

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

CODY T. KNAPP
Federal Programs Branch, Civil Division
U.S. Department of Justice
1100 L Street NW
Washington, DC 20005
Tel.: (202) 532-5663
E-mail: cody.t.knapp@usdoj.gov
Counsel for Defendants

<p>WESTERN ORGANIZATION OF RESOURCE COUNCILS,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">vs.</p> <p>JENNIFER GRANHOLM, in her official capacity as Secretary of Energy*; UNITED STATES DEPARTMENT OF ENERGY,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p>Case No. 4:20-cv-98-BMM</p> <p>ANSWER</p>
---	---

* Because David G. Huizenga is no longer the Acting Secretary of Energy, Jennifer Granholm, the Secretary of Energy, is automatically substituted as a defendant pursuant to Federal Rule of Civil Procedure 25(d).

Defendants hereby answer the numbered paragraphs of Plaintiff's complaint, filed on October 15, 2020, as follows:

1. This paragraph consists of Plaintiff's characterization of this lawsuit, to which no response is required. To the extent a response is deemed required, Defendants admit that the National Coal Council's work concerns federal coal policy, and deny all other allegations.

2. Deny.

3. Deny.

4. This paragraph contains conclusions of law and Plaintiff's characterization of the Federal Advisory Committee Act, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations of this paragraph.

5. The first sentence of this paragraph consists of conclusions of law and Plaintiff's characterization of 5 U.S.C. App. 2 § 10, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the cited statutory provision for a full and accurate statement of its contents and deny all allegations inconsistent therewith.

Defendants deny the remainder of this paragraph.

6. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence in this paragraph. The second sentence contains conclusions of law, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations of this paragraph.

7. Defendants admit that Plaintiff sent a letter to Defendants, dated May 27, 2020, seeking access to National Coal Council meetings and to materials prepared for or by the National Coal Council. The remainder of this paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed required, Defendants deny the remaining allegations of this paragraph.

8. This paragraph consists of Plaintiff's characterization of this lawsuit and conclusions of law, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations of this paragraph.

9. Deny.

10. Admit.

11. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

12. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

13. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

14. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. To the extent a response is deemed required, Defendants deny the allegations of this paragraph.

15. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

16. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

17. Defendants admit only that the National Coal Council issued recommendations to Defendants and deny the remainder of the allegations

in the first half of the sentence in this paragraph. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the second half of the sentence.

18. This paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations of this paragraph.

19. This paragraph contains Plaintiff's characterization of a letter it sent to Defendants, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the letter itself for a full and accurate statement of its contents and deny all allegations inconsistent therewith.

20. This paragraph contains Plaintiff's characterization of a letter it sent to Defendants, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the letter itself for a full and accurate statement of its contents and deny all allegations inconsistent therewith.

21. This paragraph contains Plaintiff's characterization of a letter it

sent to Defendants, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the letter itself for a full and accurate statement of its contents and deny all allegations inconsistent therewith.

22. This paragraph contains Plaintiff's characterization of an email that Plaintiff received, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the email itself for a full and accurate statement of its contents and deny all allegations inconsistent therewith.

23. This paragraph contains Plaintiff's characterization of an email that Plaintiff sent, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the email itself for a full and accurate statement of its contents and deny all allegations inconsistent therewith.

24. The first two sentences of this paragraph contain Plaintiff's characterization of a letter that Plaintiff received, to which no response is re-

quired. To the extent a response is deemed required, Defendants respectfully refer the Court to the letter itself for a full and accurate statement of its contents and deny all allegations inconsistent therewith. Defendants admit the third sentence of this paragraph.

25. This paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations of this paragraph.

26. This paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations of this paragraph.

27. This paragraph contains conclusions of law, to which no response is required.

28. This paragraph contains conclusions of law, to which no response is required.

29. This paragraph contains conclusions of law, to which no response is required.

30. Defendants admit that individuals affiliated with the Burlington

Northern Santa Fe Railway have served on some iterations of the National Coal Council. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

31. This paragraph contains conclusions of law and Plaintiff's characterization of the Federal Advisory Committee Act, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the statute and cited case law for a full and accurate statement of their contents and deny all allegations inconsistent therewith.

32. This paragraph contains conclusions of law and Plaintiff's characterization of the Federal Advisory Committee Act, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the statute and cited case law for a full and accurate statement of their contents and deny all allegations inconsistent therewith.

33. This paragraph contains conclusions of law and Plaintiff's characterization of the Federal Advisory Committee Act, to which no response is

required. To the extent a response is deemed required, Defendants respectfully refer the Court to the statute and cited case law for a full and accurate statement of their contents and deny all allegations inconsistent therewith.

34. This paragraph contains conclusions of law and Plaintiff's characterization of the Federal Advisory Committee Act, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the cited statutory provisions for a full and accurate statement of their contents and deny all allegations inconsistent therewith.

35. This paragraph contains conclusions of law and Plaintiff's characterization of the Federal Advisory Committee Act's implementing regulations, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the cited regulatory provisions for a full and accurate statement of their contents and deny all allegations inconsistent therewith.

36. This paragraph contains conclusions of law and Plaintiff's characterization of the Federal Advisory Committee Act, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the cited statutory provision for a full and accurate statement of its contents and deny all allegations inconsistent therewith.

37. This paragraph contains conclusions of law and Plaintiff's characterization of the Federal Advisory Committee Act's implementing regulations, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the cited regulatory provisions for a full and accurate statement of their contents and deny all allegations inconsistent therewith.

38. This paragraph contains conclusions of law and Plaintiff's characterization of the Department of Energy's Manual supplementing the Federal Advisory Committee Act, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the cited provision of the Manual for a full and accurate statement of its contents and deny all allegations inconsistent therewith.

39. This paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the cited statutory provisions for a full and accurate statement of their contents and deny all allegations inconsistent therewith.

40. Defendants deny that the Department of Energy manages the development of domestic coal resources to the extent that such management includes the issuance of leases, setting of export rates, or other direct management of resources. Defendants admit that the Department issues competitive awards that impact the development of domestic coal resources. Defendants further admit that the National Energy Technology Laboratory is a component of the U.S. Department of Energy that issues competitive awards. The remainder of this paragraph contains Plaintiff's characterization of a National Energy Technology Laboratory report, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the report itself for a full and ac-

curate statement of its contents and deny all allegations inconsistent therewith.

41. The first sentence in this paragraph contains Plaintiff's characterization of the Department of Energy Organization Act of 1977, to which no response is required. The second sentence of this paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the cited statutory provisions for a full and accurate statement of their contents and deny all allegations inconsistent therewith.

42. The first sentence of this paragraph contains conclusions of law, to which no response is required. Defendants admit that the Secretary of Energy invoked Section 403 of the DOE Act when proposing the Grid Resiliency Pricing Rule. The remainder of this paragraph contains Plaintiff's characterization of the proposed rule, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the proposed rule for a full and accurate statement of its contents and deny all allegations inconsistent therewith.

43. The first sentence of this paragraph contains conclusions of law, to which no response is required. The second sentence of this paragraph contains Plaintiff's characterization of public reporting, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the cited statute and article for a full and accurate statement of their contents and deny all allegations inconsistent therewith.

44. The first sentence of this paragraph contains Plaintiff's characterization of a National Energy Technology Laboratory report, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the report itself for a full and accurate statement of its contents and deny all allegations inconsistent therewith. Defendants deny the remaining allegations in this paragraph.

45. Defendants deny the allegations in the first sentence of this paragraph. The remainder of this paragraph contains Plaintiff's characterization of a working paper, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the

working paper itself for a full and accurate statement of its contents and deny all allegations inconsistent therewith.

46. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph. The remainder of this paragraph contains Plaintiff's characterization of a report by the Council of Economic Advisors, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the report itself for a full and accurate statement of its contents and deny all allegations inconsistent therewith.

47. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

48. Admit.

49. The first sentence of this paragraph consists of Plaintiff's characterization of the National Coal Council's charter, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the National Coal Council's charter itself for a full and accurate statement of its contents and deny all allegations inconsistent

therewith. Defendants deny the remaining allegations in this paragraph.

50. Deny.

51. Defendants admit that NCC, Inc. is a private organization incorporated in Virginia. The remainder of this paragraph contains Plaintiff's characterization of a declaration authored by an NCC, Inc. employee, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the declaration itself for a full and accurate statement of its contents and deny all allegations inconsistent therewith.

52. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph. The second sentence of this paragraph contains Plaintiff's characterization of a website maintained by NCC, Inc., to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the website itself for a full and accurate statement of its contents and deny all allegations inconsistent therewith.

53. Deny.

54. The first sentence of this paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed required, Defendants deny. The remainder of this paragraph consists of Plaintiff's characterization of the Articles of Restatement of NCC, Inc., to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the Articles of Restatement for a full and accurate statement of their contents and deny all allegations inconsistent therewith.

55. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph. The remainder of this paragraph consists of Plaintiff's characterization of the Articles of Restatement of NCC, Inc., to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the Articles of Restatement for a full and accurate statement of their contents and deny all allegations inconsistent therewith.

56. This paragraph consists of Plaintiff's characterization of the Articles of Restatement of NCC, Inc., to which no response is required. To the

extent a response is deemed required, Defendants respectfully refer the Court to the Articles of Restatement for a full and accurate statement of their contents and deny all allegations inconsistent therewith.

57. Defendants admit that the Department of Energy previously sought to withhold certain NCC, Inc. records in its possession under Exemption 4 of the Freedom of Information Act. To the extent that this paragraph also contains Plaintiff's characterization of a declaration authored by an NCC, Inc. employee, no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the declaration itself for a full and accurate statement of its contents and deny all allegations inconsistent therewith. Defendants deny all other allegations in this paragraph.

58. This paragraph contains Plaintiff's characterization of a declaration authored by an NCC, Inc. employee, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the declaration itself for a full and accurate statement of its contents and deny all allegations inconsistent therewith.

59. This paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph regarding NCC, Inc.'s anonymous donors, and deny the remaining allegations.

60. This paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations of this paragraph.

61. Deny.

62. Deny.

63. Defendants admit that the National Coal Council holds both in-person meetings and virtual meetings. Defendants further admit that the National Coal Council has previously discussed and voted on some of its reports during virtual meetings. The remaining allegations of this paragraph are denied.

64. Deny.

65. Defendants admit that the National Coal Council holds public

meetings at which it considers and votes on final recommendations that are provided to the Department of Energy. Defendants further admit that the National Coal Council typically does not hold public fact-finding meetings while it develops final recommendations. Defendants deny the remaining allegations.

66. Deny.

67. The first sentence of this paragraph consists of Plaintiff's characterization of the National Coal Council's charter, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the National Coal Council's charter for a full and accurate statement of its contents and deny all allegations inconsistent therewith. Defendants deny the remaining allegations in this paragraph.

68. This paragraph contains Plaintiff's characterization of a website maintained by the General Services Administration to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the website itself for a full and accurate statement of its contents and deny all allegations inconsistent therewith.

69. Defendants admit that NCC, Inc. has historically published some materials created by the National Coal Council and that NCC, Inc. has typically made those materials available to the public. To the extent this paragraph contains conclusions of law regarding the Federal Advisory Committee Act, no response is required. All other allegations in this paragraph are denied.

70. Defendants admit that NCC, Inc. records have not been made public as a matter of course since 2017. The remainder of this paragraph consists of conclusions of law and Plaintiff's characterizations of the Articles of Restatement of NCC, Inc., to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the Articles of Restatement for a complete and accurate statement of their contents and deny all allegations inconsistent therewith.

71. The beginning of the first sentence in this paragraph contains conclusions of law, to which no response is required. Defendants admit only that NCC, Inc.'s budgets and finances have not been made public, and otherwise deny the remaining allegations.

72. Admit.

73. This paragraph contains Plaintiff's characterizations of the National Coal Council's work product, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the referenced work product for a complete and accurate statement of their contents and deny all allegations inconsistent therewith.

74. This paragraph contains Plaintiff's characterizations of the National Coal Council's work product, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the referenced work product for a complete and accurate statement of their contents and deny all allegations inconsistent therewith.

75. This paragraph contains Plaintiff's characterizations of the National Coal Council's work product, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the referenced work product for a complete and accurate statement of their contents and deny all allegations inconsistent therewith.

76. This paragraph contains Plaintiff's characterizations of a report

by the National Coal Council, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the referenced report for a complete and accurate statement of its contents and deny all allegations inconsistent therewith.

77. This paragraph contains Plaintiff's characterizations of a report by the National Coal Council, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the referenced report itself for a complete and accurate statement of its contents and deny all allegations inconsistent therewith.

78. This paragraph contains Plaintiff's characterizations of a report by the National Coal Council, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the referenced report itself for a complete and accurate statement of its contents and deny all allegations inconsistent therewith.

79. This paragraph contains Plaintiff's characterizations of a report by the National Coal Council, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court

to the referenced report itself for a complete and accurate statement of its contents and deny all allegations inconsistent therewith.

80. This paragraph contains Plaintiff's characterizations of a report by the National Coal Council, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the referenced report itself for a complete and accurate statement of its contents and deny all allegations inconsistent therewith.

81. This paragraph contains Plaintiff's characterizations of the National Coal Council's work product, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the referenced work product for a complete and accurate statement of their contents and deny all allegations inconsistent therewith. Defendants deny all other allegations in this paragraph.

82. Defendants repeat and incorporate by reference each of the foregoing responses.

83. This paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed required, Defendants

deny the allegations of this paragraph.

84. Defendants admit that subcommittee meetings have not been opened to the public since 2017. Defendants further admit that meetings of NCC, Inc. generally are not publicly disclosed or open to the public. Defendants deny the remaining allegations in this paragraph.

85. Defendants deny that meetings of the National Coal Council have been closed. The remainder of this paragraph consists of conclusions of law, to which no response is required.

86. Defendants repeat and incorporate by reference each of the foregoing responses.

87. This paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed required, Defendants respectfully refer the Court to the cited statutory provision for a full and accurate statement of its contents and deny all allegations inconsistent therewith.

88. Defendants admit that full subcommittee records have not been made public. Defendants deny that they have not provided full records for

the National Coal Council's meetings. The remainder of this paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations of this paragraph.

89. This paragraph consists of conclusions of law, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations of this paragraph.

90. This paragraph contains conclusions of law, to which no response is required.

The remainder of the complaint sets forth Plaintiff's requested relief, to which no response is required. To the extent a response is deemed required, Defendants deny that Plaintiff is entitled to the relief that it seeks or to any other relief in this action.

Each and every allegation of the complaint not heretofore expressly admitted or denied is hereby denied.

DEFENSES

1. The Court lacks subject matter jurisdiction.

2. The Complaint fails to state a claim upon which relief may be granted.

3. Defendants' actions are fully consistent with applicable law.

Dated: April 20, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director

/s/ Cody T. Knapp

CODY T. KNAPP

Trial Attorney

Federal Programs Branch, Civil Division

U.S. Department of Justice

Counsel for Defendants