U.S. Department of Energy
Office of Inspector General
Office of Audit Services

Audit Report

The Department of Energy's Interaction with the National Coal Council

OAS-L-06-16

August 2006

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United States Government **Department of Energy**

Memorandum

DATE: August 4, 2006 Audit Report Number: OAS-L-06-16

REPLY TO ATTN OF: IG-30 (A06HQ002)

SUBJECT: Audit of "The Department of Energy's Interaction with the National Coal Council"

TO: Under Secretary for Energy

INTRODUCTION AND OBJECTIVE

Chartered in 1984 to provide advice and recommendations to the Secretary of Energy on general policy matters relating to coal, the National Coal Council is one of 20 active Department of Energy Federal Advisory Committees. The Council provides advice on plans, priorities, and strategies to more effectively address technological, regulatory, and social impact issues pertaining to coal production and use. As a formally chartered advisory committee, the Council must adhere to the requirements of the Federal Advisory Committee Act, which includes having a membership that is "fairly balanced in terms of points of view represented and the functions to be performed."

The Secretary of Energy requested, in April 2005, that the National Coal Council conduct a study and prepare a report on the challenges and opportunities of more fully exploring the Nation's domestic coal resources. In his request, the Secretary stated that environmental challenges, such as zero emissions power generation technology and low impact coal mining technology, must be central to the analysis. In March 2006, the Council submitted its report on this subject to the Secretary.

Senator Joseph Lieberman wrote to the Office of Inspector General, in June 2006, expressing concerns about the project, most notably that the Council's March 2006 report, in his opinion, did not reflect input from a "broad spectrum of diverse interests" and that before a doubling of coal consumption could be supported, environmental problems must be solved. Specifically, Senator Lieberman requested that the Office of Inspector General review the composition and conduct of the National Coal Council.

The objective of our audit was to determine whether the membership and conduct of the National Coal Council complied with the requirements set forth in the Federal Advisory Committee Act.

CONCLUSIONS AND OBSERVATIONS

Essential to our review was the definition of the term "fairly balanced" as it applies to the operation of the National Coal Council. We found that the Federal Advisory Committee Act does not include a definition of the term. As a result, there was no precise standard

against which to judge whether the composition of the National Coal Council met the Federal Advisory Committee Act's requirements. Additionally, according to a 2004 Government Accountability Office report, the courts have interpreted this aspect of the Act as giving agencies broad discretion in balancing their advisory committees. As such, given the latitude in the law and its subsequent interpretation, we could not draw a definitive conclusion as to whether the composition of the Council was consistent with the intent of the Act.

However, we noted that the Council's policy and practice promoted public participation during Council meetings; met Federal Advisory Committee Act requirements for public comment periods on draft reports, and ensured that opposing viewpoints were incorporated into Council reports. Further, we noted that the Department initiated action to broaden the interests represented on the Council's membership. These and related subjects are discussed in more detail below.

Composition of the National Coal Council

Our review of the National Coal Council's membership revealed that the vast majority of members were involved in coal production, mining, transport, or energy service production. These members include many of the largest coal producers and transporters in the country, as well as numerous energy providers, engineering and scientific research firms, and equipment manufacturers.

Although the National Coal Council is represented by a broad range of interests within the coal industry, there was limited representation in the form of environmental interest groups, consumer interest groups, or public health agencies. However, as noted above, absent a more definitive definition of what constitutes a "fairly balanced" membership, we could not draw a definitive conclusion as to whether the composition of the Council was consistent with the intent of the Act.

We found that each nomination to the Council included a review by Department officials and was subject to administrative guidelines provided by the General Services Administration's Committee Management Secretariat. In addition, the General Services Administration, in conjunction with the Department, assures compliance with the Federal Advisory Committee Act and related regulations by conducting annual reviews of advisory committee accomplishments and preparing an annual report covering a summary of committee achievements in order to encourage the effective and efficient use of committee resources.

Despite these safeguards, we noted that the Council's composition has contributed to skepticism as to whether it has fully analyzed the environmental challenges confronting expanded coal use. For example, one prominent environmental group criticized the Council's March 2006 report for not considering the environmental effects of its recommended approach to expanding the use of coal. We found that the report in question focused primarily on the opportunities of more fully exploring domestic coal resources to meet the Nation's future energy needs. While the report covered a range of topics including environmental issues, it appears that environmental challenges were not central to the overall analysis.

Inclusion of Opposing Views

In addition to requiring that committee memberships be "fairly balanced," the Federal Advisory Committee Act requires that advisory committees be independent and open to the public. While the National Coal Council's membership is primarily represented by the coal industry, steps were taken to promote a fair and open process in terms of the work produced by the Council. Specifically, the Council's stated policy and practice was to promote public participation in its meetings by announcing them in the Federal Register and, when received, incorporate opposing views in its published reports. We found, however, that despite the concerns raised about the Council's March 2006 report, there were no opposing views submitted to the Council for inclusion in the report. A further examination of previous work produced by the Council revealed that divergent viewpoints and specific concerns were included in various reports.

Departmental Initiatives

During the course of our review, the Department initiated an effort to nominate individuals representing two environmental groups to serve on the Council. We were informed that the purpose of this action was to ensure that environmental points of view are represented. Additionally, in May 2006, the Council made a proposal to initiate an additional study related to environmental issues, such as technologies available to avoid, capture, and store, carbon dioxide emissions from coal based utilities. The Secretary endorsed this request on June 26, 2006.

We believe that efforts to ensure that environmental perspectives are part of the deliberation of the National Coal Council are a positive step. Such action may serve to promote public confidence in the Council's work, making it a more useful component in the Department's policy development.

We coordinated this report with officials from the Office of Fossil Energy on July 13, 2006. Since no formal recommendations are being made in this report, a formal response is not required. We appreciate the cooperation of your staff throughout the audit.

William S. Maharay

William S. Maharay
Deputy Inspector General
for Audit Services
Office of Inspector General

Attachment

cc: Deputy Secretary
Chief of Staff
Assistant Secretary for Fossil Energy
Audit Liaison, CF- 1.2
Audit Liaison, FE-3

SCOPE AND METHODOLOGY

We conducted the audit from June 14 through July 13, 2006, at Department Headquarters. Our audit included an analysis of selected activities of the National Coal Council. To accomplish the objective, we:

- Reviewed and analyzed the Federal Advisory Committee Act and determined the requirements of the Act as they related to the National Coal Council;
- Interviewed personnel from the Department's Office of Fossil Energy and determined the Department's reliance on the work conducted by the National Coal Council;
- Evaluated applicable Department of Energy regulations, orders, and policies as they related to the National Coal Council;
- Determined the National Coal Council's public comment process;
- Reviewed notices of meetings that were published in the Federal Register;
- Analyzed minutes of meetings and published reports for inclusion of opposing views;
- Analyzed the Department's internal controls over nominations to the National Coal Council;
- Analyzed selected work conducted by the National Coal Council; and,
- Determined the funding mechanisms for operations of the National Coal Council.

The audit was performed in accordance with generally accepted Government auditing standards and included tests of internal controls and compliance with laws and regulations to the extent necessary to satisfy the audit objective. We considered the establishment of performance measures in accordance with the Government Performance and Results Act of 1993 as they relate to the audit objective. We found no performance measures related to the scope of this audit. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit. We did not assess the reliability of computer-processed data because computer processed data was not used during the audit.