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Congress of the United States

House of Representatives

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September 12, 2012

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On Monday, I sent you a letter objecting to subpoenas you issued last week to Department of Energy employees and contractors regarding the Department's loan guarantee program. Specifically, I objected to the following:

- the fact that you did not consult with me prior to issuing two subpoenas ordering depositions for this week—consultation that is required explicitly by Committee Rules;
- your decision to direct four armed U.S. Marshals into the Department of Energy to serve the subpoenas, which was completely unnecessary and intimidating given that the Department has routinely accepted service of subpoenas by email in the past, including from our Committee; and
- the manner in which the Committee has attempted to cut out the Department's General Counsel's office in order to target individual employees, despite the fact that the Department has been tremendously cooperative, has produced more than 600,000 pages of documents to the Committee, and has made available the Secretary of Energy and other Department officials to testify at multiple hearings.

To date, you have not responded to my letter. Instead, I have been informed that you have now demanded that one Department employee report to Committee offices today at 1 p.m. for a deposition despite the fact that he does not yet have counsel.

I believe this is an extreme abuse of the authority of this Committee, contrary to the Constitutional concept of due process, and a stain on the Committee's honor. The right to counsel is clearly envisioned by our Committee Rules, which provide that an attorney representing a deponent has the right to make objections, request rulings by the Chairman, and appeal those rulings to the Committee. Forcing a civil servant to appear at a deposition without

counsel deprives him of the rights unanimously adopted by Committee Members at our first organizational meeting last year.¹

This action is even more troubling given that this employee has cooperated at every stage of this investigation, has produced all documents demanded of him, and has made every effort to obtain a private attorney after you insisted that the Department's General Counsel could no longer represent him. As soon as the employee received the Committee's subpoena, he initiated efforts to locate private counsel at his own expense. After identifying an attorney, a routine conflicts check by the attorney's law firm revealed that he could not represent the employee, a common occurrence in these matters. The employee immediately resumed efforts to identify another counsel and notified the Committee in a timely fashion.

Despite all of these good faith efforts by the employee to comply with the demands of the Committee, I was informed this morning that you directed your staff to order this employee to appear today even without counsel. I strongly object to this approach.

As a fundamental matter, as I stated in my letter to you on Monday, I believe this deposition may not go forward because you failed to comply with Committee Rules prior to ordering it. In my opinion, there are several less problematic alternatives that the Committee could pursue. First, you could postpone the deposition until the employee obtains counsel. Second, you could conduct a transcribed interview instead of a deposition and allow the Department's General Counsel's office to represent him at the interview, as it has been doing until now.

If you decline to accept either of these reasonable alternatives, then I request that you put this matter to a vote of the Committee. I cannot imagine that any other Members of the Committee would support the concept of compelling a Department employee to appear at today's deposition without being represented by counsel.

I sincerely hope we can resolve this matter in a manner that protects the interests of this employee and allows the Committee to obtain the information it seeks for legitimate oversight purposes. I would appreciate the courtesy of a response to this letter.

Sincerely,



Elijah F. Cummings
Ranking Member

cc: Members of the Committee on Oversight and Government Reform

¹ House Committee on Oversight and Government Reform Rule 15 ("Witnesses may be accompanied at a deposition by counsel to advise them of their rights").