

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	Civil Action No.
)	01-1530 (EGS)
v.)	
)	
NATIONAL ENERGY POLICY)	
DEVELOPMENT GROUP, et al.,)	
)	
Defendants.)	

SIERRA CLUB,)	
)	
Plaintiff,)	Civil Action No.
)	02-0631 (EGS)
v.)	
)	
VICE PRESIDENT RICHARD)	
CHENEY, in his official capacity, et al.,)	
)	
Defendants.)	

**RESPONSE OF PLAINTIFF JUDICIAL WATCH, INC.
TO THE ORDER OF DECEMBER 9, 2002**

Plaintiff Judicial Watch, Inc. (“Judicial Watch”) submits the following in response to the Court’s Order of December 9, 2002:

The Court has asked the parties to address whether it may proceed while certain appeals are pending before the Court of Appeals, and specifically, the applicability of three cases: *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982) (per curiam); *United States v. Defries*, 129 F.3d 1293 (D.C. Cir. 1997); and *Princz v. Federal Republic of Germany*, 998 F.3d 1 (D.C.

Cir. 1993).

These three cases all support the well-established proposition that a district court may proceed with matters not involved in the appeal. *See also Oliver v. Kalamazoo Bd. of Educ.*, 640 F.2d 782, 786-788 (6th Cir. 1980) (since orders did not determine entire action, filing of appeal did not divest district court of jurisdiction to hold hearings and issue orders as to matters unrelated to appeal); *Sycuan Band of Mission Indians v. Roache*, 788 F. Supp. 1498, 1509-1511 (S.D. Cal. 1992) (appeal of preliminary injunction does not prevent district court from proceeding with action on merits); 20 *Moore's Federal Practice - Civil* § 303.32 [2][a][v] (2002) (“If an appeal is taken from a judgment that does not finally determine the entire action, the appeal does not prevent the district court from proceeding with matters not involved in the appeal”). In this case, the administrative stay issued by the Court of Appeals applies only to the specific orders of this Court from July 11, 2002, August 2, 2002, September 9, 2002, October 17, 2002, and November 1, 2002. These orders involve at most the non-agency defendants – and arguably only the Vice President (*see* Sierra Club’s Response to the Order of December 9, 2002) – and discovery relating to them. The agency defendants in this case, and the claims against them, are wholly unaffected by the action of the Court of Appeals.

Defendants undoubtedly will try to distinguish the three cases cited by this Court and argue that this case should be stayed (*i.e.*, delayed) in its entirety. As Judicial Watch has repeatedly stressed, and this Court has recognized, further delay only increases the likelihood that effective relief will be denied to Plaintiffs.

For this reason, Judicial Watch respectfully urges the Court to proceed with the matters before it relating to, at a minimum, the agency defendants, and in particular, the pending motions

to compel. Furthermore, Judicial Watch requests to proceed with the discovery plan approved by the Court, as well as depositions and additional written discovery, relating to at least the agency defendants and relevant third parties. These third parties include individuals who had contact with the NEPDG, such as former Enron CEO Kenneth Lay, who the government adamantly claims was not part of the NEPDG.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2002, a true and correct copy of the foregoing RESPONSE OF PLAINTIFF JUDICIAL WATCH, INC. TO THE ORDER OF DECEMBER 9, 2002, was served via ECF Notification and first class U.S. Mail, where applicable, on the following:

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