

Washington D.C. (Mar. 19, 2012)—Today, Rep. Elijah E. Cummings, the Ranking Member of the House Committee on Oversight and Government Reform, sent a [letter](#) asking Committee Chairman Darrell E. Issa to refrain from making unsubstantiated allegations against Department of Energy employees and to correct the record for multiple claims that have proved inaccurate after further investigation.

Over the past year, Issa has launched 11 investigations into the Department and its employees, sent at least 46 document requests, and received more than 300,000 pages of documents.

Many of these investigations, however, have been based on allegations that were made with little or no evidence to support them when they were made. For example, Issa has repeatedly accused Department employees of engaging in illegal criminal conduct, disregarding the law, and basing decisions on partisan politics and corruption—all claims that turned out to be inaccurate.

“As a result of our Committee’s extremely broad jurisdiction, we have a tremendous opportunity to perform constructive oversight of the Department of Energy and the energy industry to promote the bipartisan goal of energy independence for our nation,” said Cummings.

“Although I fully support aggressive oversight to ensure that government programs work effectively and efficiently, I believe the Committee should refrain from making accusations without evidence to support them and should correct the record when claims turn out to be inaccurate,” he added. “Only in this way will we be able to uphold the integrity of the Committee and protect the reputations of officials who have dedicated their careers to serving this nation.”

Cummings’ full letter is set forth below.

March 19, 2012

The Honorable Darrell E. Issa

Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Issa:

As a result of our Committee's extremely broad jurisdiction, we have a tremendous opportunity to perform constructive oversight of the Department of Energy and the energy industry to promote the bipartisan goal of energy independence for our nation. Over the past year, however, you have launched 11 investigations into the Department and its employees, sent at least 46 document requests, and received more than 300,000 pages of documents, and unfortunately many of these investigations have been based on unsubstantiated allegations that proved inaccurate after further investigation. For example:

- On May 2, 2011, you accused Department employees of engaging in criminal conduct by directing General Motors (GM) to withhold information from the Committee about the agreement between the Administration and automakers on fuel economy standards. Further investigation revealed that your claim was inaccurate and that Department employees in fact had communicated with GM about how to expedite the Department's FOIA process.

- On May 9, 2011, you sent a letter accusing the Secretary of Energy of selecting officials for an advisory panel on hydraulic fracturing who were partisan, anti-industry, and prejudiced against the use of this technology. After reviewing internal e-mails and conducting transcribed interviews of the most senior Department officials, the Committee identified no evidence that partisan politics played any role in the selection of panelists, and the panel's final report was widely praised by industry.

- On December 7, 2011, you wrote a letter alleging that the Department "clearly disregarded the law" by approving loan guarantees for energy projects that included so-called "pari passu" credit terms that allow private lenders to share risks and benefits with the Department. Further investigation revealed that your legal interpretation was incorrect, that the Department's rights after default were protected, and that adopting your rationale also would negatively impact the nuclear industry.

- On September 20, 2011, you went on national television to condemn the Department's entire loan guarantee program as a "broad scandal" that "has been driven by political favoritism and accusations of pay-to-play relationships." You asserted that "you can't have politicians,

people who have quite frankly the need to raise money to win election or the people that work for them—you can't have them selecting winners and losers." Although the Committee has identified no evidence that decisions were based on political favoritism or corruption, we have identified at least 484 letters sent by Democrats and Republicans, including you, in support of federal funds for clean energy projects.

During a hearing last month, you stated: "I will admit, we did and do get things wrong during an investigation. We do go down blind alleys regularly. Certainly, that's the case." Although I fully support aggressive oversight to ensure that government programs work effectively and efficiently, I believe the Committee should refrain from making accusations without evidence to support them and should correct the record when claims turn out to be inaccurate. Only in this way will we be able to uphold the integrity of the Committee and protect the reputations of officials who have dedicated their careers to serving this nation.

Accusing Department Employees of Criminal Wrongdoing

On May 2, 2011, you sent a letter to the Secretary of Energy accusing Department employees of criminal violations of law for obstructing the Committee's investigation into the agreement between automakers and the Administration to set fuel economy standards through 2016. Specifically, you stated:

[I]t is illegal for a government agency to interfere with a Congressional investigation. Accordingly, I am concerned that a DOE employee may have violated the law by communicating to a GM employee that certain documents should not be produced.

You cited the specific criminal code section for "Obstruction of Proceedings Before Departments, Agencies, and Committees," and you quoted in detail the section stating that offenders shall be "imprisoned not more than 5 years." Citing the "very serious nature of this allegation," you demanded a "full and complete explanation of DOE's decision to instruct GM to withhold documents from the Committee," as well as the "names of every individual who was involved in any discussion relating to DOE's instructions to GM to withhold documents from the Committee."

□ After further investigation, however, your claim turned out to be inaccurate. On May 18, 2011, the Department's Deputy General Counsel sent a letter to the Committee explaining that, as part of an initiative in 2008 to improve responsiveness under the Freedom of Information Act (FOIA), the Department asked loan applicants to submit duplicate copies of their documents,

including one copy that had information redacted consistent with a potential FOIA release to the public. According to the Department, that guidance, provided in November 2008 under the previous administration, “had nothing to do with any congressional investigation” and did not prevent GM from providing documents to the Committee.

As the Department’s May 18, 2011, letter stated:

[T]here is no factual basis for any contention that DOE instructed GM to provide the Committee only redacted documents in GM’s responses to the Committee. Nor is there revealed any factual basis for suggesting that any DOE employee may have engaged in criminal misconduct. In the future, I would encourage you or members of your staff informally to contact DOE’s Office of Congressional and Intergovernmental Affairs in order to address and resolve questions regarding the Department’s policies and programs in a more timely and efficient manner.

Rather than threatening Department employees based on little or no evidence, it appears that a telephone call could have resolved this question. In my opinion, the employees targeted in your letter deserve an apology on behalf of the Committee.

Accusing the Secretary of Energy of Stacking the Fracking Advisory Panel

On May 9, 2011, you sent a letter accusing the Secretary of Energy of selecting officials for an advisory panel on hydraulic fracturing who were partisan, anti-industry, and prejudiced against the use of this technology. Specifically, you stated that the panel’s membership “has a partisan or anti-energy development imbalance that could prejudice recommendations.” You added:

I am struck by the number of members who have worked as political appointees in Democratic Administrations and have close ties to environmental groups that would appear to indicate prejudices against hydraulic fracturing.

In fact, two panelists served on boards of energy companies, one of which previously ran his own petroleum technology consulting firm, and two others worked in the energy industry, including the Director at NRG Energy and a member of the U.S. National Petroleum Council. Nevertheless, you launched a wide-ranging investigation, issued a subpoena for internal Department e-mails and other documents, and conducted transcribed interviews of the most senior officials at the Department.

As a result of this investigation, the Committee has identified no evidence that partisan politics played any role in the selection of panelists. To the contrary, during a transcribed interview with Committee staff on March 5, 2012, the Department's Chief of Staff explained that no panelists were chosen or rejected "because of their party affiliation." He also explained that the Secretary worked to ensure that the panelists provided a balanced representation of industry, environmental groups, and state regulators with appropriate technical expertise who were committed to developing a consensus product. He also informed Committee staff that the Secretary solicited feedback from industry officials, including Rex Tillerson, the CEO of Exxon Mobil, and Jim Hackett, the CEO of Anadarko.

On August 18, 2011, the advisory panel issued a report that was widely praised by industry officials. For example, the American Gas Association wrote that "[w]e commend the subcommittee's effort," and that it was "encouraged that the report reinforces many of the principles we previously outlined for sustainable and responsible development of natural gas, including full disclosure of the chemistry of hydraulic fracturing fluids." Similarly, the Independent Petroleum Association of America stated that "the report stands in stark contrast to the strident, hysterical demands for moratoria on hydraulic fracturing."

It appears that the basis for your allegation was concern raised by an Oklahoma-based company called Devon Energy Corporation. On May 6, 2011, you invited Dr. William Whitsitt, the Executive Vice President of Devon Energy, to testify before the Committee at a hearing on hydraulic fracturing. During that hearing, you accused the Secretary of Energy of selecting "opponents of all natural gas, oil, and other fossil fuel production" who "have already decided they don't want the end product." You stated:

Secretary Chu has appointed a panel. We've reviewed it. I guess I'll ask. Any of you hear about it in time to be included in that Commission? No. From what we can find, this is a Commission that lacks operators. It lacks people with the experience in the production and appears to be a combination of, if you will, intellectuals and opponents of all natural gas, oil, and other fossil fuel production. So we're hoping, through this letter in the record, and a follow-up to the Administration, that this Commission can be expanded so that its consensus is a consensus of the entire industry and beneficiaries and not simply those who have already decided they don't want the end product.

Three days after the hearing, on May 9, 2011, you sent your letter to the Department. The next day, May 10, 2011, Devon Energy wrote its own letter expressing concern about the panel

and noting that the company had “offered the services of Devon Executive Vice President of Exploration and Production Dave Hager for the planned study.” On July 28, 2011, Devon Energy’s political action committee, DEC PAC, for the first time contributed to your 2012 re-election campaign.

Accusing the Department of Energy of Disregarding the Law

On December 7, 2011, you wrote a letter alleging that the Department “clearly disregarded the law” by approving loan guarantees for energy projects that included so-called “pari passu” credit terms. You alleged that including these credit terms in loan guarantee agreements for wind and solar energy projects would put private investors in a better position than the Department in the event of a default and that the use of these credit terms violated Section 1702 of the Energy Policy Act of 2005.

After further investigation, however, your claim turned out to be inaccurate. On January 19, 2012, the Department responded by explaining that the use of these credit terms does not put the Department in an inferior position with respect to private investors:

Once the Secretary has actually acquired property through the Secretary’s right of subrogation in a post-default situation, the statute provides that, as a matter of law, the Secretary’s rights in that acquired property are superior to any other claimant with respect to that acquired property. Providing pari passu credit terms in the guarantee agreements does not conflict with the foregoing.

The Department explained that this policy has “enabled the Department to reduce taxpayer risk because the private lenders who share the collateral pari passu with the Department absorb 20% of the credit risk.” As the Department noted, adopting your interpretation would “effectively disqualify very large power projects with co-lenders or co-guarantors that are willing to share the risks with the government on an equal basis.”

The Department also explained that it issued a Final Rule in 2009, after a full and open rule-making process with public comment, making clear that the statute you cited, Section 1702, “governs post-default rights of the Secretary, rather than conditions that must be met at the time the Secretary determines to make a loan guarantee.” As the Preamble to the Final Rule stated:

[T]he “property acquired” as to which the Secretary’s rights “shall be superior to the rights of any other person” relates to property “acquired” by the Secretary pursuant to his right of subrogation to the rights of the lender in any collateral or security interest.

Finally, the Department explained that your legal interpretation would negatively affect loan guarantees for the nuclear industry, such as the Section 1703 loan guarantee the Department is considering for Southern Company’s Vogtle reactors in Georgia. As the Department explained, “pari passu” credit terms “will very likely be a necessary and integral part of any Section 1703 financing of nuclear power projects.”

Nuclear industry officials agree that the use of these loan guarantees and credit terms is integral to financing nuclear projects. For example, on September 19, 2011, Martin Fertel, the President and CEO of the Nuclear Energy Institute, wrote:

Loan guarantees are one of the most effective tools available to the federal government, and are widely used by the federal government to support financing of projects that have substantial public value. The federal government manages a successful loan guarantee portfolio of approximately \$1.2 trillion which, on balance, returns more to the Treasury than it costs the taxpayer.

With respect to nuclear projects, he stated that “[a]ddressing the financing challenge is paramount,” and he praised the Department’s work on this front:

In the case of nuclear energy loan guarantees, the program complements the investment of billions of dollars in equity by the companies developing projects. The project sponsors also have a vested interest in ensuring the viability of these projects while protecting consumers, shareholders and taxpayers. All nuclear energy projects seeking loan guarantees are subjected to detailed due diligence and underwriting by a rating agency and the Department of Energy.

And with respect to the credit terms used in these loan guarantees, Mr. Fertel specifically cited the Vogtle project in Georgia:

The Energy Department has offered one conditional loan guarantee for a nuclear energy project, to Southern Co.'s Vogtle reactors in Georgia. The company's exceptional financial strength and 30-year history of safely operating nuclear energy facilities make it a solid credit-worthy candidate for the DOE loan guarantee. The company is well positioned to meet the obligations of its loan guarantee commitment. Moreover, the loan guarantee, along with other regulatory mechanisms, will provide customers nearly \$1 billion in benefits.

Under your interpretation of the law, the Department would not be able to use these credit terms for nuclear projects, and loan guarantees for the Vogtle project and others could be put in jeopardy. Acknowledging that some companies, such as Solyndra, may not succeed under loan guarantee programs, Mr. Fertel warned against attacking the entire program more broadly: "We must not allow the experience of one loan guarantee project to derail an essential program for the development of clean energy technologies in America."

Condemning the Department's Entire Loan Guarantee Program as Corrupt

On September 20, 2011, you went on national television to condemn the Department's entire loan guarantee program as a "broad scandal" that "has been driven by political favoritism and accusations of pay-to-play relationships." You stated that "you can't have politicians, people who have quite frankly the need to raise money to win election or the people that work for them—you can't have them selecting winners and losers." You stated further: "We see that as a backdoor easy way to end up with corruption in government."

As a result, you announced a broad investigation of politicians who supported the awarding of federal loans to clean energy programs. As one press account reported:

Issa said the committee was looking at whether it was improper for members of Congress or White House staff to select companies eligible for subsidized government loans when those companies could give campaign donations. ...

"This is another reason that crony capitalism ... is dangerous, because they're going to pick winners that they ideologically, or in some cases because they support their candidacy, want to

see win,” Issa said.

The congressman said he also wanted to expand the investigation to see whether congressmen were also exerting influence on the bureaucracy, which is commonly tasked with approving low-interest government loans.

As a result of this investigation, the Committee has identified no evidence that the Department’s decisions were the result of political favoritism or corruption. However, the Committee has identified at least 484 letters sent by both Republican and Democratic Members, including you, in support of federal funds for clean energy projects.

For example, on January 30, 2012, you sent a letter to Abound Solar requesting documents relating to a loan guarantee to develop photovoltaic modules. Unfortunately, the company recently announced that it was halting production and laying off 180 workers in order to make “the manufacturing process and equipment changes needed for the production launch of its next generation high-efficiency module.” Although the Committee identified no evidence of political favoritism or corruption in this award, we did identify significant bipartisan support for it. In 2009, Democratic and Republican Members of the Indiana congressional delegation wrote to the Department to express their “strong support and encouragement” for this project, which would provide “important economic benefits to Tipton County, the State of Indiana and indeed the nation at this critical juncture.” Governor Mitch Daniels also expressed support for an \$11.85 million tax credit for the company.

Similarly, on October 20, 2011, you wrote to the Department requesting documents relating to the Department’s decision to award Severstal North America a conditional loan commitment for a project in Michigan under the Advanced Technology Vehicle Manufacturing Program (ATVM). The Department ultimately decided not to award the loan. Although the Committee has obtained no evidence that the Department’s decisions were based on political favoritism, we have identified significant bipartisan support. On July 1, 2010, the entire Michigan congressional delegation wrote to the Department in support of ATVM loan applications from Michigan-based companies, including Severstal, noting that they “play a critical role in delivering the advanced vehicle technologies necessary to meet the demands for increased fuel economy performance.”

You have sent at least three letters in support of similar projects in California. On January 14, 2009, you wrote to the Department to express your support for a loan application from San

Diego-based Aptera Motors. You praised “[e]lectric vehicle initiatives like Aptera’s” and noted that federal support would “aid U.S. long-term energy goals by shifting away from fossil fuels and using viable renewable energy sources like plug-in electricity.” You also stated that funding Aptera would help “promote domestic job creation throughout California as well as in other states.” Unfortunately, the company you wrote in support of filed for bankruptcy in December 2011.

In addition, on June 22, 2009, you joined the California delegation in writing to the Department in support of Quallion, a lithium ion battery developer in California, as part of the Department’s Energy Electric Drive and Vehicle Battery and Component Manufacturing Initiative. You stated that “lithium ion batteries manufactured in Quallion’s new facility will have the potential to deliver real and immediate environmental solutions, while also creating new jobs at a time when Americans need them the most.”

Finally, on October 14, 2009, you wrote to the Department in support of a biofuel consortium based in California, stating that the project would “serve as a force multiplier for new economic development and job creation throughout California and the rest of the Nation.”

Despite your support for these clean energy projects, on September 22, 2011, you issued a staff report criticizing the Administration’s clean energy initiatives. Your report claimed that “the premature implementation of ‘green energy’ technologies will come at too steep a price for our already-struggling economy.” Your report also claimed that the Administration’s “ill-fated ‘green energy’ experiment” has “put our economic security in jeopardy.”

Although the Committee has obtained no evidence to support your allegations of corruption or political favoritism in the Department’s loan guarantee program, last week you sent a new round of letters announcing the Committee’s intent to “expand its investigation.” These very broad document requests, which you sent to 25 energy companies, request “that all beneficiaries of DOE-based loan guarantees produce documents, including communications, between their company and DOE surrounding the issuance of loan guarantee commitments.”

Conclusion

In my first letter to you as Ranking Member more than a year ago, I explained my goals and

expectations for our Committee's work. As I wrote:

I want the Committee to engage in oversight that is regarded as serious rather than dismissed as silly or absurd; to establish strong predicates for investigations rather than making unsubstantiated allegations that waste taxpayer funds; to use Committee resources to inform and educate the American people rather than attacking opponents; and to conduct comprehensive, balanced investigations that seek out the truth rather than launching one-sided inquiries designed to fulfill predetermined outcomes.

I continue to believe that these should be the goals of the Committee, and I hope we can work together to ensure that allegations are not made unless there is evidence to support them and that the public record is corrected swiftly when such allegations turn out to be inaccurate. Thank you for your consideration.

Sincerely,

Elijah E. Cummings
Ranking Member