

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATURAL RESOURCES DEFENSE COUNCIL,)
)
Plaintiff,)
) 01-2545 (GK)
v.)
)
DEPARTMENT OF ENERGY,)
)

Defendant.)

SECOND DECLARATION OF SHARON BUCCINO

I, Sharon Buccino, declare as follows:

1. I am a Senior Attorney at the Natural Resources Defense Council ("NRDC"), the plaintiff in this matter. I am submitting this Declaration in support of Plaintiff's Expedited Motion For an Order to Show Cause as to Why Defendant Should Not be Held in Contempt and Request for Status Hearing.

2. Over the past two weeks, I made repeated efforts, together with co-counsel Howard Crystal, to confirm with defendant's counsel exactly when and how NRDC would receive the documents to be produced pursuant to the Court's order of February 21, 2002. Given the time-sensitivity and the tremendous public demand for the information NRDC requested last April under the Freedom of Information Act ("FOIA"), NRDC wanted to ensure that the Department of Energy (DOE) provide the requested information as early as possible during normal business hours on March 25th, the date the Court Ordered DOE to produce these records to NRDC.

3. Consistent with the letter and spirit of FOIA, NRDC intended to ensure that it would be able to review and provide an analysis of the documents received expeditiously. In

addition, NRDC sought to ensure that the documents themselves would be available in electronic format online -- i.e., on the world wide web -- so that members of the public would be able to access the documents directly themselves.

4. Despite numerous calls to defendant's counsel over the past two weeks to obtain details regarding the delivery of the requested documents on Monday, March 25, defendant's counsel had provided no specific information as of 9:00 am on Friday, March 22. However, during conference calls in which I participated, defendant's counsel did represent that the documents would be provided directly to NRDC, and he took my telephone number, as well as that of Jon Devine, my co-counsel at NRDC, to ensure there was no confusion regarding the delivery. He also stated that he had NRDC's address.

5. NRDC confirmed with a reporter earlier in the day on March 22 that Administration sources had provided some documents responsive to NRDC's FOIA request directly to reporters. By close of business on Friday, DOE had provided no documents whatsoever to NRDC.

6. Together with Mr. Crystal, I called defendant's counsel, Daniel Bensing, at approximately 9:00 am on Monday, March 25. Mr. Bensing told us that he had no information and would call us after lunch. Having not heard from Mr. Bensing, Mr. Crystal and I called Mr. Bensing at approximately 1:30 pm. We reached Mr. Bensing's voice mail and left a message. Ultimately defendant's counsel represented that the documents would be delivered to NRDC between 5 and 7 pm on March 25th.

7. I was continually present at NRDC's office from 5:00 pm until 11:30 pm on March 25, 2002. We had assembled a team of approximately thirty staff to work on an immediate

review of the materials. However, the documents were not delivered to NRDC by 7:00 pm, nor were they ever delivered.

8. At approximately 8:30 pm, I learned from a reporter that DOE had provided numerous copies of the complete set of the approximately 11,000 pages the agency was releasing, together with DOE's summary of the material, to the press at DOE headquarters, 1000 Independence Avenue. This release apparently occurred shortly before 8:00 pm.

9. Although I made repeated phone calls to defendant's counsel that evening, and also called DOE's public affairs office, DOE and DOE's counsel have still not responded to any of those calls, to me or to my co-counsel Jon Devine.

10. After learning that the documents had been released to non-parties, I asked two NRDC staff members to drive themselves to DOE headquarters to try to obtain a copy of the documents DOE had been Ordered to provide to NRDC. Those staff members, John Walke and Tyler Dillavou, left NRDC for DOE headquarters shortly after 8:30 pm, and arrived at DOE headquarters at approximately 8:45 pm.

11. While at DOE headquarters, the NRDC staff saw a representative from the Associated Press arrive for, and receive, a copy of the documents. Yet, only after waiting for approximately fifteen minutes were the NRDC staff provided three boxes of materials. The materials provided to NRDC did not include an index of the documents provided, but included a cover letter to NRDC. See Attachment 1.

12. DOE also did not provide NRDC with a copy of the agency's 23-page summary of the documents, which had been provided to the media, and which NRDC received from a reporter. The DOE summary falsely asserts that 9 of 19 NRDC energy policy recommendations

were included in the recommendations of the National Energy Policy Development Task Force. The summary also identifies 36 meetings that Secretary Abraham had with industry representatives, leaving out many more meetings with industry that are in fact included in some of the documents produced. See Attachment 2. In sum, it is apparent that DOE went to tremendous effort to provide the documents and their “spin” to reporters before DOE provided the documents to NRDC.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



Sharon Buccino

3/26/02
Date