - Energy Policy Act of 2005

(Sen. Domenici (R) NM)

The Administration strongly supports Senate passage of H.R. 6 and commends the Senate for developing balanced national energy legislation that is largely consistent with the Administration's National Energy Policy. The bill would significantly benefit consumers by increasing energy supplies while protecting the environment and fostering greater competition in the marketplace. It also would improve the Nation's energy security and reduce our dependence on foreign sources of oil by increasing the use and diversity of renewable energy sources and by reducing energy consumption through greater conservation and energy efficiency.

The Administration commends the Senate for including an electricity title that would achieve many of the Administration's policy objectives to improve reliability, protect consumers, increase supply, and promote efficient markets. In particular, the Administration strongly supports the bill's authorization of mandatory, enforceable electricity reliability standards, the repeal of the Public Utility Holding Company Act, the reform of the Public Utility Regulatory Policies Act, and the Federal "last resort" siting authority for transmission facilities determined to be in the national interest. The Administration also supports further efforts to ensure open access to the interstate transmission grid for all generators, enhance consumer protections, and allow certain limited Federal Energy Regulatory Commission (FERC) regulation of Federal utilities and proper financial transparency of their borrowing activities as proposed in the President's Budget. The Administration supports provisions that strengthen FERC's authority to prevent market manipulation and market power by reinforcing the Commission's merger review authority and providing for tough civil penalties.

The Administration would oppose amendments to set a national renewable portfolio standard (RPS) on power generation and believes these standards are best left to the States. A national RPS could raise consumer costs, especially in areas where these resources are less abundant and harder to cultivate or distribute. The Administration urges the Senate to support the President's proposal to extend and expand the renewable energy production tax credit as a more efficient means to expand renewable energy.

The Administration also supports increasing the use of clean, domestically-produced renewable fuels, such as ethanol and biodiesel, and looks forward to working with the Senate to ensure that a flexible, cost-effective renewable-fuels standard is included in any final energy legislation. The Administration strongly supports the inclusion of complementary provisions, particularly the repeal of the Clean Air Act's oxygenate requirement for reformulated gasoline, which would enable greater flexibility in the Nation's fuel supply. The Administration encourages amendments to add these provisions, which would be consistent with the language contained in the H.R. 6 Conference Report in the 108th Congress.

The President has repeatedly emphasized the increasing importance of using cleaner, more efficient energy technologies to help meet the Nation's energy needs, and the Administration is pleased that the Senate bill authorizes funding for several Presidential initiatives, including the Hydrogen Fuel Initiative, Coal Research Initiative, and Nuclear Power 2010 program. However, the Administration is concerned about the potential cost of the bill's new Department of Energy (DOE) programs to provide 100-percent Federally guaranteed loans for a wide range of commercial or near-commercial technologies, and looks forward to working with the Senate to refine this provision further to focus only on long-term, high-risk investments for which Federal assistance is appropriate.

The Administration supports the bill's energy efficiency provisions, which will conserve energy and allow consumers to use it more efficiently. We also commend the Senate for extending authority for Energy Savings Performance Contracts. However, the Administration strongly opposes the bill's requirement that the President implement measures to reduce U.S. petroleum demand by one-million barrels per day. The Administration believes that it would effectively require a rapid, near-term increase in corporate average fuel economy (CAFE) standards, which would likely have undesirable safety impacts and may well be impossible to achieve under existing legal authorities. The Administration also strongly opposes any amendments to legislate an arbitrary increase in CAFE standards that could reduce vehicle safety and eliminate auto sector jobs.

The Administration strongly supports balancing energy conservation and efficiency with increasing domestic production of traditional and non-traditional energy resources. In particular, the Administration urges the Senate to adopt a provision, like the one included in the House-passed version of H.R. 6, to open a small portion of the Arctic National Wildlife Refuge (ANWR) to environmentally responsible oil-and-gas exploration and development. Opening ANWR is key not only to a truly comprehensive energy policy by increasing domestic production, but also to creating tens of thousands of new jobs for American workers.

The Administration supports increasing the production of traditional energy resources on the Outer Continental Shelf (OCS), Federal onshore lands, and Indian lands, consistent with the National Energy Policy. The President believes that additional taxpayer subsidies for oil-and-gas exploration are unwarranted in today's price environment, and urges the Senate to eliminate the Federal oil-and-gas subsidies and other exploration incentives contained in the bill. Similarly, the Administration does not believe direct or guaranteed loan assistance is appropriate or necessary to permit Tribes to develop their energy resources, particularly given current high prices for oil and natural gas. Furthermore, the Administration is concerned that language in section 503 could create new, expensive breach-of-trust claims against the United States and therefore urges the Senate to either delete this language (proposed new section 2604(e)(6)(A)(ii) of the Energy Policy Act of 1992) or revise the overall language to make it clear that nothing in the Indian energy section of the bill is intended to expand existing U.S. liability with respect to Indian energy development.

To address our growing need for natural gas supplies, the Administration supports section 381, which, as called for by the President, would clarify FERC's exclusive jurisdiction over the siting of terminals, on-shore or within State waters, for receipt of liquefied natural gas. We oppose the significant new funding authorizations and diversion of OCS revenues contained

in the coastal-State impact assistance provisions in section 371. The Administration welcomes the opportunity to discuss further with the Senate means to provide greater access to oil and natural gas resources on the OCS in cooperation with States who support such development.

The Administration supports the greater use of clean, domestic nuclear energy as a part of our Nation's energy supply. Particularly, the Administration encourages the Senate to adopt the President's recently announced proposals to provide a limited amount of Federal risk insurance and to reform the regulatory process in order to provide greater assurance that properly completed nuclear power plants can begin operation, while ensuring public safety and appropriate input. The Administration believes that the President's two proposals are sufficient to support the construction of the Nation's first new plants in a generation, and urges the Senate to adopt them. In addition, the Administration strongly supports the Senate's provisions reauthorizing Price-Anderson Act nuclear liability insurance. The Administration believes it is premature for the Senate bill to include a \$1.25-billion authorization of appropriations to construct a Federal nuclear reactor.

The Administration is not convinced of the need for additional legislation with respect to global climate change, and will oppose any climate change amendments that are inconsistent with the President's climate change strategy. In February 2002, the President committed the United States to an ambitious national goal to reduce the greenhouse gas intensity of the American economy by 18 percent over the next ten years. The President directed a broad range of domestic and international actions, including new initiatives for scientific research to develop advanced energy and sequestration technologies, and voluntary reporting of greenhouse gas emissions. The President's climate change strategy provides for a continuing cabinet-level policy process to oversee and direct this comprehensive program. Other provisions in the bill that address energy policy goals -- such as expanded use of renewable and nuclear energy, improved energy efficiency, and accelerated development of a hydrogen-based transportation infrastructure -- will reduce the projected growth in greenhouse gas emissions, and the Administration urges the Senate to allow these programs and the President's strategy to go forward unimpeded.

The Administration has serious concerns with section 623, which would amend section 129 of the Atomic Energy Act of 1954, because it would unnecessarily restrict the President's ability to cooperate with nations like Libya in cases where such cooperation would further important U.S. non-proliferation objectives or promote the common defense and security of the United States. For example, section 623 could, among other things, restrict the President's ability to engage in activities needed to secure proliferation-sensitive materials in such a country.

The Administration is concerned about the significant direct and potential cost of the Senate bill. The bill includes appropriation authorization levels that in many cases significantly exceed the President's Budget. These and new program authorizations set unrealistic targets and expectations for future program-funding decisions. Moreover, as proposed in the President's Budget, the Administration urges the Senate to take this opportunity to sunset energy programs that have outlived their purpose, provide limited public benefit, or are within industry's ability and interest to undertake without Federal help.

In drafting its tax incentives title, the Administration also urges the Senate to be consistent with the President's FY 2006 Budget, which proposed energy tax incentives totaling

\$6.7 billion over ten years dedicated solely to alternative and renewable fuels, conservation, energy efficiency, and emissions-free energy.

The Administration recommends modifications to address several constitutional concerns. Specifically, sections 633(c)(2) and 962(c)(3), which purport to direct the conduct by the Executive Branch of foreign relations, should be amended to be advisory, consistent with the Constitution's commitment to the President of authority to conduct the Nation's foreign relations. Section 953, containing new section 6 of the Methane Hydrate Research and Development Act of 2000, should be amended to refer to reports directed by law rather than reports directed by a congressional committee, as the Constitution does not grant a committee of Congress the power to issue direction to the Executive Branch. Also, many provisions, including sections 251(b)(5), 322(h)(3), 801 (containing section 401(b)(2) of the Matsunaga Act), 946(a)(2)(C), 962(b), 1282, 1308(c)(2), 1316(c), 1321(a)(2)(C), and 1322(b), purport to require Executive Branch officials to submit to Congress recommendations for legislation. Consistent with the President's constitutional authority to supervise the unitary Executive Branch and make recommendations to Congress, these provisions should be amended to call for submission only of such recommendations "as the President shall judge necessary and expedient."

In addition, the Administration opposes the processes included in sections 383 and 1221, which would allow an applicant or State to directly file an appeal with the President if permitting decisions for natural gas pipelines or interstate electric transmission facilities are not issued within certain time limits. Such provisions would conflict with existing Federal administrative law, including environmental laws, which clearly distinguish the President from executive agencies. The Administration would support other approaches that would accomplish the same result, and encourages the Senate to adopt amendments to this effect.

Finally, the Administration is continuing to review the bill and may identify additional concerns including constitutional concerns, which we will want to work on with the Congress.

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