The Honorable Richard Cheney
Vice President of the United States
Chairman, National Energy Policy Development Group
Room 283
Old Executive Office Building
Washington, D.C. 20501

Re: Cross-Border Pipeline Project

Dear Mr. Vice President:

Please accept my congratulations on your election as the Vice President of the United States and on your assignment to the President’s National Energy Policy Development Group. I enjoyed our association while you were in Texas, and I truly empathize with you regarding the daunting task before your Group. As a Texas Railroad Commissioner, I am acutely aware of the energy problems confronting the State of Texas and the nation and have been working to devise policies to help the industry meet the growing demand for natural gas and provide customers reliable and reasonably priced energy. As you are developing your recommendations for the nation’s new energy strategy, I want to offer for your consideration a project that we have just initiated in Texas to streamline cross-border pipeline projects.

The state agencies responsible for permitting international cross-border pipelines entered into a memorandum of understanding, which was finalized on March 20, 2001, designating the Railroad Commission of Texas (RRC) as the central conduit for state permits. This means that any entity that intends to build a pipeline across the border between Texas and Mexico will have to deal with only one state agency in acquiring all of the permits required by the various Texas state agencies. I recommend that the federal government encourage the other states bordering Mexico to follow suit and designate one contact agency for permitting. Further, I recommend that the federal government use that state-designated agency as the contact for all federally required permits for cross-border pipeline projects between that specific state and Mexico. In this way, a private entity would deal with only one governmental agency, and that agency would then deal with all of the other state and federal permitting agencies.

March 21, 2001

2001-008020 3/26 P 12:05
The Honorable Richard Cheney  
March 21, 2001  
Page Two  

The benefits received by this single window approach are numerous. Many of the steps required by the various regulatory agencies involved in cross-border energy projects could be eliminated and/or consolidated, thus reducing the overall time and cost associated with the permitting process.

The idea for a single window approach developed during collaborative efforts, which began in 1997, between the Railroad Commission of Texas (RRC) and the Comision Reguladora de Energia (CRE), the agency in charge of the regulation of natural gas, LPG, and electric power industries in Mexico. In 2000, RRC staff members and I traveled to Mexico City to meet with the CRE and the Instituto Nacional de Ecologia (INA) to discuss the natural gas issues confronting the two nations. As a result of those meetings and subsequent discussions with CRE, we identified the need to build pipelines to transport natural gas between the two countries as a high priority. Currently, there are seven natural gas pipelines that cross the border between Texas and Mexico, having a total capacity of 1610 MMcf per day. Of this, 1270 MMcf per day has bi-directional capability. To have viable commerce between the two countries, much more capacity must be built.

In the course of our discussions, we discovered that a major obstacle to building pipelines was the large number of state and federal regulatory entities involved in the permitting process. On just the United States side of the Texas-Mexico border, there are six federal agencies (International Boundary and Water Commission, U.S. Army Corps of Engineers, Region IV of the USEPA, Department of Energy, FERC, and U.S. Fish and Wildlife); and four state agencies (Railroad Commission of Texas, Texas Natural Resource Conservation Commission, Texas General Land Office, and Texas Historic Commission) from which permits must be obtained. The permitting process is both expensive and time-consuming. Consequently, reducing the number of agencies an applicant must contact would expedite the permitting process. The quality of regulatory oversight would not be compromised, but the applicant would be required to have a face-to-face relationship with only one agency, and that agency in turn, would work with all of the other agencies involved in the process.

There are two primary reasons for having state rather than federal agencies serve as the conduits for all state and federal permits. First, each of the border states has a greater vested interest than the federal government in the successful completion of cross-border pipelines. Because of their proximity to Mexico, the border states have strong economic and cultural ties to Mexico. Second, based on my discussions with the CRE, the CRE would prefer to deal with the border states than with the federal government.

I believe that the construction of pipelines is just the first step in developing energy related projects between the United States and Mexico that will be beneficial to both countries. The new pipelines should stimulate more interest in Mexico to further develop their gas fields. The pipelines also will help alleviate some of the tanker truck traffic on Texas highways. For
example, one company has already approached the RRC for help in obtaining a permit for a multi-line system to export butane, propane, and natural gas into Mexico. That company estimates its proposed pipeline will eliminate the need for approximately 200 trucks each day.

I strongly urge you to consider this recommendation. In the short-term, the pipelines would most likely not help alleviate the energy crisis because most of the gas would flow from the United States producing states into Mexico; however, in the long-run, and I agree with President Bush, that we must plan for the long-run, the flow across these pipelines should be reversed, and these cross-border pipelines would transport much-needed gas produced in Mexico into the United States.

For your convenience, I have attached copies of the Texas Memorandum of Understanding, the list of permitting agencies, and other related information. If you have any questions regarding this recommendation or if I can assist you in any manner, please contact me at (512)463-7140 or Melissa Columbus at (512)463-7142.

Sincerely,

Charles R. Matthews
Commissioner

Cc: The Honorable Spencer Abraham, Secretary of Energy
    The Honorable Donald Evans, Secretary of Commerce

10840
DOE016-0592

Obtained and made public by the Natural Resources Defense Council, March/April 2002
MEMORANDUM OF UNDERSTANDING AMONG THE OFFICE OF
THE SECRETARY OF STATE, THE RAILROAD COMMISSION OF
TEXAS, THE TEXAS HISTORICAL COMMISSION, THE TEXAS
GENERAL LAND OFFICE, THE TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION, AND THE TEXAS PUBLIC UTILITY
COMMISSION

THIS MEMORANDUM OF UNDERSTANDING (Memorandum) is made and entered into
among The Office of the Secretary of State, The Railroad Commission of Texas (RRC), The Texas
Historical Commission (THC), the Texas General Land Office (GLO), the Texas Natural Resource
Conservation Commission (TNRCC), and the Texas Public Utility Commission (PUC).

WHEREAS. The Office of the Secretary of State recognizes, with respect to building natural
gas pipelines that cross the border between Texas and Mexico, that the energy needs of the citizens
of Texas and Mexico can be met more efficiently if the permitting process in the State of Texas were
organized in a manner that reduces the number of agency contacts a potential permittee must make
and assures that the potential permittee secures all appropriate permits:

WHEREAS. The Office of the Secretary of State, on the advice and consent of the other
parties to this Memorandum, further recognizes the RRC is particularly well-equipped to serve as the
central state agency that reduces the number of agency contacts a potential permittee must make and
assures that the potential permittee secures all appropriate permits for building natural gas pipelines
that cross the border between Texas and Mexico;

WHEREAS, the RRC is responsible for issuing Hydrostatic Test water discharge permits,
issuing opinions to the United States Army Corps of Engineers (USACE) concerning Clean Water
Act Section 401 water quality certification, and assuming responsibility for reviewing USACE
Section 10 navigability clearance with respect to building natural gas pipelines that cross the border
between Texas and Mexico;

WHEREAS, the THC in its role as the State Historic Preservation Office, is responsible for
ensuring that adverse effects on historic properties are avoided or minimized with respect to building
natural gas pipelines that cross the border between Texas and Mexico;

WHEREAS, with respect to building natural gas pipelines that cross the border between
Texas and Mexico, the GLO is responsible for issuing easements for portions of the Rio Grande
River that have not been deeded to the United States government;

WHEREAS, the TNRCC is responsible for issuing permits to withdraw United States-owned
water from the Rio Grande River, its tributaries, and any other Texas stream for hydrostatic testing
and permits for operations of certain pipeline facilities which emit air contaminants with respect to
building natural gas pipelines that cross the border between Texas and Mexico;

WHEREAS, the PUC does not issue permits with respect to building natural gas pipelines
that cross the border between Texas and Mexico, but may in some instances play a role in such
projects.
WHEREAS, the RRC, THC, GLO, TNRCC and PUC recognize that, with respect to building natural gas pipelines that cross the border between Texas and Mexico, the permit requirements from the various State agencies are necessary to protect public health and safety and cultural resources; and,

WHEREAS, the RRC, THC, GLO, TNRCC and PUC fully concur with The Office of the Texas Secretary of State that, with respect to building natural gas pipelines that cross the border between Texas and Mexico, the energy needs of the citizens of Texas and Mexico can be met more efficiently if the permitting process in the State of Texas were organized in a manner that reduces the number of agency contacts a potential permittee must make and assures that the potential permittee secures all appropriate permits.

NOW THEREFORE, in consideration of the benefits to the State of Texas, The Office Secretary of State, the RRC, the THC, the GLO, TNRCC, and PUC enter into this Memorandum and hereby agree as follows:

1. The RRC, THC, GLO, and TNRCC shall prepare an inventory of all known permits each agency may require with respect to building natural gas pipelines that cross the border between Texas and Mexico. The inventory shall include a list of each agency’s permits identified by name and/or number, and identify the appropriate staff contact person by name, phone number, and e-mail address for each permit.

2. The RRC, THC, GLO, TNRCC, and PUC mutually agree the RRC is designated as the distributor for applicable state permit applications, initial screening of completed applications for completeness, and facilitator among the other agencies to this memorandum for applicants who wish to build natural gas pipelines that cross the border between Texas and Mexico. The RRC, THC, GLO, TNRCC, and PUC further agree to encourage other relevant State and Federal agencies to engage in this process as the necessity for and convenience provided by their participation becomes apparent.

3. Within thirty days of the effective date of this memorandum, the RRC shall implement a system and designate personnel to distribute all notices of permit requirements, permit applications, and instructions for permit submission to persons who wish to build natural gas pipelines that cross the border between Texas and Mexico.

This Memorandum shall be effective as of the date of the last signature on this document. Any party may withdraw from this Memorandum at any time upon 30 days written notice to the other parties.
OFFICE OF THE SECRETARY OF STATE OF TEXAS
By: Henry Cuellar
Date: ____________________

RAILROAD COMMISSION OF TEXAS
By: Michael L. Williams, Chairman
Date: ____________________
By: Charles R. Matthews, Commissioner
Date: ____________________
By: Tony Garza, Commissioner
Date: ____________________

TEXAS HISTORICAL COMMISSION
By: F. Lawrence Oaks, Executive Director
Date: MARCH 2, 2001

TEXAS GENERAL LAND OFFICE
By: David Dewhurst
Date: MARCH 1, 2001
David Dewhurst, Texas Land Commissioner

CROSS BORDER PIPELINE MOU
Page 3 of 4

10843
DOE016-0595

Obtained and made public by the Natural Resources Defense Council, March/April 2002
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

By: Robert J. Huston, Chairman
    Date: __________

By: R.B. Marquez, Commissioner
    Date: __________

By: John M. Baker, Jr., Commissioner
    Date: __________

PUBLIC UTILITY COMMISSION

By: Patrick H. Wood, III, Chairman
    Date: __________

By: Judy W. Walsh, Commissioner
    Date: __________

By: Brett A. Perlman, Commissioner
    Date: __________
Robert J. Huson, Chairman
R. B. "Ralph" Harquart, Commissioner
John H. Baker, Commissioner
Jeffrey A. Saitas, Executive Director

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
Protecting Texas by Reducing and Preventing Pollution
February 21, 2001

Mr. Ronald Kitchens, Director of Energy Operations
Ms. Kathy Pyka, Director of Finance and Administration
Railroad Commission of Texas
P.O. Box 12967
Austin, TX 78711-2967

Re: Memorandum of Understanding Concerning Permitting of Trans-Border Natural Gas Pipelines

Dear Mr. Kitchens and Ms. Pyka:

This is in regard to the proposed memorandum of understanding (MOU) among several state agencies for facilitating the permitting of trans-border natural gas pipelines. I understand that the Railroad Commission of Texas would be the lead agency and the central point of contact for entities desiring information on state permit requirements for the construction of trans-border natural gas pipelines. I believe that our Commission would support such an endeavor. However, since our agency is required to adopt any MOU with another state agency as a rule before signing the MOU, the time required to complete the rulemaking would preclude our participation in the MOU at this time.

In order to avoid delaying the execution of the MOU by the other participating parties, I will provide to your agency by letter the desired permitting information that you can disseminate as necessary. Our staff will continue to coordinate with your staff to update this information, as appropriate. In the meantime, as soon as the MOU is executed by the other parties and the language is final we will initiate the rulemaking process related to our participation in the formal MOU. Although these interim actions are not binding (the final decision on any rulemaking rests with the Commissioners) we trust that they support your endeavor.

If you have any questions or comments, please do not hesitate to contact Mr. Randolph Wood, Deputy Director, Office of Environmental Policy, Analysis, and Assessment, at (512) 239-1120.

Sincerely,

Jeffrey A. Saitas, P.E.
Executive Director

cc: Mr. Duncan Norton, General Counsel

P.O. Box 13087 • Austin, Texas 78711-3087 • 512/239-1006 • Internet address: www.rrc.state.tx.us

10845
DOE016-0597

Obtained and made public by the Natural Resources Defense Council, March/April 2002
USA/Texas Cross Border Natural Gas Pipeline Regulation

In addition to the Department of Energy (DOE) export license, the certificate(s) issued by FERC under Section 3 or Section 7 of the Natural Gas Act and the Presidential Permit with required recommendations from the Secretary of State and Secretary of Defense, the following state and federal agencies will be involved in the following manner with construction and operation of a cross border natural gas pipeline from Texas to Mexico:

<table>
<thead>
<tr>
<th>AGENCY</th>
<th>PERMIT/LICENSE</th>
<th>NATURE OF AGENCY AND PERMIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Boundary and Water Commission (IBWC) (USA)</td>
<td>* License To Construct</td>
<td>Agency is in charge of border property; license assures construction is sound, prudent and complies with all environmental requirements.</td>
</tr>
<tr>
<td>US Army Corps of Engineers (USACE) (USA)</td>
<td>* Section 10 Clearance (Navigability) * Section 401/404 Permit for wetlands and water quality</td>
<td>Agency is in charge of maintaining navigable US waterways and with assuring their water quality and wetland protection; permits are vehicles for accomplishing these goals. The Section 401 Clean Water Act permit is in 9/10 cases a general permit which per USACE should not require State involvement.</td>
</tr>
<tr>
<td>USEPA Region VI (USA)</td>
<td>*Storm Water Discharge permit for construction activity * National Pollutant Elimination System permit for Hydrostatic Test water discharge</td>
<td>Agency function here to maintain water quality; likely a general permit for construction activity requiring work to employ best management practices and requiring little paperwork; EPA likely not to issue NPDES permit because it is minor and operator left to work under state permit. If RAC seeks and gets NPDES authority from EPA, this federal element of paperwork could be eliminated.</td>
</tr>
<tr>
<td>Department of Energy (USA)</td>
<td>*Import/Export License</td>
<td>DOE provides permit that allows party to take title to gas imported or exported across the border.</td>
</tr>
<tr>
<td>FERC (USA)</td>
<td>*Natural Gas Act Section 3 or 7 Certification; coordinates with State Department for Presidential Permit</td>
<td>FERC coordinates Presidential Permit by getting letters from Secretaries of State and Defense approving buying or selling gas at the particular border location; also issues Section 3 permit to build facilities at border, and if gas going to interstate market, issues Section 7 permit.</td>
</tr>
<tr>
<td>US Fish and Wildlife</td>
<td>*Threatened and Endangered Species Clearance</td>
<td>Agency assures project will not threaten endangered species.</td>
</tr>
<tr>
<td>Railroad Commission (TX)</td>
<td>*T4 Permit to operate pipeline *Hydrostatic Test water discharge permit *Issuance of opinion to USACE re Clean Water Act Section 401 certification * Review of USACE Section 10 Clearance</td>
<td>Commission authority for intra state pipeline operation and sole authority for assuring no surface or subsurface water pollution from activities under its jurisdiction; also responsible for state element of 401 certification for such activities; Staff reviews navigability clearance voluntarily to assure Texas has no problem with USACE recommendation. RRC staff can in most cases assure itself USACE general permit standards protect state water quality standards and thus eliminate this state element of paperwork.</td>
</tr>
<tr>
<td>Texas Natural Resource Conservation Commission (TX)</td>
<td>Permit to withdraw Rio Grande River water for Hydrostatic Testing</td>
<td>Agency function here to regulate water use; permit needed only if river water to be used, and general permit may apply.</td>
</tr>
<tr>
<td>Texas General Land Office (TX)</td>
<td>Easement to use State land</td>
<td>Agency issues easements through State rights of way such as river bed.</td>
</tr>
<tr>
<td>Texas Historic Commission</td>
<td>Cultural Resources Clearance</td>
<td>Archaeologist may need to do survey to assure construction does not disturb antiquities.</td>
</tr>
</tbody>
</table>
NEWS from
Charles R. Matthews
Commissioner, Railroad Commission of Texas

Contact: Melissa Columbus 512-463-7142
FOR IMMEDIATE RELEASE
March 15, 2001

TEXAS STATE AGENCIES COLLABORATE ON CROSS BORDER NATURAL GAS PIPELINE PROJECTS

AUSTIN-Today, Secretary of State Henry Cuellar, Railroad Commissioner Charles Matthews, Texas Land Commissioner David Dewhurst, Public Utility Commissioner Pat Wood, III and Texas Historical Commission Director F. Lawerence Oaks signed into a joint memorandum of understanding to streamline the permitting of crossborder natural gas pipelines.

"With this MOU, we are streamlining government to make the process more efficient and effective," said Secretary Cuellar. "The Secretary of State's office is always looking at partnerships that will continue enhancing our relations with Mexico. This initiative is an example of a cooperative effort between Texas and Mexico."

This memorandum establishes a joint agreement between the Secretary of State, Railroad Commission, General Land Office, Public Utility Commission and the State Historical Commission in developing dialogues regarding the building of natural gas pipelines that cross the border between Texas and Mexico. Recognizing that the energy needs of the citizens of Texas and Mexico can be met more efficiently if the permitting process in the State of Texas was organized in a manner that reduces the number of agency contacts a potential permittee must make and assures that the potential permittee secures all appropriate permits.

"Streamlining permit applications is a win-win the General Land Office has been pursuing since I took office; first with coastal and offshore permits, and now with cross-border natural gas pipelines. Streamlining the process should result over the next decade in additional gas supplies for Texas at competitive prices," stated Commissioner Dewhurst.

"This is the first step of an overall effort to bridge vital services between Texas and Mexico," said PUC Chairman Pat Wood, III. "The PUC also is working to strengthen electricity and telecommunications links."

F. Lawerence Oaks, Executive Director of the Texas Historical Commission stated, "The Texas Historical Commission is happy to be a part of this cooperative effort that will strengthen our relationship with Mexico and provide an efficient process for providing natural gas pipelines. Working closely with Mexico on matters of this type makes good sense for Texas."

10847
DOE016-0599

Obtained and made public by the Natural Resources Defense Council, March/April 2002
"Texas State Agencies Collaborate..."

Communications that began in 1997 between the Mexican Energy Regulatory Commissioner Dr. Raul Monteforte and Railroad Commissioner Charles Matthews have focused on identifying barriers on both sides of the border. By streamlining the permitting process many of these barriers will disappear. Currently there are four state agencies a permittee has to go through to obtain permits for cross-border pipelines. The Railroad Commission will become the lead permitting agency.

The future of the North American energy industry would greatly benefit through the relationship between the Texas and Mexican regulatory agencies whose rules will help form the structure and practice of the trans-border industry. With the demand of natural gas in both the United States and Mexico increasing, these bi-directional pipelines will benefit both countries.

In this way, the foundations will be established for the natural gas and LPG transportation permitting process on both sides of the border to be carried out in a coordinated manner, thus avoiding paperwork delays and providing certainty to investors interested in developing this type of project.

“This is the first step. Our next step is to begin working with the various federal agencies to continue the process of streamlining the pipeline permitting process. Our goal is to help serve the increasing energy needs of both the United States and Mexico. We believe that these efforts will ultimately affect consumers by lowering the cost of natural gas for both countries,” stated Matthews.

-30-

10848

DOE016-0600

Obtained and made public by the Natural Resources Defense Council, March/April 2002
The Honorable Richard B. Cheney  
Vice President of the United States  
276 Dwight D. Eisenhower  
Executive Office Building  
Washington, DC 20501

Dear Vice President Cheney:

As our nation moves forward to develop and implement a comprehensive, balanced energy strategy, we at Westinghouse Electric Company believe that nuclear energy research and development can play an important role in achieving results that best meet the needs of the American people. Earlier this year, the Department of Energy launched an initiative to prepare a technology roadmap for guiding nuclear R&D activities that will lead to a new generation of new reactor technologies – referred to as Generation IV. Working groups (comprised of representatives from industry, laboratories, and academia) are carrying out this initiative under the guidance of the Nuclear Energy Research Advisory Committee (NERAC).

One particular activity within this technology roadmap initiative that needs the immediate attention of Congress and the Administration is the interim report recently released by the Near Term Deployment (NTD) Group. Just issued at the end of May, this report identifies activities that should be initiated right away – to address the complex, time-consuming regulatory hurdles that must be overcome by new, advanced nuclear plants. Specifically, the NTD Group’s report recommends that $36 million be included in the Department’s nuclear R&D budget for fiscal year 2002, to support efforts by NRC and industry to establish the new licensing processes needed for new plants. Although the NRC has already promulgated regulations to help streamline the licensing of new plants in 10CFR52 (for Early Site Permits, Combined Operating Licenses, and Design Certifications), most of these regulations have yet to be put to use and there are many details to be worked out before future applicants can be sure that the new licensing processes will work smoothly. There is also the need to work out new regulatory policies and procedures for handling the review of new advanced reactor technologies (e.g., the gas cooled reactor designs) and for approving design changes to already certified standard designs (e.g., uprating power level to improve economic efficiency).
As recommended by your National Energy Policy Development Group, developing these new licensing processes and resolving issues related to new advanced reactor technologies are essential to expanding the use of nuclear energy in the United States, while maintaining high levels of safety and environmental protection.

I strongly encourage your efforts to include the NTD Group’s recommendations in the fiscal year 2002 budget. I apologize for the late timing of this letter, however, the NTD Group’s recommendations were only recently released.

Sincerely,

Charles W. Pryor, Jr.
President and CEO
Westinghouse Electric Company

CC: The Honorable Spencer Abraham
From: Kelliher, Joseph
Sent: Tuesday, March 20, 2001 3:06 PM
To: Kellowicz, Robert
Cc: Kelliher, Joseph; Anderson, Margot; Stevenson, Beverley; Porter, Robert; Furiga, Richard; Johnson, Nancy
Subject: RE: NPC report

I spoke with Eric and he was looking for FE's report, "Environmental Benefits of Advanced Oil and Gas Exploration and Production Technology," 1999. He located it on our web site. I offered to send him a hard copy, but he was satisfied with the web site: http://www.fe.doe.gov/oil_gas/environ_rpt/index.html

Bob McNally with the White House called asking about a NPC report from 1997-98 that described how the footprint from oil and gas development has strunk dramatically. Please coordinate and respond to Bob through his assistant, Eric (456-5378). Get them a copy of any such report. I have a number of meetings so please deal with this directly.

Thanks.

Attached is a Q&A on the 30 million barrel exchange and the "net" effect of the transaction. If you want additional information, please let me know. << File: Sec-SPR.wpd >>
The Business Roundtable strongly supports many of the initiatives the Bush Administration has proposed as part of the National Energy Policy issued in May of this year. In particular, our members have a keen interest in the efforts by the U.S. Environmental Protection Agency (EPA) and the Department of Justice to review the program design and enforcement posture of the New Source Review (NSR) program under the Clean Air Act. The BRT feels that a prompt resolution of the NSR issue could greatly benefit the nation’s energy and fuel supply needs as well as improve the energy efficiency of domestic manufacturing.

We have attached a policy statement that reflects the Roundtable’s viewpoint on the issues that have arisen with this program and our recommendations for improving it in the future. We ask you to consider these views as the Administration considers administrative reforms to the program that will advance air quality goals without stifling technological innovation or imposing unnecessary burdens.

EPA has recently taken actions that represent a reinterpretation of the scope of the NSR program’s permitting and technical standards to include routine maintenance and replacement activities at industrial plants. These changes in EPA policy have been implemented through enforcement actions, rather than notice and comment rulemaking that would allow for a public dialogue on the program’s substantive policies. We believe that these policies do need a more public discussion because EPA’s current course with the NSR program can magnify burdens for industry, impose procedural delays and discourage technological innovation. Such policy changes should not be made through retroactive reinterpretation of the law or through enforcement actions.

It is important to emphasize that the Roundtable members support continuous improvement in reducing air emissions from industrial plants. We believe, however, that there are a range of strategies that EPA and the private sector can employ to achieve that goal without creating unnecessary burdens or chilling technology innovation. A number of constructive proposals for NSR reform have been offered to the Administration. We believe that many of these ideas hold great promise for improving environmental performance at plants while maintaining operational flexibility. As we have outlined in the attached paper, we urge the Administration to take a close look at those proposals and to address the improvements through the available administrative processes.

An Association Of Chief Executive Officers Committed To Improving Public Policy
September 6, 2001
Page 2

As the Administration proceeds with its efforts to reform the NSR program, the Roundtable urges the Administration to keep two considerations in mind. First, the implications of the program extend to a wide range of the American economy. There has been a tendency to focus on the implications of the program for electricity generating plants and petroleum refineries, in part because these facilities have been recent targets of EPA’s enforcement program. The Business Roundtable’s membership is quite diverse, and we can certainly affirm that companies in a variety of industries are concerned about the implications, and uncertainties, of the NSR program for their operations.

Second, it is important that the efforts you initiated produce tangible results in a reasonable period of time. Over the last several years, EPA has received a variety of proposals for reform but has not made any substantive changes in the NSR program. Thus, we were encouraged by the Bush Administration’s commitment, in the National Energy Policy, to conduct its review of the program in 90 days. On August 14, 2001, the EPA Administrator announced that EPA would be combining its NSR review with an effort to develop a “3 pollutant” proposal to reduce air pollution.

While we can understand why EPA would find it desirable to combine several efforts to change air pollution requirements, we are concerned about the implications of that decision for the timing of any meaningful changes in the NSR program. The NSR program is having tangible effects on industrial plants today. Therefore, we urge the Administration to proceed with its original plan to follow through on appropriate administrative changes to the NSR program.

We certainly believe that EPA should be afforded a reasonable opportunity to develop its more comprehensive proposal. However, given that the legislative process requires significant debate, we urge the Administration to proceed with its original plan to follow through on appropriate administrative and rulemaking changes to the NSR program as soon as practical.

The Business Roundtable stands ready to work with you on any of the elements of the attached policy statement. We appreciate your continuing involvement and leadership in these matters.

Sincerely,

Ernest W. Deavenport
Chairman and CEO
Eastman Chemical Company
Chairman, Environment, Technology & the Economy Task Force
The Business Roundtable

cc: The Honorable Spencer Abraham
    The Honorable John Ashcroft
    The Honorable Christine Todd Whitman
    Mr. Mitchell E. Daniels, Jr.
    Ms. Linda Fisher
    Mr. John D. Graham
    Mr. Lawrence B. Lindsey

Enclosure

10853

DOE016-0605

Obtained and made public by the Natural Resources Defense Council, March/April 2002
THE BUSINESS ROUNDTABLE

NEW SOURCE REVIEW REFORM POLICY STATEMENT

Introduction

Without question, achieving environmentally sound economic growth in the next century will require innovative solutions. Our society is facing growing environmental challenges and energy demands. Whether we can respond effectively to these challenges will depend to a large extent upon our ability to apply technology and increase process and operational efficiency. The Business Roundtable strongly believes that our government needs to encourage companies to routinely maintain existing equipment and to incorporate technological improvements systematically, particularly as component parts are replaced.

Within the recent past, the EPA has taken actions that represent a fundamental shift in the Agency’s New Source Review (“NSR”) policy under the Clean Air Act (“Act”). These actions are focused on imposing NSR permitting requirements on existing sources that heretofore have never been considered subject to NSR. In BRT’s view, EPA is pursuing a course of action that is both environmentally and economically counterproductive. Most importantly, the Agency’s actions reflect a reinterpretation of the law that threatens routine capital investments that increase neither capacity nor emissions rates, but only improve the reliability or efficiency of operations. This reinterpretation of existing rules implies that routine incorporation of new technology at existing facilities either is a violation of the Clean Air Act or requires a new lengthy permit approval process.

BRT believes that expanding the scope of the NSR program beyond its intended boundaries would significantly undermine constructive industry efforts to reform the basic NSR requirements. Congressional members have raised objections that including carbon dioxide emissions reductions as part of this program would violate Congress’ express prohibition against implementation of the Kyoto Protocol prior to its ratification by the U.S.

A Badly Broken Regulatory Process

Under the NSR program, companies must install state-of-the-art controls if they plan to construct a major new facility. However, Congress did not require existing plants to meet the technology-based control requirements for new sources, unless the owner modified its facility in such a way as to increase significantly its capability to emit regulated air pollutants. But existing plants must always install whatever control requirements are necessary to comply with the applicable state implementation plan to meet ambient air quality standards. These standards are established to protect human health and the environment with generous margins of safety. Until recently, it was uniformly understood by industry that “routine repair and maintenance” did not constitute a “modification” that would trigger NSR. But through its reinterpretation of the NSR requirements, EPA has now created considerable misunderstanding and ambiguity where none existed before. EPA’s recent reinterpretation of this NSR exclusion could not have been
anticipated by industry, and it fails to recognize how industry has consistently operated both before and since the Clean Air Act was enacted.

There is little disagreement that this reinterpretation of the NSR rule further increases the complexities of a program that already imposes unnecessary burdens on States and industrial sources. Applicants now face an extremely detailed and time-consuming permitting process. Moreover, this delay and related burdens create significant disincentives to new investment in more efficient and cleaner technologies and processes. In sum, the basic NSR program is in need of reform and an effort is presently underway to overhaul it through the rulemaking process.

**EPA Rule Interpretations Threaten Reliability and Efficiency Investments**

Through recent regulatory proposals and administrative and enforcement activities, EPA is reinterpreting existing law in two important ways. First, in its statements and enforcement actions, EPA is taking the position that any significant efficiency or reliability project constitutes a change that could trigger NSR, even though the project produces no corresponding increase in a source's achievable emissions rate. Second, in its 1998 NSR Notice of Availability, the Agency proposed that any change to an existing unit will create an irrefutable presumption that the change will result in an increase in future annual emissions requiring NSR.

Moreover, on November 3, 1999, EPA brought legal action against eight utilities throughout the Midwest and the South claiming that past efficiency and reliability improvement projects are now subject to NSR requirements. This is directly contrary to the common sense understanding of the term that EPA has historically applied. Recognizing that industry must undertake activities to maintain its facilities, the Agency has always allowed industry to undertake “routine maintenance, repair and replacement” projects that are customary to preserve safe, efficient and reliable generation. However, without providing any fair notice, EPA is now asserting that the electric utility industry has been violating the Clean Air Act for nearly three decades by performing such replacement and maintenance activities. EPA is claiming that projects done without any cloak of secrecy can be penalized now, regardless of how many years have passed since the work was done.

**Adverse Effects of EPA’s Actions**

BRT believes that EPA’s activities are environmentally and economically counterproductive. Essentially, its reinterpretation of NSR rules will dissuade companies from undertaking the types of projects that improve efficiency, reliability, and availability – projects that would result thereby in lower emission rates and more efficient use of capital. EPA’s enforcement activities also amount to a bypassing of the regulatory process that is undermining constructive efforts to achieve real reform and consistent application of the NSR program. Similarly, Congressional members already have raised objections to EPA that expanding the scope of the NSR program to cover controlling carbon dioxide emissions would violate congressional directives.

**Magnifying Burden:** EPA’s actions, which affect potentially thousands of projects, magnify the burdens already associated with this program. The Agency’s current approach will
undoubtedly confuse companies about the legal status of planned replacements and jeopardize maintenance programs. For example, utility companies, many of which operate under state statutes mandating routine maintenance to keep generating plants in reliable condition, will have to decide whether to continue to make routine repairs on their plants or forego maintenance. This risks plant shutdowns or, if they keep their plants running, worker safety and forced outages.

Increasing Procedural Delays: EPA’s reinterpretation of long-standing law will now require prior Agency NSR review for even capital projects that are designed simply to prevent a deterioration in efficiency. Far from streamlining an already burdensome program, this approach will significantly increase the number of time-consuming “applicability” determinations that will have to be made before virtually any capital projects are initiated. Furthermore, it could take 18 months or longer for new permitting to be completed and even longer for new control equipment to be installed.

Disincentive to Innovate: EPA’s construction of the Clean Air Act’s requirements will seriously discourage innovation in equipment design and industrial processes to achieve efficiency improvements. This is largely because economic savings and reliability improvements from the projects will be far outweighed by the cost of having to undergo NSR or of having to limit annual emissions to past levels to avoid NSR, even though the source may be well below permitted emission levels. As a result, the price of this system will continue to be lost opportunities for energy, conservation and environmental gains, and employment lost to foreign competitors. Many foreign countries have lower wage scales than the U.S. and therefore enjoy lower standards of living. U.S. industries have been able to compete with these lower-wage countries because U.S. industry has consistently been able to use technological innovation to improve efficiency and productivity to offset any wage differential.

EPA’s Retroactive Reinterpretation of the Law through Enforcement Actions: The legal actions that EPA has brought against Midwest and Southern utilities represent only a part of the Agency’s nationwide enforcement initiative. In addition to electric utilities, EPA also is targeting the pulp and paper, petroleum refinery, and iron and steel industries. EPA’s allegation of massive noncompliance throughout all of these industrial sectors is ample evidence that its reinterpretation of NSR requirements has no validity. By retroactively reinterpreting the law and undertaking this massive enforcement effort, the Agency is seeking to effect changes through punitive actions, rather than providing leadership to the ongoing stakeholder process that is seeking to achieve real NSR reform. The NSR program needs balanced industry-wide solutions that are best developed through the rulemaking process rather than through enforcement mechanisms.

Industry Proposals Provide a Constructive Basis for Reform

BRT endorses the proposals that industry has crafted as the preferable approach to defining a basic NSR scheme. BRT believes that the Utility Air Regulatory Group, Plant-wide Applicability Limits, and complex manufacturing proposals provide a constructive basis for serious discussions between the Agency, the industry, and other stakeholders. Unlike earlier EPA proposals, which dwelled on specific aspects of the rule and took a line-by-line approach,
these proposals seek to achieve overall clarification, to strike an equitable balance between competing stakeholder concerns about the core issues, and to provide certainty about compliance obligations. These proposals (Utility Air Regulatory Group, complex manufacturing, and plant-wide applicability limits) would achieve the following:

- Greatly simplify and clarify NSR applicability determinations. In the case of the utility and complex manufacturing proposals, rationalize the accounting rules that determine whether modifications by existing sources trigger federal and state NSR controls.

- Through systemic approaches substantially decrease the rate and amount of emissions from existing facilities. Through programs designed to address the respective circumstances of the manufacturing and electric generating firms, the agency would achieve NSR levels of emission reductions at existing facilities efficiently and cost-effectively, rather than through piecemeal reductions on an ad hoc basis through selective enforcement of the NSR “modification” rule. (For example, existing electric generating units would be subject to new source levels of emission control over time, in a manner coordinated with the implementation of other existing source control programs and allowing trading among sources. The complex manufacturing proposal would improve the level of control at existing units over time by assuring the installation of controls on new units as capital stock turns over and on significantly changed existing units.)

- By simplifying and clarifying NSR applicability determinations, significantly reduce disincentives in the current system for making plant changes that improve efficiency with corresponding emission reduction benefits.

- Provide facilities the flexibility to negotiate plant-wide applicability limits.

- Preserve the historical common sense understanding of “routine maintenance, repair, and replacement,” allowing companies to take steps to maintain their plants in a safe, reliable, and efficient operating condition.

- Formalize EPA’s guidance issuance procedures to eliminate the potential for conflicting (and often unpublicized) advice from different Agency offices.

Conclusion

BRT maintains that EPA’s attempts to reform the NSR program on an ad hoc basis through a retroactive reinterpretation and selective enforcement of the “modification” rule is counterproductive from the standpoint of the environment, economics and worker safety. This bypassing of the regulatory process will only serve to further delay any reasoned implementation of the NSR program. Moreover, it is unnecessary given industry’s willingness to work with the Agency and other stakeholders in developing a new basic NSR scheme. The approach that prevails will make the difference between opening opportunities for energy-efficiency improvement projects and increasing the obstacles for technology development and deployment.
TO: Ms. Carol A. Kennedy
   Executive Secretariat
   Room 7E-054 Forrestal Building
   Department of Energy
   1000 Independence Avenue SW
   Washington, DC 20585

DATE: September 18, 2001

We are forwarding the enclosed constituent mail containing views and concerns about energy issues. It is not necessary to respond to our office regarding each reply.

Should you have questions about these procedures or need to provide updated contact information, you may reach me by telephone at 202.456.9002 or by fax at 202.456.7044.

Sincerely,

Cecelia Boyer
Special Assistant to the Vice President for Correspondence
Repeal PUHCA Now
801 Pennsylvania Avenue, N.W.
Suite 352
Washington, D.C. 20004

March 1, 2001

Honorable Richard B. Cheney
Vice President of the United States
Office of the Vice President
Dwight D. Eisenhower Executive Office Building
Washington, D.C. 20501

Dear Mr. Vice President:

We, the undersigned companies and organizations, congratulate you and look forward to working cooperatively and effectively with you, particularly on your efforts with the National Energy Policy Development Group.

Repeal of the Public Utility Holding Company Act of 1935 (PUHCA) remains an issue of enormous importance to a healthy and sound electric industry. We appreciate the Administration’s understanding of the need for repeal. We are encouraged by then-Governor Bush’s recognition that PUHCA "...limits the activities of existing utilities, discourages new entrants, and places undue burden on utilities regulated by it", as well as his assessment that repeal of PUHCA will contribute to lower prices and better services for consumers.

Over the past several Congresses, efforts to repeal PUHCA have enjoyed bipartisan support in both Houses of Congress. Every major piece of restructuring legislation has contained provisions for the repeal of PUHCA. The Securities and Exchange Commission (SEC), which enforces PUHCA, has consistently recommended repeal to Congress since the early 1980s. After lengthy analysis, the SEC concluded that the statute is unnecessary in view of the several other Federal and state statutory and regulatory provisions protecting shareholders, ratepayers and consumers.

The Congressional Budget Office has scored this legislation, indicating that repeal would not have an impact on the U.S. Treasury. In fact, repeal would very likely result...
in savings to the government. Furthermore, societal costs of PUHCA have been consistently estimated in the billions of dollars.

Despite the need for repeal and the gains we have achieved, we need your support and leadership. For the sake of consumers and investors alike, we feel it is important that the Task Force not overlook the significance of PUHCA as a barrier to entry in electricity and gas markets. Every day that PUHCA remains on the books, innovation, competition and new market entry are thwarted and companies continue to labor under arcane and outdated restrictions resulting in unnecessary delays, additional expenses and uneconomic situations — the costs of which are ultimately borne by energy consumers.

We look forward to working with you and your team to accomplish PUHCA repeal within the first year of the new Administration.

Sincerely,

Thomas R. Kuhn
President
Edison Electric Institute

David N. Parker
President and CEO
American Gas Association

Alan J. Noia
Chairman, President, and CEO
Allegheny Energy, Inc.

E. Linn Draper
Chairman, President, and CEO
American Electric Power

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Xcel Energy

William Cavanaugh, III  
Chairman, President, and CEO  
Progress Energy

J. Wayne Leonard  
Chief Executive Officer  
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Chairman and Chief Executive  
TXU

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Chairman, President, and CEO  
Duke Energy

John M. Derrick  
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Pepco

Martin A. White  
Chairman, President, and CEO  
MDU Resources Group, Inc.

Obtained and made public by the Natural Resources Defense Council, March/April 2002
cc: Secretary Ann M. Veneman
Secretary Donald L. Evans
Secretary Spencer Abraham
Secretary Cale A. Norton
Secretary Norman Y. Minetta
Secretary Paul H. O'Neill
Administrator Christie Whitman
Andrew Lundquist, Director