



Department of Energy
Washington, DC 20585

May 4, 2010

MEMORANDUM FOR THE ASSISTANT SECRETARY FOR FOSSIL ENERGY

From:

A handwritten signature in black ink, appearing to read "Herbert Richardson", written over the printed name.

Herbert Richardson
Principal Deputy Inspector General

Subject:

Alleged Procurement Irregularities Relating to the Clean Coal
Power Initiative Gilberton Coal-to-Clean Fuels and Power Project
(OIG Case No. S10IS007)

On December 30, 2009, Congressman Tim Holden wrote to the Office of Inspector General regarding alleged procurement irregularities concerning the Gilberton Coal-to-Clean Fuels Project. The letter was the culmination of a meeting and several telephonic discussions on this subject which Congressman Holden's staff initiated. Participation included congressional staff, senior representatives of WMPI PTY., LLC. (WMPI) – the lead entity in the Gilberton Project – and, the Office of Inspector General.

In summary, as related in Congressman Holden's letter, WMPI claimed that a March 28, 2008, meeting between Department of Energy officials and a Washington lobbying firm representing Sasol Synfuels International (Proprietary) Limited (Sasol) was the impetus for effectively terminating the Gilberton Project through the reprogramming of the Department's \$100 million contribution to the Project. The implication was that the Department used the March meeting to directly or indirectly encourage Sasol to withdraw its support for Gilberton. Sasol was a key participant in the Project proposal, providing technology which, we were told, was essential to its success. The respective roles of the parties were outlined in a 2005 Memorandum of Understanding (MOU) between WMPI and Sasol.

In his correspondence, Congressman Holden requested an Inspector General investigation of this matter. We initiated a preliminary review focusing our attention on the March 28, 2008, meeting. We found that the Gilberton Project had been under consideration by the Department for nearly five years. We were told, as well, that: (i) there had been extensive negotiations over time on Project issues between WMPI and several participants, including Sasol; and, (ii) Sasol had repeatedly expressed fundamental concern with the reliability of WMPI's Project cost estimates.

We interviewed the parties who, we were informed, participated in the March 28, 2008, meeting. This included the then Acting Assistant Secretary for Fossil Energy, Mr. James "Jim" Slutz, and the former Under Secretary, Mr. Clarence "Bud" Albright, Jr., as well as two Livingston Group representatives. All four indicated that the Department of Energy's position at the meeting was supportive of the Gilberton Project, including the recognition of the need for WMPI and Sasol to work together prospectively to make the Project a success. In short, they denied that the Department had encouraged Sasol to terminate its participation in the Gilberton Project.

We sought, but were unable to locate, any written meeting agenda, minutes or contemporaneous notes regarding the March 28, 2008, meeting. Thus, the verbal testimony of the four participants was the only basis for gaining an understanding of the meeting's purpose and direction.

As to the criticality of the March 28, 2008, meeting, based on witness testimony and record reviews, we found that the Department, WMPI and Sasol engaged in conference calls and additional meetings for several months following the March 28, 2008, meeting. This suggested that the Project was still active. For instance, on April 11, 2008, a meeting was held in Washington, DC, with WMPI, Department of Energy career employees responsible for the Project and Sasol – which flew executives in from South Africa. The Federal employees told us that the purpose of the meeting was to discuss methods for advancing the Project and that the Project had the Department's support. As best we could re-construct the timeline, discussions such as these continued until early summer of 2008, nearly five months after the March 28, 2008, meeting. We were told that in August 2008, WMPI invoked its right as outlined in the MOU to enter into arbitration proceedings with Sasol, presumably contesting a decision by Sasol to discontinue its Project participation.

We had general discussions with Department of Energy General Counsel specialists regarding the legality of the March 2008 meeting. Although no formal legal opinion was sought nor was one proffered, it was their preliminary advice that the meeting between Sasol representatives and the Department, without WMPI's participation, was not illegal. However, based on our experience in evaluating the Department's contracting procedures and processes, it was apparent that such meetings without all parties present and which lack relative transparency can understandably lead to the kinds of conclusions expressed by WMPI in this matter. In this context, we noted that former Under Secretary Albright asserted in our interview that he told the Sasol representatives at the March 28, 2008, meeting that in the future any discussion on Gilberton should be routed through WMPI, as the lead in the Project.

In summary, we could find no evidence to support the contention that the March 28, 2008, meeting was the impetus for the reprogramming of the \$100 million award. Absent new information, no additional action by the Office of Inspector General is contemplated. For your information, our intent is to share a copy of this memorandum with Congressman Holden.

