

Ratepayers for Affordable Clean Energy

November 24, 2008

President-Elect Barack Obama
Obama-Biden Transition Team

**Subject: Obama-Biden Transition Team Agency Review Team Leads – Protest
Against Key Roles of Latham & Watkins Attorneys David J. Hayes and
Robert Sussman**

Dear President-Elect Obama:

I am writing on behalf of the coalition Ratepayers for Affordable Clean Energy (RACE), a West Coast-wide coalition of over 30 environmental and community groups advocating for a clean energy future. Our member organizations are listed on our website, www.RaceForCleanEnergy.org.

Your election as President is an overwhelmingly positive development. Your words have inspired us. America is a great nation that will regain its status as a beacon of hope to the world under your leadership. Many of our member organizations and their members have worked tirelessly to stall some of the worst excesses of the Bush Administration in the areas of energy, environment, and public lands over the last eight years. We are anxious to get started working with the Obama Administration to get America moving in the right direction again in these critical areas.

Your commitment to reducing the power of lobbyists over your administration is also inspirational and critical to the vitality of the American political system. The outreach your campaign is engaged in to seek contributions from rank-and-file Americans to fund transition activities, intended to eliminate the potential for lobbyist influence during this period, is the right path and highly commendable.

It is in this context that we are concerned over the very prominent role that two Latham & Watkins attorneys, David J. Hayes and Robert Sussman, have in the Obama-Biden transition team. Latham & Watkins has been outside counsel to Sempra Energy for many years. Latham & Watkins partner David Hayes was a lobbyist for Sempra Energy in 2006. Former Latham & Watkins partner (as of 2007) Robert Sussman was one of a handful of Latham & Watkins partners in the environment practice area in the Latham & Watkins Washington DC office, working under David Hayes, during his long tenure at the firm.

Sempra's track record in California on both consumer and environmental issues has been abysmal. The company was the subject of a lawsuit by numerous Southern California cities for fixing natural gas prices during the 2000-2001 California energy crisis. The plaintiffs originally sought more than \$20 billion in damages. Sempra settled the case for approximately \$350 million in cash payments and price reductions on power contracts. Sempra was aggressively pursuing conventional coal-fired power plants with no carbon controls of any kind in Idaho and Nevada as late as the spring of 2006. These plants were

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opposed by virtually every environmental organization engaged in energy issues in the West.

California's natural gas quality standards were weakened by the California Public Utilities Commission (CPUC) in 2006, while Mr. Hayes was a registered Sempra lobbyist, to facilitate LNG import sales by Sempra to California's natural gas utilities. These gas utilities include Sempra-owned San Diego Gas & Electric (SDG&E) and the Southern California Gas Company. FERC is the federal government's lead agency on this issue. FERC issued a policy statement in June 2006 highly favorable to Sempra and other LNG importers, opening the door for these companies to bypass gas quality standards that are designed to protect the health and safety of citizens. Sempra was successful before FERC in advancing the fiction of an imminent natural gas supply shortage as justification to weaken natural gas quality standards at a national level.

The National Interest Electric Transmission Corridor (NIETC) legislation passed by Congress as a component of the 2005 Energy Policy Act is a dramatic usurpation of traditional state authority over transmission line siting. Sempra/SDG&E aggressively lobbied the DOE in the 2005/2006 timeframe to classify a high voltage transmission line the company desired to build, intended to increase Southwest coal-fired power and Baja California LNG-fueled power deliveries to the Southern California power market, as a NIETC transmission corridor. Sempra's disingenuous public position in California is that the line will be used to import renewable energy. Sempra's lobbying of DOE for NIETC designation was successful.

The proposed CPUC decision in the Sempra/SDG&E transmission line case was issued in late October 2008. The CPUC administrative law judge recommended denial precisely because the economic benefits of the line were based on increased coal plant power deliveries to California. One of Latham & Watkins functions in 2006 was certainly to assist client Sempra/SDG&E in its lobbying of DOE to assure that this transmission line received NIETC corridor status that could later serve as trump card should the state of California deny the line as unnecessary.

The progressive and outspoken Democratic city attorney of San Diego threatened legal action against Sempra/SDG&E in mid-2008 for its failure to make adequate progress on its renewable energy obligations and for misrepresenting the renewable energy benefits of the transmission line. In late October 2008 Sempra donated \$100,000 to a San Diego Republican political action committee as an element of a relentless and successful campaign by the local Republican Party to unseat the city attorney. The city attorney was defeated.

Conclusion

Mr. Hayes tenure as deputy secretary at Interior during the Clinton Administration is laudable. However, that was a long time ago. A Latham & Watkins attorney that was a Sempra lobbyist should not be serving in any official capacity with the Obama-Biden transition team, much less as the overall EPA, DOE, Interior, Agriculture Agency Review

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Team Lead. Mr. Hayes' role as a Latham & Watkins attorney advocating for Sempra Energy makes him unsuitable for the function he has been assigned on the transition team.

Mr. Sussman is equally unsuitable for his role on the transition team for similar reasons. Mr. Sussman's tenure as assistant administrator at EPA during the Clinton Administration is to be commended. However, his long tenure as a partner at Latham & Watkins following his time in the Clinton Administration, a period when the Bush Administration was dismantling environmental and energy facility siting protections while Latham & Watkins aggressively advocated for such changes on behalf of clients like Sempra, makes him an inappropriate choice to have a substantive hand in the selection of appointees to the EPA in the Obama Administration.

We do not feel that either Mr. Hayes or Mr. Sussman can be honest brokers in the selection of Obama Administration political appointees. We respectfully request that these gentlemen be replaced as Obama-Biden Transition Team leads. High level political appointees to EPA, Interior, DOE, and Agriculture will naturally feel beholden to a degree to Mr. Hayes if he has a key role in advancing their appointments. High level political appointees to EPA will feel beholden to Mr. Sussman. This is not a time to have advocates of the status quo, at best, directing the evaluation and selection of candidates for key agency positions.

We agree with your message that it is of utmost importance that all Americans step forward now to meet each other halfway and solve the nation's problems. However, Latham & Watkins partners who have chosen to represent firms like Sempra Energy and exacerbate the very problems we are now coming together to solve should not be gatekeepers in selecting those who will lead us to a better tomorrow.

Best regards,

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