



THE COMMITTEE ON ENERGY AND COMMERCE

INTERNAL MEMORANDUM

TO: Fred Upton, Chairman

FROM: Committee Majority Staff

RE: Update on White House's Failure to Comply with the Committee's November 3, 2011, Subpoenas

You have asked Committee staff to set forth in a memorandum the chronology of the Committee's negotiations with the Office of the White House Counsel to obtain documents relating to the loan guarantee issued to Solyndra, Inc. (Solyndra) by the Department of Energy (DOE) and the current status of those negotiations.

I. White House Involvement in the Solyndra Loan Guarantee

One important goal of the Committee's investigation is understanding the nature and extent of the involvement of the White House and the various federal agencies in the review, approval, and monitoring of the Solyndra loan guarantee and its subsequent restructuring. The Committee has proceeded deliberately on this point. The Committee first issued a document request to DOE on February 17, 2011, in order to understand DOE's role with respect to the review of the Solyndra loan guarantee application and the restructuring.

The Committee followed this letter with a document request to the Office of Management and Budget (OMB) on March 14, 2011, as OMB plays a critical role in reviewing the credit subsidy costs associated with the DOE loan guarantees. Ultimately, the Committee was forced to issue a subpoena to OMB in July 2011 after that agency refused to produce any communications relating to Solyndra. OMB has also refused to grant the Committee any access to certain OMB staff who worked closely on the Solyndra loan guarantee.

The Committee has also sent document requests to other parties who played a role in the Solyndra loan guarantee, including certain Solyndra investors such as Argonaut Ventures I (Argonaut), Madrone Capital Partners (Madrone); the Department of the Treasury; the General Services Administration; the Department of Defense; and DOE's independent consultants on the Solyndra loan guarantee, R.W. Beck. During the course of the Solyndra investigation, Committee staff has convened numerous briefings and conducted interviews of several witnesses.

Information gathered during the course of the Committee's investigation demonstrates that the White House has been involved in the Solyndra loan guarantee throughout its lifetime, even though the White House does not have a statutory role under the Energy Policy Act in the review, approval, or monitoring of DOE loan guarantees. The White House's involvement in matters relating to the Solyndra loan guarantee is a critical question in this investigation, where the various federal agencies charged with reviewing the loan guarantee repeatedly raised questions and concerns with DOE and with the White House regarding Solyndra and the loan guarantee review process. Moreover, our investigation has revealed that Treasury was deliberately left out of the decision-making process, which is a violation of the Energy Policy Act and its regulations. Finally, our investigation has shown that DOE ignored Treasury's recommendation to consult the Department of Justice with regard to its decision to subordinate its interest in the loan guarantee to two of Solyndra's investors.

The documents and information provided to the Committee raise several key questions about the circumstances surrounding the White House's involvement in the Solyndra loan guarantee. These questions have not yet been answered or addressed by the documents provided by the White House or by the other federal agencies to which the Committee has directed document requests. We describe some of the most important open questions below:

1. Shortly after the loan guarantee closed in September 2009, Solyndra began experiencing severe financial problems which were made public in an auditor's letter included as part of the company's Amended S- 1 statement filed on March 16, 2010. In anticipation of President Obama's scheduled visit to Solyndra in May 2010, senior White House advisors, including Valerie Jarrett and Ron Klain, discussed the financial condition of the company and the wisdom of going forward with the President's visit.

This visit came at a critical juncture for Solyndra, as it was attempting to raise \$175 million in capital from existing investors due to the cancellation of its initial public offering, which had been planned for June 2010. In addition, during this time, OMB and Treasury staffs were discussing their concerns about the company's financial position and DOE's ability to monitor the company. What documents and information does the White House have in its possession regarding this issue? Why did the White House decide to press forward with this event, and what information was the White House provided about the company's financial position? What impact did the fact that the company's largest investor was also a contributor to the President play in the White House decision to go forward with the visit to the Solyndra plant?

2. By October 2010, Solyndra informed DOE that if its loan guarantee was not restructured, the company would run out of cash by the end of the year. On October 26, 2010, the Chief of Staff to DOE Secretary Steven Chu informed Carol Browner, Director of the White House Office of Energy and Climate Change Policy, that Solyndra was planning to announce the layoff of approximately 200 employees. Staff in the White House Office of Energy and Climate Change Policy spoke to Secretary Chu's Chief of Staff, and by the following morning, a decision had been made to postpone the announcement. Emails produced to the Committee by a Solyndra investor state that DOE directed Solyndra to

postpone the layoff announcement until after the 2010 midterm elections. What documents and information does the White House have in its possession regarding this issue? What was the extent of White House involvement in the discussion regarding this issue?

3. Documents produced to the Committee show that the White House was involved in DOE's negotiations and decision to restructure the loan guarantee agreement. An email from a White House staffer in the Office of Energy and Climate Change Policy dated August 12, 2011, recounted the events surrounding the restructuring and stated that "[a]t the time, [White House] (our shop, OMB, NEC) reluctantly went with DOE's course of action to embrace the restructuring." What other documents and information does the White House have in its possession regarding the restructuring and subordination of the loan guarantee? What was the White House's role? When was the White House involved? What information was it provided, and what factors did it consider when approving DOE's course of action, even though Treasury and OMB raised serious concerns about the restructuring?
4. The largest investor in Solyndra was also a major financial contributor to the President who visited the White House numerous times during the time periods in which Solyndra's loan application was under review and being monitored. When first questioned about this relationship by the press, both the investor/contributor and the White House claimed that they had never discussed Solyndra. When emails subsequently came to light which demonstrated that Solyndra had been discussed at a meeting between the investor/contributor and staff for the Vice President, the investor/contributor and the White House altered their response. In the altered response, the White House claimed that while Solyndra had in fact been discussed with the investor/contributor in the White House, those discussions had no effect on the Administration's handling of the Solyndra loan guarantee. What other documents and information is in the possession of the White House regarding this investor/contributor? Was this relationship with Solyndra's investor a factor in the White House decisions to go forward with appearances and trips to Solyndra's facilities by Secretary Chu, Vice President Biden and President Obama and to support the restructuring and subordination of the Solyndra loan guarantee?

II. The Committee's Document Requests to the White House

On September 1, 2011, the Committee sent its first document request to the White House, seeking certain communications between Solyndra or its investors and the White House. The Committee's request was focused on those communications in order to examine a particular question raised by the Committee's investigation: whether the fact that certain Solyndra investors were also donors to the President had played any role in the Solyndra loan guarantee. At the request of the White House Counsel's office, the Committee provided the White House with a list of investment firms which had invested in Solyndra and officials at those firms, in order to assist the White House in its search.

Only after the September 1, 2011, letter was sent to the White House did the Committee receive additional documents from DOE and OMB that showed close White House involvement and monitoring of the review of the Solyndra loan guarantee application by senior White House advisors such as Ron Klain, Valerie Jarrett, and Rahm Emanuel. For this reason, the Committee sent a second document request to the White House on October 5, 2011, requesting internal White House documents and communications relating to the Solyndra loan guarantee.

The Committee's October 5, 2011, letter specifically requested that the White House Counsel contact the Committee to discuss a schedule for production, so that staff for the Committee and the White House Counsel could begin a productive discussion about the Committee's requests. The White House Counsel, however, never contacted Committee staff. Instead, the White House Counsel sent a letter dated October 14, 2011, stating that the Committee's request "implicates longstanding and significant institutional Executive Branch confidentiality interests" and explained that document productions from DOE, OMB, and the Department of the Treasury should "satisfy the Committee's stated objective" in understanding the White House's role in the Solyndra loan guarantee. This letter did not indicate whether the White House had conducted any searches for information or documents in response to the Committee's request, and the White House did not claim executive privilege or cite any other justification for refusing to produce the information the Committee requested.

In an effort to engage in a discussion with the White House, the Committee sent a second letter to the White House Counsel on October 18, 2011, to reiterate its willingness to work on a schedule for production and again asked that the White House Counsel contact Committee staff to discuss the document request. No one from the White House contacted the Committee. Rather, the White House Counsel sent another letter on October 25, 2011, stating that the Administration "will continue to cooperate with legitimate Congressional requests for information," and noting that the "accommodation process" between the executive and legislative branches "requires that both branches work to accommodate each other's needs and interests." This letter provided no information about the quantity or type of documents in possession of the White House, and did not explain what specific steps should be taken as part of the "accommodation process."

In an attempt to move the investigation forward, Committee staff contacted the White House legislative affairs staff on October 27, 2011, to try to schedule a call with the White House Counsel's office to discuss the Committee's request. The call was never returned. Chairman Fred Upton then called White House Chief of Staff William Daley that same day to ask that the White House Counsel's office contact Committee staff to discuss the document requests. Once again, no one contacted Committee staff.

III. The Committee's Subpoenas

After trying — and failing — to engage the White House Counsel in a discussion about the Committee's document requests, on November 1, 2011, the Committee scheduled a business meeting for November 3, 2011, to consider authorizing the issuance of subpoenas to the

Executive Office of the President and the Office of the Vice President on the Solyndra matter. With this, a meeting finally took place on November 2, 2011, between the White House Counsel, members of the White House Counsel's office, Chairman Upton, Oversight Subcommittee Chairman Cliff Stearns, Ranking Member Henry Waxman, Oversight Subcommittee Ranking Member Diana DeGette, and Committee staff.

At that meeting, Chairman Upton noted that the Committee was sensitive to the President's concerns about the confidentiality of his personal communications. Chairman Upton explained that the Committee was willing to discuss reasonable accommodations if the White House would engage in a conversation with the Committee regarding the scope and nature of the documents in the Counsel's possession. In turn, the White House Counsel acknowledged that the Committee's investigation of the Solyndra loan guarantee was legitimate, but that the White House was concerned with the "breadth" of the Committee's request.

In order to engage in a discussion about how to target or prioritize the Committee's request, Committee staff asked the White House Counsel about the volume and type of responsive documents in her possession. The White House Counsel indicated that she would not engage in a discussion of that "granularity." Rather, the White House Counsel stated that Committee staff must first narrow the Committee's document requests in the absence of that information. Committee staff explained that it was impossible to properly narrow the Committee's requests without basic information about which White House officials were involved and the volume of Solyndra-related documents they possessed — information which was solely within the possession of the White House.

Committee staff had two more conversations with White House Counsel's office staff on November 2, 2011, relating to the Committee's requests. During those discussions, the staff of the White House Counsel refused to answer any questions regarding the type or quantity of documents in the White House's possession, or the scope of the White House's search for responsive documents. Instead, the White House Counsel's office staff proposed narrowing the Committee's October 5, 2011, request to four categories. Committee staff asked that the White House share its proposed language by 4:30 p.m. that afternoon, in time for a meeting of the Members on the Subcommittee on Oversight and Investigations, so that the Members could consider this language and determine whether to go forward with the business meeting scheduled for the following day. The White House's proposal for narrowing the Committee's document request arrived two hours after the meeting of Subcommittee Members. In the absence of such language, the Subcommittee Members decided to proceed with the business meeting on November 3, 2011.

At the business meeting, the Subcommittee on Oversight and Investigations voted to authorize the issuance of two subpoenas to White House Chief of Staff Bill Daley and Vice President Joseph Biden's Chief of Staff Bruce Reed, or the appropriate custodians of records, for documents relating to the Solyndra loan guarantee. Committee staff incorporated a significant amount of the White House's proposed language into the document requests contained in the subpoena. The subpoenas were served that evening. The subpoenas set a document production deadline of noon on November 10, 2011.

IV. The White House's Response to the Committee's Subpoenas

Following the issuance of the subpoenas, the Committee did not hear from the White House Counsel's office. On November 9, 2011, the Committee Chairman and Subcommittee Chairman Stearns sent a letter to the White House Counsel asking whether she had conducted a review of the White House's involvement in the Solyndra loan guarantee in order to determine the quantity and type of documents that existed and were responsive to the Committee's subpoenas. The Committee also indicated that the chairmen and the Committee staff remained willing to engage in further discussions regarding the Committee's requests.

On November 10, 2011, White House Counsel's office staff contacted Committee staff and stated that the White House Counsel would be sending a letter that day with some responsive materials. That letter, dated November 11, 2011, and 136 pages of documents revealed that the White House had not conducted a search for the documents as requested in the Committee's subpoenas. Instead, the White House Counsel unilaterally devised four different categories of documents that the White House would produce, using language that ensured that only a small amount of documents would fall into those categories. The White House Counsel did so without consulting Committee staff, even though Committee staff had stated prior to the business meeting that, should a subpoena be issued, the Committee staff remained willing to discuss production issues with the White House staff.

According to the White House Counsel's November 10 letter, the White House could not find any documents responsive to three of the four categories it had defined. The documents that the White House did produce contained notable gaps. For instance, the White House did not produce or otherwise make available any documents from the time period in which DOE was negotiating with Solyndra's investors to restructure the Solyndra loan guarantee, even though certain documents made available in an *in camera* review indicated that White House staff had monitored the situation and agreed to the restructuring. Nonetheless, the White House Counsel stated that this production would "satisfy any legitimate interest of the Committee."

The Committee Chairman and Subcommittee Chairman sent the White House Counsel a letter on December 1, 2011, expressing the Committee's concerns about the manner in which the White House had unilaterally narrowed the Committee's document requests as set forth in the November 3, 2011, subpoenas, and again asked that the White House Counsel contact Committee staff no later than December 2, 2011, to discuss the White House's response to the Committee's subpoenas. Once again, the White House failed to do so. Instead, at Chairman Upton's direction, Committee staff called the White House Counsel's office on December 5, 2011, to inquire as to the reasons for the White House's failure to respond. Committee staff was told that "the White House is a busy place" and that the White House would respond at some point in the future.

On December 6, 2011, the White House Counsel sent a letter to the Committee acknowledging for the first time that the White House possessed internal communications

relating to Solyndra that it had not produced. Without providing any information about these materials aside from the fact that some of them were press clippings, the White House Counsel maintained that these documents were "not tied to the Committee's legitimate oversight interests." The White House Counsel did not explain the White House's understanding of the Committee's "legitimate oversight interests," nor did the letter describe why the White House found Committee staff's repeated descriptions of the Committee's interests and the purpose of the Solyndra investigation to be inadequate. The letter did indicate, however, that the White House Counsel's office was "willing to move the discussion forward in a productive manner to the extent that any legitimate issues remain," and asked Committee staff to contact the White House Counsel. The Committee staff's efforts to do just that had largely been rebuffed or ignored by the White House in the two months since the Committee sent its October 5, 2011, document request. As legitimate issues remained, however, that had not been addressed by the White House's November 11, 2011, production of documents, the Chairman directed Committee staff to try again to engage in discussions with the White House.

V. The Committee's Submission of Prioritized Categories of Documents

On December 8, 2011, Committee staff and staff from the White House Counsel's office held a conference call to discuss a path forward. Committee staff indicated during that call, as we had indicated prior to the issuance of the subpoenas, that the Committee was willing to prioritize certain substantive categories for production to assist the White House in its search. In turn, to assist the Committee in identifying these categories, Committee staff asked for basic information regarding the documents in the possession of the White House relating to Solyndra and assurances about the search the White House had conducted for this information. As before, the White House Counsel refused to accommodate the Committee's request for this information.

On December 12, 2011, at the request of the White House, Committee staff met with staff from the White House Counsel's office at the Eisenhower Executive Office Building. Pursuant to the White House's request that the Committee identify substantive areas of concern, Committee staff provided a list of eleven prioritized document categories to the White House Counsel's office. Committee staff spent considerable time with White House staff explaining why it had identified these eleven categories, how they were relevant to the Committee's investigation, and the Committee's outstanding questions about the White House's involvement in the Solyndra loan guarantee. The Deputy White House Counsel acknowledged that the categories the Committee had identified were "substantive," although the White House Counsel staff continued to assert that even these narrowed categories were "overbroad," albeit without articulating why they believed that to be so. In addition, staff for the White House Counsel provided some information about which offices it had searched, but did not provide any information about the responsive documents that had been identified and were in the possession of the White House. At the conclusion of the meeting, staff from the White House Counsel's office requested additional time to review the Committee's prioritized list, and agreed to contact Committee staff no later than December 15, 2011, to let the Committee know whether it would conduct a search for documents relating to the eleven categories.

On December 15, 2011, staff from the White House Counsel's office indicated that they had not had sufficient time to discuss or review the Committee's prioritized list. Committee staff requested a phone call on December 16 to receive an update on the White House's progress, but was informed that the White House would not be in a position to discuss the Committee's prioritized document categories until December 19. During the call on December 19, the White House Counsel's office staff stated that they had "given some thought" to the Committee's categories, "but were not as far along" as they had hoped to be. Staff from the White House Counsel's office indicated that they would begin to conduct searches for four of the eleven document categories identified by the Committee, but they needed additional time to consider the Committee's prioritized categories relating to the conditional commitment to Solyndra, the closing of the loan guarantee, and its restructuring. White House Counsel's office staff stated that they would follow up with the Committee in one week regarding those requests.

Accordingly, on December 22, 2011, Committee staff contacted the White House to schedule a call for December 27 to discuss the White House response to the Committee's prioritized requests. White House Counsel's office staff informed Committee staff that no one from their office was available for a call to discuss the Committee's prioritized requests due to holiday vacation schedules. Committee staff contacted the White House Counsel's office on January 1, 2012, and stated that the White House's continued delay in responding to the Committee's narrowed document requests suggested that the White House was not making a good faith effort to comply with the subpoenas (Attachment 1).

On January 5, 2012, Committee staff again participated in a conference call to discuss the White House's response to the prioritized document categories that the Committee had provided three weeks before. During the course of the call, Committee staff informed the White House Counsel's office that staff was concerned that the White House was attempting to further improperly narrow, or redefine, the prioritized document categories the Committee had provided on December 12. Committee staff, therefore, requested that the White House Counsel describe in a cover letter accompanying the document production the kinds of searches the White House had conducted, and how they differed from the Committee's prioritized document categories. Staff from the White House Counsel's office agreed to do so, and stated that the White House would produce additional documents responsive to the Committee's prioritized document categories no later than January 13, 2012. White House Counsel's office staff further explained that this production would include only email communications, as the search for responsive paper documents was a "different process."

***VI. White House Production of Documents Responsive to the Committee's
Prioritized Categories of Documents***

On January 13, 2012, the White House produced an additional 66 pages of documents in response to the Committee's prioritized categories of documents. In the letter accompanying the production, the White House Counsel maintained that even the Committee's prioritized categories of documents were somehow "overbroad," and "unreasonably intrude[s] on

longstanding institutional interests of the White House," Although, once again, the White House Counsel did not explain why.

The White House's January 13 letter revealed that it had once again substantially redefined and unilaterally limited even the Committee's narrowed categories of document requests. Like the November 11, 2011, production, the documents in this production provided little information about the White House's review or involvement in the Solyndra loan guarantee, or other questions central to the Committee's investigation. Approximately half of the production was copies of the same email and attachment—a Daily Recovery Act Memo dated March 6, 2009—reproduced multiple times to show who had received the memo. The bulk of the remaining documents related to the decision to postpone the announcement of Solyndra job layoffs in October 2010 until after the midterm elections. While these documents provide some information about who was informed of the upcoming announcement, they do not indicate how the decision to postpone the announcement came about, or how the White House was involved in that issue. It seems clear that the White House possesses other documents regarding this important issue.

After reviewing the White House's January 13, 2012, letter, and the related documents, the Committee was concerned that the White House had once again sharply limited its searches in a way that would necessarily exclude responsive information about its involvement in events related to the Solyndra loan guarantee. For this reason, the Committee Chairman directed Committee staff to contact the White House Counsel to discuss the White House's search for responsive materials, especially with regard to documents relating to the restructuring of the Solyndra loan. With regard to those documents, the Committee had requested that the White House search for "[a]ll documents referring or relating to the restructuring and/or subordination of the Solyndra loan guarantee. In the White House's letter, the White House Counsel explained that the White House had limited this category to "[e]mails regarding the decision-making whether or not to restructure the Solyndra loan guarantee and/or subordinate the government's interest, dated prior to the signing of the restructured loan on February 23, 2011."

During the January 19 call, White House Counsel's office staff explained that while DOE had approved the restructuring, the "White House had voiced concerns about the advisability" of doing so. Yet, the White House has provided no documents to substantiate this point, or any other documents that show what information the White House had considered or had been provided about the restructuring. Indeed, the only White House document that Committee staff has seen regarding this point indicates the exact opposite—that the White House approved the restructuring and subordination (as related above, the White House has refused to produce this document). This is a significant matter in our investigation, as OMB and Treasury had expressed strong concerns about DOE's decision to restructure the loan guarantee. Any White House involvement in the face of disagreement among Executive Branch agencies about the wisdom of proceeding with the restructuring is critical to the Committee's understanding of the facts and circumstances surrounding the Solyndra loan guarantee, as well as the processes and management of the DOE loan guarantee program generally.

After further discussing the document request category relating to restructuring, and the other ways in which the White House had improperly limited the Committee's prioritized document categories, Committee staff again requested that the White House search for documents based on the document request categories the Committee provided to the White House Counsel in December 2011. Committee staff explained that if the White House had objections to doing so, the White House Counsel's office needed to explain with particularity why these requests were not appropriate beyond blanket assertions that they were "extremely overbroad." Committee staff asked the White House Counsel's office to provide an answer to the Committee's request no later than January 23, 2012.

During a January 23, 2012, conference call, staff from the White House Counsel's office informed Committee staff that the White House Counsel had agreed to conduct searches for materials responsive to the eleven prioritized document categories as defined by the Committee on December 12, 2011, adding that they would need one week to consider how to conduct these searches. Committee staff and staff from the White House Counsel's office agreed to talk again on January 30, 2012.

On January 25, 2012, Committee staff contacted staff from the White House Counsel's office to inform them of a meeting of the Republican Members on the Committee on February 1, 2012, to discuss the status of the White House's response to the Committee's subpoenas and document request. Committee staff stated that it was the preference of the Committee to receive materials responsive to the subpoenas ahead of this meeting. The White House Counsel's office staff acknowledged the Committee's request, but did not commit to doing so.

On January 30, 2012, Committee staff and staff from the White House Counsel's office participated in a conference call to discuss a schedule for production. The White House Counsel's office staff stated that in the intervening week, it had focused its efforts and searches on only the first of the eleven categories identified by Committee staff on December 12, 2011: the documents referring or relating to the conditional commitment to Solyndra. Staff from the White House Counsel's office stated that they would make a production of materials relating to this category no later than February 3, 2012; however, certain documents in this category presented "unique concerns." For example, the White House's search identified multiple ARRA reports that contained information about the conditional commitment for Solyndra. To accommodate the White House Counsel's office's concern that producing each of these reports would be too burdensome, Committee staff proposed that the White House provide only those pages that referenced Solyndra. In a February 1, 2012, email to Committee staff, staff from the White House Counsel's office agreed to the Committee's proposed accommodation, and stated that the White House would provide the report pages by the end of the week. Finally, the White House Counsel's office staff stated that, once the White House had produced documents relating to the Solyndra conditional commitment, it would then move on to conducting searches for the remaining ten categories. Committee staff related to the White House Counsel's office its concern, and the concern of the Committee Members, that the White House must produce responsive documents more quickly.

On February 3, 2012, the White House produced just over 300 pages of documents. In the production cover letter, the White House Counsel stated that the White House remained "willing" to search for documents responsive to the eleven, narrowed categories Committee staff presented on December 12, although the White House Counsel continued to assert that the Committee's requests are overly broad. Once again, the White House Counsel did not explain why, even after agreeing to search for these categories of documents, the White House considered the request to be overly broad. In addition, the White House Counsel noted that the White House had withheld some documents from production due to "long-standing Executive Branch institutional interests," although the White House Counsel did not claim executive privilege for these documents.

— Original Message —

From: Harrison, Todd

Sent: Sunday, January 01, 2012 06:26 PM

To: 'Edward_N_Siskel' [REDACTED]

Cc: Christian, Karen

Subject: Subpoena response

Ed:

In response to your last email, we will call you on January 5 at 11 am. However, we must warn you that this further delay clearly indicates to us that the White House Counsel's Office is not making a good faith effort to comply with the Committee's subpoena.

On Monday, December 12, at your request, we handed you a narrowed list of document requests for you to focus on and prioritize. The list represented an effort, on our part, to target our requests in order to assist you in your search. We reviewed the entire list with you during our meeting on that day. You then stated that you needed to discuss it internally. We told you that we needed an answer as to whether you would agree to conduct a search for those narrowed requests for documents as soon as possible, but no later than Thursday, December 15.

On Friday, December 16, you left us a voicemail stating that the White House Counsel's Office hadn't had time to review our list, and wouldn't be ready to discuss the list until the following week. We then had a conference call on Monday, December 19. At that meeting you said that the White House Counsel's Office still had not had enough time to fully review the list.

It is clear that your strategy is simply to delay our discussions as long as possible. The White House Counsel's Office could have, and should have, reviewed the Committee's list and given the Committee an answer within one day. Assuming that you actually give us a final answer on January 5, you will have taken nearly one month to review the list (which we submitted at your request). This is not acting in good faith.

Your response to our narrowed list of document request categories also indicates to us that you are not acting in good faith. As mentioned above, during our meeting on December 12, we reviewed the Committee's list of prioritized document requests with you. For some of the document request categories, you asked us to further explain our basis for asking for such categories of documents. In an effort to accommodate you, at times in our response we referred to specific emails already in our possession. We did this at your request, in a good faith effort to help you understand the categories of documents that we were looking for. During our conference call on December 19, however, in reference to one of our document request categories, you stated that you would only produce documents directly related to a specific email we had cited on December 12, rather than producing all of the responsive documents in that category. In other words, after we submitted the prioritized list of document requests to you (at your request) and then engaged in discussions with you in which we fully described our reasons for requesting such documents and provided you with specific examples of emails already in our possession, you are now attempting to use our good faith efforts against us by producing only documents directly related to a specific email that we discussed with you as an illustrative example. This

is not acting in good faith, and we request that you reconsider your position in advance of our conference call on January 5.

In addition, in the face of all of our good faith efforts to explain to you what we are looking for and why, you have steadfastly refused to give us any of the basic information that we have requested, such as information relating to the scope of your search for documents or the quantity and type of documents in your possession. This is also unacceptable and, once again, we ask you to reconsider your decision prior to our conference call on January 5.

Sincerely, Todd Harrison

**Todd Harrison
Chief Counsel
Oversight and Investigations
Energy and Commerce Committee
U.S. House of Representatives**

