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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

February 28, 2013

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The Honorable Steven Chu
Secretary
U.S. Department Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Secretary Chu:

As you know, the House Committee on Natural Resources (“Committee”) is conducting oversight on issues surrounding your March 16, 2012 Memorandum (“Memorandum”) to the Power Marketing Administrations.

In an October 11, 2012 letter the Department of Energy (“Department”) was asked to produce several categories of documents and communications related to the issuance of the Memorandum. It is disappointing that the response submitted by the Department consisted of mostly publicly available information and does not fully respond to the requested information requests.

The response provided by the Department on November 21, 2012 acknowledged that it was only an “initial set” of responsive documents, however more than three months have passed and no additional information has been provided. Specifically, the Department has not provided internal email communications discussing the Memorandum, communications between Ms. Lauren Azar and the Joint Outreach Team, and the economic analysis used to understand the effects of the Memorandum.

As you know, the Department has been criticized for its lack of transparency over the Memorandum and many questions have been raised about its statutory basis and effects on consumers. The Department’s failure thus far to provide more information, including important emails referenced above, only fuels those criticisms. Therefore, I hope you agree that a thorough and complete response on behalf of the Department is important and necessary. Through this letter, I renew my request that the Department produce the following documents and information – all requested in the October 11, 2012 letter – by March 14, 2013.

1. Please provide the Committee with a specified accounting of all PMA and DOE expenses (direct and indirect) incurred or committed-to-date related to the Memorandum. Please provide projected future costs.
2. Please provide the Committee with all communications between the White House, CEQ, DOE, WAPA, and the other PMAs related to the Memorandum.
3. Please provide the Committee with all communications (related and not related to the Memorandum) between Ms. Lauren Azar, the PMAs, and the Joint Outreach Team (“JOT”). Please provide a list of all members of the JOT.
4. Ms. Azar has been involved with drafting the Memorandum, played a primary role at the JOT workshop sessions, and has been the main point of contact at the DOE for questions related to this Memorandum. Please provide the Committee with a list of all of the employees at DOE and WAPA, and any of the other PMAs, as well as, any outside consultants who have been involved with the planning, drafting, and implementation of the Memorandum – before and since March 16, 2012. Additionally, please provide the Committee with a list of all of the employees at DOE, WAPA, and any of the other PMAs, as well as any outside consultants who were involved in the planning, organization, and execution of the JOT workshop and subsequent recommendations of the drafting processes. Please provide a list of all internal and external meetings related to the Memorandum, including JOT meetings.
5. All drafts, documents, and communications related to Federal Register Notices released by DOE or WAPA related to the Memorandum.
6. Ms. Azar’s testimony to the Committee noted that Congress has established statutory obligations for the PMAs with respect to grid operations and reliability. Please provide any correspondence from NERC or any regional reliability organization citing the PMAs for failure to properly ensure system reliability.
7. Please provide all comments from interested parties related to the Memorandum, including those submitted at JOT Workshops. Please provide all communications and documents that have been provided to the Department related to the Memorandum that have not been posted on WAPA’s web page.
8. Please provide the Committee with all jobs impact analyses and cost/benefit analyses, including analyses of an Energy Imbalance Market (“EIM”), that the DOE used to understand the effects of Secretary Chu’s Memorandum. Please provide a list of all internal and external meetings relating to development of an EIM in the Western Interconnection including those with FERC, NERC, WECC, investor-owned utilities, PMA Customers, and environmental organizations.
9. Please provide the Committee with all analyses – including drafts – of a Western EIM used by DOE, WAPA, the JOT, and/or any associated consultants during this process.

10. Please provide all documents and communications provided by DOE and WAPA to Miracorp that were used to form the assertion in the Miracorp WAPA Operations Report that “WAPA has elected to participate [in an Energy Imbalance Market].”
11. Please provide all correspondence and documents specifically referencing the Memorandum, between DOE and the Office of Management and Budget (“OMB”) regarding budget authority, caps on budget authority, and proposals for a revolving fund for WAPA and SWPA. Responses to this question should also include all correspondence and documents between OMB and DOE prior to March 16, 2012 on the role of the PMAs in modernizing the transmission grid, revising rate structures to incentivize new programs, and discussions of budget authority under Section 1222 and the Transmission Investment Program (“TIP”).
12. Please provide the Department’s specific legal analysis of the statutes governing the PMAs to determine what each can legally do, in terms of implementing any elements of the Memorandum and any recommendations developed following the summer workshops.

An attachment to this letter provides additional information about responding to the Committee’s request, including definitions and instructions for compliance. Please contact Kiel Weaver, Staff Director of the Water and Power Subcommittee, with any questions regarding this request, and to make arrangements for the production. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doc Hastings", is written over the typed name.

Doc Hastings
Chairman

Responding to Committee Document Requests

A. 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, recorded notes, letters, notices, confirmations, receipts, checks, envelopes, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), notations of any type of conversation, telephone call, voice mail, phone mail, meeting or other communication, diaries, analyses, summaries, messages, correspondence, circulars, opinions, 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 electronic, mechanical, and electric records or representations of any kind, 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.
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 face-to-face, in a meeting, by telephone, mail, e-mail, discussions, releases, personal delivery, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request. The singular includes the plural. The masculine includes the feminine.
4. As used herein, “referring” or “relating” means and includes “constituting,” “pertaining,” “evidencing,” “reflecting,” “describing,” or “having anything to do with,” and in each instance, directly or indirectly. These terms mean, without limitation, any reference or relationship which either (a) provides information with respect to the subject of the inquiry, or (b) might lead to individuals who, or documents which, might possess or contain information with respect to the subject of the inquiry.

B. Instructions

1. In complying with this document request, you are required to produce all responsive documents, materials, or items that are in your possession, custody, or control, whether held by you or your past or present agents, employees, representatives, subsidiaries, affiliates, divisions, partnerships, and departments acting on your behalf. You are also required to 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. No records, documents, data or information called for by this request shall 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 document request has been, or is also known by any other name than that herein denoted, the document request shall be read also to include them under that alternative identification.
3. Each document produced shall be produced in a form that renders that document capable of being printed or copied.
4. Documents produced in response to this document request shall be produced together with copies of file labels, dividers, envelopes, or identifying markers with which they were associated when this document request was served. Documents produced to this document request shall also identify to which paragraph from the document request such documents are responsive. Moreover, please include with your response, an index identifying each record and label (preferably by bates stamping) the documents. The Committee prefers, if possible, to receive all documents in electronic format.
5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses documents that are non-identical or identical copies of the same document.
6. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.
7. If compliance with the document request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
8. In the event that a document is withheld, in whole or in part, based on a claim of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter of the document; (d) the date, author, and any recipients; and (e) the relationship of the author and recipients to each other. Claims of privileges are considered under Committee on Natural Resources Rule 4(h) and, similar to all common-law privileges, are recognized only at the discretion of the Committee.

9. If any document responsive to this document 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 by which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this document 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.
11. 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 location or discovery subsequent thereto.
12. Production materials should be delivered to:

Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington D.C. 20515