

J. GREGORY COPELAND NOMINATION

HEARING BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE ONE HUNDRED TENTH CONGRESS

SECOND SESSION

ON

THE NOMINATION OF J. GREGORY COPELAND, OF TEXAS, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF ENERGY, VICE DAVID R. HILL

FEBRUARY 27, 2008



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J. GREGORY COPELAND NOMINATION

WEDNESDAY, FEBRUARY 27, 2008

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:46 a.m. in room 366, Dirksen Senate Office Building, Hon. Jeff Bingaman, chairman, presiding.

OPENING STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

The CHAIRMAN. OK. Why don't we go ahead with the hearing? The Committee meets this morning to consider the nomination of J. Gregory Copeland to be General Counsel at the Department of Energy. We'd also planned to consider the nomination of Stanley Suboleski to be Assistant Secretary for Energy for Fossil Energy, but he's asked that his name be withdrawn.

Mr. Copeland is a senior partner in the law firm of Baker Botts in Houston, where he heads the firm's energy litigation practice. He brings to the table 35 years of experience in complex litigation in all sectors of the energy industry. He's tried cases involving oil, and natural gas, and coal, and nuclear, and gasoline, and electricity during the course of his long career.

We appreciate his willingness to serve in this important position and welcome the opportunity to consider his nomination. Let me defer to Senator Domenici for any statement that he would like to make.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Let me say thank you for yielding, Mr. Chairman. We're here this morning to consider the nominee for an extremely important position in the Department of Energy. As the Department presses on with its final year to implement administration policies, it must have experienced and savvy lawyers heading up its legal team.

Greg Copeland, the nominee before us today, by the Department's General Counsel to be that, certainly has the credentials to fill that bill. His extensive litigation experience in energy matters makes him an able candidate for this position.

That said, Mr. Copeland will have a daunting task in rapidly familiarizing himself with the Department and the plethora of programs that it is charged with implementing. In that regard, I'm

going to thank Chairman Bingaman for scheduling this hearing so soon after the nomination, and I hope that we'll quickly be able to report and permit him to take this job which, for some unknown reason, he desires.

I welcome Mr. Copeland to the committee and look forward to his testimony. I do mean sincerely that we thank you so much, and I say I don't understand only in that it is a tough, tough job for a relatively few number of months, but we need you. So maybe that's the reason you're doing it. If it is, I'm very appreciative.

The CHAIRMAN. All right. The rules of the committee that apply to all nominees require that they be sworn in connection with their testimony. Mr. Copeland, could you stand and raise your right hand, please?

Do you solemnly swear that the testimony you're about to give to the Senate Committee on Energy and Natural Resources shall be the truth, the whole truth, and nothing but the truth?

Mr. COPELAND. I do.

The CHAIRMAN. You may be seated. Before you begin your statement, I need to ask three questions that we address to each nominee before this committee.

The first question is, will you be available to appear before this committee and other congressional committees to represent departmental positions and respond to issues of concern to the Congress?

Mr. COPELAND. I will.

The CHAIRMAN. The second question is, are you aware of any personal holdings, investments, or interests that could constitute a conflict of interest, or create the appearance of such a conflict, should you be confirmed and assume the office to which you've been nominated by the President?

Mr. COPELAND. Mr. Chairman, my investments, my personal holdings, and other interests have been reviewed both by myself and the appropriate ethics counselors within the Federal Government.

I have taken appropriate action to avoid any conflicts of interest. There are no conflicts of interest or appearances thereof to my knowledge.

The CHAIRMAN. All right. The third question, are you involved or do you have any assets that are held in blind trust?

Mr. COPELAND. No, sir, I do not.

The CHAIRMAN. At this point, our tradition is to invite the nominee to introduce any family member that you have with you, if you do have family members with you.

Mr. COPELAND. I'm sorry to say, Mr. Chairman, my family was not able to travel with me. I believe they're all, though, closely looking at the Internet this morning, monitoring what's going on.

The CHAIRMAN. All right. Why don't you go ahead with your opening statement? Then, I'm sure we'll have some questions.

**TESTIMONY OF J. GREGORY COPELAND, NOMINEE TO BE
GENERAL COUNSEL, DEPARTMENT OF ENERGY**

Mr. COPELAND. Thank you, sir. Mr. Chairman, Senator Domenici, other members of the committee and their staff who are here today, I'm honored to appear before you today as the President's nominee to become the Department of Energy's General Counsel.

By way of introduction, I was born and raised in Frederick, Oklahoma, which is a small farming community in southwest Oklahoma. I went to Culver Military Academy in high school, which is in Indiana. I returned to Oklahoma to go to college, and attended the University of Oklahoma, where I graduated with a BA degree in business and economics.

I then went south to the University of Texas to attend law school, which always garners some comments from people about which football team I prefer. I'm not going to disclose that today.

Immediately upon graduating from law school in December 1972, I joined Baker & Botts in Houston, Texas. I've been there ever since. I've only had one job. I'm currently a senior partner in the firm and a member of the firm's executive committee.

Of interest to you, perhaps, I first decided that I wanted to work in the energy field when I was a young law student at the University of Texas. In the winter of 1971-72, I experienced first-hand what happens when we have an energy shortage. At that time, as you well know, the natural gas pipelines in this country were all merchant pipelines, and they were having trouble meeting demand because of price caps on natural gas, which had severely limited supply that they could obtain from producers.

The problem became so severe that winter that the university closed, and the students were sent home for several days. It seemed obvious to me at that point that the United States was going to continue to face serious energy challenges, and I decided then that I wanted to be involved in addressing them.

That decision led me to Houston, what some people call the energy capital of the world, and a job with one of the world's leading energy firms. Today, I lead the firm's energy practice. In the last 35 years, as the chairman noticed, I have appeared before numerous Federal and State agencies, including the old Federal Power Commission, now the Federal Energy Regulatory Commission, the SCC, the NRC and others. I've appeared in State and Federal court in at least 15 different States that I can account for.

Regardless of where I was or what I was doing, the matters typically involved the energy business in some way. I've represented oil and gas producers, large and small, refiners, pipelines, gas storage companies, utilities, and energy trading companies. I've dealt with issues relating to oil, gas, gasoline, natural gas, liquids, uranium, carbon dioxide, coal bed methane gas, lignite, and nuclear power plants, and transmission.

While in the last half of my career, at least, I've been a trial lawyer, mostly. I've always been interested in energy policy. Those issues go hand in glove, of course, with the legal problems that I've worked on as a lawyer. I'm very aware today of the broad array of difficult issues that we must responsibly confront in order to provide safe, clean, and economical energy that we need in order to keep our economy strong.

As I look back 35 years ago, I can say that I was right in predicting that the energy business would provide interesting challenges. But I can also say that I greatly underestimated those challenges. As I look forward from today into the future, and I think the problems that I foresee are far more complex than those I foresaw as a young law student in the 1970s.

I'm very honored that President Bush would ask me to join the Department of Energy at this point in time. I'm confident that both the President and Secretary Bodman intend to continue working hard to deal with these complex issues. I trust that their choice of me is a reflection of their judgment that I could step in on short notice and assist them and to try to make a difference. I vow to you that I will do my best to do that.

In closing, I would like to thank my friends and the partners in my firm who have supported me in taking this step. In particular, I must recognize Secretary Baker for his emphasis to the lawyers in our firm, and indeed to the profession as a whole, on the need for public service.

Last, but certainly not least, I thank my wife Becky, my son Todd, and my daughter Rebecca, for their support in this new endeavor. Like your own families, they have had to endure weeks and sometimes months of absence over the last 35 years, but I know they support me in this latest endeavor, because they do share an awareness of the importance of the job.

Mr. Chairman, this concludes my statement and I would be pleased to answer any questions.

[The prepared statement of Mr. Copeland follows:]

PREPARED STATEMENT OF J. GREGORY COPELAND, NOMINEE TO BE GENERAL COUNSEL, DEPARTMENT OF ENERGY

Mr. Chairman, Senator Domenici, Members of the committee, I am honored to appear before you today as the President's nominee to become the Department of Energy's General Counsel. By way of introduction, I was born and raised in Frederick, Oklahoma. I went to high school at the Culver Military Academy, returned to Oklahoma to attend the University of Oklahoma, where I graduated with a BA degree in economics, and then attended the University of Texas School of Law where I graduated in December, 1972. I joined the firm of Baker Botts in Houston, Texas in February, 1973, and I have been there ever since. I am currently a Senior Partner and a member of the Firm's Executive Committee.

I first decided that I wanted to work in the energy field when I was a law student. While attending the University of Texas in the winter of 1971-72, I experienced first-hand what happens when we run short of energy. At that time, natural gas pipelines were all merchant pipelines and they were having trouble meeting demand because price caps on natural gas had severely reduced the supply of gas that was available to them from natural gas producers. That winter the issue became so severe that the university closed and sent its students home. It seemed obvious to me even then that the U.S. would face continued energy challenges and I decided that I wanted to be involved in addressing them. That decision led me to Houston, the energy capital of the world, and a job with one of the world's leading energy firms. Today, I lead our firm's energy litigation practice.

In the last 35 years I have appeared before numerous state and federal agencies, including the Federal Power Commission, the Federal Energy Regulatory Commission, the Securities Exchange Commission and the Nuclear Regulatory Commission. I have appeared in state and federal courts in more than 15 states.

Regardless of the forum, the matters that I handled have typically involved a client that was engaged in the energy business in some way. I have represented oil and gas producers, both large and small, refiners, pipelines, gas storage companies, utilities and energy trading companies. I have dealt with issues relating to oil, gas, gasoline, natural gas liquids, uranium, carbon dioxide, coal bed methane, and gas, lignite and nuclear power plants.

Throughout my career I have been interested in the energy policy issues that go hand in glove with the legal problems on which I have worked. I am very aware of the broad array of difficult issues that we must responsibly confront today in order to provide the safe, clean and economical energy needed to keep our economy strong. As I look back on 35 years I can say that I was right in predicting that the energy business would provide interesting challenges but I can also say that I greatly underestimated the challenges that lay ahead. And as I look forward it seems

quite apparent that the challenges we face today and into the future are far more complex than the problems I foresaw as a young law student in the 1970s.

I am very honored that President Bush would ask me to join the Department of Energy. I am confident that both the President and Secretary Bodman intend to continue working hard to deal with these complex issues, and I trust that their choice is a reflection of their judgment that could step in on short notice to assist them and to make a difference. I vow to you that I will do my best to make that happen.

In closing, I would like to thank my friends and the partners in my firm who have supported me in taking this step. In particular, I must recognize Secretary Baker for his emphasis to the lawyers in our firm, and indeed to the profession as a whole, on the need for public service. Last, but certainly not least, I thank my wife Becky, and my two children, Todd and Rebecca, for their support in this new endeavor. Like your families, they have had to endure weeks, and sometimes months, of absence over the last 35 years, but I know they support me in this latest endeavor because they share an awareness of the importance of the job.

Mr. Chairman, this concludes my statement I would be pleased to answer any questions.

The CHAIRMAN. Thank you very much. Let me ask a question, and then defer to Senator Domenici. One issue that will come up very quickly once you're in this position is the whole issue of recusal. I think both the recusal policy here in the committee, but also the Government Ethics Rules, obviously, require you to recuse yourself from participating, personally and substantially, in matters involving former clients.

I'm sure you've had several former clients that are very involved in issues coming before the Department of Energy. How do you see that affecting your ability to serve in this as head of the General Counsel's Office there in the Department? How do you anticipate—how extensive will that problem be? How do you expect to deal with it?

Mr. COPELAND. Based on what I understand to be the ethics rules, both of the DOE and the Senate, I have gone over those rules carefully with the Ethics Officer of the DOE, both before and subsequent to the nomination. Frankly, I've had that question raised by some of the Senators with whom I've spoken in the past few weeks.

I candidly don't believe it's going to be a significant problem. I think that the matters that are going to come before the Department are not likely to create the kind of conflict that would just keep me from being effective in the job. But I have discussed that very carefully with the Ethics Officer, and went over this again with them yesterday, as a matter of fact, to make sure that I wasn't—I don't want to take a job and I can't do anything. It's pointless.

So I hope I'm going to be able to operate effectively. I know there will be occasions where I have to recuse myself, but I don't expect that to cripple me in the job.

The CHAIRMAN. All right. Thank you very much.
Senator Domenici.

Senator DOMENICI. Same question, but it seems to me, as you answer it, and as I think about it, we have an awful lot of issues that are certainly very unique to the implementation of our new laws, to the implementation of brand-new policies around here, and I don't see how many of those are going to require that you not participate because of conflicts of interest.

I don't believe that's going to happen. But I do trust you that you understand if it does, you must recuse yourself.

Mr. COPELAND. Yes, sir. Absolutely.

Senator DOMENICI. You don't have any doubt about that. Could I just ask, as a matter of personal information—obviously, Secretary Bodman has a very big void, and he needs legal counsel. But just how did it come to you that you might serve your country in this capacity, pursuant to what you said Secretary Baker's admonition that you do something?

This seems to me to—for you to jump out of your big practice for 10 months, service appears very unique. To our advantage, I would say.

Mr. COPELAND. Actually, it goes all the way back to when I was a young lawyer. I actually worked on licensing a couple of nuclear plants. Since nobody in my firm knew anything about that, I was seconded, in effect, to work with a wonderful gentleman here in Washington, named Jack Newman, who then was the head of the firm Newman & Holtzinger, and was the Dean of the Nuclear Licensing Industry.

He was the one that called me last fall and said, "The White House is going to be calling you."

Senator DOMENICI. Really?

Mr. COPELAND. "Because I've given them your name." So, it came from Jack. Of course, I have tremendous respect for him and—

Senator DOMENICI. He must have had for you, also.

Mr. COPELAND. I hope he did. So, you know, I certainly talked with people in my firm, including Secretary Baker, and public service is part of the fabric of our firm, and I was encouraged to go ahead. Obviously, by the reason of the fact that you've asked the question, you know I had some concerns about it at this point in my career.

Senator DOMENICI. Of course.

Mr. COPELAND. But it did seem to me that the Department really did need somebody who could come here and get up to speed on short notice, and that given the uniqueness of my background, it was hard for me to deny that I was a serious candidate for that. So here I am.

Senator DOMENICI. I want to ask one other question. When we developed and wrote the Energy Policy Act of 2005—which I'm sure by now you know we did, and it's a rather formidable piece of legislation, with an awful lot of policy changes for America. People don't think we did anything, but that law takes a long time to implement.

One of the provisions in that law has to do with loan guarantees. Those loan guarantees that now are up—we have \$18 billion worth of authority. We don't think it's—I don't think it's enough, but we got caught at right at the end, and had to share it with another part of the development, and that's all right with me, as long as we get to use it.

My question to you, it's been a challenge getting this part of the law implemented and getting nuclear power going, although it's doing wonderfully well. Will you commit to us that you will make it a priority to do everything you can to expedite implementation of this program?

Mr. COPELAND. Yes, sir. I believe very strongly in that program. I think it's very important, and it does need to be pushed as hard as it can be pushed.

Senator DOMENICI. Thank you. I have no further questions.

The CHAIRMAN. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman. I thank you and Senator Domenici for scheduling this hearing. Mr. Copeland, welcome, and I enjoyed our visit the other day in the office. As we discussed, the first area I'm going to ask you about is what you would be doing to clean up this mess in terms of environmental cleanup at Federal facilities and the Federal contracting debacle.

I don't think you can describe it any other way. At Hanford, in our part of the country, we've seen wholesale failure to meet environmental compliance schedules, massive cost increases, Hanford contractors get the bonuses. According to the Department's Inspector General, the General Accounting Office, all of these independent agencies have pretty much said that these programs are a huge mess.

Now, you, of course, would not be running the cleanup program, and I understand that to be the case. But you're going to be the Department's chief legal official, if confirmed, and certainly environmental compliance agreements are legally binding agreements. So what I'd like to know, for the purposes of this morning, is what would you do in this position to correct this abysmal, really outlandishly awful record at the Department of poor contracting and environmental compliance?

Mr. COPELAND. Thank you, Senator, and likewise, I enjoyed meeting with you the other day. I appreciate your being here today. First of all, it probably has gone unnoted that I do have quite a bit of experience with construction contracts and litigation in that arena. I know, basically, how complex projects are run. I know how they get off track, and I know how to analyze what causes them to get off track.

So I think I could be effective in at least quickly understanding perhaps some of the problems. It seems to me, based on the limited amount of time that I have been studying and preparing to take on this position, that the Department of Energy is perhaps, to some extent more than other organizations, very dependent on independent contractors to perform all the obligations that they have to perform.

I think, given that situation, if I'm accurate in that assumption, that you need to look at every way possible to strengthen the oversight of those contractors. That would be something I would take a hard look at.

Senator WYDEN. Let me ask it in a different way, because you're absolutely right about the independent contractors. If you're confirmed, I would like you to regularly report to the chairman, and the ranking minority member, and I, what the progress is at Hanford. Because, respectfully, we have heard comments much along the lines you've made and nothing much happens. They go further in the hole in terms of environmental compliance. The cost overruns increase, the bonuses continue. It goes on and on.

So let me ask you, if you would, if confirmed, within 60 days of your confirmation, I'd very much like you to send to the chairman,

Chairman Bingaman, and Senator Domenici, so that it could be shared with us, what's being done specifically at Hanford to address these concerns.

Mr. Chairman, do I have time for one additional question?

The CHAIRMAN. Certainly.

Senator WYDEN. The only other question I have, Mr. Copeland, again along the lines that we talked about up in the office, is you represented industry for quite some years. You represented Shell Oil in a key case where the company agreed to pay the United States \$56 million on underpaid royalties in the natural gas area.

You represented Reliant in a Clayton Act case brought by the California Attorney General. This was a settled case, involving the withholding of power supplies, a variety of manipulative practices. So now, you would be wearing a different hat. You were a lawyer, and obviously a very good one, for the clients that you represented. But now you have a different set, if confirmed, which essentially means that consumer interests, ratepayer interests, taxpayer interests, all be represented.

Tell me what assurances you can give us this morning that you can take on those new hats at this time.

Mr. COPELAND. You're right. It is a different hat. I respect that, and I understand that, and I would not have taken this job unless I thought I could fairly represent all the constituents that the Department of Energy is responsible for.

Senator WYDEN. Thank you, Mr. Chairman.

The CHAIRMAN. All right. Mr. Copeland, thank you very much for being here. We will try to act swiftly to move your nomination to the Senate floor for consideration. That will conclude our hearing.

Mr. COPELAND. Thank you, sir. Thank you.

[Whereupon, at 10:09 a.m., the hearing was adjourned.]

APPENDIX

RESPONSES TO ADDITIONAL QUESTIONS

RESPONSES OF J. GREGORY COPELAND TO QUESTIONS FROM SENATOR WYDEN

Question 1. As we have discussed, I am concerned that there may be a number of Departmental responsibilities and programs that would require your recusal because of your prior representation of clients with interests in the activities. For example, several companies (BP, Marathon, ExxonMobil) have filed comments with the Department regarding energy transmission corridors including but not limited to CO₂ sequestration. Other companies, such as Shell, have significant interests in the operation of the Strategic Petroleum Reserve and Oil Shale programs. Please explain whether or not the following Departmental activities would require your recusal: Section 368 of the Energy Policy Act of 2005 (EPACT 2005) requires the Department to participate in the determination of energy corridors on federal land.

Answer. I have checked with the Department's Designated Agency Ethics Official and have been advised that the Executive Branch-wide regulations governing recusals that result from prior employment or legal representation, as well as the committee's recusal policy, apply to particular matters involving specific parties in which:

- Baker Botts is a party or represents a party for a period of one year from my resignation or confirmation, whichever occurs later; or
- a former client of mine that I represented within the last year, is a party or represents a party, for a period of one year after I last provided service to that client or confirmation, whichever occurs later; or
- I participated personally and substantially as a partner or employee in a work or service relationship when the matter is one in which the Department of Energy is a party or has a substantial interest, for the duration of my service as General Counsel.

ExxonMobil, while a former client of mine, was not a client that I represented within the last year. In addition, the Department of Energy was not a party to, and did not have a substantial interest in, any of the legal work that I participated personally and substantially in at Baker Botts.

I have been advised by the Department's Designated Agency Ethics Official that the determination of energy corridors on federal land is not a particular matter involving specific parties at this time. Therefore, the recusal requirements do not apply to any former clients of mine or to Baker Botts. However, in the event that it does become a particular matter involving specific parties, I will recuse myself if (1) Baker Botts is a party or represents a party for a period of one year from my resignation or confirmation, whichever occurs later; or (2) a former client of mine that I represented within the last year, is a party or represents a party, for a period of one year after I last provided service to that client or my confirmation, whichever occurs later.

Question 2. Section 1221 of EPACT 2005 requires the Department to initiate and coordinate of Federal authorizations for electric transmission facilities, including the designation of National Interest Transmission Corridors.

Answer. I have been advised by the Department's Designated Agency Ethics Official that this initiation and coordination activity is not a particular matter involving specific parties at this time. Therefore, the recusal requirements do not apply to any former clients of mine or to Baker Botts. However, in the event that it does become a particular matter involving specific parties, I will recuse myself if (1) Baker Botts is a party or represents a party for a period of one year from my resignation or confirmation, whichever occurs later; or (2) a former client of mine that I represented within the last year, is a party or represents a party, for a period of one year after I last provided service to that client or my confirmation, whichever occurs later.

Question 3. Section 1222 of EPACT 2005 requires the Department's Power Marketing Administrations to design and construct new transmission facilities in National Interest Transmission Corridors.

Answer. I have been advised by the Department's Designated Agency Ethics Official that the design and construction of new transmission facilities in National Interest Transmission Corridors is not a particular matter involving specific parties at this time. Furthermore, it is unlikely that any of my clients within the last year or Baker Botts would be involved in this design and construction. However, in the event that it does become a particular matter involving specific parties, I will recuse myself from any such particular matters involving specific parties in which: (1) Baker Botts is a party or represents a party for a period of one year from my resignation or confirmation, whichever occurs later; or (2) a former client of mine that I represented within the last year, is a party or represents a party, for a period of one year after I last provided service to that client or my confirmation, whichever occurs later.

Question 4. Operation of the Strategic Petroleum Reserve including receipt and exchange of Royalty-in-Kind oil from any or all U.S. leases and the determination of compliance with the conditions established in Section 301 of EPACT 2005.

Answer. To the best of my knowledge, Baker Botts is not involved in particular matters involving specific parties that are related to the operation of the Strategic Petroleum Reserve or entitlement to particular volumes of crude oil from particular leases, nor is it likely to become so involved. However, if this unlikely event occurs, I will recuse myself from any such particular matters involving specific parties in which Baker Botts is a party or represents a party for a period of one year from my resignation or confirmation, whichever occurs later. I also will recuse myself from any such particular matters involving specific parties in which a former client of mine that I represented within the last year, is a party or represents a party, for a period of one year after I last provided service to that client or my confirmation, whichever occurs later.

Question 5. Establishment and operation of the Oil Shale, Tar Sands, and Unconventional Fuels Program pursuant to Section 369 of EPACT 2005.

Answer. To the best of my knowledge, Baker Botts is not involved in particular matters involving specific parties that are related to the operation of the Oil Shale, Tar Sands, and Unconventional Fuels Program, nor is it likely to become so involved. However, if this unlikely event occurs, I will recuse myself from any such particular matters involving specific parties in which Baker Botts is a party or represents a party for a period of one year from my resignation or confirmation, whichever occurs later. I also will recuse myself from any such particular matters involving specific parties in which a former client of mine that I represented within the last year, is a party or represents a party, for a period of one year after I last provided service to that client or my confirmation, whichever occurs later.