

WORC

Western Organization of Resource Councils

September 8, 2021

Jennifer Granholm
Secretary of Energy
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585
Also submitted via electronic mail to: The.Secretary@hq.doe.gov

Re: Request to restructure or terminate the National Coal Council FACA

Dear Secretary Granholm,

On behalf of the members of the Western Organization of Resource Councils (WORC), we are writing to request that you carefully scrutinize the operation of the National Coal Council (NCC) federal advisory committee, and, at a minimum, terminate the inappropriate relationship between the NCC and the corporate alter-ego of the council, NCC, Inc. We further request that you consider whether NCC can be restructured to ensure it is properly fulfilling its obligations under the Federal Advisory Committee Act (FACA) or whether it should be terminated altogether.¹

Our organization has been reviewing NCC records obtained in litigation,² including meeting minutes and transcripts, reports, and recommendations. We have grave concerns that this committee does not meet the public purposes and requirements of FACA and that it provides biased information to the Department of Energy (DOE) on behalf of the coal industry. Additionally, the committee's intertwined relationship with the NCC, Inc. is most troubling, and raises questions about transparency, funding, and public accountability.

WORC is a seven-state member organization with a mission to advance the vision of a democratic, sustainable, and just society through community action. WORC is committed to building sustainable communities that balance economic growth with the health of people and stewardship of the land, water, and air resources. WORC has member organizations in coal-producing regions of the Western United States, including Wyoming, Montana, Colorado, and North Dakota. Since WORC's founding in 1979, the organization has focused on coal mine reclamation and taxation of natural resources, implementation of the Surface Mining Control and Reclamation Act, DOE subsidies and policies related to coal mining and coal-fired power plants, and federal coal leasing

¹ See <https://www.nationalcoalcoalouncil.org/> & <https://www.energy.gov/fe/national-coal-council>

² See *WORC v. Dep't of Energy*, 4:20-cv-00098 (D. Mt.).

activities of the Department of the Interior. WORC and its members have a keen interest in and are directly affected by policies of the federal government that promote coal-based energy, carbon capture and sequestration at coal plants, and coal extraction for non-energy purposes, such as carbon fiber or advanced manufacturing.

The NCC is an advisory committee organized under FACA, a sunshine law designed to promote transparency and balance in the operation of committees of private individuals that provide advice to the federal government at the government's request. See 5 U.S.C. App. 2. Uniquely, however, a parallel organization called NCC, Inc. operates as a 501(c)(6) trade association, with the exact same membership as the NCC. NCC, Inc. is funded by private contributions from the same coal companies that make up NCC's membership. WORC's litigation about the transparency obligations of NCC, Inc. is ongoing, and a federal judge recently found that NCC, Inc. was the indistinguishable "alter ego" of the NCC, with identical members, purpose, and leadership as the federal committee. *Niskanen Ctr., Inc. v. U.S. Dep't of Energy*, 328 F. Supp. 32 1, 11 (D.D.C. 2018). It is highly problematic for a federal advisory committee to have a corporate alter-ego structured as a non-profit trade association for regulated industry. It is particularly troubling when there appear to be no clear lines of separation between the federal entity and the mirroring industry association.

WORC has been following with interest what policies the NCC is recommending that DOE implement – especially those having to do with funding. In reviewing information about the NCC, including the recently compiled administrative record in *WORC v. Dep't of Energy*, our members and staff have become gravely concerned about the level of direct and exclusive access and influence of the coal industry within the NCC and through it on the DOE. The lack of balance in views and perspectives in the NCC membership is glaringly obvious in the meeting transcript materials, which show that NCC meetings are devoid of any counterbalancing perspectives from individuals or organizations working to address the negative impacts of coal extraction or its burning for power generation. Such perspectives are crucial to ensure taxpayer funds are being invested wisely.

As is clear from the records we have obtained, the NCC's work, funding, and structure is intertwined with the coal industry to a degree that is breathtaking for what is ostensibly a government entity. The records show that NCC events, often including dinner, drinks, and social time, are funded by the coal industry, and that this funding blatantly influences the work of the NCC. For example, at one recent NCC meeting, the federal advisory committee received a presentation on NCC, Inc.'s financing, in which the speaker lauded the approval of new appointments by the DOE Secretary to the NCC because they would generate additional revenue for NCC, Inc. At another meeting of the federal committee, a speaker called upon members to become dues paying members and sponsors of NCC, Inc. No federal advisory committee should function as a revenue-generation tool for a private trade association, but the NCC clearly has.

The membership and funding structure of the NCC has translated into open efforts by this federal advisory committee to engage in policy advocacy, rather than simply rendering vetted advice to the DOE. For example, the Council appears to believe that it has a single-focus policy mission of propping up the coal industry. One NCC speaker put it best when he said, “the single most important priority for the committee” is to “preserve and rejuvenate the existing coal fleet.” In another instance, the Chairman of an NCC subcommittee admitted that while the NCC seeks to give the DOE the advice it seeks, the NCC has a parallel goal of, “at the same time, serving our own strategic objectives.” FACA exists to facilitate the collection by federal agencies of advice and research from third parties; the statute was not designed to facilitate organized industry associations pursuing their strategic objectives via federal policymaking.

In practice, as expected for an industry association in the guise of a FACA, NCC speakers exhibit pro-coal biases, with occasional open bashing of counter perspectives coming from the conservation community or those with differing political views. For instance, a speaker at a NCC event in 2018 remarked, “[I]magine where we would be if we were a year and three months into the Hillary Clinton Administration.” He further remarked “You may [] see it differently, but it’s my stance that the time for cooperation and placating the environmental left is over. The idea that the environmentalists care at all about the future of coal or coal miners is obviously false. . . No concessions to the environmental lobby are in your best interest. They are dead set not on limiting your business, but destroying it.”

Similarly, former DOE Secretary Rick Perry, a blatant industry ally, felt comfortable delivering highly political remarks to the NCC to applause from the group, saying, “The problem with some of my friends on the other side is, it’s not their utopian views - - well. It’s more so how, that they legislate and regulate in ways that are detrimental to the overall well-being of the citizens of this country. . . [the Obama Administration] prioritized carbon reductions at the expense of the American worker. And Americans responded. So with the stroke of a pen, this president began dismantling the Left’s war on coal.”

In an almost comical example of the pro-coal sentiment of the NCC, the Director of the National Energy Technology Laboratory at the time, Grace Bochenek, led NCC meeting attendees in a “COAL” cheer:

08:46:56 15 And, the only thing I can think of is:
16 Give me a C.
17 (Whereupon, a response was had.)
18 DR. BOCHENEK: Give me an O.
19 (Whereupon, a response was had.)
08:47:02 20 DR. BOCHENEK: Give me an A.
21 (Whereupon, a response was had.)
22 DR. BOCHENEK: Give me an L.
23 (Whereupon, a response was had.)

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The record also shows a troubling relationship between the NCC and NCC, Inc. NCC, Inc. staff are often involved in coordinating meeting logistics, setting agendas, inviting speakers, and being present and involved in discussions.

Given these documented examples of bias and open collusion between the NCC federal advisory committee and the coal industry, we believe the NCC as it exists today, particularly with respect to the relationship with NCC, Inc., is untenable. It must be fundamentally restructured or terminated altogether. If a federal advisory committee is necessary to obtain advice on DOE funding priorities related to coal mines or power plants, we ask that that committee (whether a restructured NCC or some new entity) operate completely in the public and contain a variety of views and perspectives, including the critical views and perspectives of people impacted by pollution and the negative effects of coal extraction and combustion.

Thank you for your time and attention, and we look forward to your response.

Sincerely,



Robert LeResche
Coal Team Chair
Western Organization of Resource Councils

cc: Jennifer Wilcox, Designated Federal Officer, jennifer.wilcox@hq.doe.gov