The Secretary of Energy
Washington, DC 20585

July 15, 2005

The Honorable Joe Barton
Chairman
House, Senate Conference on H.R. 6
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter provides the Administration's view to the House and Senate conference committee on H.R. 6, energy legislation passed by the House and Senate.

The Administration commends the House and Senate for addressing many of the provisions of the President's National Energy Policy in their versions of H.R. 6. Conferees have an opportunity to pass a balanced bill that benefits consumers by increasing the reliability and diversity of the Nation's energy supplies while protecting the environment and fostering greater competition in the marketplace. The bill should also improve the Nation's energy security by expanding the use of new technologies, increasing the diversity of renewable energy sources, and reducing energy consumption through greater conservation and energy efficiency.

Electricity Reliability and Modernization

The Administration commends both the House and Senate for including electricity titles that would modernize our electricity laws, improve reliability, protect consumers, increase supply, and promote efficient markets. In particular, the Administration strongly supports provisions in both versions of H.R. 6 to: (1) establish mandatory and enforceable reliability rules to reduce the risk of power outages; (2) expand investments in transmission and generation facilities by repealing the Public Utility Holding Company Act; (3) reform the Public Utility Regulatory Policies Act; (4) provide Federal "last resort" siting authority for transmission facilities determined to be in the national interest; and (5) prevent market manipulation and exercise of market power. The Administration also supports further efforts to provide open access to the interstate transmission grid for all generators, enhance consumer protections, extend certain Federal Energy Regulatory Commission (FERC) regulatory authorities to cover Federal utilities, and ensure proper financial transparency of Federal utility borrowing activities.

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Renewable Energy

The Administration supports provisions in both the House and Senate bills that would enable improved assessment of renewable energy resources, encourage expanded use of renewable energy by the Federal Government, expand commercial use of biomass resulting from hazardous fuels reduction programs, and make changes to geothermal leasing programs to encourage an efficient permitting process for development of this renewable resource.

However, the Administration opposes the Senate bill provision that would set a national renewable portfolio standard (RPS) on power generation and believes these standards are best left to the States. Even with limits on the cost of credits under the program, a national RPS would force higher electricity costs on consumers, especially in areas where these renewable resources are less abundant and harder to cultivate or distribute. The Administration urges the conferees to instead support the President's proposal to extend and expand the renewable energy production tax credit to increase renewable energy generation.

Renewable Fuels

The Administration supports House and Senate efforts to increase the use of clean, domestically-produced renewable fuels such as ethanol and biodiesel and repeal of the Clean Air Act's oxygenate requirement for reformulated gasoline to enable greater flexibility in the Nation's fuel supply. Expanded use of clean, domestically produced renewable fuels, like ethanol and biodiesel, will improve the Nation's energy security, farm economy, and environment.

The Administration strongly encourages a careful consideration of the design of the renewable-fuels-standard provisions to minimize costs. This includes maintenance of the credit trading and credit borrowing provisions and incorporation of provisions allowing credit banking and a ceiling on the credit price, thereby capping the costs of the program. These features are vital to making the renewable fuels standard economically achievable.

Fuel Economy

The Administration strongly opposes the Senate bill's mandate that the President implement measures to reduce U.S. petroleum demand by one million barrels per day. The Administration believes that this provision would effectively require a rapid, near-term increase in corporate average fuel economy (CAFE) standards beyond the capability of current and affordable vehicle technology, which would likely have undesirable effects on safety and auto industry employment and may be impossible to achieve under existing legal authorities.

The Administration opposes provisions adopted by the Senate that would require a multi-year NHTSA rulemaking for both passenger cars and light trucks without

also providing statutory authority for NHTSA to consider the full range of CAFE reform options, including the recommendations of the National Academy of Sciences in their 2001 review of the CAFE program. Such reforms will enhance NHTSA's ability to improve automobile fuel economy while protecting passenger safety and jobs.

Energy Efficiency

The Administration supports the energy efficiency provisions contained in both the House and Senate bills, which will conserve energy and allow consumers to use it more efficiently. In addition, we support the energy conservation goals for Federal agencies contained in the bill, and urge the conferees to adopt the Senate's long-term extension of Energy Savings Performance Contract authority for all Federal agencies, which will allow all agencies to use modern technologies to conserve energy and water at Federal facilities. The Administration strongly urges the conferees not to include section 111 of the House bill regarding daylight saving time, which would raise serious international harmonization problems for the transportation industry.

Advanced Energy Technology R&D and Deployment

The President has repeatedly emphasized the importance of using cleaner, more efficient energy technologies to help meet the Nation's energy needs with fewer environmental impacts. The Administration is pleased that the House and Senate bills authorize funding for a number of Presidential initiatives, including the Hydrogen Fuel Initiative, Coal Research Initiative, and the International Fusion Reactor (ITER) initiative.

However, the Administration is concerned about the effectiveness and potential cost of some of the direct and guaranteed loan programs authorized in the House and Senate bills for a wide variety of technologies. Nearly all of these loan programs are inconsistent with long-standing Federal credit program policy, particularly in their authorization of 100 percent Federal guarantees that leave little incentive for private risk-sharing or due diligence. The Administration looks forward to working with conferees to focus these programs on long-term, high-risk investments for which Federal assistance is appropriate.

Nuclear Energy

The Administration supports the greater use of clean, domestic nuclear energy as part of our Nation's energy supply. Provisions in the House and Senate bills to reauthorize Price-Anderson nuclear liability insurance, authorize the Administration's Nuclear Power 2010 program, and the House bill's modification of the tax treatment of nuclear decommissioning costs would provide needed impetus toward this goal. In addition, the Administration looks forward to working with the conferees to incorporate the President's proposal to reduce uncertainty in the nuclear licensing process and provide Federal risk insurance to

mitigate the potential cost of unforeseen delays. These actions would help secure the needed investment climate to license and build the first new nuclear plants in a generation.

Domestic Energy Production

The Administration supports provisions, consistent with the National Energy Policy and the Administration's proposed regulations, to increase environmentally responsible production of traditional energy resources on the Outer Continental Shelf (OCS), Federal onshore lands, and Indian lands. However, the Administration is concerned that language in the Senate bill could create new, expensive breach-of-trust claims against the United States, and encourages conferees to make clear that nothing in the final conference report will be intended to expand existing U.S. liability with respect to Indian energy development.

The Administration continues to urge Congress to adopt legislation similar to the House provision that would open a small portion of the Arctic National Wildlife Refuge to oil-and-gas exploration and development using the newest available technology and toughest environmental standards ever imposed on this kind of project. However, the Administration believes that additional taxpayer subsidies for oil-and-gas exploration are unwarranted in today's price environment, and urges conferees to eliminate the Federal oil-and-gas subsidies and other exploration incentives contained in the House and Senate bills.

The Administration strongly opposes provisions in the House and Senate bills that would divert OCS revenues from existing leases in Federal waters for broad uses by coastal states, via both direct spending and authorized appropriations. We urge conferees to exclude these provisions from the final conference report as these provisions are inconsistent with the President's 2006 Budget and would have a significant impact on the budget deficit. However, the Administration welcomes the opportunity to work with conferees on provisions that could provide greater access to new oil and natural gas resources on the OCS, and provide new royalty revenues that could be shared with States that support such development.

Oil and Gas Markets

To address our growing need for natural gas supplies, the Administration supports provisions in both bills, particularly section 382 of the Senate bill, which, as called for by the President, would clarify FERC's exclusive jurisdiction over the siting of terminals, on-shore or within State waters, for receipt of liquefied natural gas. The Administration appreciates the Senate's action to amend the Natural Gas Act to improve the FERC's ability to regulate natural gas markets. The Administration looks forward to working with the conferees to refine provisions addressing market-based rates and market manipulation.

The Administration opposes the "NOPEC" provisions in the Senate bill. These provisions are unlikely to achieve the desired result of lower oil prices, would raise serious legal and foreign policy issues, and potentially would interfere with the Administration's ability to conduct foreign relations.

In addition, the Administration opposes the processes included in the Senate bill that would allow an applicant or State to directly file an appeal with the President if permitting decisions for natural gas pipelines or interstate electric transmission facilities are not issued within certain time limits. Such provisions would conflict with existing Federal administrative law, including environmental laws, which clearly distinguish the President from executive agencies. The Administration would support and encourage other approaches that would accomplish the same result.

Climate Change

The President's climate change strategy is focused on reducing the greenhouse-gas-emissions intensity of the U.S. economy by 18 percent by 2012 through a broad range of domestic and international actions. The Administration supports the many provisions in both the House and Senate bills that address our energy policy goals -- such as expanded use of renewable and nuclear energy, improved energy efficiency, and accelerated development of a hydrogen-based transportation infrastructure -- while also reducing the projected growth in future U.S. greenhouse gas emissions without harming the economy or increasing energy costs to consumers. The Administration supports efforts to aid the domestic and international deployment of cleaner, more efficient energy technologies. However, we are concerned with the cost and structure of some provisions in the Senate bill, and look forward to working with the conferees to ensure that such provisions are implemented in a fiscally responsible manner.

The Administration strongly opposes the "Sense of the Senate" provision contained in the Senate bill which, while non-binding, calls for the eventual establishment of a mandatory program to limit emissions of greenhouse gases from the U.S. economy. We believe that such a mandatory program is unnecessary in light of the continued success of the President's climate change strategy. Several economic studies have demonstrated significant negative impacts of mandatory programs to control greenhouse gases on energy prices, economic growth, American jobs and consumer income.

Tax Provisions

The President proposed $6.7 billion over ten years in energy tax incentives dedicated solely to alternative and renewable fuels, conservation, energy efficiency, and emissions-free energy. The Administration is concerned that the House and Senate bills contain tax provisions whose total cost significantly exceeds this proposal and provide unnecessary subsidies. In addition, the Administration opposes reinstatement of a five cent per barrel tax on oil to

recapitalize the Oil Spill Liability Trust Fund, since this would increase energy costs to consumers. Any final conference report must include a tax title that is fiscally responsible and consistent with the President's proposals.

Total Cost of the Bill

The House and Senate versions of H.R. 6 also include authorization levels that in many cases significantly exceed the President's Budget. These authorizations set unrealistic targets and expectations for future program-funding decisions. In addition, as proposed in the President's Budget, the Administration urges the conferees to use this opportunity to sunset energy programs that have outlived their purpose, provide limited public benefit, or are within industry's ability and interest to undertake without Federal assistance.

The Administration strongly objects to an amendment added to the Senate bill that would authorize disaster loans from the Small Business Administration (SBA) and the Department of Agriculture (USDA) to compensate for economic injury caused by higher energy prices. SBA and USDA's existing disaster loans programs are intended to provide assistance for losses from natural disasters and sudden catastrophic events, which high energy prices are not. Also, Congress terminated the previous "economic disaster" loan authority of these agencies after they experienced significant default rates and had difficulty verifying that these loans were used for their intended purposes.

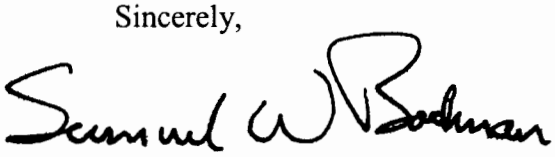
Constitutional Concerns

The Administration is concerned about constitutional issues raised by the bill, including provisions that would violate the Appointments Clause and that would interfere with the President's authority to conduct foreign relations. The Administration would like to work with the conferees to resolve these concerns.

Conclusion

The Administration applauds the House and Senate for their work on comprehensive energy legislation to date. It urges conferees to give due attention to the Administration's concerns and looks forward to working with conferees to present the President with comprehensive, balanced energy legislation that will benefit the Nation for years to come.

Sincerely,



Samuel W. Bodman

cc: All Conferees/House and Senate Conference Committee on H.R. 6