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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision of the Comptroller General Concerning NEPDG Litigation
January 30, 2002

As you know, the United States General Accounting Office (GAO) has been engaged in an ongoing effort to obtain certain narrowly defined, factual information concerning the development of the National Energy Policy proposal from Vice President Cheney in his role as Chair of the National Energy Policy Development Group (NEPDG). Importantly, we are only seeking limited information in connection with NEPDG-related matters.

The administration used the NEPDG as a mechanism to, among other things, outreach to selected non-governmental parties and develop a proposed comprehensive energy policy. In addition, contrary to recent assertions, we are not seeking the minutes of these meetings or related notes of the Vice President's staff. This was conveyed to the White House in writing on August 17, 2001. Unfortunately, despite our numerous attempts to reach a reasoned and reasonable accommodation on this matter, to date, the information we requested has not been made available to us.

In his August 2, 2001, letter to both Houses of Congress, the Vice President raised a number of objections to providing the information we requested. Importantly, for both the Congress and GAO, the Vice President challenged GAO's fundamental statutory authority to assist the Congress in connection with its constitutional, legislative and oversight authorities. These challenges went far beyond issues relating to his constitutional position as Vice President and White House staff related matters. As noted in our prior correspondence concerning this matter, the information we are seeking is clearly within our statutory audit and access authority. Accordingly, as provided in our statutory access authority, on July 18, 2001, we issued a formal request for the records. Unfortunately, the statutory 20-day response period passed without any meaningful action by the Office of the Vice President. In accordance with the prescribed statutory process, on August 17, 2001, we reported to the Congress, the President, the Vice President, and other officials that the NEPDG had not provided the requested records. (See enclosed August 17, 2001, report.) While the NEPDG did provide some cost-related documents to GAO, most of these documents were not useful or self-explanatory. Moreover, even though the Vice President and his counsel acknowledge our authority to access cost information, they have not provided us the remaining cost information and explanations requested. Apart from information concerning the Vice President's meetings, they also have not provided us with factual information concerning who the NEPDG staff, including non-White House staff who were assigned to the NEPDG from various government departments and agencies, met with and the purpose of those meetings.

We strongly disagree with the Vice President's objections to our audit and access authority. Significantly, under GAO's statutory access authority, Congress provided the President and the Director of the Office of Management and Budget a safety valve to preclude judicial enforcement of GAO's access rights. The executive branch has chosen not to use this mechanism. Furthermore, the President has not claimed executive privilege in connection with our request. As previously noted, all of our attempts to reach a reasoned and reasonable accommodation, including reducing the scope of our request, have been rebuffed, and we have now exhausted the statutory process for resolving our access requests. As a result, our only remaining recourse is either to file suit in the United States District Court for the District of Columbia or to forego further assertion of our access rights.

GAO was preparing to go to court in September of this past year until the tragic events of September 11. As I stated last September, prudence dictated that we delay any related legal action given the immediate need for the administration and the Congress to focus on developing our Nation's initial response to our fight against international terrorism and efforts to protect our homeland.

The Congress has a right to the information we are seeking in connection with its consideration of comprehensive energy legislation and its ongoing oversight activities. Energy policy is an important economic and environmental matter with significant domestic and international implications. It affects the lives of each and every American. How it is formulated has understandably been a longstanding interest of the Congress. In addition, the recent bankruptcy of Enron has served to increase congressional interest in energy policy, in general, and NEPDG activities, in particular. This, plus the Senate's expected consideration of comprehensive energy legislation this session, reinforces the need for the information we requested concerning the development of the National Energy Policy proposal. In this regard, we recently received a request for the NEPDG information we are seeking from four Senate committee and subcommittee chairmen with jurisdiction over the matters involved. Importantly, our governing statute requires GAO to perform such committee requests.

Clearly, the formulation and oversight of energy policy and the investigation of Enron-related activities represent important institutional prerogatives of the Congress. Furthermore, a number of other important principles are involved. Failure to provide the information we are seeking serves to undercut the important principles of transparency and accountability in government. These principles are important elements of a democracy. They represent basic principles of "good government" that transcend administrations, partisan politics, and the issues of the moment. As such, they should be vigorously defended. Otherwise, it could erode public confidence in and respect for the institutions of government.

The disclosure of the activities of the NEPDG is also important for precedential reasons. Specifically, the NEPDG was financed with appropriated funds and staffed largely by government department and agency personnel assigned to it. We disagree with the White House position that the formation of energy policy by the NEPDG is

beyond congressional oversight and GAO review. Were the Vice President's arguments in this case to prevail, any administration seeking to insulate its activities from oversight and public scrutiny could do so simply by assigning those activities to the Vice President or a body under the White House's direct control.

In our view, failure to pursue this matter could lead to a pattern of records access denials that would significantly undercut GAO's ability to assist Congress in exercising its legislative and oversight authorities. We would have strongly preferred to avoid litigation in connection with this matter, but given the request by the four Senate committee and subcommittee chairmen, our rights to this information and the important principles and precedents involved, GAO will take the steps necessary to file suit in United States District Court in order to obtain, from the Chair of the NEPDG, the information outlined in our August 17, 2001, report. This will be the first time that GAO has filed suit to enforce our access rights against a federal official. We hope it is the last time that we will have to do so.

We have great confidence in our nation's legal system and look for a timely resolution of this important matter. If you have any questions, comments or concerns, please do not hesitate to contact me.

Sincerely yours,

[signed]

David M. Walker
Comptroller General
of the United States

cc: President of the United States
Vice President of the United States

Enclosure