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Volume 2

DEPARTMENT OF ENERGY AUTHORIZATION—

FISCAL YEAR 1979:

DOCUMENTS

FEDERAL ENERGY REGULATORY COMMISSION

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 11137, H.R. 11392, AND H.R. 12163

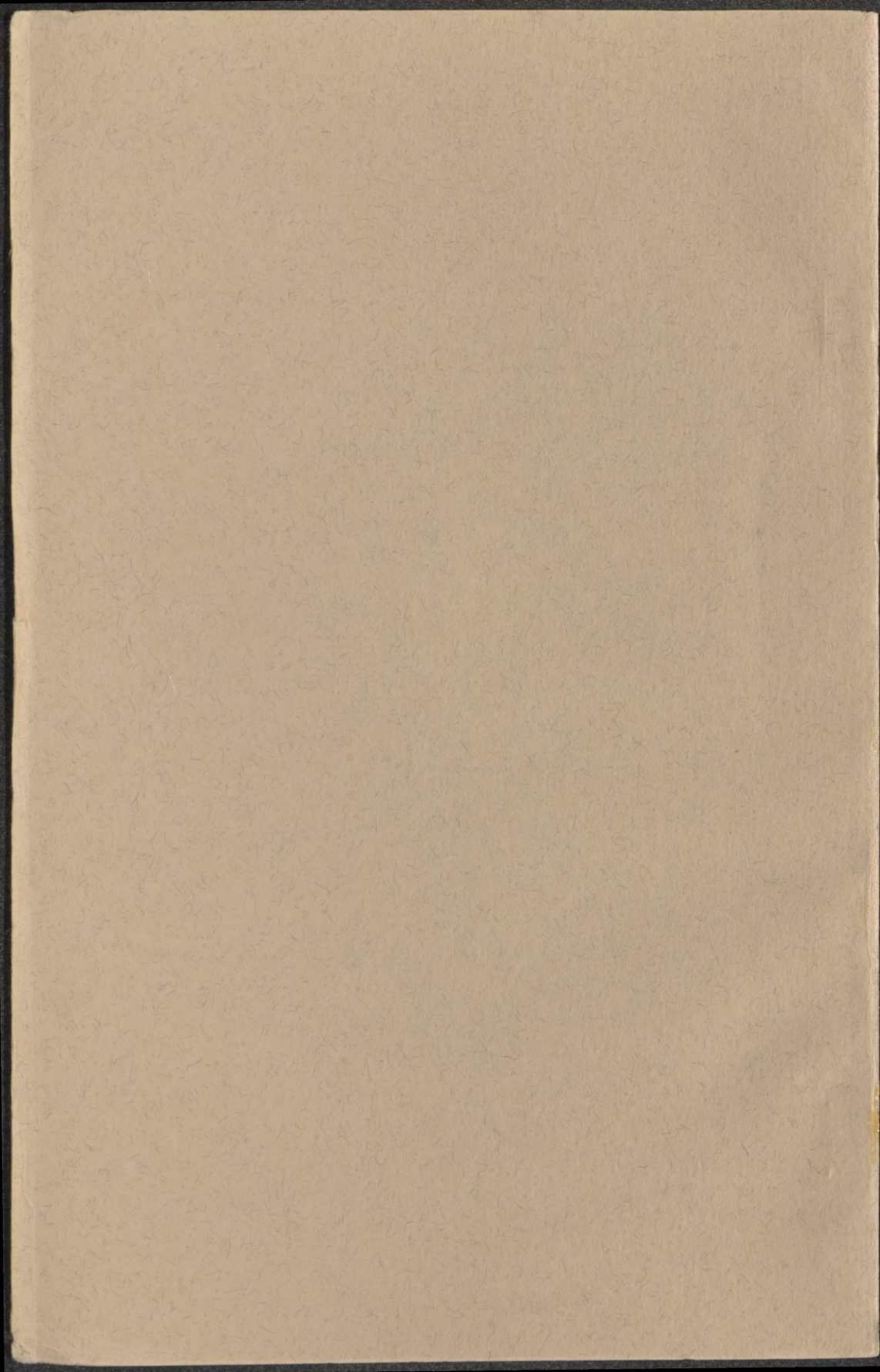
BILLS TO AUTHORIZE APPROPRIATIONS TO THE DEPARTMENT
OF ENERGY AND THE FEDERAL ENERGY REGULATORY
COMMISSION, AND FOR OTHER PURPOSES

MARCH 2, 1978

Serial No. 95-164

Printed for the use of the
Committee on Interstate and Foreign Commerce





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FISCAL YEAR 1979:
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WASHINGTON : 1978

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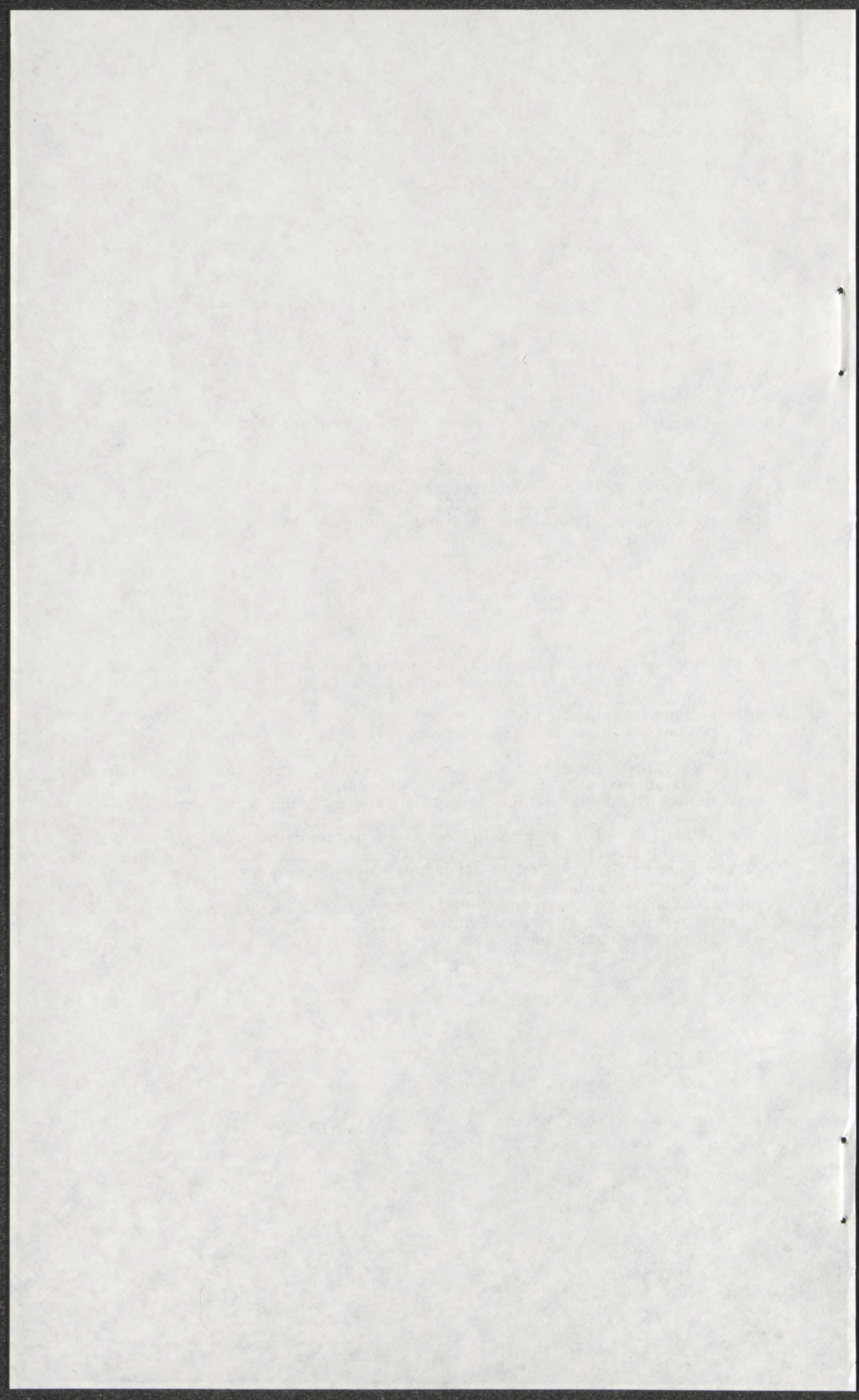
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DEPARTMENT OF ENERGY AUTHORIZATION—FISCAL
YEAR 1979
FEDERAL ENERGY REGULATORY COMMISSION

TUESDAY, MARCH 2, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 2123, Rayburn House Office Building, Hon. Richard L. Ottinger, presiding; Hon. John D. Dingell, chairman.

Mr. OTTINGER. The Subcommittee on Energy and Power will come to order.

Today's hearing is a continuation of the subcommittee's authorization hearings on the Department of Energy's proposed budget for the fiscal year 1979. This morning we will receive testimony with respect to the proposed budget for the Federal Energy Regulatory Commission.

The Congress, in creating the Department of Energy, specifically established the Federal Energy Regulatory Commission as an independent body. Accordingly, it is especially important that the Commission receive the resources required to allow it to operate effectively and independently. The need to insure that the Commission discharges its statutory obligations to protect the American public effectively and in a timely manner is all the more urgent in this time of uncertainty as to future resources of energy.

With a very major responsibility, the Federal Energy Regulatory Commission has only three-tenths of 1 percent of the Department of Energy's Budget; whereas 64 percent goes to nuclear weapons, nuclear research and development, and strategic petroleum reserve. I have great doubts as to the appropriateness of that kind of set of priorities within the Department of Energy. I also have great concern, which I know the chairman shares, with respect to the relationship that has developed between the Federal Energy Regulatory Commission and the Department of Energy and the nature of that relationship as it pertains to maintaining the independence of the agency.

I would hope that those two questions—the resources necessary to do the job properly; and the ability of the agency to maintain its independence—would be addressed.

We have as our witness this morning a good friend personally, and a good friend of the committee—its former counsel—Chairman Charles B. Curtis. We welcome you here. We would appreciate it if you would introduce the colleagues with you. And I would appreciate it if you would not read this large statement you have presented to us, but would summarize it. Please proceed.

STATEMENT OF HON. CHARLES B. CURTIS, CHAIRMAN, FEDERAL ENERGY REGULATORY COMMISSION; ACCOMPANIED BY COMMISSIONERS GEORGE R. HALL, MATTHEW HOLDEN, JR., GEORGIANA SHELTON, DON S. SMITH, AND WILLIAM McDONALD, EXECUTIVE DIRECTOR

Mr. CURTIS. Thank you, Mr. Chairman. I am pleased that the considerable responsibility for energy regulation is a shared one and one shared with my colleagues at this table, whom I would like to introduce to the committee. On my far left and your far right is Georgiana Sheldon; on my immediate left is the Vice Chairman of the Commission, Commissioner Don Smith; and on my far right and your far left, Commissioner George Hall; and between George and myself is Commissioner Matthew Holden. And on my immediate right is William McDonald, who is the Executive Director of the Commission.

My name is Charles B. Curtis, and I am appearing this morning as Chairman of the Federal Energy Regulatory Commission to testify with respect to our fiscal year 1979 authorization.

As the members of the subcommittee know well, the Federal Energy Regulatory Commission is an independent regulatory body existing within the Department of Energy. While the Commission is not technically a successor to the Federal Power Commission, it did inherit a large part of the FPC's jurisdictional responsibilities.

Along with those responsibilities, the Commission inherited an unacceptably large backlog, insufficient resources, and an inefficient decisionmaking mechanism which is unable to keep pace with the dynamics of the marketplace which it is intended to regulate.

In the past, the FPC received substantial criticism from this committee and others indicating a loss of confidence in the agency on the part of the industries it regulated, on the part of consumers, and on the part of the people's Representatives in Congress. The question now is whether the rose, that was the Federal Power Commission, will smell any sweeter as the Federal Energy Regulatory Commission. The answer depends to a large extent on whether, as a result of these and other hearings, the Congress decides to make an adequate investment of resources to permit the Commission to perform its tasks.

I would like briefly to summarize for you the responsibilities assigned to the Commission, including those inherited from the FPC and the new functions existing under the Department of Energy Organization Act.

The FPC regulated certain interstate activities under the Federal Power Act and the Natural Gas Act, together with confirmation and approval of rates proposed to be charged for the sale of electricity from federally owned hydroelectric projects. These responsibilities

included: (1) issuing licenses for certain non-Federal hydroelectric facilities, (2) certificating the construction of facilities and authorizing their abandonment, (3) regulating the rates for interstate sales for resale or transportation of electric generation and natural gas, (4) establishing and administering curtailment programs for interstate pipelines, and (5) passing on mergers, the issuance of securities, and certain acquisitions with respect to certain regulated companies. With one or two exceptions, these FPC responsibilities were assigned to the FERC.

Some FPC matters were transferred to the jurisdiction of the Secretary of Energy, who in turn delegated them to the Economic Regulatory Administration. Thus ERA assumed the FPC's authority over: (1) exports and imports of natural gas and electricity, (2) the setting of curtailment priorities, (3) the review of Federal power marketing functions, and (4) the ordering of emergency electric interconnections. In the area of gathering and processing information, the FPC's authority is now shared with the Energy Information Administration.

The new functions assigned to the Commission under the DOE Act include the establishment and enforcement of oil pipeline rates, charges, and valuations, a function formerly assigned to the Interstate Commerce Commission. The FERC is also assigned the task of reviewing remedial orders issued by ERA to enforce the oil price and allocation regulations under the Emergency Petroleum Allocation Act and of reviewing denials by ERA of requests for exceptions from those regulations and others administered by the Department.

The Commission must review all rules proposed by the Department, and if the Commission determines that the proposals may significantly affect certain functions of the Commission, then we must assert that jurisdiction, receive comments from the public, and make recommendations to the Secretary on whether and how to implement the proposal. When the proposed rule involves an energy action—that is, a major oil pricing or allocation matter requiring congressional review, such as a decontrol proposal—the Commission must follow this procedure and also make recommendations.

The number of cases and other matters filed with the Commission, if we look at the historical pace of the Federal Power Commission, is increasing faster than the Commission and its staff's capability exist to dispose of them, and this trend is expected to continue.

We cannot now predict with confidence the increase that will result from the new functions of the Commission, but we know that it will be considerable. For fiscal year 1978, we estimate the number of new matters filed with the Commission will exceed the number we can complete at our currently authorized staffing level, resulting in a 12.1-percent increase in our yearend workload rather than a reduction in the backlog.

I am confident, however, that if the Congress decides to make a sufficient investment of staff and funds in the Commission, over time we will be able to effectively deal with the case backlog, making the needed procedural changes, and eventually be able to report to this committee that we are effectively carrying out our responsibilities.

Would it be a worthwhile investment? In terms of the absolute cost to the taxpayers of this Nation, I would like to point out that a large percentage of the total Commission budget is usually recouped in fees from regulated companies. During the last 3 years, the Commission ordered refunds amounting to \$658 million, which is almost six times its budget—\$118 million—for the same 3 years.

Would it be a good investment to consumers? I believe it would. Consumers now receive rate refunds as a result of Commission action which in the aggregate exceed many times the Commission's total budget. And they do so in an environment that has permitted the continued health of the regulated industries for which the Commission has the regulatory duty.

I would also point out that the cost to consumers of regulation of the gas and electric industries is not high. We estimate the cost of regulation to be about one-thousandth of a cent per kilowatt-hour of electricity, and just above one-tenth of 1 cent per thousand cubic feet of gas.

By usual Government standards, this is a bargain.

I believe that an investment of resources in the Commission would be sound, and I also believe that it should be made as early in the new Commission's life as possible. This would enable us to reduce the current regulatory delays which disrupt planning by regulated companies and purchasers of gas and electric power and cause increased construction costs by delaying projects.

Some of these costs can be identified but not quantified; some can be quantified, however. In the area of licenses to build hydroelectric projects, for example, where applications have more than doubled in the last year, we estimate that in the aggregate, each month of Commission delay adds \$6 million to the cost of new planned hydroelectric projects. It does not take an extension of the new math to conclude that in just 6 months, the entire budget of this Agency is inflicted on consumers in the manner of increased costs in the construction of hydro facilities alone.

These costs are unnecessary, but can only be prevented if the Commission has adequate resources.

As of October 1, 1977, the FERC started with a budget of approximately \$34 million for fiscal 1978. The Commission requested a fiscal 1979 personnel allocation of 1,739 positions, and a budget of \$50.8 million. This amounts to an increase in the work force of 523 and an additional \$17.5 million. This request was not made with an indifference to exerting fiscal responsibility in the work of Government. Rather it was made with the full recognition that this Agency has not been granted adequate resources to carry out its function; and that the costs inflicted on society as the result of that inadequacy exceed by many factors the appropriated moneys to this regulatory task. We did not fully succeed in the budgetary process, although we had the Secretary's full support for our request.

The Office of Management and Budget, while sympathetic to our needs, concluded that additional positions and funds should come from within the Department. As a result, the OMB recommendation was for fiscal year 1979 authorization which included no additional

positions and a budget of \$34.1 million, the same funding level as in fiscal year 1978. OMB did make it clear that it would consider adequately justified requests for additional personnel and funding as part of forthcoming supplemental proposals.

The Secretary was successful in achieving a revision of this initial determination and ultimately it was agreed that an additional 200 positions would be made available to the Commission and a recommendation sent forward to the Congress to permit an increase of \$9.6 million in appropriated moneys.

The net result is that, if these amounts are approved, the Commission would face fiscal year 1979 with a work force of 1,403 and \$43.7 million in budget. I would admit that this is significantly under our initial request. However, given the realities of the limited availability of resources to satisfy the multitude of public demands placed on them, I am reasonably satisfied with the approved level of funding.

Two important factors, in addition to the Commission's backlog, will strain our ability to succeed in fulfilling our responsibilities in the future.

The first is the workload associated with the many new functions assigned to the Commission, which I have described. It now appears likely that they will require a substantially greater amount of our resources than we had expected.

The second is the ultimate passage of the National Energy Act which will impose substantial new responsibilities on the Commission. The FERC will be required to implement several major provisions of the act, and also to assist in implementing other provisions. While it is not possible to project with confidence the dollar costs involved, a preliminary estimate shows that approximately \$5 million and 120 man-years would be required in fiscal year 1979 for NEA implementation. When we are able to assess the additional resources that will be required, we will return to this committee with a detailed report on our assessed needs.

Mr. Chairman and members of the committee, I think I can speak for the entirety of the Commission in saying that we are committed to better managing the affairs of this Agency to produce the type of effective and responsive regulatory decisionmaking that the people of this country and the Congress expect of us. Thank you, sir.

[The attachments to Chairman Curtis' statement follow:]

RESPONSES TO QUESTIONS ASKED BY CHAIRMAN JOHN D. DINGELL IN
HIS FEBRUARY 14, 1978 LETTER TO CHAIRMAN CHARLES B. CURTIS

Specific Numbered Questions

Question 1: (a) What specific functions have been transferred from the FPC to the DOE, pursuant to section 301(b) of the DOE Act and what additional functions remain to be transferred or are being considered for transfer?

Answer: We have interpreted the DOE Organization Act as not specifically vesting in the FERC, and apparently vesting in the Secretary of Energy, the following functions under the Federal Power Act ("FPA"): authority to conduct river basin appraisals (§4(a) of the FPA); the authority to reserve sites for power development (§24, FPA); voluntary interconnection (§202(a), FPA); emergency interconnection (§202(c), (d), FPA); approval of electric power exports (§202(e), FPA); corporate regulation, excluding regulation of mergers and securities (§203, 204, FPA); adequacy of interstate service (§207, FPA); joint boards (§209, FPA); authority to require annual reports from licensees and public utilities (§304, FPA); regulation of company officer security dealings and interlocking directorates (§305, FPA); and investigations of regulated companies (§311, FPA).

In addition, the following functions under the Natural Gas Act ("NGA") were not specifically vested in FERC: exemption functions under the NGA (§1(b) and (c), NGA); authority to approve exports and imports of natural gas (§3, NGA); investigation of regulated companies (§5(b), NGA); establishment and review of priorities for curtailments (§7, NGA); authority to require special reports (§10, NGA); authority respecting State compacts (§11, NGA); regulation of company officer security dealings (§12, NGA); and authority to grant rehearings of orders (§19, NGA).

Of these functions reserved to the Secretary, all except those dealing with voluntary interconnection, exports of electricity, and emergency interconnections of power facilities (§202(a), (c), (d), and (e), FPA); natural gas exports and imports (§3, NGA); setting priorities for curtailments (§7, NGA); and reports

on State compacts (§11, NGA) have been delegated to the FERC by the Secretary in his Delegation Order No. 0204-1, dated October 1, 1977 (APPENDIX A) or the subsequent amendment to that Order, dated December 23, 1977. In addition, Delegation Order No. 0204-8 delegated to the FERC all authorities which the FPC could have exercised with respect to the Alaska gas transportation system but for the enactment of the DOE Act.

The net result is that the FERC now exercises all of the authorities under Parts I and II of the Federal Power Act, except § 202(a), (c), (d), and (e), and except that the Secretary and the Commission have concurrent authority under §4. The FERC exercises all functions under Part III of the Federal Power Act. In addition, the FERC exercises all authorities under the Natural Gas Act with the exception of natural gas exports and imports, the establishment and review of curtailment priorities, and reports on State compacts.

There is continuing discussion between DOE and the FERC concerning ambiguities in the interpretation of §402(f) of the DOE Act.

Question 2: Under section 402(b) of the DOE Act, certain functions were transferred to FERC. Your October 21, 1977 letter to DOE states that only \$350,000 was transferred to FERC from the ICC. Please indicate how many positions were transferred to FERC from the ICC and what effect on the FERC budget and personnel this transfer will have.

Answer: \$808,000 was the total funding transferred to the FERC from the ICC pursuant to section 402(b) of the DOE Act. Of this total, \$350,000 was the amount designated for contracts. In addition, 17 positions were transferred to the FERC from the ICC. These transfers of funds and positions will amount to 1.6% of the FERC's FY 1979 budget request as stated in my October 21 letter to Secretary Schlesinger, and less than one percent of our FY 1979 manpower request. Further analysis is underway and preliminary indications are that funds and positions transferred from the ICC are inadequate to handle the oil pipeline tariff workload.

Question 3: What functions or matters will be assumed or considered by FERC under section 402(d) of the DOE Act and what effect will such activities have on the FERC budget and personnel in FY 1978 and 1979. Please provide the same information for sections 402(e) and (f).

Answer:

No functions or matters have thus far been assumed by the FERC under section 402(d) involving any agency determination required by law to be made on the record after an opportunity for an agency hearing or involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing. There have been no discernable effects to date on FERC budgets or personnel nor are any anticipated at this time in FY 78 and FY 79.

The Secretary has issued several delegation orders pursuant to section 402(e).

Delegation Order No. 0204-1 (Appendix A) contains the delegation and assignment of Federal Power Act and Natural Gas Act functions to the Commission.

Delegation Order No. 0204-8 (Appendix A-2) delegates and assigns to the Commission the responsibility for the Alaska Gas Project. At present, this function is being managed within the Commission by the Alaska Gas Project Office. Both additional personnel and fiscal resource needs are anticipated, especially in view of the commencement of fiscal audits of the project anticipated to begin in 1979. Preliminary indications are that additional positions in the range of 30-40, and contract funds as high as an additional \$3M may be required in FY 1978 and FY 1979.

On December 23, 1977, Delegation Order No. 0204-1 was amended (Appendix A-1) to delegate and assign to the Commission functions under sections 4 and 24 of the Federal Power Act, concerning river basin appraisal and hydroelectric licensing, respectively. The

delegation and assignment under section 24 relate to the granting of entry, location or other disposition of lands in the U.S. reserved or classified as power sites. Delegation Order No. 0204-1, as amended, provides that the Commission shall submit a report six months from the date of the amendment on the number and type of applications filed under section 24.

Using the authority provided in sections 301 and 402(f) regarding the assignment to the Commission of functions regulating the exports or imports of natural gas or electricity, the Secretary, pursuant to section 402(e), issued Delegation Order No. 0204-13 (Appendix A-3) authorizing the Commission to consider the issuance of a temporary certificate under section 7 of the Natural Gas Act to Distrigas of Massachusetts Corporation to construct certain facilities at its Everett, Massachusetts terminal. Using the same statutory authority, the Secretary later issued Delegation Order No. 0204-14 (Appendix B), delegating and assigning to the Commission that statutory authority as it applies to applications by Distrigas Corporation and Distrigas of Massachusetts Corporation to import liquefied natural gas from Algeria. The delegation and assignment of authority are limited to matters not decided by the ERA's order of December 31, 1977. The Commission's budget and personnel are not expected to be affected by these two delegations. No other delegations to the Commission involving these sections have been made.

Question 4: What steps have you taken to implement the provisions of section 503 of the DOE Act which relate to FERC responsibilities? What funds and positions will be required in FY 1978 and FY 1979 to carry out these responsibilities and what is your estimate of the caseload?

Answer 4: This particular section deals with remedial orders issued by the Secretary or his authorized representative pursuant to the Emergency Petroleum Allocation Act of 1973, and their subsequent appeal. At this time, the Office of the General Counsel is finalizing its recommendations and will soon present to the Commission its proposal for the processing of such appeals. Although a heavy workload is anticipated as a result of remedial order appeals, the variables involved make a precise estimation of the workload and its budget and staffing effects impossible to identify at this time.

Question 5: To what extent will the provisions of section 403(c) and (d) be utilized and what effect will this have on the FERC budget and personnel in FY 1978 and 1979?

Answer 5: Section 403 authorizes the Secretary and the Commission to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under other sections of the Act.

While the FERC, as an ongoing policy, is analyzing the application of rulemaking procedures to the establishment of rates and charges under the Federal Power Act or the Natural Gas Act, the ultimate effect of such procedures has not yet been definitely resolved. The Office of the General Counsel is currently considering the question of rulemaking procedures in the expectation that such procedures may ultimately improve the Commission's work by enabling the FERC to avoid the repetitious litigation of generic legal issues.

At this point, it is too early to really tell what the budgetary and personnel effects will be. However, preliminary estimates are that as many as 5 additional positions may be required to handle the rulemaking activity initially.

Question 6: Please provide a description of the organization, functions, and responsibilities of the General Counsel's Office and indicate what, if any, actions you plan to take or have taken to reorganize that office and utilize its lawyers. Please indicate how many positions are authorized in FY 1978 and 1979 in the General Counsel's Office.

Answer 6: Overall, the General Counsel performs a vital function as the legal advisor to the Commission. The Office of the General Counsel is generally responsible for defending Commission actions in court litigation, reviews Commission documents for legal sufficiency, and is responsible for all legislative matters as well as all general legal matters such as Equal Employment Opportunity, Freedom of Information Act, and the Privacy Act. At present, 167 staff are on board for OGC with this level expected to rise to 202 by September 30, 1978 to reflect the recent authorization of 35 additional positions. The estimated number of positions for FY 79 is 202, although more would be required if certain aspects of the NEA are enacted and the Commission's responsibilities under sections 404 and 502 of the DOE Act significantly increase.

The organization of the Office of the General Counsel has recently been modified and improved by realigning certain responsibilities and by consolidating its functions into four major divisions from the six or more which existed previously. The ultimate objective of this improved structure is to free the General Counsel from both the daily trial process and routine administrative affairs so that he can perform more effectively as the chief legal advisor to the Commission. This was accomplished by the creation of the Chief Trial Counsel's Office which will handle many of the realigned responsibilities. In addition, the Chief Trial Counsel will be better able to supervise the cases presented before the Administrative

Law Judges and will have the opportunity to identify critical legal issues at an earlier stage in the regulatory process. Overall, it is felt that these improvements will enable the Office of the General Counsel to significantly improve both the quality and the efficiency of its input.

- Question 7: (a) Please explain what the Energy Executive Service is and why FERC will not utilize it.
- (b) To what extent is the Commission now "encumbered" by career staff and what are its implications?

Answer 7:

(a) Energy Executive Service

Section 621 (b) and (d) of the Department of Energy Organization Act (P.L. 95-91) authorized the Secretary of Energy to appoint a total of not more than 511 scientific, engineering, professional, and administrative personnel without regard to Civil Service laws and to fix the compensation of such personnel at levels not in excess of the maximum rate payable for GS-18 of the General Schedule. These appointments, referred to as Energy Executive Service appointments, are for personnel who will serve at the pleasure of the Secretary to discharge his functions as he deems necessary as opposed to positions covered under Section 401(a) of the Act which authorizes the Chairman of the Federal Energy Regulatory Commission to select, appoint, and fix the compensation of such personnel as he deems necessary. Section 621(c) of the Act provides for appointments of a total of 178 supergrade positions at GS-16, GS-17, and GS-18 without specification that they serve at the pleasure of the Secretary of Energy or the Chairman of the Federal Energy Regulatory Commission.

The FERC will be using two EES appointments as a result of the Secretary's allocation of seven additional supergrades to the Commission (5 from the 178 pool, and 2 from the EES pool).

(b) Career Staff Positions Encumbered at FERC

At the current time, there are 23 encumbered supergrade positions (grades GS-16, GS-17, and GS-18) at the Commission. Of these positions, 13 are filled by Career Executive Assignment (CEA), 3 are filled by Noncareer Executive Assignment (NEA), and 7 are filled under Schedule A appointments. NEA assignments are premised on the need to fill a position by a person who will 1) be deeply involved in the advocacy of administration programs and support their controversial aspects; 2) participate significantly in the determination of major political policies of the administration; or 3) serve principally as personal assistant to or adviser of a Presidential appointee or other key political figure. Because the NEA position calls for loyalty, support and dedication to current policy decisions, should there occur a change in the leadership of the Commission, the NEA incumbent may be removed at any time from his/her assignment when the person's qualifications or relationships required for the assignment change or cease to exist. Therefore, by filling key policy positions under NEA, a new agency head is not forced to "live with" a staff which may find itself in fundamental disagreement with the policies of the Chairman of the Commission.

The Commission is in the process of converting its major policy supportive supergrade positions to NEA. There are several positions which are exceptions to this policy. For example, the Chief Accountant and the Director, Office of Enforcement, whose accounting, enforcement, and compliance functions require insulation to avoid any appearance of politicization; and the Secretary who acts as a legal custodian for the Commission.

Other Unnumbered Questions Raised in Chairman Dingell's LetterAre FERC requests for data being honored by DOE?

The arrangements whereby EIA will collect and provide in timely fashion such data as FERC may require are set forth in IMD 4001, "Regulatory Data Responsibility Within DOE", APPENDIX C, which was approved on December 21, 1977, after lengthy consultation between FERC, EIA, and ERA. Since that approval, drafts of other proposed IMDs have been circulated by EIA to FERC for comment. These draft IMDs set out certain "in house" procedures for handling data. In addition, discussions at the staff level are continuing on this matter.

The Commission has not articulated a general policy on confidentiality to be accorded information which it acquires. The Commission has addressed the confidentiality question in the specific context of geological information covered in Schedule B, Form 40. The Commission's policy appears on pp 13-16, Order No. 526-C, a copy of which is attached as Appendix D.

The relationship between the Commission and the EIA is one that is evolving and will be undergoing constant reassessment to make sure FERC needs are met.

What are the FERC's top priorities from FY 1979?

There are seven major priority areas which will receive the greatest attention and devotion of Commission resources during Fiscal 1979. These priorities are all extremely important and the array should not be considered as showing the relative order of importance of the individual priority. We will submit a listing showing the resources required to carry out these priorities for the record. A list of the priorities is attached as APPENDIX E.

Why were 14 positions transferred to the ERA?

The Congress determined in enacting the DOE Organization Act that 202(a) and 202(c) functions should be vested in the Secretary. Consequently, in accord with Civil Service Commission rules on transfers, which require that positions track functions, the positions which had been assigned these functions in the FPC were transferred to ERA.

In addition, we will continue to provide whatever FERC support is necessary to assist ERA in addressing national emergencies as we are continuing to do during the coal emergency.

Why did the FERC suffer a "drastic cutback" in FY 1978, and then seek to restore additional funds and personnel for FY 1979?

In fact, the cutback referred to for FY 1978 was not a cutback in the true sense of the term. The reductions in funding and personnel represented the transfers of functions and support personnel to other entities within the DOE. The funding and personnel increases requested initially for FY 1979 were the result of two factors: the desire to reduce and eliminate the outstanding backlog of cases and filings as quickly as possible, and the need to cope with the accretion of new responsibilities assigned to the FERC under the DOE Act.

Who are the persons at DOE who make budget and personnel decisions for the FERC?

The Chairman of the FERC is responsible for assessing the budgetary requirements of the Commission and making an annual request for resources to the Secretary. Under section 401(j), DOE Organization Act, this annual assessment is required to be submitted to Congress unchanged along with the Congressional budget. The Secretary, however, is authorized to assess the FERC's resources in view of the data he has and in view of overall Departmental priorities, and forward his assessment to the Office of Management and Budget and the Congress, along with the FERC request. This fall, the Secretary submitted the FERC's request unchanged to the Office of Management and Budget.

Under the DOE Organization Act, the basic authority for personnel appointment and administration is vested in the Chairman; the exercise of this authority, however, is conducted in accordance with the Common Administrative Support Agreement (APPENDIX F) between the Chairman and the Director of Administration, DOE. Pursuant to the provisions of this agreement, the Director of Administration, is responsible for providing the full range of personnel services to the Commission. The Director is also responsible for providing the personnel administration resources necessary for ensuring that FERC needs are met.

FERC managers continue to be responsible for establishing the qualification criteria of their staff, and for selection of staff.

Expand on the need for high level managers and state where and how they would be placed with respect to current staff.

Many of the problems facing the Commission such as a massive backlog of work coupled with a 20 percent turnover rate, can be described as management problems. While additional staff and fiscal resources of all kinds are required, the most compelling single resource requirement of the Commission is for high

level managers who can reorganize the methods by which the Commission's functions are carried out in order to more efficiently utilize the resources available to us and to expedite processing of workload of all sorts.

Until we have fully reviewed the procedures and steps involved in processing FERC workload, and are able to identify where bottlenecks are occurring, we are not in a position to describe where these managers will be placed.

Would FY 1978 and FY 1979 budget permit adequate staffing of the Office of Enforcement?

The creation of the Office of Enforcement within the FERC is a new initiative, undertaken as one of the top priorities of the Commission. The FY 1978 and FY 1979 allocation of 20 positions for the office probably will not provide adequate staffing and resources to carry out the missions and functions of this office. However, these 20 positions were never intended to be the full complement of resources which the FERC will devote to the task of assuring that the statutes administered by the Commission, its regulations, orders and opinions are enforced. The enforcement effort must be developed in manageable increments. Our initiatives in this area will be closely scrutinized by the regulated industries and consumers as well as the Congress. We must be successful in our first efforts. In other words, the missions, functions and operation of the office must be developed and implemented correctly -- unfortunately a time-consuming process. The Commission, will, however, move to have in place an effective and efficient enforcement effort at the earliest practical opportunity. The commitment of 20 positions at this time is adequate to undertake the development of the missions, functions and the office's procedural regulations; and to identify the magnitude of the enforcement problem. After this initial phase, when the need for additional resources is identified and documented, they will be provided. Indeed, of the 200 additional positions allocated to the FERC by the Secretary, 27 remain unallocated which could and will be used to fulfill the requirements of the Office of Enforcement as they become evident.

Further information on environmental initiatives, dam safety, and small hydroelectric projects.

Environmental:

The FERC, and its predecessor, the FPC, have made steady progress toward assuring that environmental considerations receive proper consideration in the decisionmaking process. The American Association for the Advancement of Science recently singled out the Federal Power Commission for the way in which environmentally superior alternatives for a transportation system to bring natural gas from Alaska to the lower 48 States were developed.

I am firmly committed to maintaining this momentum. I directed that a comprehensive study be made of all environmental activities at the FERC, to be used as the basis for developing even more effective and efficient environmental programs. This study is now undergoing final review at the senior staff level. When completed, the results will be translated into specific management initiatives that will increase the effectiveness of allocated environmental resources both for the Commission and for the public.

Dam Safety:

As Chairman Dingell noted in his February 14 letter, the initial FERC FY 1979 budget request specified that, of the 523 additional positions requested for FY 1979, 25 would be devoted to dam safety programs. Since that time, the need to proceed as rapidly as possible with an accelerated dam safety inspection program has become even more evident. While the 200 additional positions we received from DOE in December is much lower than the total of 523 positions we had requested, we have still allocated 27 positions to dam safety programs and the expedition of hydroelectric license applications. In addition, a total of 25 existing FERC staff personnel, in the five Regional Offices and at Headquarters, are assigned full-time to dam safety issues. Other staff members devote part of their time to such issues resulting in an additional 15 man-years of effort each year on dam safety. Still another five man-years of clerical support is devoted to this area. We will continue to assess these resources to make sure we are fully able to carry out our responsibilities in this area. If these resources prove to be inadequate, we will redeploy available resources from other areas to this priority activity.

Our immediate need in the dam safety area is for specialized training opportunities for current and prospective inspectors of hydroelectric facilities. We have had preliminary discussions with a local university regarding the establishment of a course designed specifically for FERC inspectors, and we are pursuing other avenues to train and deploy new inspectors as quickly as they can be brought to an effective level of specialized knowledge.

There are 685 inspections of dams under license in Fiscal Year 1977. These include operation inspections and the inspection of dams under construction. In addition, there were pre-license inspections of 54 of the approximately 108 dams at projects not yet licensed, but for which applications are pending. Also, there were 115 safety inspections by independent consultants employed by licensees.

Hydroelectric License and Relicense Applications

For major hydro projects (more than 1500 KW of installed capacity), 32 applications for preliminary permits are pending; 12 for new capacity; 81 for new constructed projects; 77 for relicensing; and 2 for amendments to existing licenses.

For small hydro projects (less than 1500 KW), 3 preliminary permits are pending; 8 for new capacity; 27 for new constructed projects; and 12 for relicensing.

Hydroelectric Staff Plan:

A staff hydroelectric plan has been developed but has not yet been placed before the Commission. Major features of the plan follow:

(1) The staff has initiated the first phase of a three-phase program to simplify its regulations regarding hydro licenses. The staff has developed a proposed rulemaking that would provide a short form license for very small projects having (a) dams 25 feet or less, (b) reservoirs less than 10 acres, and (c) an installed capacity of 1,500 kW or less. The interest in small scale projects has resulted in a number of applications (over 50) for such projects. This first phase of Regulation revisions should reduce staff workload and applicant requirements to a minimum. It is our desire to reduce processing time for these very small projects by at least 50 percent.

(2) The staff has installed a case management system that is designed to reduce processing time for applications by

- (a) setting specific dates for completing processing steps,
- (b) identifying those areas where time can be saved by changing procedures or eliminating unnecessary steps, and
- (c) establishing priorities for energy related actions.

(3) In the next few months, it is our intent to initiate the second and third phases of our Regulation revisions. The second phase would relate to all projects 15 MW or less, unless covered by phase one regulation. This is consistent with the provisions of the National Energy Act which would require the Commission to simplify its regulations for projects of that size. Even without the pending legislation, the staff is dedicated to revising its regulations to simplify and make them more responsive to the public needs, and the President's proposed Executive Order which would direct agencies to improve regulations. It is our objective to reduce processing time 25 to 50 percent for small scale projects, particularly those at existing dams. We expect to develop our program for the third phase of regulations this coming fall. This final phase would be for projects larger than 15 MW.

Of the 200 additional positions allocated to the Commission, 3 will be devoted to small hydro activities. Our preliminary estimate is that approximately 20 more positions will be required to carry out these activities if the NEA is enacted.

Provide data on supergrade positions available to the FERC, provide views on the need for more Administrative Law Judges, and provide data on GS-15 positions.

Currently, the FERC's authority for supergrades, not including ALJ positions, is 41 (61 if ALJ positions are included). Seven of these positions were allocated to the Commission on February 24 to meet the critical need of the Commission for high level managerial staff. As the Commission continues to assess its workload, we will also reassess our requirements for supergrade staff and make specific requests to the Secretary for additional supergrade positions as appropriate.

Administrative Law Judges:

In response to your questions regarding Administrative Law Judges:

1) We feel that our situation requires a modest addition of five ALJs to our present corps of 19 (plus the Chief Judge) for the following reasons:

a) In order to achieve some worthwhile reduction in the initial decision backlogs at the end of each Fiscal Year, and in the number of cases still in process before the Administrative Law Judge at the end of each Fiscal Year.

b) To make it possible for our Administrative Law Judges to handle, without expanding our current backlog figures, the increase in caseload which we expect to experience under the DOE Act. This anticipated expansion will come from, (1) oil pipeline rate and valuation proceedings, transferred from the ICC under that Act; (2) matters which the Secretary may transfer to FERC at his discretion, for hearing under the Act; (3) certain FEA proceedings which may require FERC hearings under Sections 503 and 504 of the Act.

2) We hope to expedite our ALJs' handling of cases by the expansion in our ALJ corps, referred to above, and by expanding related necessary support services in terms of the number of law clerks, technical assistants, and secretarial assistance. This suggested expansion would include three additional GS-7 secretaries, increasing that staff from nine to 12 in order to maintain our traditional pattern of one secretary for each two ALJs; two additional technical assistants (GS-14), increasing that staff from three to five; one additional front office position, a GS-5 clerk-typist, in order to provide assistance in connection with the increase in mail, case records, etc., expected because of the increased caseload. We have recently received approval to hire four additional law clerks.

3) The actions we have taken up to now with the Civil Service Commission, in connection with our request for five additional ALJs, includes letters dated September 26 and December 28, 1977, in which we requested authorization to add five additional ALJs. Both requests were denied.

4) Cases are assigned by the Chief Administrative Law Judge on the basis of his determination as to which ALJ may have a relatively lighter caseload situation, so that the impact on that particular ALJ may be less harmful than in the case of the other ALJs.

5) The number of ALJ initial decisions issued in recent years is as follows:

- a) FY 75 - 87, or 5.6 per ALJ.
- b) FY 76 - 126, or 6.8 per ALJ (based on 4 Qtrs)
- c) FY 77 - 104, or 5.3 per ALJ.

6) The average time required from filing of final briefs to issuance of the ALJ's initial decisions has been as follows:

- a) FY 75 - 3.2 months.
- b) FY 76 - 5.6 months.
- c) FY 77 - 5 months.

These figures represent the average for all cases, without regard to the type of case involved. The average decisional time from filing of final briefs, when broken down by particular type of cases, has run as follows:

a) Producer Certificate

FY 1975 - 3.1 months
 FY 1976 - 4.3 months
 FY 1977 - 2.5 months

b) Producer Rate

FY 1975 - 5.0 months
 FY 1976 - 6.4 months
 FY 1977 - 2.8 months

c) Pipeline Rate

FY 1975 - 3.3 months
 FY 1976 - 4.9 months
 FY 1977 - 5.4 months

d) Electric Rate

FY 1975 - 4.1 months
 FY 1976 - 8.3 months
 FY 1977 - 5.7 months

e) Pipeline Certificate

FY 1975 - 2.8 months
 FY 1976 - 4.1 months
 FY 1977 - 4.3 months

f) License Projects

FY 1975 - 2.0 months
 FY 1976 - 5.0 months
 FY 1977 - 3.9 months 1/

1/ These time lag figures do not represent actual writing time. Instead, it simply means that the average decision is issued the stated number of months after final briefs. During this time period the ALJ had hearing sessions in other cases, plus other backlogged decisions to write before he tackled this one.

POSITIONS AUTHORIZED AT GS-15 AND ABOVE

	<u>GS-15</u>	<u>Supergrades</u>
FPC Before October 1, 1977		
Commission/Executive Director	1	3
Secretary	1	
Off of Administrative Law Judges		20
Off of Special Assts to Comm	5	1
Off of Policy Analysis	7	2
Off of Personnel Programs	1	
Off of Public Information	1	
Off of Regulatory Info. Systems	2	1
Office of the Comptroller	1	
Off of Admin. Operations		
Off of the General Counsel	16	8
Off of the Chief Accountant	6	3
Bureau of Natural Gas	29	7
Bureau of Power	23	6
Unassigned		4
	—	—
TOTAL	93	55
FERC for FY 1978/1979*		
Commission	8	1
Executive Director	6	2
Off of the General Counsel	17	9
Off of Opinions and Reviews	9	2
Off of the Secretary	1	
Off of Regulatory Analysis	7	3
Off of the Chief Accountant	6	4
Off of Electric Power Regulation	18	5
Off of Pipeline and Producer Reg	28	8
Off of Enforcement	7	
Off of Administrative Law Judges		20
Unassigned		7**
	—	—
TOTAL	107	61

*FERC was not given an increased ceiling allocation over FY 1978. The FY 1978 budget for FERC was not broken down by grade levels. Numbers shown here reflect on-board and vacancies effective December 31, 1977.

**Additional supergrades allocated to FERC on February 24, 1978.

Provide Tables showing gas, power, and other agenda items at Commission meetings from November, 1977 through January, 1978.

Based on a review of the Commission agendas over the past three months, we have determined that approximately 586 cases, 66 percent, were gas related; and 281, 31.9 percent were electric related.

See Monthly Totals Below:

NOVEMBER:	Total	-	403	
	Gas	-	275	68%
	Power	-	121	30%
	Other	-	7	2%

DECEMBER:	Total	-	291	
	Gas	-	190	65%
	Power	-	94	32%
	Other	-	7	3%

JANUARY:	Total	-	194	
	Gas	-	121	62%
	Power	-	66	34%
	Other	-	7	4%

TOTALS:	888	Items	
	586	Gas	66%
	281	Power	31.9%
		Other	2.1%

APPENDIX A

42 F.R. 55637,
10/18/77SEE FERC Order #1,
10/6/77 - RM78-1

DEPARTMENT OF ENERGY

DELEGATION ORDER NO. 0204-1

TO THE FEDERAL ENERGY REGULATORY COMMISSION

Pursuant to the authority vested in me as Secretary of Energy ("Secretary") and by Sections 642 and 402(e) of the Department of Energy Organization Act (Pub. L. 95-91) (the "DOE Act"), there is hereby delegated and assigned to the Federal Energy Regulatory Commission ("FERC") the authority to carry out the functions under the following statutory authorities:

1. Part I of the Federal Power Act (Pub. L. 280, 66th Cong., 2d Sess.), to the extent that such authority is not transferred to, and vested in, FERC by Section 402(a)(1)(A) of the DOE Act, provided that this paragraph does not delegate functions under (i) Section 4(a) of the Federal Power Act as it relates to river basin appraisals and (ii) Section 24 of the Federal Power Act as it relates to the disposition of power site lands;

2. Section 203 of the Federal Power Act (relating to the disposition, merger or consolidation of facilities and the acquisition of securities);

3. Section 204 of the Federal Power Act (relating to the issuance of securities and the assumption of liabilities);

4. Section 206(b) of the Federal Power Act (relating to the investigation and determination of the cost of production or transmission of electric energy), as FERC determines appropriate to perform its vested or delegated functions;

5. Section 207 of the Federal Power Act (relating to adequate and sufficient interstate service);

6. Section 209 of the Federal Power Act (relating to use of boards composed of State representatives and cooperation with State commissions);

7. Section 304 of the Federal Power Act (relating to annual and periodic or special reports), as FERC determines appropriate to perform its vested or delegated functions;

8. Section 305 of the Federal Power Act (relating to officers or directors benefitting from the sale of issued securities and to interlocking directorates);

9. Section 311 of the Federal Power Act (relating to investigations regarding the generation, transmission, distribution, and sale of electric energy), as FERC determines appropriate to perform its vested or delegated functions;

10. Sections 1(b) and 1(c) of the Natural Gas Act (Pub. L. 688, 75th Cong., 2d Sess.) (relating to certain exemptions from the provisions of the Natural Gas Act);

11. Section 3 of the Natural Gas Act with respect to the decision of pending cases assigned to FERC by rule;

12. Section 5(b) of the Natural Gas Act (relating to the investigation and determination of the cost of production or transportation of natural gas), as FERC determines appropriate to perform its vested or delegated functions;

13. Section 10 of the Natural Gas Act (relating to annual and periodic or special reports), as FERC determines appropriate to perform its vested or delegated functions;

14. Section 12 of the Natural Gas Act (relating to officers or directors benefitting from the sale of issued securities);

15. Section 19 of the Natural Gas Act (relating to rehearings on orders);

16. The Interstate Commerce Act (49 U.S.C. § 1, et seq.) and other statutes which formerly vested authority in the Interstate Commerce Commission or the chairman and members thereof, as such statutes relate to the transportation of oil by pipeline, to the extent that such statutes are not transferred to, and vested in, FERC by Section 402(b) of the DOE Act, provided that this paragraph does not include any of the authority under Section 11 of the Clayton Act (15 U.S.C. § 21);

17. To issue orders, and take such other action as may be necessary and appropriate, to direct the Energy Information Administration to gather energy information pursuant to the

Federal Energy Administration Act of 1974 or the Energy Supply and Environmental Coordination Act of 1974 to the extent necessary or appropriate to the exercise of regulatory functions vested in or delegated to the Federal Energy Regulatory Commission; and

18. The authority to take such other action as the Secretary or his authorized delegates may, from time to time, authorize.

Except as provided in Paragraph 11, this Order does not include the authority to carry out the functions delegated herein to the extent such functions are vested in the Secretary pursuant to his authority to regulate the exports or imports of natural gas or electricity, under Section 402(f) of the DOE Act; provided that the Secretary may from time to time delegate to FERC such other authority under Section 3 of the Natural Gas Act as may be determined appropriate.

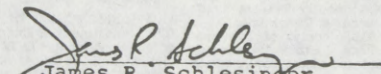
The authority delegated to FERC may be further delegated, in whole or in part, as may be appropriate.

FERC shall consult with the Administrator of the Energy Information Administration ("EIA") with respect to the exercise of functions under paragraphs 4, 7, 9, 12, 13, and 17, as EIA considers appropriate.

All actions pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order

are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or superseded.

This Order is effective October 1, 1977.


James R. Schlesinger
Secretary of Energy

NOTICES

[3251-01]

COMMODITY FUTURES TRADING
COMMISSIONPROPOSED 30 INDUSTRIAL STOCK AVERAGE
FUTURES CONTRACT

Availability

In accordance with its established policy, the Commodity Futures Trading Commission ("Commission") is making available copies of the proposed 30 Industrial Stock Average futures contract submitted for contract market designation by the Kansas City Board of Trade pursuant to section 5 and 5a of the Commodity Exchange Act, as amended, 7 U.S.C. 7, 7a (Supp. V, 1975). Copies of the proposed contract will be available for inspection at the Commission's offices in Washington, New York, Chicago, Minneapolis, Kansas City, and San Francisco. Additionally, the Commission will furnish copies of the proposed contract upon request to the Executive Secretariat.

Any person interested in expressing his views on the terms and conditions of the proposed contract should send his comments by February 6, 1978 to Ms. Jane Stuckey, Executive Secretariat, Commodity Futures Trading Commission, 2033 K Street NW, Washington, D.C. 20585, 202-354-5316. Copies of all comments will be available for inspection at the Commission's Washington office.

Issued in Washington, D.C., on December 30, 1977.

WILLIAM T. BAGLEY,
Chairman.

(FR Doc. 78-131 Filed 1-4-78; 2:45 am)

[3123-01]

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

Amendment of Delegation Order No. 0204-1
From the Secretary of Energy

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: Notice is hereby given of the amendment of Delegation Order No. 0204-1 of the Department of Energy, which was a delegation and assignment of certain matters by the Secretary of Energy to the Federal Energy Regulatory Commission. The amendment delegates and assigns to the Commission functions under sections 4 and 24 of the Federal Power Act, which the Secretary had reserved to himself in Delegation Order No. 0204-1.

EFFECTIVE DATE: December 23, 1977.

FOR FURTHER INFORMATION
CONTACT:

Nancy E. Williams, Department of Energy, Office of General Counsel, 12th and Pennsylvania Avenue NW, Room 7132, Washington, D.C. 20461 202-566-2454.

Robert L. Baum, Deputy General Counsel, Federal Energy Regulatory Commission, Washington, D.C. 20426, 202-275-4333.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) was established by the DOE Organization Act, Pub. L. 95-91, 42 U.S.C. 7101, et seq. (1977) (the Act), which was enacted on August 4, 1977. The effective date of the Act was prescribed as October 1, 1977, by Executive Order 12009, dated September 13, 1977 (42 FR 46267, September 15, 1977).

Sections 401-407, 503 and 504 of the Act set forth the jurisdiction and authorities of the Federal Energy Regulatory Commission (the Commission), the independent regulatory commission within DOE. These sections describe those functions previously performed by the Federal Power Commission and the Interstate Commerce Commission that are transferred to, and vested in, the Commission by the Act. These sections also describe the role of the Commission in DOE Rule-making proceedings, its role with respect to appeals of certain Remedial Orders issued by the Secretary, and its role with respect to denials of adjustments to certain rules, regulations, and orders issued by the Secretary.

In addition, section 402(e) of the Act provides that the Commission will have jurisdiction over any other matter assigned to it by the Secretary, upon public notice being given of the assignment.

In addition to the other provisions of this section, the Commission shall have jurisdiction over any other matter which the Secretary may assign to the Commission after public notice. ***

Section 642 of the Act gives the Secretary a general power of delegation:

Except as otherwise expressly prohibited by law, and except as otherwise provided in this act, the Secretary may delegate any of his functions to such officers and employees of the Department as he may designate, and may authorize such successive redelegations of such functions within the Department as he may deem to be necessary or appropriate.

Pursuant to the above provisions, public notice is hereby given that the Secretary delegates and assigns to the Commission the authority to carry out certain functions which by the act are transferred to, and vested in, the Secretary. The assignment is in the form of a delegation, in accordance with all delegations of authority made by the Secretary.

The delegation order set forth below amends Delegation Order No. 0204-1

by abrogating the reservation of sections 4(a) and 24 of the Federal Power Act contained in paragraph 1 of that Order. The amendment of the Delegation Order with respect to section 4(a) amends the original paragraph 1 to the extent it reserved "Section 4(a) of the Federal Power Act as it relates to river basin appraisals", since it has become apparent, subsequent to execution of the original Delegation Order, that the Commission may have need to gather data for river basin appraisals in order to carry out its responsibility to assess whether or not a project considered for hydroelectric licensing is best adapted to comprehensive development of the waterway on which the project would be located. The determination of adaptability must be made by the Commission pursuant to section 10(a) of the Federal Power Act. The amendment makes clear that the authority vested in the Commission pursuant to the Delegation Order is co-extensive with its authority under the DOE Act, in particular section 402(a) (2) of the act, which provides:

The Commission may exercise any power under the following sections to the extent the Commission determines such power to be necessary to the exercise of any function within the jurisdiction of the Commission:

(A) Sections 4, 301, 302, 306 through 309, and 312 through 316 of the Federal Power Act. ***

By the amendment, the Commission is given authority to exercise any power under section 4 of the Federal Power Act to the extent the Commission determines utilization of the power is necessary for the Commission to perform the functions assigned to it by the Delegation Order.

The abrogation of the reservation of section 24 as it was included in the original Delegation order is a delegation and assignment only for a period of 6 months. The authority is delegated because section 24 applications do relate to hydroelectric licensing functions carried out by the Commission. Furthermore, the Commission presently has an efficient method of handling section 24 applications, and the applications are of a type which must be acted upon rapidly and daily. For these reasons, it is believed to be in the public interest to have the Commission continue to process section 24 applications for a period of 6 months. During this time period, the Commission will provide the Assistant Secretary for Resource Applications with a copy of each section 24 application filed with it, and afford the Assistant Secretary a reasonable time period to comment on the application. At the end of the 6-month time period, the Commission will prepare a report for the Secretary on its activities of those 6 months with respect to the section 24 applications. At that time, a deci-

NOTICES

sion will be made as to which entity or officer of the Department should from henceforth have responsibility for the action on 24 applications.

(Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009, 42 FR 64281.)

Issued in Washington, D.C. on December 29, 1977.

WILLIAM P. DAVIS,
Acting Director of Administration.

DEPARTMENT OF ENERGY, DELEGATION ORDER
No. 0204-1, AMENDMENT No. 1, TO THE FEDERAL ENERGY REGULATORY COMMISSION

Pursuant to the authority vested in me as Secretary of Energy ("Secretary") and by sections 402 and 402(e) of the Department of Energy Organization Act (Pub. L. 95-91) (the "DOE Act"), paragraph 1 of Delegation Order No. 0204-1 is hereby amended to read as follows:

1. Part 1 of the Federal Power Act (Pub. L. 280, 86th Cong., 3d Sess., as amended), to the extent that such authority is not transferred to, and vested in, FERC by this delegation, and (B) Section 24 of the Federal Power Act (relating to the granting of entry, location, or other disposition of lands of the United States reserved or classified as power sites), provided that, upon receipt of an application under section 24, FERC shall provide a copy of such application to the Assistant Secretary for Resource Applications and allow such officer a reasonable time to comment on the application; and, provided further, that, at a date six months from the date of this Order, FERC shall submit a report to the Secretary identifying the number and type of applications which have been filed with FERC under section 24 in that time period.

This amendment to Delegation Order No. 0204-1 is effective December 23, 1977.

JAMES R. SCHLESINGER,
Secretary of Energy.

(FERC Doc. 77-37413 Filed 12-30-77; 8:45 am)

[6/40-02]

FEDERAL ENERGY REGULATORY
COMMISSION

(Docket Nos. ER78-110 et al.)

KENTUCKY UTILITIES CO.

Proposed Rate Schedule Change

DECEMBER 27, 1977.

Take notice that on December 14, 1977, Kentucky Utilities Co. (Kentucky) (Docket Nos. ER78-110, ER78-111, ER78-112, ER78-113, ER78-114, ER78-115, ER78-116, ER78-117, ER78-118, ER78-119, ER78-120, ER78-121, ER78-122, ER78-123, ER78-124, ER78-125, ER78-126, ER78-127, and ER78-128) tendered for filing a change in its Rate Schedule FPC No. 82, which is for service to Jackson Purchase Electric Cooperative Corp. (JPECC).

Kentucky states that the proposed rate schedule for the delivery points, listed below, provides for delivery at \$9,000 or 34,500 volts, billing on rate WFS-78. Kentucky proposes an effective date of January 15, 1978.

Kentucky submitted a separate filing for each of the delivery points which are identified as:

La Center—ER78-112
Grand Rivers No. 2—ER78-111
Reed Crushed Stone—ER78-110
Calvert City—ER78-119
Kevil—ER78-118
Culp Road—ER78-117
Kansas—ER78-116
Curtville—ER78-114
Palma—ER78-115
Lebetter—ER78-113
Shell Oil Pump—ER78-123
Cairo Road—ER78-121
Coleman Road—ER78-122
Little Union—ER78-124
Kreb Road—ER78-125
Freemont—ER78-120
Lovelsville—ER78-128
New York—ER78-127
Husband Road—ER78-126

According to Kentucky copies of this filing were mailed to the Public Service Commission of Kentucky and Jackson Electric Cooperative Corp.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, and 1.10). All such petitions or protests should be filed on or before January 3, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMK,
Secretary.

(FERC Doc. 78-96 Filed 1-4-78; 8:45 am)

[6/40-02]

(Docket No. ER78-130)

PUBLIC SERVICE CO. OF OKLAHOMA

Rate Schedule

DECEMBER 27, 1977.

Take notice that Public Service Co. of Oklahoma (PSO), on December 14, 1977, tendered for filing a Power Sales and Service Contract with KAMO Electric Cooperative, Inc. (KAMO), which provides that KAMO has contracted to provide electric service to certain distribution cooperative members not presently adjacent to KAMO transmission system and desires PSO

to serve those off-system distribution cooperatives.

PSO also tendered for filing a Power Interchange Contract dated November 11, 1977, between PSO and KAMO providing for Interchange Power and Energy.

PSO states that the Power Sales and Service Contract will allow KAMO to purchase electric power and energy to be supplied from PSO system to the distribution cooperative members of KAMO. PSO further states that the Power Interchange Contract will allow KAMO to furnish Interchange Power and Energy from KAMO system to PSO customers at the same rate as applied to the Power Sales and Service Contract.

PSO requests waiver of the minimum 30-day filing period and requests an effective date of January 1, 1978.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 3, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMK,
Secretary.

(FERC Doc. 78-95 Filed 1-4-78; 8:45 am)

[6560-01]

ENVIRONMENTAL PROTECTION
AGENCY
(EPLR 838-6)

CALIFORNIA STATE MOTOR VEHICLE POLLUTION CONTROL STANDARDS

Waiver of Federal Preemption

I. INTRODUCTION

This decision, issued under section 209(b) of the Clean Air Act, as amended (hereinafter "the Act"), will address three requests for waiver of Federal preemption by California pertaining to amendments, specified infra, to its motorcycle emissions control program. Pursuant to several bona fide requests,* this decision will also recon-

*42 U.S.C. 7543(b) (1977), formerly 42 U.S.C. 1857f-6a(b), as amended by Pub. L. 95-95 § 207, 91 Stat. 755 (Aug. 1, 1977).

*Letter from Mr. Keith Emi, Manager, Engineering Division, Yamaha International Corp., to Mr. Russell Train, (Former) Administrator, Environmental Protection Agency (EPA) (January 7, 1977; letter from

DEPARTMENT OF ENERGY

DELEGATION ORDER NO. 0204-1

AMENDMENT NO. 1

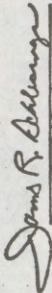
TO THE FEDERAL ENERGY REGULATORY COMMISSION

Pursuant to the authority vested in me as Secretary of Energy ("Secretary") and by Sections 642 and 402(e) of the Department of Energy Organization Act (Pub. L. 95-91) (the "DOE Act"), Paragraph 1 of Delegation Order No. 0204-1 is hereby amended to read as follows:

1. Part I of the Federal Power Act (Pub. L. 280, 66th Cong., 2d Sess., as amended), to the extent that such authority is not transferred to, and vested in, FERC by Section 402(a) (1) (A) of the DOE Act, provided that this paragraph delegates (A) Section 4 of the Federal Power Act to the extent FERC determines the exercise of such authority is necessary for it to exercise any function transferred to, and vested in, FERC by this delegation, and (B) Section 24 of the Federal Power Act (relating to the granting of entry, location, or other disposition of lands of the United States reserved or classified as power sites), provided that, upon receipt of an application under Section 24, FERC shall provide a copy of such application to the Assistant Secretary for Resource Applications and allow such office a reasonable

time to comment on the application; and, provided further, that, at a date six months from the date of this Order, FERC shall submit a report to the Secretary identifying the number and type of applications which have been filed with FERC under Section 24 in that time period.

This amendment to Delegation Order No. 0204-1 is effective December 23, 1977.


James R. Schlesinger
Secretary of Energy

GENERAL COUNSEL

DEPARTMENT OF ENERGY FEB 17 4 45 PM '78

DELEGATION ORDER NO. 0204-8

TO THE FEDERAL ENERGY REGULATORY COMMISSION

Pursuant to the authority vested in me as Secretary of Energy ("Secretary") and by Sections 642 and 402(e) of the Department of Energy Organization Act (Pub. L. 95-91) (the "DOE Act"), there is hereby delegated and assigned to the Federal Energy Regulatory Commission ("FERC") the authority to carry out the following functions:

(1) Any functions under Section 8(f) of the Alaska Natural Gas Transportation Act of 1976 (relating to the report to Congress respecting the Presidential decision submitted to Congress concerning the transportation for delivery of Alaskan natural gas).

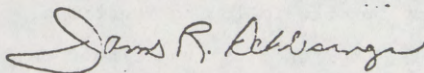
(2) Any other function which (but for the enactment of the DOE Act) the Federal Power Commission could have exercised with respect to any approved transportation system (within the meaning of Section 4 of the Alaska Natural Gas Transportation Act of 1976), to the extent such authority has not been transferred to and vested in FERC by Section 402(a) of the DOE Act, or otherwise transferred, assigned or delegated to the FERC pursuant to such Act.

3. Take such other actions as the Secretary or his authorized delegates may, from time to time, authorize.

The authority delegated to the FERC may be further delegated, in whole or in part, as may be appropriate.

All actions pursuant to any authority delegated by this Order and in effect on the date of this Order are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or superseded.

This Order is effective October 1, 1977.

A handwritten signature in dark ink, reading "James R. Schlesinger". The signature is fluid and cursive, with the first name "James" and last name "Schlesinger" clearly legible. It is positioned above a horizontal line.

James R. Schlesinger
Secretary of Energy

GENERAL COUNSEL

FEB 17 4 45 PM '78

DEPARTMENT OF ENERGY

DELEGATION ORDER NO. 0204-13

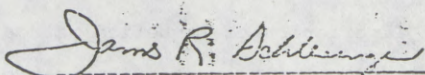
TO THE FEDERAL ENERGY REGULATORY COMMISSION

Pursuant to the authority vested in me as the Secretary of Energy ("Secretary") and by Sections 642 and 402(e) of the Department of Energy Organization Act (Pub. L. 95-91), (the "DOE Act"), there is hereby delegated and assigned to the Federal Energy Regulatory Commission ("FERC") the authority to carry out such functions as are vested in the Secretary pursuant to his authority to regulate the exports or imports of natural gas under Sections 301 and 402(f) of the DOE Act with respect to the following matter:

- Distrigas of Massachusetts Corporation, Docket No. CP77-216, solely as it relates to the request filed July 18, 1977, by Distrigas of Massachusetts Corporation for issuance of a temporary certificate under section 7 of the Natural Gas Act to construct certain vaporization facilities and related equipment at its Everett, Massachusetts LNG marine terminal.

The authority delegated to FERC may be further delegated, in whole or in part, as may be appropriate.

This Order is effective November 29, 1977.


James R. Schlesinger
Secretary of Energy

APPENDIX B

DEPARTMENT OF ENERGY

DELEGATION ORDER NO. 0204-14

TO THE FEDERAL ENERGY REGULATORY COMMISSION

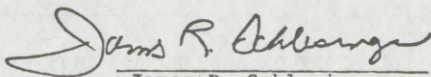
Pursuant to the authority vested in me as the Secretary of Energy ("Secretary") and by Sections 642 and 402(e) of the Department of Energy Organization Act (Pub. L. 95-91), (the "DOE Act") there is hereby delegated and assigned to the Federal Energy Regulatory Commission ("FERC") the authority to carry out such functions as are vested in the Secretary pursuant to his authority to regulate the exports or imports of natural gas under Sections 301 and 402(f) of the DOE Act with respect to all issues which are the subject of applications in Distrigas Corporation and Distrigas of Massachusetts Corporation, Federal Power Commission Docket Nos. CP70-196, et al., CP77-216 and CP77-217. In exercising authority delegated by this Order the FERC is specifically authorized to exercise any authority otherwise vested in the Secretary to impose such contingency plan requirements as the FERC deems necessary and appropriate.

These matters are delegated and assigned to the FERC only to the extent that they have not been decided in the Order on Importation of Liquefied Natural Gas from Algeria, in Distrigas Corporation and Distrigas of Massachusetts Corporation, ERA Docket No. 77-011-LNG, December 31, 1977.

The authority delegated to FERC may be further delegated in whole or in part, as may be appropriate.

All actions pursuant to authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or superseded.

This Order is effective upon publication in the Federal Register.

A handwritten signature in dark ink, reading "James R. Schlesinger". The signature is fluid and cursive, with the first name "James" and last name "Schlesinger" clearly legible. It is positioned above a horizontal line.

James R. Schlesinger
Secretary of Energy

APPENDIX C

Form DOE-411
(10-77)**IMD****Interim
Management
Directive**

SERIAL NO. 50

IMD NO. 4001

DISTRIBUTION CODE

DATE December 21, 1977

APPROVED

*William S. Huffman***United States
Department of
Energy**

SUBJECT

REGULATORY DATA RESPONSIBILITY WITHIN DOE

I. PURPOSE

This directive establishes the respective roles of the Federal Energy Regulatory Commission (FERC), the Energy Information Administration (EIA), and the Economic Regulatory Administration (ERA) regarding responsibilities for regulatory data functions.

INTRODUCTION**A. Background**

1. The DOE Organization Act established within the Department, the Energy Information Administration which is "responsible for carrying out a central, comprehensive and unified energy data and information program. . . ." Under this program, EIA has the responsibility to collect, evaluate, assemble, analyze and disseminate energy data and information. The Act further provides that the Secretary (of DOE) shall delegate to the Administrator (of EIA) the functions vested in him (the Secretary) relating to gathering, analysis and dissemination of energy information, but that such delegation may be on a nonexclusive basis (i.e., that a given function may also be delegated by the Secretary to another element of DOE). In spite of this nonexclusionary delegation

provision, the Joint Explanatory Statement of the Committee of Conference states: "It is the intent of the conferees to eliminate duplication and overlap now existing in energy information programs by centralizing the responsibilities for such programs in this newly-created Administration within the Department." Accordingly, any determination to delegate a function related to energy information to an element of DOE other than EIA must be weighed carefully to assure that it is consistent with the intent of the Congress.

2. Due to the unique data requirements of regulatory programs, and in particular the independence and jurisdiction vested in the FERC by the DOE Organization Act, it is essential that the respective responsibilities of the EIA and the regulatory entities of DOE prescribed in an appropriate manner.

Definitions

1. For purposes of this directive, the term "regulatory data" is defined to mean any energy data involving collection from persons or agencies external to DOE that are necessary for the ERA or the FERC to fulfill their respective regulatory responsibilities and not otherwise available from public sources deemed reliable by the appropriate regulatory body.
2. The terms "energy information" or "energy data" are defined to include (A) all information in whatever form on (i) fuel reserves, exploration, drilling, development, or production facilities, extraction, and energy resources (including petrochemical feedstocks) wherever located; (ii) production, distribution, processing, transportation, consumption and end use of energy and fuels wherever carried on; and (B) matters relating to energy and fuels, such as corporate structure and proprietary relationships, costs, prices, capital investment, and assets, and other matters directly related thereto, wherever they exist.
3. Definitions of the specific functions that are associated with regulatory data programs are presented in Exhibit 2.

C. References

1. DOE Delegation Order No. 0204-3 delegates to the Administrator of the EIA the authority vested by law in the Secretary relating to gathering, analysis, and dissemination of energy information.
2. DOE Delegation Orders No. 0204-1 and No. 0204-4 delegate to the FERC and the ERA respectively a number of specific authorities, some of which involve potential requirements for gathering, analysis and dissemination of energy information. Each of these delegations require that the regulatory entity (ERA or FERC) consult with the Administrator of EIA with respect to the exercise of those functions that involve energy information and data support. These consultations shall occur on a quarterly basis to consider agreed upon issues of mutual concern and more often as necessary to consider specific matters. The intent of this consultation requirement is to enable EIA to assure that no duplicate or overlapping efforts are undertaken and that no independent energy information programs are established which should be incorporated into the central, comprehensive and unified energy data and information program for which EIA has responsibility, and to enable FERC to assure that no regulatory work is impaired because of inadequate availability of the necessary data and information.

XII. POLICY

- A. Primary responsibility for development and support of data systems is assigned to EIA, with the regulatory bodies (ERA, FERC) having the right to initiate, and sign-off authority for, systems design, forms design and data systems development. (See Exhibit 1 for detailed breakdown of regulatory data functional responsibilities.) As a further matter of general policy, energy data programs in support of FERC are to be given the necessary priority to assure that FERC is able to perform its statutory and delegated regulatory functions, subject to the resources available to EIA.
- B. The ERA and the FERC, in consultation with EIA, may establish requirements for EIA concerning the elements of the data which they require for the performance of their statutory and delegated functions. The dates on which such data are to be submitted by EIA to ERA and the FERC will be subject to concurrence by EIA and the requesting regulatory entity.

C. As exceptions to the general policy described above, the appropriate regulatory entity (ERA or FERC) will have authority and responsibility for regulatory data involving collection:

1. From fewer than 10 persons or agencies external to DOE; or
2. Required in the course of investigation not covered by the Federal Reports Act and OMB Circular No. A-40, or litigation, administrative or adjudicatory proceedings; or
3. In connection with a specific application, petition or other request for ERA or FERC action.

EIA, otherwise, will have primary authority and responsibility for all regulatory data to which the Federal Reports Act and OMB Circular No. A-40 apply in accordance with the general policy described above.

- D. Nothing in this IMD shall limit the statutory and delegated authority of FERC to prescribe uniform systems of accounts pursuant to the Federal Power Act, the Natural Gas Act, and the Interstate Commerce Act (for oil pipelines only).

IV. APPLICABILITY

This directive is applicable to the Federal Energy Regulatory Commission, the Energy Information Administration and the Economic Regulatory Administration.

V. RESPONSIBILITIES AND AUTHORITIES

A. Energy Information Administration (EIA)

1. Authority

The Administrator of EIA is delegated the full authority vested by law in the Secretary relating to gathering, analysis and dissemination of energy information.

2. Responsibilities

The Administrator of EIA is responsible for:

- (a) Promptly providing to ERA/FERC upon request any information or analysis in his possession in

accordance with the DOE Organization Act, Sections 205(f) and 407.

- (b) Responding to the request of ERA/FERC that EIA initiate, as required, new energy information gathering activities so as promptly to develop and provide energy information not currently in his possession, subject to the IMD on Energy Data Development Requirements and Form Clearance Procedures. (To be issued.)
- (c) Effecting close coordination with the regulatory entities in establishing EIA budget levels that are adequate to assure the fulfillment of projected regulatory data requirements.
- (d) Achieving together with the regulatory entities agreement with regard to priorities associated with processing regulatory data. These priorities may be reviewed on a quarterly basis in conjunction with the EIA resource allocation process as prescribed in the IMD on Management of Energy Data Services Resources. (To be issued.)
- (e) Making EIA personnel available, upon request by a regulatory body, for presentation of data before such body, for providing sworn testimony in formal regulatory proceedings or Congressional hearings, or for meeting data requirements that may arise during regulatory litigation. Such testimony shall not include policy conclusions or recommendations.
- (f) Establishing and maintaining in the National Energy Information Center (NEIC) energy information gathered on behalf of the regulatory entities of DOE.
- (g) Performing functions as set forth in the table of Primary Responsibility for Regulatory Data Functions (Exhibit 1).
- (h) Establishing within the organizational structure of EIA a clear identification of responsibility to be concerned with regulatory data and dedicated to fulfilling the needs of ERA/FERC.

B. Federal Energy Regulatory Commission (FERC)

1. Authority

The Chairman of the FERC is authorized, in consultation with the EIA Administrator, to require the EIA to provide any energy data that he has in his possession, or that he is authorized to collect under the authority delegated by the Secretary. FERC may, in consultation with EIA, establish requirements concerning the elements of the data which it requires for the performance of its statutory or delegated functions. FERC may define, prescribe and promulgate the elements of the data requirements under the authorities of the Federal Power Act, the Natural Gas Act, the Interstate Commerce Act, the Federal Energy Administration Act and the Energy Supply and Environmental Coordination Act. The dates on which such data are to be provided to FERC by EIA will be established by FERC after consultation with EIA. In the event that EIA states it is unable to comply with a FERC requirement, resolution of the issue may be sought from the Deputy Secretary. If the Deputy Secretary cannot resolve the issue then the FERC, to the extent of its lawful authority, may obtain data using its own resources, consistent with Section 401(c) of the DOE Organization Act.

2. Responsibilities

The Chairman of the FERC is responsible for performing functions as set forth in the table of Primary Responsibility for Regulatory Data Functions (Exhibit 1).

C. Economic Regulatory Administration (ERA)

1. Authority

The Administrator for the ERA is authorized, in consultation with the EIA Administrator, to require the EIA to provide promptly any energy data that he has in his possession, or that he is authorized to collect under the broad authority delegated by the Secretary. ERA may, in consultation with EIA, establish requirements concerning the elements of the data which it requires for the performance of its statutory or delegated functions. ERA may define and promulgate the elements of the data which it requires under the authorities of the Federal Power

Act, the Natural Gas Act, the Federal Energy Administration Act and the Energy Supply and Environmental Coordination Act. The dates on which such data are to be submitted to ERA will be subject to concurrence by EIA and ERA. In the event that EIA states it is unable to comply with an ERA requirement, resolution of the issue may be sought from the Deputy Secretary, or ERA may be authorized by the Administrator of EIA to obtain the required support using its own resources.

2. Responsibility

The Administrator of the ERA is responsible for performing functions as set forth in the Table of Primary Responsibility for Regulatory Data Functions (Exhibit 1).

RES AND REQUIREMENTS

- A. The Table of Primary Responsibility for Regulatory Data Functions (Exhibit 1) identifies specific functions (defined in Exhibit 2) that are involved in any information and data program. The locus of primary responsibility for each function is identified. It should be noted that assignment of primary responsibility to either the regulatory entity or EIA is not meant to imply that the responsible entity is accorded exclusive or absolute authority. It is expected that there be early coordination between the regulatory entities (ERA, FERC) and EIA in the performance of all regulatory data functions.
- B. The following is a discussion of those functions for which primary responsibility is either shared or qualified:

1. Determine Priorities

This function is shared since there must be close and early cooperation between EIA and the regulatory entity throughout the development and operation of

a regulatory data system. The regulatory entity is responsible for identifying priorities among its own data requirements. Resolution of these priorities with the priorities of other offices requiring EIA data support will then be negotiated by EIA and the respective offices as set forth in the Interim Management Directive on Management of Energy Data Services Resources. ERA and FERC, in consultation with EIA, shall establish priorities to be observed in EIA, subject to availability of necessary resources.

2. Formulate Data Standards

EIA is responsible for establishment of a comprehensive energy data standards program. All data standards that have direct impact on regulatory data systems, however, will be fully coordinated with the cognizant regulatory entity to assure that the data standards are consistent with the regulatory program requirements. ERA/FERC may establish data standards to be observed by EIA with respect to data collected for ERA/FERC, which ERA/FERC certifies as necessary for the performance of its statutory and delegated functions.

3. Forms Design, Systems Design and Development

Primary responsibility for forms design, systems design and systems development with regard to regulatory data systems is assigned to EIA. However, the right to initiate, and sign-off authority are reserved for the cognizant regulatory entity.

4. Validate Data and Control Data Base

Although validation and data base control are normally functions of EIA, these functions may be assigned to or retained by the regulatory entity on an exception basis for specific regulatory data systems (See Exhibit 3). In addition, there is a need for particularly close coordination between EIA and the regulatory entities with regard to control of regulatory data bases.

5. Conduct Analysis

EIA, the cognizant regulatory entity, and other DOE components will perform analysis as required for the performance of their respective functions.

6. Auditing

The auditing function is composed of three sub-functions: compliance auditing, systems auditing and data verification. Compliance auditing (i.e., auditing for the purpose assuring of compliance with data requirements, compliance with and enforcement of the uniform systems of accounts prescribed by FERC, and compliance with and enforcement of agency rules, regulations, policies, orders, and other decisions) will be performed by the regulatory entity. Systems auditing (i.e., auditing for the purpose of assuring conformance with specifications and continuing utility of data systems) will be performed by EIA. Data verification (i.e., auditing for the purpose of certifying that data submitted by a respondent firm are complete and accurate) will be the responsibility of EIA, but will be initially performed using staff support provided by compliance auditing personnel. Over the longer term, the data verification function will be fully centralized in EIA. In any case, it is imperative that there be coordination between the compliance auditing and data verification functions to avoid duplication. EIA may request the regulatory entities to assist in the data verification process, subject to availability of regulatory entities' resources.

Enclosures

Exhibit 1

PRIMARY RESPONSIBILITY FOR REGULATORY DATA FUNCTIONS

<u>FUNCTION</u>	<u>PRIMARY RESPONSIBILITY</u>	
	<u>Regulatory Entity</u>	<u>EIA</u>

	Regulatory Entity	EIA
1. Determine Priorities	S	S
2. Define Functional Objectives	X	
3. Define Data Requirements	X	
4. Establish Validation Criteria	X	
5. Coordinate with Other Requirements		X
6. Formulate Data Standards	S	S
7. Apply Data Standards		X
8. System Design		X ₁
9. Forms Design		X ₁
10. Forms Clearance		X
11. Computer Services Support		X
12. Develop Data Systems Computer Programs		X ₁
13. Distribute Forms		X
14. Receive Forms	X ₄	
15. Process Data		X
16. Validate Data		X ₂
17. Conduct Analysis (including Analytical Programming)	X	X
18. Control Data Base		X _{2,3}
19. Prepare and Disseminate Standard Reports & Publications		X
20. Decision Making	X	X
21. Auditing	X	X

Notes to Table of Primary Responsibility for Regulatory Data Functions:

X - Indicates primary responsibility. 'X' under both ERA/FERC and EIA indicates separate responsibility. For example,

both EIA and ERA/FERC have responsibility for data analysis

S - Determination of priorities and formulation of data standards are shared responsibilities.

1 - Sign-off authority is reserved for ERA/FERC.

2 - Although data validation and control of the data base are typically functions of EIA, these functions may be accomplished by ERA/FERC with respect to specific regulatory data systems.

3 - The need for close coordination between EIA and ERA/FERC with regard to data base control is emphasized.

4 - For certain forms, ERA/FERC may delegate this function to EIA.

Exhibit 2

The following are brief descriptions of each of the specific functions identified in the table of Primary Responsibility for Regulatory Data Functions (Exhibit 1).

1. Determine Priorities

Identify order of relative importance associated with development and operation of the respective regulatory data systems. Allocate resources to assure efficient performance of regulatory data functions.

2. Define Functional Objectives

State the purpose to be served by collecting the data, the outputs (analyses, reports, publications, and other documents) to be generated, and the uses to be made of the data collected.

3. Define Data Requirements

Specify and define the data elements to be collected. Develop the rules for formatting data elements, their functional or grouping relationships, the key elements within the groups, and the hierarchical relationships of the groups. Specify number and kinds of regulatory outputs. Specify the persons or groups of persons required to submit the data for regulatory purposes.

4. Establish Validation Criteria

Develop the rules for formatting data elements, for editing individual data elements, for validating one element against another and for comparing data element values over a period of time.

5. Coordinate With Other Requirements

Check for duplication of data collected, integrate with other requirements into an efficient, compatible system, and assure uniqueness of outputs (avoid producing similar outputs with different inputs).

6. Formulate Data Standards

Develop data standards, in addition to accepted standards, to satisfy special processing requirements and insure compatible data elements. Specify procedures for processing confidential data, the conditions and procedures for releasing confidential data and the format in which confidential data may be summarized and reported. Ensure that definitions of data parameters coincide with legal definitions and requirements.

7. Apply Data Standards

Coordinate recommended standards with accepted standards to insure compatibility and compliance with accepted standards. Place new standards into data standards program.

8. Systems Design

Specify the collection, conversion, validation, storage, processing and output processes for the data and prescribe processing rules and algorithms, subject to the approval of the appropriate regulatory entity.

9. Forms Design

Detail design of the package of instructions, format, schedules and data standards (Data Item Lists) to be used by respondents to submit data.

10. Forms Clearance

Coordination functions associated with proposals for new or revised data collection forms including pretesting, assessing reporting burden, and obtaining required concurrences on all new and revised regulatory data collection forms. Coordination be required internal to DOE (e.g., user office, General as well as external (OMB). FERC forms shall be subject to coordination and external clearance.

11. Computer Services Support

Provide ADP equipment, systems software, data transmission facilities, computer system operation, maintenance services and supplies required for development and operation of regulatory data systems. Equipment shall include requested on-site terminals printers and related peripheral equipment in the offices of the respective regulatory entities, subject to availability of resources.

12. Develop Data Systems Computer Programs

Design, code, and checkout internal computer programs to process and store data, and produce outputs in desired formats, subject to the approval of the appropriate regulatory entities which may retain their own capability to carry out this function.

13. Distribute Forms

Preparation of mailing lists of respondents, composition of schedules, preparation of forms package, and mailing of packages to respondents. ERA/PERC will specify respondents to be included within the class from which it requires data.

14. Receive Forms

Monitor respondents' data preparation process including answering questions, and granting extensions of time, receiving completed forms, and keeping track of who is submitting what forms and when they are being submitted. Initial review of submission to establish acceptance.

15. Process Data

Batch submissions for processing, convert to machine compatible format, preliminary processing to get all data in standard format for validation process.

16. Validate Data

Process data against validation criteria established above, identify errors detected for correction, monitor the error correction process, and reprocess corrected data into acceptable data category. Load all acceptable data into data bases. The appropriate regulatory entity will determine acceptability of all corrected data to be loaded into the data bases used for regulatory purposes.

17. Conduct Analysis

Development of analytical programs, processing of validated data through analytical processes (summarization, comparisons, trending, variance) to produce useful information for decision making.

18. Control Data Base

Establish and maintain integrity of the data base. This function involves certifying the accuracy and completeness of regulatory data bases, and controlling access to data to authorized users.

19. Prepare and Disseminate Standard Reports and Publications

Periodic preparation of defined reports and publications, based upon data collected, in support of decision making processes.

20. Decision Making

The issuance of regulatory entity decisions on such matters as rate setting, product allocation, determination of non-compliance, and issuance of certificates or licenses.

21. Auditing

Comparing data on a regulatory data collection form received from a respondent firm to data reflected in the records of the firm, or to actual operations of the firm for the purpose of compliance with data requirements, compliance and enforcement of the uniform systems of accounts prescribed by FERC, and compliance with and enforcement of agency rules, regulations, policies, procedures, orders, and other decisions (compliance auditing); or for the purpose of ensuring accuracy and completeness of reported data (data verification). Also involves evaluating data systems, on an ongoing basis, for conformance with system specifications and continuing utility (system auditing).

Exhibit 3

The following regulatory data forms/systems are those for which the validation and data base control functions may be performed by the regulatory entity pursuant to footnote 2 in the table of Primary Responsibility for Regulatory Data Functions (See Exhibit 1).

<u>FERC Form</u>	<u>Title</u>
<u>Permanent FERC</u>	
6	Initial Cost Statement for Licenses Projects
7	Statement of Actual Legitimate Original Cost of Construction
314A	Application for Small Producer Exemption
	Systems Flow Diagrams
--	Report by Natural Gas Pipeline Companies on Service Interruptions
334	Reserves Dedication Report

FERC until EIA Can Assume Responsibility

16	Report of Gas Supply and Requirements (Schedule 1A)
17	Monthly Report of Natural Gas Pipeline Curtailments
108	Rate Schedule Analysis and Annual Reports of Sales by Rate Schedule
423	Monthly Report of Cost and Quality of Fuel for Steam-Electric Plant

<u>EPA Form</u>	<u>Title</u>
FEA-5791-M-0	Transfer Pricing Report
FEA P-113-M-0	Report of Oil Imports Into the U. S. and Puerto Rico
FEA P114-S-0	Monthly Remittance Advice (Oil Imports)
FEA P-115-S-0	Other Remittance Advice (Oil Imports)
FEA P116-S-0	Request for Refund of Oil Import Fees
FEA P124-M-1	Domestic Crude Oil Purchasers Monthly Report
FEA P-102-M-1	Refiners Monthly Report (Entitlements)
FEA P-103-M-0	Entitlement Transaction Report
FEA P-117-M-0	Importers Monthly Report (Entitlements)
FEA P-129-M-0	Naphtha Importers Monthly Report (Entitlements)

APPENDIX D

RESERVE REPORTING, PRACTICE
AND PROCEDURE, (Hearing)
(Stay), JUDICIAL REVIEW
(Substantial Evidence)

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Charles B. Curtis, Chairman;
Don S. Smith, Georgiana Sheldon,
Matthew Holden, Jr., and George R. Hall.

Natural Gas Companies' Annual	)	
Report of Proved Domestic	)	Docket No. RM74-16
Gas Reserves: FPC Form No. 40	)	

ORDER NO. 526-C

ORDER GRANTING REHEARING OR RECONSIDERATION
IN PART AND DENYING STAY

(Issued February 17, 1978)

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Public Law 95-91, 91 Stat. 565 (August 4, 1977) and Executive Order No. 12009, 42 Fed. Reg. 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977. 1/

The "savings provisions" of Section 705(b) of the DOE Act provide that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if

1/ The "Commission" when used in the context of an action taken prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of this proceeding were specifically transferred to the FERC by Section 402(a) (1) or 402(a) (2) of the DOE Act.

The joint regulation adopted on October 1, 1977 by the Secretary and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC," 10 CFR ___, provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

The proceeding relates to the issuance of RPC Form No. 40, which requires that certain jurisdictional producers submit data on proved domestic gas reserves including data on a reservoir basis. The FPC originally issued Form 40 by Order Nos. 526 and 526-A 2/, but these orders were set aside and remanded in *Union Oil Company of California v. F.P.C.*, 542 F.2d 1036 (CA9-1976). On June 30, 1977, the FPC issued Order No. 526-B, ___ FPC ___, in response to the Court's remand and again issued Form 40 which required data in Schedule B on a reservoir basis. The following parties filed applications for rehearing of Order No. 526-B on July 29, 1977, Gulf Oil Corporation and the Superior Oil Company, and Amoco Production Company; on August 1, 1977, Amerada Hess Corporation, Tenneco Oil Company, Exxon Corporation, Marathon Oil Company, and C&K Petroleum, Inc. C&K Offshore Company and C&K Marine Production Company. Jake L. Hamon on August 8, 1977, Union Oil Company on November 14, 1977, and Texaco Inc. on November 23, 1977, filed untimely applications for rehearing or reconsideration, which must be treated as applications for reconsideration. On August 5, 1977, Amoco Production Company moved for a partial stay of Order No. 526-B.

The filings raise and discuss the following points:

(1) whether the producers should be required to file reserve information on a reservoir basis;

(2) whether all working interest owners should be required to report on the reserves in question or whether it would be sufficient if only the operator reported except where the operator is a non-jurisdictional or a non-reporting company;

2/ ___ FPC ___, issued February 25, 1975; and ___ FPC ___, issued August 18, 1975.

(3) whether regulations should be issued to prevent the release of confidential information pending procedures to protect the producers;

(4) whether a stay of Form 40 should be granted.

RESERVOIR REPORTING

Some producers object to being required to supply information on a reservoir basis. They contend, as they have previously, that supplying such information will be time-consuming and expensive and in some cases, where the data are not available, not productive of accurate information. They also argue that the FPC's conclusions about the need for such data were not based on substantial evidence and that the record does not provide substantial evidence upon which to ground these conclusions.

Gulf and Superior quote from the Court's opinion in Mobil Oil Corporation v. F.P.C., 483 F.2d 1238 (D.C. Cir., 1973) to the effect that informal comments cannot create a record that satisfies the substantial evidence test even if controverting information is submitted in the form of comments by adverse parties. They contend that there must be an adversary proceeding. We disagree. 3/

3/ In addition, the United States Court of Appeals for the Fifth Circuit similarly found such an argument unpersuasive. Superior Oil Co. v. FERC, 563 F.2d 191 (1977). There, the Court discussed Mobil and said (563 F.2d at 201, n. 18):

Our decision is not inconsistent with Mobil Oil Co. v. FPC, *supra*, Placid Oil Co. v. FPC, 483 F.2d 880 (5th Cir. 1973), *aff'd* sub nom. Mobil Oil Co. v. FPC, 417 U.S. 283, 94 S.Ct. 2328, 41 L.Ed.2d 72 (1974), and Shell Oil Co. v. FPC, 520 F.2d 1061 (5th Cir. 1975) cert. denied 426 U.S. 941, 96 S.Ct. 2661, 49 L.Ed.2d 394 (1976). These cases involved rate making or the regulation of rates rather than policy decisions.

The proceeding to which the Court directed attention in Mobil involved a rulemaking proceeding which set rates for certain transportation services as distinguished from this proceeding which involves a rulemaking designed to promulgate a data gathering form. Mobil does not provide convincing precedent that the procedures followed by the FPC were not satisfactory to create a record containing substantial evidence to support the requirements of Form 40. In Mobil, the Court cited its decision in City of Chicago v. FPC 4/ to establish the appropriate standard for evaluating the adequacy of administrative procedures:

[T]he "primary objective is the acquisition of information which will enable the Commission to carry out effectively the provisions of the Natural Gas Act." [City of Chicago, at 744]. To this end, the Commission should "realistically tailor the proceedings to fit the issues before it, the formation it needs to illuminate those issues and the manner of presentation. . . ." (Id.) 5/

The Court in Mobil provided further guidance on the type of inquiry the Commission should follow in establishing its procedures. The Court states: "[i]f a relatively high degree of evidentiary support is required in establishing a factual predicate, the rulemaking procedures must be designed to create this." (483 F.2d at p. 1257). Applying this standard to the instant proceeding, the Court in Union said that, while there must be evidence that reservoir data is available to the producers, the Commission need not conduct an adjudicatory hearing or any oral hearing in order to obtain such evidence (542 F.2d at p. 1041). In our opinion, the staff's statement of position filed February 10, 1977 (Ex. 1) along with other data in the record supports the FPC's action and is relied on in the instant matter. Furthermore, it is clear that the factual

4/ 147 U.S. App. D.C. 312, 458 F.2d 731 (1971), cert. denied, 405 U.S. 1074, 92 S.Ct. 1495, 31 L.Ed.2d 808 (1972).

5/ 483 F.2d at 1252.

predicate needed to develop a data information form for regulatory use is much less subject to dispute than that needed to establish transportation rates. 6/ Most of the arguments made by the Applicants on rehearing were previously made and discussed by the FPC in Order No. 526-B, but further discussion by the FERC will clarify our position.

Gulf and Superior say that the accuracy of the reserve estimates cannot be improved by making the estimate on a reservoir basis rather than on a field or lease basis. They contend that there are no available data for the older reservoirs so that arbitrary allocations must be made with the result that an estimate of reserves on a reservoir basis will be no more accurate than an estimate on a field or lease basis.

In Order No. 526-B, the Commission pointed out that to make an accurate estimate for the field it would be necessary to make an estimate for each reservoir. In those few instances where there are no available reservoir records, an estimate by allocation or any other reasonable means may be employed. Total reserve figures will be more accurate where based to the greatest degree possible on reservoir data available to the producers. In Opinion No. 526-B, it is shown that a large number of the producers have been able to file their data on a reservoir basis.

It is contended that the Commission has ignored the testimony and producer comments on the burden of complying with reservoir-basis reporting. The FPC did not ignore the record (see Opinion No. 526-B, pp. 9-10). The FPC said that it realized that the present data did not always permit accurate analysis of a limited number of reservoirs, and that in such cases the FPC would not ask for anything more than what is feasible. The FERC expects that the affected producers will employ a reasonable method of allocating gas to these few reservoirs and will accept such data even though it may not be as accurate as that data produced by the most rigorous techniques.

6/ Superior Oil Co. v. FERC, supra.

It is further argued that the reservoir data are not necessary in considering pipeline applications for certificates or pipeline depreciation, because the pipelines supply sufficient data on Form 15. ^{7/} However, reporting by the producers, who are most familiar with the reserves, should be available to the Commission in considering these pipeline questions in order to compare producer and pipeline reserve estimates by reservoir and to determine the availability of reserves in reservoirs which have not yet been produced by producers and which have not been reported by the pipelines. The data are also necessary to check the accuracy of the aggregate figures upon which the Congress, the public and the Commission must rely for decision-making purposes.

Apart from increasing the accuracy of reserve data and auditing procedures as discussed in Order No. 526-B, we note that Form 40 gives us data on the depths of reservoirs that could be used for granting price incentives, where necessary, for deeper drilling (See \$2.76 of the Commission's Rules); the data on committed and uncommitted gas reserves which will enable us to determine whether producers are living up to their contracts to deliver gas; and the means to compare proved reserves with cumulative production on a reservoir basis in order to determine which gas reserves are close to depletion.

Gulf Oil and Superior suggest that producers who cannot file by reservoir be required to file by field according to state-designated nomenclature, and that, in this way the Commission would have a common data base for those producers. This suggestion is not satisfactory since there would not be a common basis for comparison between those reporting on a field basis and those using the reservoir method. Nor is the nomenclature uniformly defined by the producing states.

^{7/} Form No. 15, Annual Report of Gas Supply for Certain Natural Gas Pipelines, Order No. 546, __ FPC __, March 8, 1976, 18 CFR §260.7

Under the FPC's orders in this docket, all natural gas companies who, together with their affiliates, produced for direct sale and for resale in interstate commerce in excess of 250,000 Mcf for the reporting year will be required to file Form 40. However, those companies who, together with their affiliates, produced over 250,000 Mcf per year; but who alone own less than 20 Bcf in reserves would be exempt from filing Schedule B of Form 40.

After examining the Form 40 filings submitted for 1974 and other data, we conclude there is an adequate basis for further limiting the number of reporting entities without loss of information necessary to our regulatory functions. Highly cognizant of the need to lessen the burden of compliance with information requirements of government where to do so would not impair its regulatory purposes, this Commission on its own motion has determined to modify the initial threshold levels for reporting established in FPC Order No. 526-B. All natural gas companies which, together with their affiliates, produced for direct sales and/or sale for resale in interstate commerce 1,000 MMcf or less of gas during the report year will be exempted and Schedule B will be filed only by producers who own more than 100 Bcf of gas reserves.

For 1974, 555 producers with more than 250,000 Mcf of total production filed Form 40 reports. These 555 producers accounted for about 82.2% of total natural gas production as estimated by the American Gas Association (AGA). ^{8/} However, in 1974 only 378 of the Form 40 respondents reported over 1,000 MMcf of production but these entities accounted for about 81.7% of the production as estimated by AGA. Thus, applying the proposed reporting rules to the 1974 data would have resulted in a 31% reduction in the number of reporting units but only a minor reduction in the percentage of total industry production included in the coverage.

^{8/} AGA production and reserve estimates are used as benchmarks only and imply neither acceptance nor rejection of these as defining the total statistical universe.

The basic relationships between the number of working interests and reserves and production for 1974 are schematically indicated in the attached figures. ^{9/} Also shown are two charts that depict the amount of production and reserves by each of the largest 720 working interests in 1974. For each working interest (the "N"th interest, i.e. the 420th largest working interest or the 370th largest interest, etc.) one can obtain an idea of the size of that reporting unit measured either by production or reserves.

The 1974 data are used to illustrate the general orders of magnitude of reporting requirement reductions on the one hand and information reduction on the other. Industry changes, changes in reporting definitions and other changes since 1974, mean that the number of working interests reporting 1976 data will differ.

Another estimate of the impact of the change in reporting requirements is shown in Table 1, attached, which summarizes the responses of large firms for 1973 on Forms 301-A and 301-B and small firms on 314-B. Over 5,000 small firms were tentatively identified and about half submitted Form 314-B reports. Of these 2,563 firms, only 639 had jurisdictional sales of over 250 MMcf and only 245 had jurisdictional sales over 1,000 MMcf. Form 301-A was filed by 590 large producers or affiliates of large producers. Part II of the table reveals that the more than 400 working interests with jurisdictional sales of greater than 250 MMcf but less than 1,000 MMcf accounted for only 1.8% of the total jurisdictional sales reported. Note that even using a 250 MMcf cut-off point, on the basis of the 1973 figures, three-fourths of the small firms would not be included in the data base.

The current threshold for filing Schedule B of Form 40, 20 Bcf of reserves, yielded approximately 254 filings in 1974. These 254 companies accounted for approximately 82.05% of AGA's estimated total reserves. A requirement of 100 Bcf of reserves in 1974 would have reduced the number of filings to approximately 116, a reduction of 60% in the number of reports filed. These 116 reports accounted for approximately 79.25% of AGA's estimated 1974 total reserves.

^{9/} See Appendices A, B, C and D.

As indicated above, we believe these reductions in the reporting requirements will alleviate some of the reporting burden while not causing a loss of necessary data. While we have analyzed this issue using 1973 and 1974 data, we believe the conclusions reached apply to the current situation. Our easing of the reporting requirements will have its greatest impact on small producers by reducing the number who must file Form 40. However, any further increase in the filing thresholds at this time could result in a loss of significant data which the Commission needs to perform previously articulated regulatory responsibilities.

In sum, the FERC has analyzed the reporting burden on the smaller entities in the natural gas industries and balanced this with the marginal contribution to effective regulation of the data lost as a result of changing the reporting requirements. We have concluded that the substantial reduction in reports required merit this change in requirements. Where a reduction of the filing burden of this magnitude can be permitted with no loss of data necessary to perform the FERC's regulatory responsibilities, the Commission feels compelled to do so in order to protect the regulated entities from unnecessary reporting requirements. However, we feel any further reduction in reporting requirements would result in an unacceptable loss of information.

C&K Petroleum argues that there is a relatively larger burden placed upon small producers. The threshold modifications in this order will alleviate to a considerable extent the reporting burden on small producers by reducing the number of reporting entities by more than half on a reserve basis and by almost a third for all schedules of Form 40. The FERC here exercised its responsibility to assure that the data requested are only those data necessary to permit it to perform its regulatory functions. Nonetheless, we emphasize that we have regulatory responsibilities that involve all sectors of the natural gas industry firms. We need adequate and accurate information about both large and small firms. It is not enough merely to account for most of the industry's production and reserves. The Commission's assigned tasks necessitate information about small producers. We note with regret that even if we were to have kept the 250 MMcf cut-off point, we would not have obtained data from the majority of working interests. (See Table 1 attached). Although Form 40 is not the appropriate vehicle for dealing with this problem, we will continue to explore ways to improve FERC's data base with respect to the small producer sector of the industry.

Clarification has also been requested as to how to calculate whether a producer is required to file. Pursuant to the Commission modification to the threshold levels ordered therein, producers who, together with their affiliates, produce 1,000 MMcf or less per year are exempt from filing any of the schedules required by Form 40. However, if a producer, together with its affiliates, produces 1,000 MMcf or more per year it must file Form 40. The producers that own 100 Bcf or less of dry gas reserves are not required to file Schedule B of Form 40. The 100 Bcf exemption from filing Schedule B applies to any individual member of a group of affiliates if that individual member owns 100 Bcf or less of dry gas reserves.

Finally, the FERC emphasizes the FPC's reference to the Second Natural Gas Rate Cases, F.2d (D.C. Cir., June 16, 1977), in Order No. 526-B. The Court examined the Commission's estimate of drilling productivity based on data gathered by the American Gas Association, comments of the parties, and the FPC staff studies, and concluded that the evidence was the minimum upon which the Court would base its opinion. The Court was unwilling to remand the proceeding for further evidence because of the overriding need for certainty of natural gas prices and noted that the Commission was "building an administrative record for its Form 40, to permit its gathering of direct information on producers' reserves, rather than through statistical appraisal by the industry committee." (Slip opinion at 61.) "To sum up," the Court said, "we do not approve or embrace the AGA figures; we simply tolerate them for purposes of this proceeding. We expect that by the next biennium the Commission will have put into effect its own procedures for gathering reserves data." (Slip opinion at 62.)

The Form 40 data requested here are vital for carrying out this mandate. We stress that while we have attempted to accommodate industry suggestions the data specified in this order are essential to discharge FERC's duties.

WORKING INTEREST REPORTING

A number of the applicants for rehearing object to the requirement that all working interest owners report the reserves to which their working interests relate. The producers argue that the operator has available the requisite geological and production data and can make the most accurate report. The non-operating working interest owners would have to acquire the necessary data at the cost of time and expense resulting in duplicative filings which might differ from one another. Where the operator is not a natural gas company or is not subject to the Form 40 reporting requirements, the producers on rehearing agree that the requirement of reporting should continue to rest on the working interest owners.

We believe that reserve data on a working interest basis are required in order to permit the FERC to develop a series of reporting forms which, when taken as a whole, will permit meaningful comparative analyses. In order to accomplish this goal of establishing an integrated reporting system for regulatory data, the set of reporting entities must be consistent. The Form 40 information is designed to report on an individual working-interest basis the productivity of drilling operations. Form 40 will provide information on the depths of drilling to the reservoirs, the reserves in those reservoirs, and the changes in such reserves. These data are then to be correlated with the cost data provided in Form 64.10/ Form 64 reports cost data on a working interest basis. The accurate matching of the average drilling productivity with the associated costs is necessary to determine the just and reasonable natural gas rate. To require the reporting on an operator basis only would necessitate an extrapolation of the operator data to a working interest basis in order to correlate the cost data with the productivity data. Such an additional analytical

10/ Recently upheld in Superior Oil Co. v. F.E.R.C.
563 F.2d 191, (5th Cir., November 17, 1977).

step will unnecessarily reduce the accuracy of the average production costs for rate-making purposes. 11/ To the extent the FERC is able to improve the data upon which it must rely to exercise its major regulatory functions by requiring working interest reporting while imposing a minimal regulatory burden upon the reporting entities, the Commission feels compelled to do so. We will also request each reporting entity which has already filed for operated properties to supplement their filing with this information.

11/ The Commission believes that a different case may be presented where a data request reaches more broadly to obtain data from all producers. In such a case, it may be appropriate to rely on operator reporting which identifies working interest ownership without loss of accuracy. In as much as this is a rehearing of a form originally issued to producers subject to FPC jurisdiction under the Natural Gas Act, the hypothetical case outlined above is not now before this Commission.

CONFIDENTIALITY OF DATA

The Court in Union considered the FPC petition for rehearing of the Court's finding that the confidentiality policy set forth in Order No. 526 and 526-A was arbitrary and capricious, and concluded that:

The Commission states that it is its practice not to release such data without giving notice to the parties. However, we find no regulation of the Commission to that effect, or committing the Commission to that practice, and the order under review makes no such commitment. The Commission merely stated that such data would be 'given confidential status . . . and left in the Commission files until further ordered by the Commission.' On its face, this is a reservation of unfettered discretion.

With regard to actions taken after remand of Union, Gulf and Superior argue that we have failed to consider regulations to protect from disclosure the confidentiality of information on Schedules B, C and D of Form 40. In denying a motion by Gulf to expand the present docket to consider specific rules concerning confidential reserve information the Commission said:

However, we will hold administratively confidential those parts of Form 40 heretofore designated and will not make disclosure as an exercise of discretion on our part without affording the producers opportunity for a hearing. Where we are required by statute or otherwise to make disclosure to some other government body we shall notify the producer involved as much in advance as possible.

Gulf and Superior contend that the Commission's promise to notify producers and provide an opportunity for a hearing before disclosure is not an effective relinquishment of "unfettered discretion" particularly since one Commission cannot bind a subsequent Commission. Only by promulgating regulations, Gulf and Superior say, can the Commission deal adequately with the holding in Union that the reservation of discretion by the Commission to determine whether to disclose confidential reserve information is arbitrary and capricious.

We do not read the Union decision to require the promulgation of a regulation as Gulf and Superior contend. Nor do we read Union as holding that the Commission may not employ its administrative discretion in considering the question of disclosure. The decision only requires that the Commission articulate its procedure for considering data disclosure requests and the standard by which the Commission will render its decision. The Court's requirement that the producer be afforded an opportunity to voice its objection to the Commission before the release of the confidential data is fulfilled by permitting the producer and other interested parties to file written objections and comments which will be considered by the Commission prior to disclosure.^{12/}

The policy outlined below shall apply to the Form 40 data which the Commission recognizes is information encompassed within the exclusions to the Freedom of Information Act.^{13/} Although this information may be encompassed within the exclusions enumerated in the statute, this fact does not absolutely prohibit disclosure but leaves such a determination to the discretion of the agency which maintains custody of the data.^{14/} Nonetheless, it is the Commission's intent to respect the confidential nature of the data submitted.^{15/}

The Commission does, however, reserve the right to use the data in any judicial proceeding, in which it is a party or intervenor, any administrative rulemaking, adjudicatory or investigatory proceeding before the Commission, or in any such proceeding before other agencies in which it is a party or intervenor.

^{12/} United States v. Florida East Coast Railway Co., 410 U.S. 224, 93 S. Ct. 810 35 L.Ed. 2d 223 (1973).

^{13/} 5 U.S.C. Sec. 552(b)(4), (9); Amerada Hess Corp., 50 F.P.C. 1048 at 1050 (1973).

^{14/} Pennzoil Company v. F.P.C., 534 F.2d 625 (5th Cir. 1976).

^{15/} Id.

The Commission also reserves the right to disclose the data, after notice to the producer(s) who submitted the data, in any judicial proceeding in which the Commission is a party or intervenor, any administrative rulemaking or adjudicatory or investigatory proceeding before the Commission or another agency where the Commission is a party or intervenor. In such proceedings the Commission will attempt to limit the disclosure to only those data required to be disclosed in order to execute the Commission's statutory obligations. It is proper in such an instance, that the burden be placed on the person or entity that objects to such disclosure of the data to seek appropriate relief, if any, in a court of competent jurisdiction.

In instances where the request for disclosure is in the form of a lawfully issued subpoena from a Court or another agency, a duly constituted Congressional Committee or Subcommittee 16/ or Chairman thereof, either by subpoena or formal written request, or an administrative agency pursuant to a mandatory request, it will be the Commission's policy to give notification as soon as is practicable to the affected reporting entity of the request for the data and that the Commission intends to comply therewith on a date certain. It is proper, in such an instance, that the burden be placed on the person or entity that objects to the Commission's disclosure of the data to seek appropriate relief, if any, in a court of competent jurisdiction or before the requesting entity. In complying with such a disclosure request, the Commission will, in its submission, advise the requesting person or entity that the reporting party has requested the FERC to treat the data sought as confidential and that the Commission has honored that request for its own purposes.

When FERC is requested by another administrative agency to disclose the data pursuant to a formal request to use the data for regulatory or enforcement purposes, the Commission will allow the affected reporting entity(ies) an opportunity to voice its (their) objection to the Commission by permitting the reporting party to file written objections which will be considered by the Commission prior to disclosure. In complying with such a disclosure request, the Commission will, in its submission, advise the requesting entity that the reporting party has requested the FERC to treat the data sought as confidential and that the Commission has honored that request for its own purposes.

16/ The Commission's policy recognizes that the House of Representatives and the Senate are organized into legally authorized committees and subcommittees.

When such a request is made for statistical purposes, the Commission will disclose the data, if at all, conditioned upon confidential treatment by the requesting agency. In all such cases the Commission will notify the producer(s) whose data is subpoenaed or otherwise requested as soon as practicable.

In cases where the FERC is requested by an individual or where the Commission decides to disclose Form 40 data for public information, the Commission will notify the affected reporting entity(ies) of the request, or the Commission's decision, and will permit them to submit written comments as to whether the Commission should comply with the request or disclose the information. The Commission has determined, however, that it is not inclined to disclose the data in response to such requests by individuals or for public information. Therefore, there will be a strong presumption against such disclosure.

In exercising its discretion as to whether to honor a nonmandatory data request, the FERC will follow the Court's mandate in Union for "a reasoned decision weighing their interest and that of the public before the Commission permits the release of such data, if it is to be released at all." In reaching a decision on disclosure the Commission will consider inter alia: (1) the nature of the data; (2) the extent to which disclosure will aid or impair the Commission's discharge of its statutory duties; (3) the extent of the harm or risk disclosure might cause to producers and to the general public; (4) available alternatives to disclosure; (5) availability of the data from other sources; and (6) the use to which the data is to be put. 17/

17/ Cf. Superior Oil Company v. F.E.R.C., ___ F.2d 716, (5th Cir. 1977) (Nos. 76-2113, 76-2246, Nov. 17, 1977).

ATTESTATION CLAUSE

Union Oil with the support of Texaco, in its application for reconsideration contends that its Form 40 filings will comprise many pages of a very technical nature and cannot be reviewed and tested by any one person. It suggests that the attestation language, "... that he has read this report and is familiar with the contents thereon ..." be deleted and replaced with the phrase "... that he has caused this report to be prepared by those individuals employed by the respondent who are most familiar with the subject matter"

In order to alleviate the problem raised by Union, we are herein modifying the attestation clause as included in Appendix E to this order. The new attestation clause is adopted from the statement contained on all corporate income tax returns which must be signed by a corporate official. We recognize that the attestation clause contained in prior orders would have been difficult to comply with. This new attestation clause is similar to those that are regularly executed by corporate officials, is designed to insure the accuracy of the data submitted to enable the FERC to carry out its statutory function.

NEED FOR A STAY

A number of producers asked for various extensions of time in which to file Form No. 40 beyond the November 1, 1977, filing date covering the filing years 1974, 1975 and 1976 as specified in Order No. 526-B. By notice issued October 19, 1977, the Secretary granted an extension of the filing date to December 1, 1977.

Amoco asked for a stay of the November 1, 1977, filing date with respect to Schedule B of Form 40 for the years 1974, 1975 and 1976, pending completion of rehearing and judicial review. It was not our intention that Schedule B be filed for the years 1974 and 1975, but for 1976 and later years. We shall amend Order No. 526-B accordingly to make this clear. Apart from this its arguments citing Virginia Petroleum Jobbers Ass'n v. F.P.C., 259, 921 (CADC 1958), are not persuasive. We do not agree that it is likely to prevail

on the merits. Nor will it be irreparably harmed if a stay is not granted. As the Court said mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. There is no reason to assume that confidential data will be disclosed. It will not be done without consideration of the producers' objections (unless another government agency so requires under the authority of some other statute), and appeal can be made to a reviewing court. If a stay is granted, other parties and the public will clearly be injured by a stay assuming, as we do, that the Schedule B data is necessary to carry out the purposes of Form 40.

We shall therefore deny a stay as requested by Amoco. We postponed the initial filing date for the calendar years 1974, 1975 and 1976 from November 1, 1977, until December 1, 1977. In the instant order, we further extend the filing date for 1974, 1975, and 1976 from December 1, 1977 to March 1, 1978. We also extend the filing date for 1977 from April 1, 1978 to September 1, 1978. As a result the filing requirements for Form 40 are as follow:

<u>Report Year</u>	<u>Filing Date</u>	<u>Schedules Required</u>
1974	1 March 1978	Schedule A and Schedule D to A, as needed for footnotes.
1975	1 March 1978	Schedule A and Schedule D to A, as needed for footnotes.
1976	1 March 1978	Schedule A and Schedule D to A, as needed for footnotes. Reserves greater than 100 Bcf: Schedule B and Schedule D to B as needed for footnotes. Reserves of 100 Bcf or less: Schedule D with volumes of reserve by state(s), sub-division(s) and district(s)
1977 and 1978 and later years	1 September 1978 and 1 April of the next year	Schedule A and Schedule D to A as needed for footnotes. Reserves greater than 100 Bcf: Schedule B and Schedule D to B as needed for footnotes. Schedule C and Schedule D to C as needed for footnotes. Reserves of 100 Bcf or less: Schedule C and Schedule D to C as needed for footnotes.

In addition to the above schedules, a title page and an attestation must be filed for each of the report years.

The Commission further finds:

(1) The assignments of error and grounds for rehearing of Order No. 526-B in the applications for rehearing or reconsideration filed herein present facts and legal principles which warrant certain modifications and clarifications as set forth herein.

(2) On its own motion, that the reporting thresholds for Form 40 and Schedule B of Form 40 should be modified as set forth herein.

(3) The procedure adopted herein for the treatment of confidential data meets the procedural requirements of the Administrative Procedure Act and the Freedom of Information Act and complies with the remand of the Court in Union Oil Company of California v. F.P.C., 542 F.2d 1036 (9th Cir., 1976).

(4) The conclusions of the FPC as expressed in Order Nos. 526-A and 526-B and the FERC as expressed in the instant order are based on substantial evidence as required in Section 19 of the Natural Gas Act.

(5) The notice and opportunity to participate in this proceeding with respect to the matters currently before the Commission are consistent and in accordance with all procedural requirements as prescribed in Section 553, Title 5 of the United States Code.

(6) The amendment to Section 260.13 of Part 260 of the Commission's regulations and the modifications of Form 40 are necessary and appropriate for the administration of the Natural Gas Act.

The Commission orders:

(A) The applications for rehearing or reconsideration filed by the applicants herein are denied except to the extent granted herein.

(B) Section 260.13, Part 260, Subchapter G of Chapter I, Title 18 of the Code of Federal Regulations, is amended to read as follows:

§260.13 Form No. 40, natural gas companies annual report of proved domestic reserves.

(a) The form of Natural Gas Companies Annual Report of Proved Domestic Gas Reserve as F.P.C. Form No. 40 is adopted.

(b) Each person found by the Commission to be a natural-gas company within the meaning of the Natural Gas Act, which together with its affiliate, associate or subsidiary produced for direct sale and/or sale for resale in interstate commerce more than 1 Bcf of gas at 14.73 psia and 60 degrees Fahrenheit during the report year shall prepare and file with the Commission F.P.C. Form No. 40, as follows:

- (i) An original and four copies of Schedule A;
- (ii) An original copy of Schedule C; and
- (iii) An original copy of Schedule D, as necessary.

(c) Each person found by the Commission to be a natural gas company within the meaning of the Natural Gas Act which owns more than 100 Bcf of dry gas reserves at 14.73 psia and 60 degrees Fahrenheit at the end of the report year shall prepare and file with the Commission F.P.C. Form No. 40, as follows:

- (i) An original and four copies of Schedule A;
- (ii) An original copy of Schedule B;
- (iii) An original copy of Schedule C; and
- (iv) An original copy of Schedule D, as necessary.

(d) Paragraphs (b) and (c) apply to calendar year 1976 and subsequent years, except that Schedule C is not required for 1976. The F.P.C. Form No. 40 shall be filed by March 1, 1978 for the calendar year ending December 31, 1976, by September 1, 1978 for the calendar year ending December 31, 1977, and thereafter shall be filed by April 1 of the year following the year to which the form applies.

(e) Any person subject to paragraph (b) who has not filed Schedule A for 1974 and 1975 shall do so by March 1, 1978.

(f) Schedule A shall be made available at the Commission's principal office for public inspection.

(g) Information filed pursuant to this section shall be filed under oath.

(C) The procedure adopted herein for the treatment of confidential data filed in Form 40 shall apply only to Form 40 data.

(D) The attestation clause of Form 40 is amended as shown in Appendix E attached hereto.

(E) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

(F) The motion of Amoco Production Company for a partial stay is denied.

(G) The effective date of this order shall be the date of issuance.

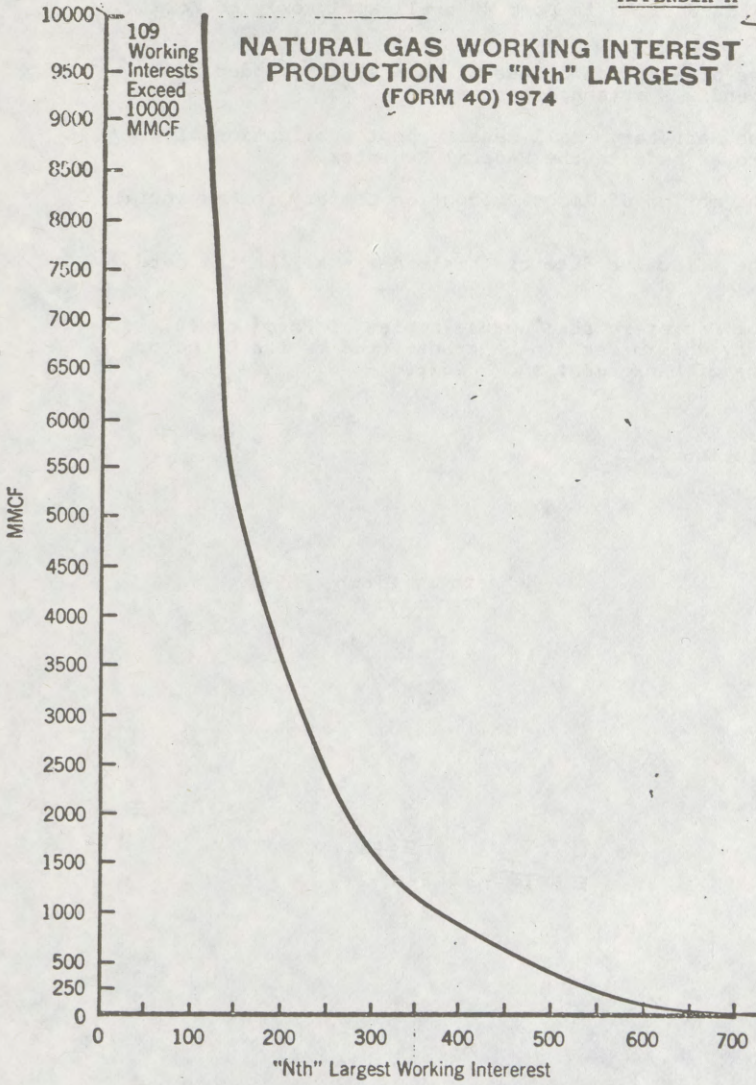
(H) The Secretary shall cause copies of Form No. 40, as modified by this order, to be transmitted to the Director of the Office of Management and Budget.

By the Commission.

(S E A L)

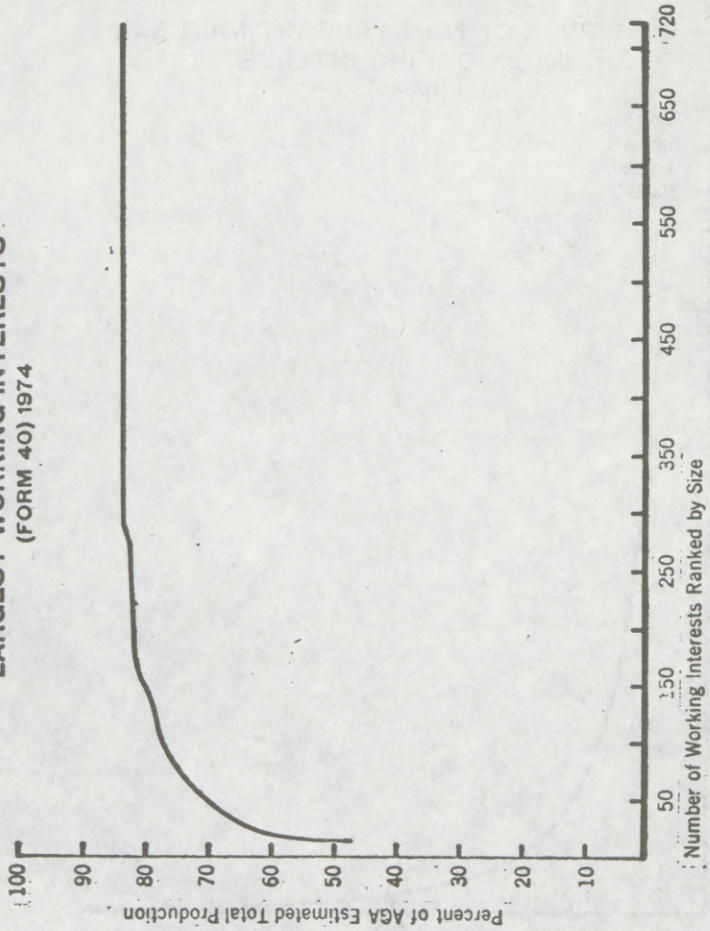
Kenneth F. Plumb,
Secretary.

APPENDIX A

**NATURAL GAS WORKING INTEREST
PRODUCTION OF "Nth" LARGEST
(FORM 40) 1974**

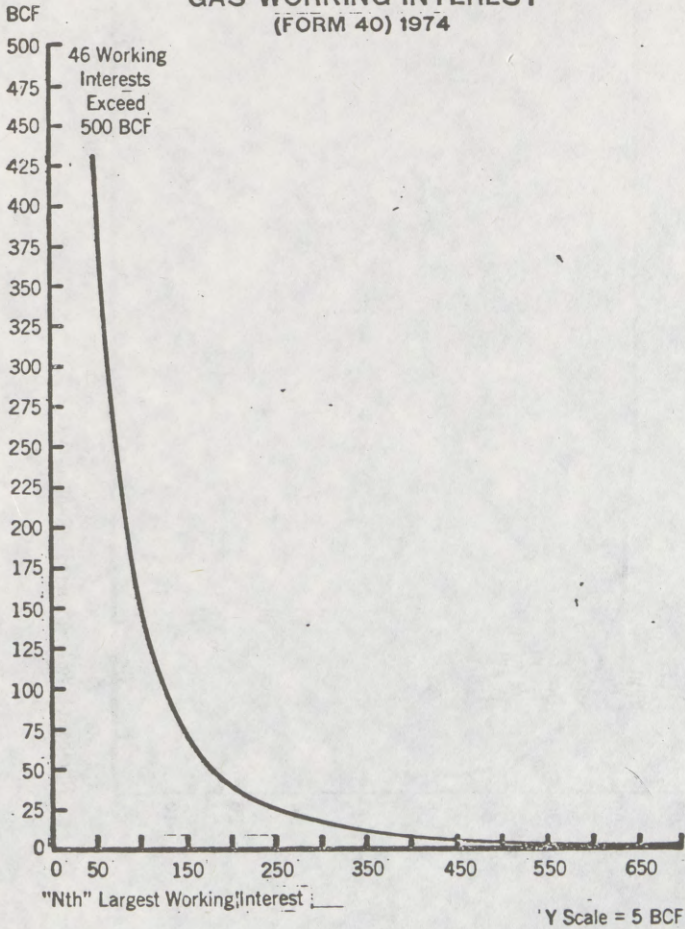
APPENDIX B

**CUMULATIVE TOTAL NATURAL GAS PRODUCTION BY
LARGEST WORKING INTERESTS
(FORM 40) 1974**

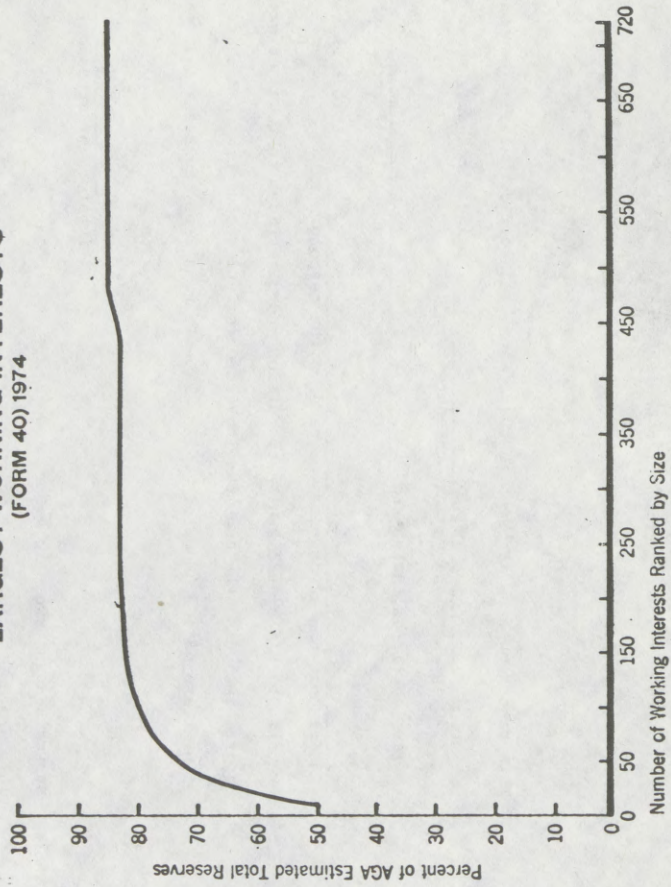


APPENDIX C

RESERVES OF "Nth" LARGEST NATURAL
GAS WORKING INTEREST
(FORM 40) 1974



CUMULATIVE TOTAL NATURAL GAS RESERVES BY
LARGEST WORKING INTERESTS
(FORM 40) 1974



APPENDIX E

FEDERAL ENERGY REGULATORY COMMISSION

FORM NO. 40 - ANNUAL REPORT OF PROVED DOMESTIC GAS RESERVES

ATTESTATION UNDER OATH

This report must be attested to under oath by an officer of the respondent.

_____, being first duly sworn according
(Insert here the name of the attester)

to law, certifies that he is _____ of
(Insert here the legal title of attester)

_____; that this report was
(Insert here the exact title or name of the respondent)
prepared by him or under his supervision and direction; that he has examined the
report, including the accompanying schedules and statements; and that, to the best
of his information, knowledge, and belief, it is true, correct, and complete.

82

(Signature of Attester)

Subscribed and sworn to before me

this _____ day of _____, 19__.

NOTARY PUBLIC
(SEAL)

NOTICES

[1610-01]

REGULATORY REPORTS REVIEW
Transfer of Clearance Responsibility

The Department of Energy Organization Act (Pub. L. 95-91) results in transferring the clearance responsibility for forms and questionnaires of the Federal Energy Administration (FEA) and the Federal Power Commission (FPC) from the General Accounting Office (GAO) to the Office of Management and Budget (OMB) under the Federal Reports Act. The Federal Energy Administration and the Federal Power Commission will no longer be identified as independent Federal regulatory agencies and subject to 44 U.S.C. 3512. They will now be part of the new Department of Energy.

On September 13, 1977, President Carter signed Executive Order No. 12009 activating the Department of Energy on October 1, 1977. Therefore, beginning on October 1, the forms and questionnaires of the new Department will be subject to the review and clearance of OMB under sections 3502 to 3511 of Title 44 of the U.S. Code.

In the future, notices announcing the request for clearance of new, revised, or extension of existing forms and questionnaires of the Department of Energy will be found under the Management and Budget Office in the FEDERAL REGISTER. The FEA forms still under review by GAO on September 30, 1977, will be transferred to OMB for final action. Comments received by GAO on these forms will receive consideration prior to final action by OMB.

NORMAN F. HEYL,
Regulatory Reports
Review Officer.

[PR Doc 77-30397 Filed 10-17-77; 8:45 am]

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health
Administration

ADVISORY COMMITTEES

Renewals

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (5 U.S.C. Appendix D), the Alcohol, Drug Abuse, and Mental Health Administration announces the renewal by the Secretary, Department of Health, Education, and Welfare, with the concurrence of the Office of Management and Budget Committee Management Secretariat, of the following advisory committees:

Epidemiologic Studies Review Committee
Paraprofessional Manpower Development Review Committee
Psychiatric Nursing Education Review Committee
Psychiatry Education Review Committee
Psychology Education Review Committee
Social Work Education Review Committee

Authority for these committees will expire December 31, 1977, unless the

Secretary formally determines that continuance is in the public interest.

Dated: October 12, 1977.

FRANCIS N. WALDROP,
Deputy Administrator, Alcohol,
Drug Abuse, and Mental
Health Administration.

[PR Doc 77-30316 Filed 10-17-77; 8:45 am]

[4110-03]

Food and Drug Administration
[Docket No. 75N-0232]

FLAVORING SUBSTANCES

Additional Flavoring Substances in Gras Review; Extension of the Effective Date for Compliance With Bulk Flavor Ingredient Declaration Requirements

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Fifty flavoring substances are added to the agency's safety review of substances that are generally recognized as safe (GRAS), and the agency extends the effective date for compliance with a regulation for these flavoring ingredients. The flavors are listed in the Flavor and Extract Manufacturers' Association (FEMA) GRAS List No. 10 (published in Food Technology January 1977).

DATE: Compliance with bulk labeling requirements by July 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFP-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: In a notice published in the FEDERAL REGISTER of July 26, 1973 (38 FR 20051), the Food and Drug Administration (FDA) announced that, as part of its GRAS review program, Scientific Literature Reviews (SLR's) were being prepared on several chemical classes of flavoring ingredients listed in §§ 182.10, 182.20, 182.30, 182.40, 182.50, 182.60, and 21 CFR Part 172 (Subpart F), or flavoring ingredients otherwise submitted to the agency.

In the FEDERAL REGISTER of February 3, 1976 (41 FR 4934), FDA also extended until July 1, 1979 the effective date for compliance with bulk labeling requirements of § 101.22(g) (2) (21 CFR 101.22(g) (2)) for those flavor ingredients that are listed as GRAS in a reliable industry association list and are included by FDA in its review of GRAS food ingredients. The notice also announced a procedure under which FDA would accept additional substances for incorporation into its safety review. The procedure provided for the inclusion of additional flavoring

ingredients if the SLR for each chemical class of flavors is appropriately amended before the safety evaluation begins. In this way, all available data for each chemical class of flavors will be included and evaluated at the same time. If individual flavor ingredients cannot be added to the SLR's by these provisions, extension of the effective date for compliance with bulk labeling requirements and exemptions from specific ingredient listing as specified in § 101.22(g) (2) will not be granted except by FDA approval of food additive or GRAS affirmation petitions for the ingredients.

In accordance with this procedure, FEMA published its GRAS List No. 10 in January (Food Technology, Vol. 31, No. 1, January 1977), which comprised 50 flavoring substances. FEMA has included 30 of these ingredients in already-completed SLR's. The Commissioner has received a written commitment from FEMA stating that the remaining 20 flavoring substances will be appended to SLR's currently being drafted by them. The 50 flavoring ingredients that constitute the FEMA GRAS List No. 10 are the following:

Bis-(2,5-dimethyl-3-furyl) disulfide
2,3-Butanedithiol
1-Butanethiol
Candelilla wax (wax from stems and branches of *Euphorbia cerifera*)
o-Cresol
2,5-Dimethyl-3-thiofurylfuran
2,5-Dimethyl-3-thioisovalerylurea
2,6-Dithianon-4-en-4-carboxaldehyde
1,2-Ethanedithiol
o-(Ethoxymethyl)phenol
Ethyl frans-2-butenolate
Ethyl maltol
Ethyl 2-methylpentanoate
Ethyl 2-methyl-4-pentenolate
Ethyl octadecanoate
2-Ethyl-1,3,5-trimethyl-2-norbornanol
Ethyl undecanoate
trans-3-Heptenyl acetate
trans-3-Heptenyl 2-methylpropanoate
1,6-Hexanedithiol
cis-4-Hexenal
3-Hexenyl 2-methylbutanoate
3-Hexenyl 3-methylbutanoate
Hexyl 2-methylbutanoate
Hexyl 3-methylbutanoate
Linyl phenylacetate
2-Mercapto-3-butanol
2,3- or 10-Mercaptopyranine
Methyl benzyl disulfide
3-Methylbutyl 2-methylbutanoate
3-Methylbutyl 3-methylbutanoate
3-Methylbutyl 2-methylpropanoate
Methyl 3-hydroxyhexanoate
a-Methyl-6-hydroxypropyl a-methyl-6-mercaptopropyl sulfide
4-Methyl-2-pentenal
2-Methyl-4-pentenol acid
2-Methyltetrahydrothiophen-3-one
1,9-Nonanedithiol
1,8-Octanedithiol
1-Octen-3-one
trans-2-octen-1-yl acetate
trans-2-octen-1-yl butanoate
Octyl 2-furoate
2-Phenyl-4-pentenal
1,2-Propanedithiol
Propanethiol
o-Propylphenol
Pyridoline
3,5,8-Trimethylhexanol
2,4,6-Trimethyl-3-oxoheptanone

TABLE 1

Analysis of Form 301-A and 314-B Filings for
Report year 1973

I. CS Docket Number and Order 411 authorization as of
December 31, 1973 5014

Small producer responses to Form 314-B 2563
for report year 1973

% responding 51%
for report year 1973

II. Summary of Form 301-A and 314-B respondents

Form 301-A respondents	590
Form 314-B respondents	2,563
Total respondents	3,153

<u>Jurisdictional Sales Level</u>	<u>No. of Companies</u>	<u>% of total respondents</u>	<u>Juris- dictional sales reported</u>	<u>% of total reported</u>	<u>% of Form 15 total purchases</u>
> 1000 Mcf	375	11.8%	11.44 Tcf	97.1%	83.6%
> 250 Mcf	813	25.7%	11.66 Tcf	98.9%	85.2%
All respondents	3,153	100.0%	11.78 Tcf	100.0%	86.1%

III. Summary of Form 314-B (Small producer exemptions) respondents

<u>Jurisdictional Sales Level</u>	<u>No. of Companies</u>	<u>% of total respondents</u>	<u>Juris- dictional sales reported</u>	<u>% of total reported</u>	<u>% of Form 15 total purchases</u>
> 1000 Mcf	245	9.6%	0.745 Tcf	70.6%	5.4%
> 250 Mcf	639	24.9%	0.941 Tcf	89.2%	6.9%
All respondents	2,563	100.0%	1.055 Tcf	100.0%	7.7%

TOP PRIORITIES FOR THE FERC IN FISCAL YEAR 1979

1. Reduce backlogs of cases and filings by improving the efficiency of Commission and staff procedures.
 - Continue review and reorganization to make formal Commission meeting process more efficient;
 - Establish firm timetables and priorities for all issues;
 - Reassign staff resources to areas of highest priority.
2. Improve methods for handling new cases and issues.
 - Increase use of rulemakings to decide generic issues;
 - Adopt more stringent rules for intervention;
 - Adopt stricter rules on interlocutory appeals to the Commission;
 - Submit proposals for new legislation where needed;
 - Develop new methodology for handling referrals of proposed rulemakings from DOE.
3. Develop plans for NEA implementation actions as soon as possible following enactment.
4. Improve staff morale and decrease turnover rate.
 - Accelerate recruitment program;
 - Increase employee educational and professional development opportunities;
 - Reassess internal staffing structure to assure that individual operating units are not too large to function effectively;
 - Increase chances for internal advancement;
 - Reassess grade structure to bring in line with other similar Federal agencies.

5. Assure that pending projects most critical to future energy supply are expedited.
 - Track separately to assure maximum attention to these projects;
 - Assure adherence to fixed schedules;
 - Condense time frames wherever possible by eliminating unnecessary operations and shortening others.
6. Reduce paperwork requirements wherever possible, both for FERC staff and for regulated companies.
7. Restore confidence in the fundamental regulatory principles and mechanisms of the Commission, and enhance consumer understanding of and participation in FERC processes.
 - Establish Office of Enforcement to assure compliance with Commission regulations, rules, orders, and other legal requirements;
 - Establish consumer liaison office to promote two-way communication between the, FERC and individuals affected by energy regulation;
 - Intensify efforts to protect consumers from unnecessary and unreasonable energy costs, while assuring that regulated energy companies receive a sufficient rate of return to attract the capital investment necessary to finance energy supply initiatives; and
 - Review all regulations, orders, opinions, and other documents published by the FERC to assure readability, adherence to policy, and understandability to the public and to regulated individuals.

APPENDIX F

COMMON SUPPORT AGREEMENT
BETWEEN
CHAIRMAN
FEDERAL ENERGY REGULATORY COMMISSION
AND
DIRECTOR OF ADMINISTRATION
DEPARTMENT OF ENERGY

FEB 2 1978

As the Department of Energy Headquarters structure has evolved over the past several months, agreement has been reached on the assignment of responsibility for the provision of management and administrative support services. Generally speaking, the operational capability for providing each service will be centralized within the principal Headquarters staff or program organization having overall responsibility in that particular functional area. Under this structure, the Assistant Secretary organization, Economic Regulatory Administration, and Energy Information Administration will all obtain support from the appropriate central offices making it unnecessary for them to devote their own staff resources to such functions except for the purposes of coordination and liaison. It is agreed that the Federal Energy Regulatory Commission will be supported by the central staff in a similar manner, as specified in this Agreement.

During the period of initial organization, the Federal Energy Regulatory Commission has attempted to make maximum use of the central Department of Energy support capability where the requirements of the Commission for support are common to those of other Headquarters organizations, although the Federal Energy Regulatory Commission has retained in-house capability for providing program-related support, and for advising and assisting the Commission relative to areas of common support. We believe that this is the most desirable approach since it fully recognizes that the programmatic responsibilities of the Federal Energy Regulatory Commission demand a fully developed internal capability in some support areas such as legal, document and correspondence control, audit and accounting for compliance, public information, as well as appointing, selecting, and determining appropriate responsibilities of staff. However, this approach also recognizes that there are general support requirements such as contracting and procurement (except for employment of experts and consultants pursuant to 401(c)(5) Department of Energy Organization Act), recruiting and personnel administration, payroll, ADP, operation of management information systems, property management, facility maintenance,

and equal employment opportunities, which generally can be provided by Central Headquarters Offices without jeopardizing the programmatic independence or objectivity of the Federal Energy Regulatory Commission. In addition, this will provide the broader benefits of increased efficiency, maximized staff resource utilization, and more effective management of the support functions. It is further agreed that the Central Office staff will, on request, provide support in areas where expertise is not resident in the Federal Energy Regulatory Commission staff.

Finally, it should be emphasized that this approach need never compromise the Federal Energy Regulatory Commission's position as the final authority on matters within its jurisdiction, even where operational support is provided centrally. For example, even though the Central Personnel Office would provide operational personnel support, direct program-related responsibilities, such as defining qualification criteria, determining selection procedures, and selecting employees, would remain with Federal Energy Regulatory Commission officials. In the same manner, though the Management Office might define the structure and format of the Department of Energy Management Directives System, the content and objectives relating to the Federal Energy Regulatory Commission programs are clearly a Commission responsibility. Furthermore, the Federal Energy Regulatory Commission would retain full responsibility for the planning, conduct, and evaluation of its substantive programs, objectives, and internal organization. Moreover, the Federal Energy Regulatory Commission would have authority to exempt itself from policy guidelines or requirements which it determines impair its independent regulatory status or the conduct of its administrative responsibilities.

Given the above considerations, it is desirable for the Federal Energy Regulatory Commission to maintain requisite staff capability in areas where operational support is provided by central staff organizations. We see this as being necessary to enable the Federal Energy Regulatory Commission to communicate effectively with the Central Support Organization, to give independence to the Federal Energy Regulatory Commission's budget preparation process as contemplated by the Act (See Section 401(j), Department of Energy Organization Act), and to permit the Commission to monitor and oversee the furnishing of operational support under the provisions of the Administrative Support Agreement. Further, since the Commission's concurrence is necessary for any policy

determination which impacts on the support services being provided to the Federal Energy Regulatory Commission, we consider it imperative that the Commission maintain a knowledgeable staff in certain key areas to advise the Commission as appropriate. This is particularly important in the area of budget formulation wherein specific authority is given to the Federal Energy Regulatory Commission for development of its budget requests, and in the personnel area, where similar discrete authority is given to the Chairman.

The undersigned agree to examine the effectiveness of this Agreement from time to time, and to modify and/or supplement the Agreement accordingly based upon working experience. If significant problems arise in the operation of this Agreement and cannot be mutually resolved, the Secretary will be notified and the Agreement can be terminated by either party with 90 days' notice.

Charles B. Curtis

Charles B. Curtis

William S. Heffelfinger

William S. Heffelfinger

Mr. OTTINGER. Thank you, Mr. Chairman. Mr. Curtis, what is your current backlog of cases?

Mr. CURTIS. The current backlog, Mr. Chairman, appears to be between 6,000 and 10,000 docketed items. I would like to add two qualifications to that. It is a measure of the current problem that we are trying to clean up the verification process to get a firm number. That we cannot report to the committee a specific number at this time speaks more eloquently than anything I might say about the disorder of the management of the Commission's processes that we are confronted with.

Second I would point out that our projections of new filings indicate a growth in backlog at approximately a rate of 12.1 percent.

Mr. OTTINGER. I take it that the backlog, though, is only a part of the problem of inadequate resources. For instance, I noted in the Executive Director's report that some 15,000 price increases were allowed to go into effect for gas producers, many of which might not have been justified but the Commission was incapable of adequately reviewing. I assume those are not included as part of your backlog but still represent a very substantial problem and a tremendous cost to the consumer, or at least potential cost.

Mr. CURTIS. Mr. Chairman, they are included in the numbers. The Commission receives over 25,000 filings in a fiscal year. The producer rate filings, the individual producer filings number over 30,000. That is included in that number. A smaller portion of that is backlog, that is, matters which remain in process, falling behind our ability to discharge the applications as they are received.

Mr. OTTINGER. But I take it that in addition to backlog there are a lot of cases that are disposed of without the ability to perform adequate review. Is that correct?

Mr. CURTIS. I think we could do a better regulatory job if we had greater resources applied to this. I am personally worried about the adequacy of our review, of that particular aspect of the Commission's work. It is clear that we have to devote greater resources to it. We have, incidentally, had a special team working on those filings. We have authorized overtime for personnel working through the weekend and we have allocated resources from other functions in the agency. But our ability to penetrate this backlog is very limited.

Mr. OTTINGER. I want to explore that in some greater detail later and I do not want to take undue time from my colleagues here. There is one other area that I would like you to explain at the present time and that is the relationship between yourself and Mr. Bardin's organization as far as auditing and compliance is concerned.

It is my understanding that Mr. Bardin has certain authorities and has a staff of auditors to look into, it is my understanding, particular problems with respect to pricing. But I do not quite understand the relationship between that and your own new compliance efforts and how they will interrelate.

And I am quite concerned at reports that the Department of Energy, and I assume this is primarily Mr. Bardin's operation, has been concentrating on the retailer and imposing a tremendous burden on that small businessman and virtually ignoring the producer and

the refiner. And I would hope that in your compliance efforts your concentration will be on the major source of the problem, which is the producer, I would take it. But I wondered if you would comment on that interrelationship and on the emphasis of your compliance effort.

Mr. CURTIS. First, the Commission, as an independent agency has an independent responsibility to enforce the laws which it has responsibility to administer. So, in that regard we have a separate and distinct compliance and enforcement effort.

There is the hope, long-term, that we might coordinate our activities at least to the point of sharing information, to avoid multiple audits of the same entities.

The Economic Regulatory Administrator is charged with the administration of oil pricing and allocation, and product pricing and allocation requirements of the Emergency Petroleum Allocation Act.

The Commission is charged with the administration of the Natural Gas Act. But as you know, there is a coincidence of identity of persons who are engaged both in oil production and natural gas production. And it is hoped that we do not through our compliance and enforcement activities and, through some mistake or lack of coordination, inflict especially upon the small producer, multiple audits of essentially the same books and records where that is unnecessary.

As to the concentration of Mr. Bardin's enforcement efforts, I think he is better able to speak to that. I think that there is a general awareness in this Department that both the President and the Congress are concerned about the regulatory harassment of small business and the anticompetitive effects that regulation seems to impose upon small business entities. There is a serious effort to avoid those inimical effects.

Indeed, as you know, the Department of Energy Organization Act has specific language written into it in the part dealing with information-gathering authority which directs the agency to minimize the burden on small reporting entities.

Mr. OTTINGER. I wonder if each of the Commissioners—and I know many of you are relatively recent to the Commission—would like to say a word about what your aspirations are for the Commission, what your frustrations have been or recommendations that you might have for things that we ought to consider on the committee.

I wonder if we might just have a word from each of you and the Executive Director.

Mr. SMITH. Mr. Ottinger, I served on the Federal Power Commission for some years. The growing frustration with not being able to keep up with the work satisfactorily is very uncomfortable. It would be my hope that Congress would recognize the problem and, as the Chairman requested, afford us resources to deal with it.

I am particularly concerned with the new responsibilities the Commission has. For example, Mr. Chairman, we have calculated we can anticipate some 4,000 filings per year by oil pipelines for transportation rate increases which will require a considerable allocation of Commission resources which are not on hand currently.

Mr. OTTINGER. If you were to recommend the committee to anything in particular in terms of priorities for our actions, you would say the number one is to provide more personnel?

Mr. SMITH. Yes, sir.

Mr. OTTINGER. Rather than specific authorities?

Mr. SMITH. Well, I think Congress has wrestled a great deal with amendments to the substantive legislation under which we operate and I would not suggest that that be an easy solution to any of our problems because it has not been.

Mr. OTTINGER. Commissioner Sheldon?

Ms. SHELDON. Mr. Chairman, in line with additional resources, my background, as you know, has been in management and administration both inside and outside the Federal Government. And as a former Vice Chairman of the Civil Service Commission, I have seen many agencies in this city very much overpopulated and very much overgraded. I can say that I probably have not seen an agency in town—and this is not because I am part of it, believe me—that has been as poorly managed and had as poor an administrative setup as when I walked into this agency last August.

And anything I can do, I shall. And probably the greatest contribution I could make to the Commission is assist the Commission in its efforts to set up a management system so that at least, we will know where our cases are and what we are doing with them, and make our people feel that they are part of an on-going system.

I think we have a problem with morale; I think we have a problem with people feeling, well, that they are not really part of a dynamic organization. And I really feel we are turning the corner in this regard as you will see when the Chairman discusses the new tracking system and our management systems. And this is the area where I feel that I can be of most assistance to the Commission.

Mr. OTTINGER. I think the agency has had considerable problems with the Civil Service Commission in terms of classification and in terms of getting approval for positions. Are you going to be able to help in that?

Ms. SHELDON. May I suggest, Mr. Chairman, that the new reorganization of the Civil Service Commission, with which I am in complete accord, will put the responsibility where it belongs and that is with the agency for recruitment of its personnel.

For too long the agencies have blamed the Civil Service Commission for inadequacies, and I am not sure all the blame belongs there. So I think it will help individual agencies to get the right caliber of people and our classification can be improved as well.

Mr. OTTINGER. Well, I understand there was a tremendous backlog in the administrative law judges' cases. A caseload of 228 cases for a collective group of judges, or about 12 cases per judge and 19 judges. The agency asked for 5 additional administrative law judges and got zero, and that was a turndown from the Civil Service Commission. Is that information accurate?

Ms. SHELDON. Yes, it is, Mr. Chairman. And it is primarily because there are no more administrative law judges in the pot. The Congress has not seen fit to give the Civil Service Commission enough ad-

ministrative law judge spaces to go around. And I think there is legislation coming up this year for additional administrative law judges. If not, I think we should ask for our own.

Mr. CURTIS. Mr. Chairman, if I may comment on one other part of that—the difficulty the Civil Service Commission had with our request was a belief that we had not been able to fully substantiate the requirement by giving them a firm understanding of our caseload, the ability to obtain greater efficiencies with our existing administrative law judge contingent and a projection of what additional requirements will be placed upon that contingent.

The management systems that we have put into effect should overcome that deficiency and our ability to make a persuasive argument to the Civil Service Commission. And we are hopeful that should the Congress increase the allocation of administrative law judges, and there is legislation pending to do that, that we will be successful in our next effort.

Mr. OTTINGER. Mr. Hall.

Mr. HALL. Thank you. I would like to associate myself with the remarks of the Chairman and my colleagues. Unfortunately I think that right now the highest priorities have to be organizational and procedural. I say unfortunately because we have a variety of very challenging and significant policy issues before the Commission. Substance should take precedence. But I think our ability to deal with those policy issues in a timely manner and in an effective manner and our ability to give the public and the industries that we regulate the kind of prompt and effective regularly action they need depends upon our ability to deal with the two procedural matters which the Chairman emphasized in his statement.

The first is the harmonization of the organization of FERC as a component within the Department of Energy. I think it very important that we do have a consistent and coherent energy policy. The Department provides a mechanism for doing this, but it does require a lot of effort to insure that the relationship between the Economic Regulatory Administration and the Energy Information Administration and the FERC is an effective and harmonious one and does not lead to confusion and extra work.

The second problem is the backlog problem which we have all addressed. And again I think that has to be the highest priority, even recognizing the many very challenging policy issues before us.

Mr. OTTINGER. Mr. Holden.

Mr. HOLDEN. Mr. Chairman, after my colleagues' comments on those subjects, there is not a great deal more to add. When I first arrived, I asked the Chairman "Where can I find the tabulation of the cases that are of some consequence waiting to be decided and that would require a little preparation?" And he sort of grimaced a little bit and smiled a little bit. And he said, "Well, that can't be done."

And having been, Mr. Chairman as you know, in a State commission that was not precisely a model of expedition all the time, I wondered why it couldn't be done. And he explained the problems he has explained here.

And I have found that a matter of some concern since because it just takes an awful long time to get an answer to a question as to if

you change something from 7.4 percent to 7.5 percent, what are the practical consequences? That is partly a data processing problem. Getting information in a form useful for analysis is hard. This is not to pick flaws with anybody, but, as I say, for the reasons the Chairman has indicated.

There is another area I would mention. The Chairman has already referred to it. Commissioner Hall has elaborated on it in some detail. It is that the new responsibility that FERC gets, with respect to some portions of the DOE Act, calls for kinds and qualities of work that have not yet been fully envisaged. Even though it must be treated seriously, ultimately it can only be treated pro forma. I take it the latter is not what Congress had in mind in the first place. There will be, I think, a high flood of that work as well.

But, as I say, I will associate myself fully with the views of my colleagues. And to elaborate beyond that, would put me in the position of the fellow telling flood stories when Noah is in the audience.

Mr. OTTINGER. Mr. McDonald?

Mr. McDONALD. Mr. Chairman, I see my task as threefold. First I work on a daily basis with the Chairman as the Administrative Officer to make this machine or wagon go better.

Second, I put most of my time in getting this backlog defined and putting in a management information system.

And third, I am attacking a serious problem at the Commission which is a turnover rate of personnel between 15 and 20 percent.

So to answer your question, I highly concur with the Chairman and the members of the Commission that our immediate problem is for both additional personnel and contract resources. Also, the additional personnel must be of the highest quality. I would also like to agree with Commissioner Holden's point that the new work that is coming down the road from the interfaces with DOE; as well as the passage of the National Energy Act; as well as new and more difficult generic problems that are arising out of the review of these 48,000 filings, are going to require functions that may not have been performed to that degree ever before, which will require not only more people but better qualified people. And I do not like to say a grade increase, but you cannot get policy papers to the Commission at the GS-5 or the GS-7 level.

Mr. OTTINGER. I want to get into that in some greater detail later, but we have a good number of our colleagues with us and they have been patient.

Mr. CURTIS. Mr. Chairman, may I make just one last comment because it has concerned me. Having sat on that side of the table and witnessed hearings of this nature before, I am aware that every government agency will come before this committee and tell it that it needs more resources—

Mr. OTTINGER. Except the Department of Energy. The Department of Energy, particularly in solar and renewable resources and conservation, has continually asked for much less than the Congress is prepared to give them.

Mr. CURTIS. It was my limited experience that it was a universal behavioral trait. But I wanted to make just one point and try and give you the depth of the difficulty here.

The Congress passed to this agency the responsibility to administer the regulatory requirement for oil pipelines. Now, apparently the Congress wants that job done. We have 17 people. We have 4,000 filings a year. Now, the question is whether we are serious about it. We cannot do it with those resources. And we are writing phony law if we do not apply the resources to carry out the tasks which we assign to the agencies of government. And that is our problem.

Mr. OTTINGER. Do we have from you in any detail the resources that you feel you need in each category in order to be able to do the job properly?

Mr. CURTIS. I believe you do. We are in the very difficult position of assessing just now for the committee our resource requirements over the next 5 years, based upon the information that is now coming out of our newly implemented Management Information System.

I have with me today for the committee, should it wish to explore it, the examples of the various books and a description of how those tools would be used.

Most importantly, we have tables which will show what the projected filings are and our ability to complete work product for the next 5 years. And that is a very depressing story.

Mr. OTTINGER. I would like to go into that if time permits, but let me now call on my colleagues. And we will proceed under the 5-minute rule with some liberality, in the order of their appearance. Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman. Chairman Curtis, we certainly welcome you here because you understand this subject completely and will certainly be able to respond well.

Now, as I heard your remarks, you are advocating that we should expand the size of this Commission to take care of additional regulation?

Mr. CURTIS. Yes, sir.

Mr. COLLINS. Now, you know that the American people say that we have too much bureaucracy and too many taxes and all of that, and yet you are recommending going counter to what the American people say. Why do you do that?

Mr. CURTIS. For two reasons, Congressman. One of the problems that the American people have with their government is not strictly its size but its unresponsiveness. It is not producing the type of result the American people expect to get as a return from their tax dollar. I attempted to indicate in my remarks that this agency is a pretty cheap one.

First of all, it gets back in terms of fees charged to regulated companies, 50 cents on each dollar that is expended.

Second, in terms of the cost of the agency considering its responsibility, it is rather modest in the aggregate budget. But the most important point is if we invest in greater resources to this agency, we can get control of the regulatory process, so it tends to be more responsive and efficient. And that will take costs out of the regulation process, that are not quantified by the American people and taxpayers. As I tried to indicate, in the licensing procedure, for each month of delay it is costing \$6 million.

Mr. COLLINS. Mr. Chairman, three out of four of your cases are rate increases due to the fact that we have price control. Your predecessor Chairman Nassikas said that price control would not work. Do you believe that price control will work?

Mr. CURTIS. You are referring to the pricing of natural gas?

Mr. COLLINS. The pricing of natural gas, which is your primary function.

Mr. CURTIS. I think I can say that the natural gas pricing in a bimodal sense, where there is an attempt to regulate pricing for sales in the interstate market but not otherwise during times of supply deficiency, does not work. It is clearly not working.

Mr. COLLINS. And would you recommend that we have complete deregulation of gas?

Mr. CURTIS. No, sir.

Mr. COLLINS. Why wouldn't you recommend it?

Mr. CURTIS. Because the supply-demand relationship is so far out of balance that if you were to unleash the 1.8 trillion cubic feet of pent-up unsatisfied demand in the interstate market to chase after the 200 to 300 billion cubic feet of available supply in the on-shore interstate market, in my opinion it would run those prices up to the equivalency of the incremental cost of gas to the interstate market today; and that would be the cost of LNG. I think that that would have a disastrous effect upon the economies of the producing States; it would unnecessarily pour revenues into producers at a pace faster than they could possibly reinvest in useful and successful drilling and exploration activities.

I think it would be a mistake.

Mr. COLLINS. Let's go to fundamentals—the regulation is what forced a shortage because if it had gone to its natural market level, gas would not be short. And yet you are saying that we should perpetuate it. And I don't understand the correlation.

Mr. CURTIS. What I am saying, sir, is that we have to take our marketplace as we have it today. Now, I think there is some very legitimate criticism that can be brought to the manner in which price controls were administered through the 1950's after the *Phillips* case and into the 1960's.

We have received and are heirs to a legacy of that era, but nonetheless we have to confront the practical realities of this marketplace.

Mr. COLLINS. Now to what extent are you able to advise the Secretary of Energy on oil? You know, I read the front page of the paper and it says that we have a dollar declining all the time. And the reason is that the foreign companies have no confidence in our policies and they don't believe we have done an adequate job on imports.

Now, I understand you have a chance to review according to this procedure. What is your review procedure and to what extent can you advise the Secretary?

Mr. CURTIS. Yes, sir. Under the Emergency Petroleum Allocation Act if the Secretary would propose to increase crude oil pricing, producer pricing, at a pace above the congressionally set parameter of 10 percent per year, or if he would propose to decontrol a product

or product category, that requires submission to the Congress as an energy action. Under the Department of Energy Organization Act the Secretary must first submit that proposal to the Commission for its views and recommendations. If the Commission says no, the Secretary does not have the authority to submit it to the Congress. Now, that advice that you mentioned takes place in a formal context and is not individual advice but advice of the Commission collectively.

Mr. COLLINS. You don't have the opportunity under this new arrangement to initiate advice to the Secretary; you are merely responsive to what he wants to do?

Mr. CURTIS. Yes, sir. That is correct on oil pricing. Sometimes he asks.

Mr. COLLINS. Is there anything you can do about the fact that we were importing \$5 billion worth of oil in 1972 and over \$45 billion today, and that this import is the major crisis in our energy situation in the country? Is there anything your group can do about it?

Mr. CURTIS. Yes, sir.

Mr. COLLINS. What?

Mr. CURTIS. Yes, sir, we think we can. One is to make sure that the docketed items that are moving through the regulatory stream that affect energy supply are given the highest allocation of our resources. And we are doing that.

We have a Critical Project Management System, which is the so-called blue book that we have set up in which we have identified gas and hydro projects, which will add materially to our energy supply.

And as you know, for each million Btu's that we are able to get on and the earlier we are able to get it on, we can move out a million Btu's of imported oil. But, Mr. Collins, again that is going to require resources to do the job better and faster than we are able to do it today. That is the most important thing that we can do—to make sure the regulatory system gets out of the way as quickly as possible to get these additional supplies in place.

Mr. COLLINS. Mr. Chairman, I know I am out of time, but I want to ask one more question. What good does it do to expedite imports if we have already got too much of them?

Mr. CURTIS. Excuse me, perhaps I misspoke. What I am talking about are new hydrofacilities and new gas facilities.

Mr. COLLINS. Domestic?

Mr. CURTIS. Yes, sir.

Mr. COLLINS. What you are doing is saying the answer is to increase our domestic resources and expedite the development of them in every way?

Mr. CURTIS. Absolutely.

Mr. OTTINGER. The time of the gentleman has expired. The gentleman from Louisiana, Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman. Mr. Curtis, we certainly appreciate you and the Commission being here. And my initial remarks have nothing to do with you because I don't think it is your fault, but 1 year ago when we were having the original authorization hearings for this Department we were told, as a matter of fact we

were assured, we would see the cost of this agency go down "by the combination of all the agencies coming together under one Department."

I bought that and I am sorry I did. I wish we had a consumer protection agency I could appeal my vote to. I am afraid that what we are going to see is the thing get bigger and more expensive every year. And this is evidenced by your agency as only a small part of it.

I do agree with what you say on the first page of your statement, that there is no way for you to keep up with the dynamics of the marketplace—and the day that a regulatory agency can keep up with a dynamic marketplace is the day we have destroyed the dynamic marketplace and have a very stagnant one that is thoroughly regulated by the Government. And the free enterprise system would be nonexistent at that point.

So I don't think we can ever give you the money and the people to have you keep up with a dynamic marketplace. I don't think we want to. We want the marketplace hopefully to be ahead of you all the time. You doing whatever is necessary as decreed by law to protect whatever we are trying to see protected.

I agree with the gentleman from Texas the best way to solve our problem would be to deregulate gas and oil, and that would reduce a lot of your expenses. But that is not something for us to discuss here.

I would like to turn to page 3 of your statement where you indicate in the first paragraph of page 3 that you lost some of your original functions and then you got some functions from the Interstate Commerce Commission. Could you give us a rough cost estimate of what the cost was of what you lost and the cost is of what you gained?

Mr. CURTIS. I will have to look it up, but while my Executive Director is doing that, just let me mention that we transferred out 259 people. We received in from the ICC 17 people. We lost approximately \$10 million and we gained \$808,000.

The Federal Power Commission's budget had been just under \$43 million. The Federal Energy Regulatory Commission's budget on October 1, after the subtracting out of these transfers, was \$34 million.

Mr. MOORE. So then this swapping where the Commission came out with less overhead and less expense is reflected in your original fiscal 1978 budget?

Mr. CURTIS. That is the \$34 million.

Mr. MOORE. Now, in reading through your statement and listening to you, I see we have something we can sink our teeth into, a 12.1 percent increase in your caseload. And of course I am being very fundamental here. In taking the 12.1 percent are you throwing in another 2 or 3 percent in case we are missing something, and taking that times your budget, it comes out on the order of something like \$4 to \$4½ million; or about half of what OMB has allowed you to ask us for.

I am having a hard time justifying that—when we see the change in functions has already been taken care of and you actually wind up needing less money for that—justifying why you need \$9.6 million more, based on the promises of Mr. O'Leary that we would be

spending less; and not seeing anything more in your statement to justify anything more than maybe a \$4.2 million increase because of a 12 percent increase in the cost of one of your areas: That of cases.

So I wonder if you could give me some explanation for my rudimentary thinking here?

Mr. CURTIS. Yes, sir. First, the caseload figure, while a predominate part of the Commission's responsibility, is only one part of the Commission's responsibility. There are a lot of noncase related activities that this Commission has. So I am only estimating a growth in backlog that results from docketed items.

So the short statement there is that it doesn't tell the whole story of the responsibility of the agency.

Secondly, one would have to assume that the agency was adequately funded on day 1—and it was not.

And third, there are additional responsibilities that this agency acquired under the Department of Energy Organization Act, which were not performed by any agency prior to that act and therefore there are not appropriated monies for the conduct of those functions—Congress having not yet appropriated funds to those functions.

Mr. MOORE. A moment ago—well, could you give me a figure real quick on what you think the cost is going to be of these new functions that nobody had before that are being put on you?

Mr. CURTIS. We are not going to give you a very good answer to that question I am afraid. And the reason is that a number of those functions are evolving and we do not have a measure of them. For example, we have the responsibility, after hearing, to review all appeals from remedial orders and denials of adjustment that the Secretary may make through his delegate, the Economic Regulatory Administrator, under the oil pricing and allocation responsibilities.

We haven't seen one yet but we know they are coming. We can't put a measure on how many times there are going to be appeals, we can't give you a good figure on it. Essentially we will come back to the Congress when we have that figure and measure it against our resources. And if we can show you that our resources are not adequate to the task, hopefully you will authorize greater expenditure. But we do know it is our responsibility to demonstrate that case first.

Mr. MOORE. I don't mean to be pessimistic but if you look at the old Agency's functions and appeals, the appeals grew every year and grew by leaps and bounds. That is what you get into when you start regulating: obviously people will disagree with the outcome. So I think you probably will find a cost increase there.

Did I understand you a moment ago in answer to my question, Mr. Chairman, to say roughly on those figures of the functions you lost and those you gained, that you have a rough estimate of \$25,000 per employee total cost?

Mr. CURTIS. That is a rule of thumb used governmentwide to measure the cost to government per position—that is not only the compensation level but includes benefits and supplies.

Mr. MOORE. I understand. I would like to make one last comment to Commissioner Sheldon. That if you would like to come join us

and tell us, even in closed session, which agencies we can cut that have too many people, we would very much appreciate that.

Ms. SHELDON. Sir, I would be very happy to have done that last year when I was with the Civil Service Commission. I think probably Chairman Campbell could do that for you.

Mr. MOORE. Well, this is the fourth year I have been here and it is an illusory thing. We never can find them. Maybe you can give us some help. Thank you very much.

Mr. OTTINGER. The time of the gentleman has expired. The gentleman from Connecticut, Mr. Moffett.

Mr. MOFFETT. Thank you, Mr. Chairman. I have been listening to my friend from Texas Mr. Collins for 3 or 4 years now about the problem with bureaucracy and how mad people are about it. I just went to Texas and got off the plane expecting to see people swimming in red tape throughout Texas. I was surprised not to see it.

I think it is true that people really want you to do your job better and to give more quality protection than has been the case. I realize that has a lot to do with resources.

There was a December 15 memo that I believe was framed for appeal to OMB, most likely by Mr. McDonald. We know that the fiscal year 1978 FERC budget was originally set at \$34.1 million with 1,203 positions and that Dr. Schlesinger authorized FERC to increase its positions from 1,203 to 1,403 for fiscal year 1978, although no additional money was authorized.

FERC has requested a budget of \$43.7 million, if I am not mistaken, and 1,403 positions for fiscal year 1979, which is an apparent increase of \$9.6 million although no additional positions over fiscal year 1978 budget. This is not an increase that makes additional resources available to the Commission for fiscal year 1979 because, as I understand it, \$3 million of the \$9.55 million apparent increase has been allocated for October 1977 payraises and the remaining \$6.5 million is needed to support the additional 200 positions made available to FERC by Dr. Schlesinger.

Mr. MOFFETT. So the fiscal year 1979 FERC budget submitted to Congress really represents no increase over its fiscal year 1978 budget at all; correct?

Now in the memo that I mentioned —

Mr. OTTINGER. Do you want an answer to appear in the record?

Mr. MOFFETT. That is correct. Thank you.

Now, in the memo that I mentioned, and I quote from it, it says:

"Increases in staffing and contract support funding are required to meet increased DOE responsibilities and reduce the serious backlog and rate-making activities. This request, which is in direct support of the President's objective of making government more responsive, was reduced to less than the fiscal year 1977-78 level of funding."

And then under "Impact of allowance" in the same memo it says:

"Maintenance of the allowance level will worsen the current unacceptable situation in which the backlog of FERC actions continue to grow, resulting in delayed regulatory actions on new energy sources; and with inadequate assurances that consumers are not being charged unjustified rates for current energy supplies."

It goes on :

"The current staff level cannot be supported at the allowance level; further aggravating the situation. Necessary efforts to review and streamline Commission procedures cannot be undertaken because of the immediacy of pending actions."

And then under "Appeal" there is a section that says there is a need to "analyze and expedite review of some 53 types of filings, including 15,000 gas-producer filings which are currently allowed to go into effect if there is no staff action within 30 days. Because of inadequate staff many of these have been passed on to consumers without any real analysis as to their reasonableness."

Mr. Chairman, I would ask unanimous consent that this document be inserted into the record.

Mr. OTTINGER. Without objection so ordered.

[The document referred to follows:]

MISSION: REGULATION—FERC; RESOURCE/SECTOR: MULTI RESOURCE; DECISION UNIT NAME AND NUMBER—
FERC #4017

[In millions of dollars]

	Fiscal year 1977	Fiscal year 1978	Fiscal year 1979		
			DOE request	Presidents allowance	Appeal
B/A.....	\$33.1	\$33.7	\$50.8	\$33.0	\$17.8
B/O.....					
Full time employees.....		1,216	1,739	1,216	523

APPEAL ISSUE

The request for FERC is based on the overall objectives of increasing energy supplies of gas, oil and electricity and assuring that these supplies are available to consumers at just and reasonable rates. Increases in staffing and contract support funding are required to meet increased DOE responsibilities and reduce a serious backlog in rate-making activities. This request, which is in direct support of the President's objective of making government more responsive, was reduced to less than the fiscal year 1977/1978 level of funding.

IMPACT OF ALLOWANCE

Maintenance of the allowance level will worsen the current unacceptable situation in which the backlog of FERC actions continue to grow, resulting in delayed regulatory actions on new energy sources and with inadequate assurances that consumers are not being charged unjustified rates for current energy supplies. The current staff level cannot be supported at allowance level, further aggravating the situation. Necessary efforts to review and streamline Commission procedures cannot be undertaken because of the immediacy of pending action.

APPEAL

The DOE appeal is for the minimum number of positions and contract funding necessary to address the backlog situation, meet new or expanded responsibilities and initiate efforts to effect procedural improvements in Commission activities. The resources contained in the appeal are designed to:

1. Reduce an inventory of 6,000 formal cases pending before the Commission.
2. Analyze and expedite review of some 53 types of filings including 15,000 gas producer filings, which are currently allowed to go into effect, if there is no staff action within thirty days. Because of inadequate staff, many of these have been passed on to consumers without any real analysis as to their reasonableness.

Mr. MOFFETT. It seems to me that in effect you are saying many things here: that you don't have enough money to do the job and that consumers may be paying higher-than-justified prices because FERC lacks the staffing and funding to investigate it. Is that correct? Is that a correct assumption?

Mr. CURTIS. Yes.

Mr. MOFFETT. Is a refund provision of any kind made when it is found that a filing was allowed to go into effect that was unjustified? I am referring to a refund provision to protect consumers. In other words, what happens once that 30-day time limit that you are operating under passes?

Mr. CURTIS. I am afraid I am going to give you a complicated response. The filings that you were referring to have to do with the gas producer so-called compliance filings which notified the Commission of a sale within or under the "just and reasonable" determined rates, or an increase of rates occurring as permitted under the just and reasonable rates; i.e., the penny increments per quarter under 770-A for example.

If it is determined that in fact the producers were charging rates above the just and reasonable rates, those monies can be ordered refunded.

Now, under the general tariff rates of gas pipelines and of electric utility sales for wholesale there is a requirement that the Commission review rate increases within 30 days and determine whether to suspend them from 1 day to 5 months and allow them to go into effect.

The Commission in suspending a rate, may allow the rate to go into effect, subject to refund. In that case there could be a refund at the conclusion of proceedings which would result after the suspension.

Mr. MOFFETT. Do you have any idea of how many rate increases have been allowed to go into effect that have not been properly investigated? Do you have any idea to what extent that continues to happen?

Mr. CURTIS. It would be pure speculation, Mr. Moffett.

Mr. MOFFETT. But it could be happening?

Mr. CURTIS. It is disquieting that we are not adequately reviewing the filings with the Commission under our statutory obligation to do so because of an inadequacy of resources. It is this disquiet that we are trying to reflect in those budgetary documents. We cannot give you a measure of it.

Mr. MOFFETT. I see. You are familiar with the GAO report entitled Emergency Natural Gas Purchase: Actions Needed to Correct Program Abuses and Consumer Inequities?

Mr. CURTIS. Yes.

Mr. MOFFETT. That report concluded that interstate pipelines were allowed to purchase large quantities of natural gas without restrictions on what constituted an emergency or what priorities govern the use of natural gas.

Now, did inadequate funding and staffing play a role in creating that situation?

Mr. CURTIS. One of our major problems in staffing is that we are so overwhelmed by the day-to-day chores of our responsibilities that we do not have an opportunity to measure the effect of our actions and to reflect upon the correctness of the regulatory course once selected.

Now, to that extent if there were greater resources available to the Commission, there may have occurred a reexamination of that policy at an earlier date. It is clear to this Commission that a reexamination of that policy is in order. It instructed the staff November 16 to prepare an appropriate vehicle for that examination and announced that in a recent order involving Texas Eastern Transmission Corp.

Mr. MOFFETT. To what extent are you asked by the Administration to give advice on the administrability, if I might use that word, of various proposals concerning natural gas that come before the Congress? To what extent have you been involved in shaping the Administration's natural gas policy?

Mr. CURTIS. There is no formal role. Individually I have been consulted by Secretary Schlesinger with respect to the administrability of various proposals for gas regulation from the standpoint of "Can you do it? What type of resource requirements do you need?" et cetera.

Mr. MOFFETT. You think your role is a proper one?

Mr. CURTIS. In my opinion, yes.

Mr. MOFFETT. You don't feel you have been lobbying for one proposal or another?

Mr. CURTIS. No, sir. I am glad to have the opportunity to be able to comment on various proposals which it may be our responsibility to administer.

Mr. MOFFETT. I think that is good as long as you don't end up as part of the brigade that is leading the retreat from the President's own position. And that is the only thing that concerns me. That you may even—I won't say unwittingly but out of a situation that is not your own doing—be enlisted to join that brigade by filling a certain role. And I think your comment-role is a proper one.

Thank you, Mr. Chairman.

Mr. OTTINGER. The time of the gentleman has expired. The gentleman from Michigan, Mr. Stockman, with apologies for having skipped over you earlier.

Mr. STOCKMAN. Thank you, Mr. Chairman. Mr. Curtis, I want to ask a question that relates more to a policy direction. I think it deals with a very important responsibility you have. Secretary Schlesinger testified before the Senate yesterday and again reiterated that the clock is ticking away and we are heading closer and closer to this great oil crunch seen in the early or mid-1980's.

Now, obviously anything we can do to reduce our demand for oil in this country will help us divert that or at least diminish the cost.

I have been looking at some of the figures for the last 2 years and it seems to me that it is pretty clear that one of the forces pushing up oil demand in this country has been fuel substitution—industrial users moving away from gas because of its unavailability and going to oil.

Now, I know that is largely a legislative problem. We must break the deadlock on what we are going to do about the regulation of natural gas. But it seems to me that your character is broadly discretionary. It says that you have to set rates that are "just and reasonable." And there has been discussion in your predecessor agency, the EPC, particularly in Order No. 770, in which it was indicated it would be within your discretionary authority to set higher rates or incentive rates for certain kinds of high-cost gas—deep drilling, deep offshore drilling, and so forth. As a matter of fact, in Order No. 770 one of the concluding paragraphs said that no action was taken at the time because insufficient data was available; but it did say that should adequate data become available "We would consider the initiation of the proceedings required to determine the appropriate allowances for drilling efforts to depths greater than 15,000 feet, and drilling efforts in ultradeep waters."

Now, it was 2 years ago or more that that was written. And it seems to me that whatever happens on the natural gas legislation currently pending in conference, it is clear within that legislative language that we will have discretionary authority on high-priced gas.

Dr. Schlesinger, Mr. O'Leary, and others have said time after time it is the intention of the administration to set special allowances or prices for high-priced gas.

What would prevent you from moving now to initiate a rate proceeding to establish incentive prices for ultradeep gas or ultradeep offshore drilling that might help bring in maybe even 1 trillion feet extra in the 1980's, thereby helping to alleviate some of the oil-crunch we hear so much about?

Mr. CURTIS. There are a couple of answers to the question. First, we are not prevented from moving forward. Any determination that the Commission may make, however, must be supported by substantial evidence.

The Federal Power Commission has attempted to obtain through reporting form 40 the necessary reservoir data which would provide the record basis to allow, among other things, the type of incentive pricing that you referred to. And I would agree that there are opportunities within the "just and reasonable" standard to do so. Unfortunately, the Federal Power Commission's effort to obtain these data was locked up in the courts. Only recently has that information come to the Commission. It is still incomplete in the filings because a number of producers are refusing to file the requested information which would equip us with an adequate data base.

It is kind of a paradox that the industry is unwilling to supply the Commission with the types of tools that it requires in order to do the very thing that you mentioned. That had been the Federal Power Commission's problem up to this time.

Mr. STOCKMAN. So you are saying the major obstacle is the fact that you don't have the data base for the record necessary to initiate a proceeding; and that if you had that sufficient record it would be your intention or the desire of the Commission to move forward?

Mr. CURTIS. Yes, sir.

Mr. STOCKMAN. Thank you.

Mr. OTTINGER. My colleague from New York, Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman. It is a pleasure to welcome Chairman Curtis here this morning. I agree with my colleague from Connecticut that there are two things that a Texan is afraid of, and one is the Chairman of the Federal Energy Regulatory Commission.

For the benefit of the gentleman from Texas, the other thing is an Irishman with a football.

Mr. Curtis, the question of jurisdictions between the ERA and the FERC poses a question where you have, as you say, responsibility for regulating the rates for interstate sale and resale or transportation of electric generation and natural gas. The ERA has the responsibility for rates of liquid natural gas imports; is that correct?

Mr. CURTIS. Yes, sir.

Mr. MURPHY. How do you coordinate between the pricing of those two gas resources?

Mr. CURTIS. Mr. Murphy, the question has not presented itself to the Commission as of yet and it is one for which there is not a clear answer. In the Department of Energy Organization Act, the Congress chose to reside in the Secretary the authority under section 3 of the Natural Gas Act while assigning to the Federal Energy Regulatory Commission the authorities under sections 7 and 4 of the Natural Gas Act—relating to the certification of facilities, the approval of sale, and the tariff provisions for gas transportation.

Cryptically, I am afraid, in section 402(f) the Congress said that nothing in the section assigning section 7 and section 4 functions to the Commission "shall permit the Commission to regulate imports." Now, the question is: What does that mean? Was the Congress intending to displace the Commission's exercise of authority even as it relates to pricing decisions under section 4 and 7, with respect to an "import"? Is that quote a regulation of imports that the Congress was intending to so limit?

We have had our lawyers and general counsel of DOE examine the question. There has been a blizzard of memorandum transferred back and forth on the subject. And we sincerely hope that we can give you our best legal judgment within the next 2 weeks. There has been only one importation question—a case decided since October 1—and that dealt with Pac-Indonesia, which was a "section 3 only" case involving an importation into the State of California; the gas not leaving California once imported.

So the answer is: We do not have a response on the interrelation. It is very complicated. It will turn on a matter of statutory interpretation. And we are developing our best legal judgment on what was the intent of Congress and how it should be implemented at the moment. We hope to have that answer for you in the next 2 weeks.

Mr. MURPHY. Movement to the east coast would be interstate because of the location of other facilities, including the Columbia facilities?

Mr. CURTIS. Yes, sir.

Mr. MURPHY. Would you give me your attitude on incremental pricing of liquid natural gas versus natural gas?

Mr. CURTIS. I can only state a personal view, of course, and this is a matter again that the Commission will have to consider as a matter of first impression, not having been previously presented with the case.

My personal view is that incremental pricing is a valuable concept as a regulatory device to assure that the cost incurred by the ratepayer is properly valued by the ratepayer. It develops efficiencies to cost at the margin. It is a basic principle of economic law.

As a matter of principle I would favor incremental pricing of LNG. I recognize, however, that there are significant administrative difficulties in implementing any incremental pricing procedure. I recognize also that there is a great deficiency in the gas supply of this country that may justify a departure from basic principles or inclinations to adopt principles. And so I would like to reserve a final determination until I have a case presented to me and an opportunity to weigh the various considerations that would be presented in that case.

Mr. MURPHY. I might state we have lost industries that require natural gas as a fuel for their processes. And they have gone to the cheapest areas for the location of that gas. And a differential in price certainly would have a marked impact on location or expansion of those facilities in the States where they presently exist.

Mr. CURTIS. Yes, and I think that is what I am trying to get at: There are times when basic principles have to yield to the economic realities of a marketplace which might otherwise indicate that the public interest is best served otherwise.

And for that reason I think we simply have to look at the case as it is presented to us.

Mr. MURPHY. As far as the proportion of the importation of liquid natural gas, do you have a feeling that it should be limited to a percentage of the overall gas production and consumption in the country?

Mr. CURTIS. I would not favor that policy.

Mr. MURPHY. Do you foresee it as a possibility that we could become dependent on the importation of LNG as we have become dependent on the importation of crude?

Mr. CURTIS. Yes, sir.

I would be much more inclined to engage in efforts to develop domestic ability to fill our pipelines through synthetic gas and other means. I think that is a preferred alternative. The difficulty on the LNG question is whether, in fact, it is an alternative or whether we must do both.

As far as the dependency on LNG, I would look much more carefully at the country-of-origin question for national security purposes than aggregate volumes. There is an opportunity to develop, perhaps in the international marketplace, Mr. Murphy, a number of alternative sources. So it is not the aggregate volumes of dependence but the uniqueness of the source of the LNG that I would worry about more.

Mr. OTTINGER. Would the gentleman yield?

Mr. MURPHY. Be happy to yield.

Mr. OTTINGER. Do you have any responsibility over the safety of handling LNG?

Mr. CURTIS. Yes, sir, we do in one case specifically and that results from a delegation of the Secretary which was made last week: To reside in the Commission the site-specific questions relating to the certification of facilities for Distrigas importation.

Those would involve both environmental and safety considerations.

Mr. OTTINGER. Have you formulated any views about the safety of bringing in LNG to a place like New York Harbor? I mean, we don't want Staten Island to blow up.

Mr. CURTIS. I agree with the President's basic policy that LNG facilities should not be sited in populated areas.

Mr. OTTINGER. I thank the gentleman for yielding.

Mr. MURPHY. I was going to get to the question of siting of liquid natural gas operations in this country. I think the ERA has that responsibility; doesn't it? Well, they did in the California case I believe.

Mr. CURTIS. Yes, sir. That involves section 3 only. In the *Distrigas* case, to avoid any question concerning legal authority as well as to recognize that the Commission is, perhaps through its adjudicatory role, best suited to determine site-specific questions, the Secretary has assigned facility siting responsibility to the Commission under the Department of Energy Act Authority.

Mr. MURPHY. I have been an intervenor in nine ex partes before your Commission and its predecessor in this regard for 5 years.

On the question of hydroelectric plants versus nuclear plants versus fossil fuel, who makes the determination as to the mix and the need and necessity generally for that type of facility?

Mr. CURTIS. No one does, Mr. Murphy. That is one of the deficiencies of our energy policy in the administration of Government responsibility. It is a deficiency that the President attempted to address in proposing to the Congress a Department of Energy which would consolidate the functions including bringing in the Federal Power Commission so that there could be greater coordination.

One of the difficulties the Federal Power Commission had in the past was its very narrow perspective. Hopefully, the Department will provide a mechanism for a broader view of the energy requirements of this Nation.

Now, within the Department the basic responsibility for developing the policy on the fuels mix of this Nation resides in Assistant Secretary Alm's Office on Policy and Evaluation, and, of course, ultimately with Secretary Schlesinger.

The Secretary was given the authority and the role by the Congress to intervene in our proceedings to present policy perspectives which would help us in making our specific hydro and gas decisions, Mr. Murphy, and to take into account the Secretary's perspective of the overall policy of the energy requirements of the Nation.

Mr. MURPHY. On the question of synthetics that you mentioned before, will FERC be the agency to license and approve the location and size of synthetic gas plants?

Mr. CURTIS. It depends on whether the Congress passes the National Energy Act. At the present time facilities for synthetic gas are not jurisdictional.

Although we examine into their costs in discharging certain of our rate functions, the cost of facilities do not go into rate base. Both the House and Senate have passed amendments to the Natural Gas Act and submitted to conference, with the National Energy Act, provisions which would make synthetic gas facilities jurisdictional, in which case the responsibility would be assigned to the Commission.

Mr. OTTINGER. The time of the gentleman has expired, I am afraid. The gentleman from Tennessee, Mr. Gore.

Mr. GORE. Thank you, Mr. Chairman. Welcome, Mr. Curtis. Let me again, just briefly, make a point on the regulation of LNG pricing that my my colleague from New York explored with you. As I read section 420(f), it is somewhat vague. And correct me if I am wrong, but isn't there pretty strong legislative history to the effect that the FERC's responsibilities under the Natural Gas Act to regulate LNG pricing are not displaced under the current act?

Mr. CURTIS. There is legislative history to the effect that the Congress intended to place pricing decisions in the Commission. There is a good deal of legislative history on that. The only thing specific on imports is found in Congressman Moss' statement in the Extension of Remarks in the House. And that expressed Congressman Moss' opinion that the basic pricing decision for imports would be subject to Commission review. Aside from that I know of no other legislative guidance from the Congress.

Mr. GORE. Well, it is part of the Journal, part of the permanent Journal. And I noticed that in your detailed statement for the record you say that: "As energy import-export jurisdiction is now split, the ERA has the authority to decide the basic issue of whether or not import or export of natural gas should be allowed at a given price under given terms." You go on to say: "While the FERC has jurisdiction over rates and charges for transportation and for facilities has crossed the border into this country."

I don't want to dwell on this but I do want to make the point that there is a good case to be made for you exercising that authority. I want to move on to some other subjects in the brief time that I have. I want to talk about the *Gulf-Texas Eastern* case. I have thousands of constituents who were ripped off by the overcharges in that case. And it is my understanding that on February 21 the Supreme Court denied certiorari for the *Gulf* case. Is that true?

Mr. CURTIS. That is my understanding.

Mr. GORE. Well, if that is the case, then what procedures are going to be followed by you in rebating this money to consumers?

Mr. CURTIS. I have not examined the question and cannot respond to it today. I would be happy to do so for the record. Now, to the extent that it requires Commission action, I would only be able to

state my personal view until such time as the Commission takes that action because I cannot commit my colleagues until they commit themselves by a vote on this matter.

[The following material was received for the record:]

The mandate from the Third Circuit Court of Appeals was issued February 24, 1978, following denial by the Supreme Court of Gulf's petition for writ of certiorari, issued February 21, 1978.

According to Opinion No. 780, issued October 15, 1976, *Opinion and Order on Deliveries of Gas Under Certificate and Warranty Contract*, Docket no. CI64-26, ordering paragraph (e), Texas Eastern must file a plan for the flow-through of the refunds Gulf is ordered to pay. This plan must indicate the amount of the refund payable to each jurisdictional customer, the basis used to compute the amount payable, and the period of time involved. After receipt of the plan of flow-through prepared by Texas Eastern, the Commission will decide whether or not to approve it, or approve it with modifications. After a flow-through plan is approved and Gulf has paid over the total amount of refunds to Texas Eastern, Texas Eastern has 30 days within which to distribute the monies to its jurisdictional customers, in accordance with the approved flow-through.

Therefore, it appears that Texas Eastern must file its prepared flow-through plan by June 23, 1978 (120 days after the effective date of the final order, February 24, 1978). After Commission approval of a flow-through plan and payment to Texas Eastern by Gulf of the total sum of refunds owed to date, Texas Eastern will have 30 days to distribute these monies to its jurisdictional customers in accordance with the Commission-approved plan.

Mr. GORE. Well, you personally have no quarrel with the fact that the money should be rebated to consumers; do you?

Mr. CURTIS. I am afraid I am not familiar with the specifics of the case but Commissioner Smith is and perhaps you would care to hear his comments.

Mr. GORE. Certainly.

Mr. SMITH. Mr. Gore, the basic order that has now withstood judicial appeal sets up a procedure whereby periodic examination of what occurs would be made by the Commission.

I have seen a number of reports relative to the degree of paybacks that are occurring. I would have to consult that particular order as well as discussing with our staff just what the specifics of the mechanism are. I can say without having to refer to any material that it will be very closely monitored. And we will insure that the provisions of the order will be carried out.

Mr. GORE. Is the money going to get back to the consumer?

Mr. SMITH. Money or gas.

Mr. GORE. Money or gas? How quickly will this remedy be put into effect?

Mr. SMITH. The gas payments have already been paid back to a very substantial degree, Congressman. I think the Gulf deliveries under that order have been quite substantial.

Mr. GORE. Let me ask you, Mr. Curtis, about another case—the *Shell v. FERC* case. Where does this decision leave the Commission in terms of its ability to insure that dedicated natural gas reserves are being diligently developed?

Mr. OTTINGER. I would just like to intervene to say that with respect to any case that is pending we would expect you not to make

any replies that would jeopardize your decision. We will leave that to your discretion.

Mr. CURTIS. I thank the Chair for that. In that particular case the fifth circuit has decided that the Commission lacked jurisdiction to impose the prudent operator standards. And a rehearing was not sought of that case so I don't think we have a *Pillsbury* problem on it. The Commission yesterday in administrative session voted to request the Solicitor General to petition the Supreme Court for certiorari in the case.

Mr. GORE. Excellent.

Mr. CURTIS. It does leave us, to answer the question, significantly impaired in our ability to assure that the producers meet the deliverability responsibilities that we believe they have either inherently or expressly in undertaking to supply gas to the interstate market upon which so many depend.

Mr. GORE. Well, if the decision should stand, it is my understanding that there would be virtually no way to monitor the compliance with terms of existing contracts and certificates. And if it should be upheld, I would certainly expect to see legislation introduced immediately to rectify that problem.

Mr. CURTIS. I would point out that there is a provision of the House-passed National Energy Act which would permit the Commission by rule to regulate such matters, among other things, as deliverability obligations of producers. Whether that will survive the conference or not I don't know. But should it survive, we would have the clear authority.

Mr. GORE. Well, there seems to be a lot of momentum developing toward separating the Energy Act into five sections, and saving settlement of the Natural Gas Act later.

And this seems to me to be adding pressure to FERC to undertake actions to deal with natural gas problems under the current authority. And one final question, Mr. Chairman. I see that gavel jiggling over there. Just one final question.

Are you allocating sufficient staff time to reviewing—to a review of the Order No. 770 decision and specifically to the tax model that was allowed in the Order No. 770 decision?

Mr. CURTIS. As you know, the Supreme Court has refused certiorari of the Order No. 770 decision. The Commission has nonetheless committed to reexamine the methodology in the context of its biennial review of producer rates. We have suspended that proceeding faced with the reality that both the House and the Senate have passed legislation which would change the method of rate regulation—both departing from cost-based rate regulation.

Mr. GORE. But the premise of my question is that the deadlock in the developing momentum to separate out the different components of the National Energy Act puts a different face on this issue and heightens your responsibility to reexamine the methodology used in the Order No. 770 decision, it seems to me.

Mr. CURTIS. Yes, sir, I think if the conference appears, in fact, to be deadlocked, then the Commission will have the clear responsibility to move forward with the biennium.

Mr. GORE. It appears to be deadlocked. Thank you, Mr. Chairman.

Mr. OTTINGER. The time of the gentleman has expired. The gentleman from California, Mr. Moorhead.

Mr. MOORHEAD. Good to see you again, Mr. Curtis. One of major concerns that I have, coming from the West, is hydroelectric power. Our companies out there are both public and private. As you know, in the Los Angeles area most of our electric power is provided by public agencies. But the redtape that we have in getting new licenses is really curtailing the development of electric power in the West, especially the smaller units that could be developed.

I am told that it takes between 6 and 7 years to get a license. And many times the costs incurred by those long delays makes small projects just impossible. And in other instances, of course, we are denied electric power for the years that intervene. What can be done to correct the situation?

Mr. CURTIS. Well, let me just say I agree entirely with your statement. It is a totally unacceptable delay and it is very costly for consumers in the country at large.

In response to Chairman Dingell's questions, I outlined the staff plan for a small hydro licensing program, which would very much truncate this, to be implemented in three States.

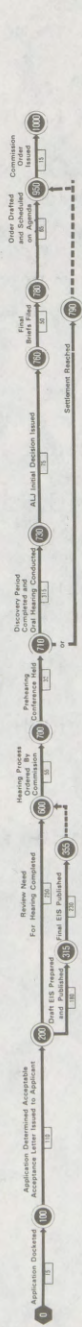
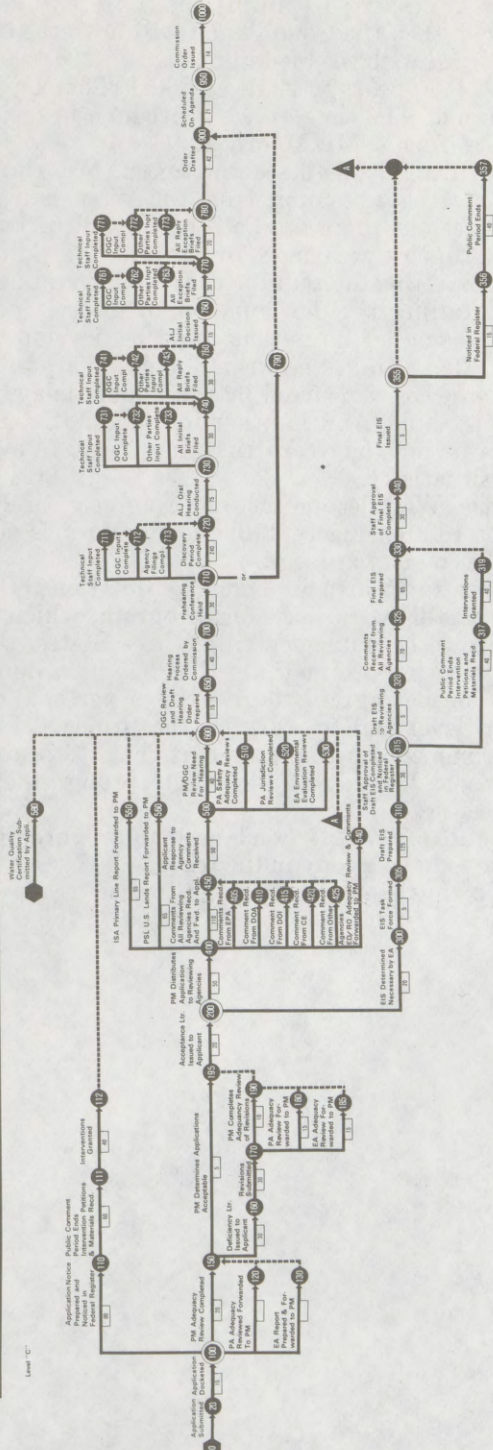
But the most important thing that has been done is that Commissioner Sheldon has agreed to give this a personal direction from the Commission level and to work on the projects. I would like her to be able to comment on the matter, if that is appropriate.

Ms. SHELDON. Would you like to go through the steps necessary in getting a license?

Mr. MOORHEAD. Well, I don't need to go through all of those but I would like to have a copy in the record.

[The following chart was received for the record:]

Level "8"

Level ^{13}C 

Reviewed by: <i>Suzanne B. L. C. S.</i>	Date -1/5/93
Office of Executive Director	Responsible Official
	Date

AS OF WEEK ENDING 2/3/78

Ms. SHELDON. One thousand days is absolutely the minimum, based on legislative and procedural requirements. We are in the process now of trying to streamline our procedures.

If you would like me to, I will delineate some of the reforms which we have already instituted. Rather than simply passing an application from office to office, as has been previously done, we are assigning a project manager who will be responsible for scheduling and monitoring the application from its receipt to the time it comes to the Commission.

Second, the project manager will prepare a summary memo explaining the application to the Commission and present the matter personally at our Commission meeting. This frees up our senior staff to be other places at the time the Commission does meet.

Then we have better coordination between our technical staff and the legal bureaus. And we bring this merger of the legal staff and the technical staff closer to the filing of the application, instead of waiting until it gets downstream. And then also we are proposing, as the Chairman has indicated, streamlining of our licenses in three separate stages.

Mr. MOORHEAD. Along that line, you know I am very interested in the California Metropolitan Water Districts being able to build generators in the conduits they have out there.

We do have a proposal in the energy plan—and it is going through in a watered-down form—but I wondered whether you felt it could be implemented in your plan so that organizations such as the Metropolitan Water District and others could build those projects without going through the redtape they have had to before?

Ms. SHELDON. Sir, this is a pending proceeding.

Mr. MOORHEAD. That is correct.

Ms. SHELDON. But we will give you the information which we can give you. We have it in our "Book of Critical Projects" and we are tracking it.

Mr. MOORHEAD. I just wanted to feel certain that——

Ms. SHELDON. And it is the first one in the book.

Mr. MOORHEAD. I just wanted to be sure of your intent to really implement that program and make it possible for these small 15 megawatt hydroelectric projects to be built within those conduit systems.

Ms. SHELDON. And I would also like to ask, if you have any influence with the California agencies, we can also use some help from them in all of these projects. Because we do have many California projects that are pending before us now——

Mr. MOORHEAD. If you let us know the ones that go in that direction, we will be happy to do what we can.

Ms. SHELDON. We will be happy to do what we can.

Mr. OTTINGER. The time of the gentleman has expired. The Chair would like to note a rollcall vote, but we will continue the hearings. The Chair has made arrangements for the gentleman from Colorado, Mr. Wirth, to come down. I would like now to recognize staff, Mr. William Braun, for questions.

Mr. BRAUN. Chairman Curtis, I would like to address for a moment the issue of the Commission's need for improved management con-

trols and procedural changes. Could you detail, please, your needs in this area for improved management controls and procedural changes at the Commission?

Mr. CURTIS. Yes, Mr. Braun. The Commission has two major problems as I mentioned. One is a backlog of unacceptable proportion. And a rapid attrition rate. As far as the backlog goes, it means that if we are to make any meaningful inroads into it, we will have to run essentially two agencies—the new Commission and the old Federal Power Commission—for a period of time to clean up that backlog.

That will require close management direction to locate the bottlenecks; to apply additional resources to those areas where our analysis shows that resource application would benefit the pacing of the matter through the Commission's decisionmaking process; and to evaluate the manner in which we can truncate the process by other means. For example, we have located a whole range of instances in which a number of cases are standing in line awaiting for the Commission's actions on one or two particular cases.

By having additional management ability to apply resources to those one or two particular cases, we can remove the logjam and allow the stream of casework to go forward much more rapidly than would otherwise occur.

Now, as far as the attrition rate is concerned, one of the first tasks, which was an assignment to Mr. McDonald, was to conduct an interview of each person leaving the Commission, to determine the why's and the wherefores. Overwhelmingly the answer has been a lack of participation in the work of the Commission and a lack of feeling of confidence in the quality of the work product of the Commission.

Now, frankly, the only way to address that is to improve our management systems. And to do that means you are going to have to attract people with ability at high levels in order to motivate and provide the traditional benefits of a well-managed organization, which we do not today have.

Mr. BRAUN. How many additional supergrade positions would be necessary for the Commission to provide this adequate managerial support?

Mr. CURTIS. Our best estimate would be to seek 13 in addition to those which we have at present. Now, let me amplify that a bit. To an earlier question by Mr. Moffett in terms of whether the 1979 authorization amounted to any practical increase in the resources available to the Commission above 1978 the response was that, no, it does not. But the reason that it did not is because the Secretary, from resources otherwise available to the Department has, recognizing our critical needs, of his own motion assigned 200 additional positions to us.

We will have to obtain the budget authorization to pay for those positions in the 1979 authorization or come to the Congress for a reprogramming of funds. Our numbers of existing vacancies and our attrition rate are such that it is unlikely that we are going to be able to, by our best efforts, get the additional 200 people on board. We are running at about a 300 deficiency right now: That is about 100 vacan-

cies plus the 200 positions. And it simply takes times to get people on board, I don't think we are going to catch up with it.

The Secretary also recently assigned to the Commission on February 24 seven additional supergrades to those assigned on October 1; bringing our total strength of supergrades now to 41 plus 20 supergrades assigned to the administrative law judge function.

We believe that we will need an additional 13.

Mr. BRAUN. Above that?

Mr. CURTIS. Yes.

Mr. BRAUN. On September 16 you addressed a letter to the Director of the Office of Management and Budget in which you asked for \$66.6 million for the Federal Power Commission. In that letter you stated that the \$66 million is

A substantial increase over the FY 1978 appropriation yet I am not convinced it will provide the total manpower and other resources the Commission would need in FY 1979 if it were to continue to function as a separate, independent regulatory commission and adequately discharge its responsibilities under the laws which it administers.

That was in September when the Federal Power Commission was in its last hours. However, the FERC budget, even when you take into account the lost 250 positions, is far below what the \$66 million figure would be if it were adjusted for those 250 positions.

Given the statement that you make to the Director of the OMB, are the resources that are provided to FERC for fiscal year 1979, that is \$43 million, going to be adequate for the Commission to function as a separate, independent regulatory Commission and adequately discharge its responsibilities?

Mr. CURTIS. Let me explain first the earlier statement. The budget submission to the Office of Management and Budget that you refer to was made on the basis of a budgetary analysis that was prepared at the Federal Power Commission. Most of the work being completed before I got there.

The instruction to the staff was to inform the OMB of their best estimate of what are their resource requirements to carry out their responsibilities under the law. That figure assumed a business-as-usual method of conducting the affairs of the Commission. That figure was also developed by the staff with a deficient understanding of what was its existing workload or what its future requirements may be.

And, unfortunately, that figure was the product of an assessment of what resources would be necessary if one assumes that we could not improve our functions through applied management controls.

My earlier statement that I was not sure, even with those resources, that we could assure the President or the Congress that we are adequately carrying out our responsibilities, was made because there was at that time no means of measuring with any degree of accuracy what those responsibilities were nor any confidence that applying or throwing additional money and manpower at the task would produce an appreciable result.

Now, as to our current budget authorization, as I mentioned in my statement, although it is significantly below earlier estimates, I am reasonably satisfied with the proposal presented to the Congress.

Part of my satisfaction comes from a greater confidence acquired through the work of Bill McDonald in implementing the management information system and the promise of the fruits of that system that look very encouraging.

Second, it is because it is a practical realization, given our vacancies, given the difficulties in attracting people to public service and in effectively training those people in the discharge of our particular functions. I simply don't think that applying significant amounts of more money or manpower is going to materially aid the Commission.

If anything, I would ask for more money rather than greater positions because we may be able to make a more effective use of contracted-for services simply because we are not confronted with the same attrition, vacancies, and civil service problems in bringing contractors on board as we are with bringing full-time employees on board.

Mr. WIRTH [presiding]. Thank you, Mr. Braun. Mr. Curtis, I was very impressed in your testimony about the reflected need to increase your resources and use your scarce resources well. I hope you realize the committee is trying to help you by having a runner scheme going back and forth while there is a vote going on, so you and your staff can be used as well as possible while you are here.

Let me ask you, if I might, some questions about the whole of the regulatory process. If you read your testimony and look at the questions submitted by the committee, you know, anybody reading that has just to be overwhelmed with the task facing you and the extraordinary backlog that you are faced with. Presumably this is going to go on for some time to come. Now, 3 years ago, before Mr. Schultz was Chairman of the Council of Economic Advisors, he was spending a good deal of time talking about alternatives to regulation; talking about different ways of going about trying to achieve the goals that we all set for ourselves. You know, there are different ways of doing that.

In the environmental area last year you remember with the Clean Air Act we were able to write into the Clean Air Act some very different ways of going about regulating emissions and charging a fee for that rather than going about trying to regulate every point source of emission.

Mr. Schultz and Mr. Kneese, who is now at the University of New Mexico, wrote a book together at Brookings on the alternatives to regulation.

The background and purpose of all of this is to ask you about looking at the background you are faced with in coming into this new agency, if you have any kind of a group that is looking at different ways of going about discharging your responsibilities. You know, are there economists around who are thinking out different ways we could accomplish this? Are there other criteria that could be used or ways of turning the whole process on its head that could make it less cumbersome and less overwhelming for you and maybe accomplish the same end?

Mr. CURTIS. We have, as a matter of the first step in the process of developing a good management handle on the work of the Commis-

sion, identified the steps in each of the work products that the Commission performs. There are some 63 of those at least. In that analysis we call upon the staff to examine into and suggest methods in which the time or complexity of the process may be reduced.

One of the reasons we haven't brought in and set up a special team to do this is the belief that in this highly technical and complex area, the staff, which has been working with the process for a number of years, will probably be a fruitful source of suggestion for avoiding some of the complexity that entangles not only the regulated industry but the staff in their day-to-day activities.

We have sought that advice and we have obtained many valuable suggestions that we hope to implement.

Second, more broadly speaking, I think the Commission will place greater reliance on rulemaking in the future. The times simply do not permit the type of fine-tuning decision-making process that the Commission has engaged in in the past, forcing all of those who must also seek the Commission's opinion to wait in line until the Commission has finished fine-tuning the mechanism. So that means more rulemaking.

And lastly, I think that we may explore our abilities to place greater trust on the regulated industry to behave responsibly within some broadly stated guidelines.

Now, this will require us to develop a meaningful enforcement capability so that we can be assured that the trust is not misplaced and take effective action in the event that it is demonstrated that that trust is misplaced.

But in the past the Commission has regulated by withholding its approval. It would be my personal view that the Commission could more effectively regulate in the future by giving more blanket, up-front approval to certain activities under broad regulatory definition but then having a meaningful and effective mechanism for policing the marketplace to assure that responsible behavior is in fact occurring in that marketplace.

However, I think the Government generally and the regulated aspects of Government should operate on a presumption of compliance rather than a presumption of noncompliance. And I think a presumption of noncompliance adds to our complexity.

I would like to add one last thing. Commissioner Holden has written a good deal on this subject, and I wonder if he might want to respond to the question.

Mr. HOLDEN. I am not altogether clear the things I have written in the past have always been borne out. I would say there are a couple of points however. First, there is a distinction at least in my mind between the interests of my former colleague Allan Kneese in incentives where the objective is to get rid of something that is as patently undesirable as air pollution in contrast to the kind of regulation we are involved in where the objective—

Mr. WIRTH. Let me say I am very aware of the fact these are apples and oranges. What is interesting is the Kneese approach of turning it around and just looking at it through a different kind of a lens. I know the immense complexity you face in air and water pollution is very different from what you all face at the FERC.

Mr. HOLDEN. What I am suggesting is we are involved in a process of achieving a result, and the regulation, it seems to me, in many ways is indispensable to achieving the result. But the Chairman has addressed it by raising the question in my mind of what proportion of existing regulation is indispensable. And I have always been bothered with the problem of having to deal with a rate case where the proposed rate increase is \$33,000 and the total operating revenues of the company is \$3,700,000 and the next item on the agenda is an item of \$40 million or \$50 million. It does seem to me that if we have a legal requirement that each of those be given the same kind of consideration, then we have a very serious kind of trouble indeed. I think that is a large part of our problem, the legal requirements of a vast number of items, each of which must be treated exactly procedurally like the other. Frankly, in my view, we would be well assisted if we could get rid of that.

Mr. WIRTH. Sure.

Mr. HOLDEN. There is a second consideration which is purely personal and that is the means of information search. I recognize all of the reasons for the present groundrules but the means of information search available to us under the highly judicialized procedure existing make it impossible for us frequently to learn what we need to know in sufficient time to handle a case well.

One reason it takes so long in my view is that not everything has to be developed in an elaborate procedure. And you discover way at the end that you didn't know the right questions the first time around. And there is some procedural history to that. But both of those seem to me to be extraordinarily burdensome and bog us down.

Mr. WIRTH. Let me just go on with this for a minute more. I mean I really like your third point of where the presumption is and are they presumed to be in compliance or not to be in compliance. And I think we have historically said the assumption is that everybody out there is presumed to be a crook until presumed not to be a crook. And when I am talking about "turning it on its head", I mean just that, in other words, the presumption around the other way.

You know, it seems to me that as you look at your testimony and listen to this morning's discussion, you know, as I pointed out earlier, the overwhelming nature of the job that you are going to face suggests that we have one of two choices: Either to continue this budget year after year—and it is going to get more and more complex—and have the kinds of problems you are talking about, or we can say maybe there is a different way of going about doing this business.

You know, turn the presumption around and the question is: Do you have the resources to make that kind of an examination or are you so caught up in the problem of day to day or plain catch-up on this huge backlog that you don't have the resources internally, that you yourself don't have the time to look at this, that you don't have the resources to say "bring in the Kneese-type people or bring in the producer or bring in the other people who might be very helpful in putting together the homework" so to speak that is necessary to find that different way.

I mean do you have that kind of resource? Do you need that kind of resource? If you need it, would it be helpful to have that kind of resource? Have you thought about that in your budget request?

Mr. CURTIS. We have attempted to think about that. We do not have the resources. It is one of the very significant deficiencies in the Commission's work. It is one that Commissioner Hall has devoted a good deal of time to in attempting to develop our analytical tools so we can get a measure of where this flood of casework is going and perhaps make some sensible channels of the decisions of the Commission so they may by their direction accomplish some public purpose.

Mr. WIRTH. What I am after is not just the management of your existing caseload as you were pointing out the 63 some odd steps—your points one and two earlier—but rather your point 3: that even more we tend to loose sight that maybe instead of just managing our existing caseload there is a different way of going about managing it.

And that is going to take a kind of creativity; that is going to take a kind of backing off from the day-to-day, you know, just the overwhelming and depressing sense of that huge backlog and caseload. I mean how do you get some kind of different way of thinking about reaching the goals that are defined in the legislation?

Mr. CURTIS. I think I am in total agreement with the point that underlies the question. If we continue to do the things the way we are doing them, we will never be able to change the process. We need a chance to step back and reflect upon it and say "we don't have to do it that way, we can do it a different way and it will produce a better result."

Mr. WIRTH. Do you have the resources to step back and answer that question?

Mr. CURTIS. No, sir.

Mr. WIRTH. All right.

Mr. CURTIS. That requires injections of high-level resources and of managers not to perform that function themselves but to free other persons up who have the expertise, who have that reflective ability but no opportunity to reflect, so that they can step back and have a better opportunity to make policy recommendations to the Commission.

Our office heads, for example, and their deputies who labor in these vineyards to a greater extent than the Commission itself, literally are overwhelmed by the task and do not have the chance to reflect on the policies of the Commission.

Mr. WIRTH. Is there in your budget request a request for the resources to allow that stepping back?

Mr. CURTIS. That is a supergrade addition that in my opinion is required more than anything else. And that we do not have as yet.

Mr. WIRTH. Do you have any sense of how long would it take you to put together a request to develop the stepping back unit, whatever we might call it, the look-for-alternatives unit? You know, we've got to find a better way of managing this incredible, overwhelming backlog that you face. How long would it take you to put together a request like that?

Mr. CURTIS. I think we can put together a justification for 13 additional supergrades. But I want to emphasize I don't think, Mr. Wirth, it should be a separate unit. I think it is a matter of freeing people

up in the line, because they know more about it than any unit is going to be able to learn.

Mr. WIRTH. OK. I mean pulling those people out of that line and giving them an office and time to think about this, and not to think about day-in-and-day-out the kinds of problems they face, which are reactions to yesterday's problems, and not looking at tomorrow. So when I say "unit," I think we are in agreement.

Could you put that kind of request together for us? Because I think there are many on this subcommittee that would like to encourage and help you to think about this alternative.

Mr. CURTIS. We would attempt to do so, yes. The reason for the fuzziness of my answer is that the Congress under the Department of Energy Organization Act allocated all supergrades to the Secretary so that the Secretary may judge and evaluate the priority of the applied resources of the Department.

If the Commission were to obtain additional supergrades now, it would require that they be pulled from other parts of the Department. Now, the Secretary has already given to the Commission seven additional supergrades over what had been the previous authorization request. This required the Secretary to extract those from other functions of the Department. The question is, is the Congress going to give the Department more supergrades to meet the responsibilities of this agency or are you going to continue to rely upon a process that requires the Secretary, in order to honor our request, to withdraw supergrades from other functions of the Department.

Mr. WIRTH. Just to close this off, I am not sure that you have to permanently staff something like this. It is a matter of having the people sprung free for a year or whatever time-frame might be necessary to take a look at this process, and not to build that in permanently.

You know, what we would want to do is give you those resources for a finite period of time. Presumably one of the things that a group like this might come out with is overall reform of the system in such a way that you didn't need this increasing number of slots and money to do the process in the old way.

Mr. CURTIS. I think some of our additional resource needs can be fairly short term; and that by better management controls and increasing our productivity, we can return to lower levels of total workforce. But the type of task that you are talking about I can't emphasize too much, Mr. Wirth, requires an injection of management on the line at the higher levels of our operating offices and in our General Counsel's Office as well as a complement to the Office of Regulatory Analysis.

It cannot be an exclusive force of academics or management consultants. I just don't think that will work.

Mr. GORE. Would the gentleman yield?

Mr. WIRTH. I would be happy to yield.

Mr. GORE. I want to pursue just briefly the point about the supergrades positions. It is my understanding that FPC had more supergrades than the number proposed for transfer. Is that not correct?

Mr. CURTIS. No, sir, I think that is incorrect. The Federal Power Commission had 54 supergrades, including 20 administrative law

judge positions. The FERC now has 61 supergrade positions, including 20 administrative law judge positions.

Mr. GORE. Sixty-one?

Mr. CURTIS. Yes, sir.

Mr. GORE. And that includes the seven that have just been added?

Mr. CURTIS. It does.

Mr. GORE. I stand corrected. Thank you, Mr. Chairman.

Mr. COLLINS. Mr. Chairman, could I just raise a question? As we talk about the need for additional staff, and it is a subject that I have heard come up again and again, I am just wondering if it is possible under this new FERC to standardize the rules to where we might do away with this?

As an example, take old oil fields that come in and they don't qualify as strippers and you said you can't qualify them for increased costs. Is there any way that you can work out standardization? What the producers have to do with a lot of the oil fields question should the fields just be closed down. Are you having many of those cases or do we just hear more about them?

Mr. CURTIS. First, Mr. Collins, I think consistency in a regulatory program and continuity in policies is very important to making the regulatory program effective. And it is something that the Commission is well aware of and keeps in mind. And, hopefully we will not repeat the mistakes the Federal Energy Administration encountered in its attempt to implement oil pricing regulations.

Mr. COLLINS. As you know, in that particular situation they go back and tell them: "Go back to your original costs and what you still have left in it." And if they had the field for 20 years, there aren't any costs and no valuation. And yet to produce the oil under new pumping procedures, they can't make it on \$5.50 a barrel.

And does every one of those cases have to go through you or is there some way you can work out a consistent procedure to take care of them?

Mr. CURTIS. They will only come to us if the Economic Regulatory Administrator would take enforcement action through the issuance of remedial orders and we get an appeal from his remedial order. Or they could come to us if a producer sought special relief through an exception to the regulation and then that request was denied. An appeal could come to us from that producer.

But generally the oil pricing regulatory program, and the allocation program, I am happy to say, is the Economic Regulatory Administration's responsibility and not ours.

Mr. COLLINS. Not yours?

Mr. CURTIS. No, sir.

Mr. OTTINGER. I am going to recognize my colleagues for 5 minutes each. We have a series of questions we would like to get on the record. There has been a very excellent job done here by our counsel William Braun. So I am going to keep to the 5-minute rule.

Mr. Gore was here first.

Mr. GORE. Mr. Chairman, I will yield to my colleague.

Mr. MOFFETT. Thank you.

Mr. OTTINGER. The gentleman from Connecticut.

Mr. MOFFETT. I would like to get to the question of information; specifically section 407(a) of the DOE Reorganization Act. That section makes it clear that the congressional intent is for your Commission to be provided with information in the possession of existing agencies both within and outside of the Department of Energy in order to carry out your responsibilities.

Recently the Department of Energy has put forth several proposals to deal with the question of confidentiality: stating the problem that the energy companies may be unwilling to provide information to the energy agencies if they know that the information could be sent to you or the Federal Trade Commission or Justice and used for competition investigations. Are you aware of the DOE proposals to deal with the question of confidentiality? Have you commented on them?

Mr. CURTIS. I am aware of it. The Commission has not taken a position in commenting on the policy review initiated by the Energy Information Administrator.

Mr. MOFFETT. Have you been asked to comment on those?

Mr. CURTIS. I believe that there is a general request to comment. However, we may have been asked to comment specifically.

Mr. MOFFETT. Do you plan to comment?

Mr. CURTIS. As far as any proposal to limit access of the Federal Energy Regulatory Commission to information obtained by the Energy Information Administrator, it seems to me the law is clear—information must be presented to the Commission upon demand.

If it were to be limited, it would require action by the Congress. I haven't felt a compelling need to comment on that aspect of it because I think it is stated in the rule proposal that they have a statutory obligation to supply us with information.

Mr. MOFFETT. Good. Has the defeat of the office for Consumer Representation bill caused you to make plans to attempt to see that consumers are represented in the same way and in the same fashion as they might have been had the bill passed?

Mr. CURTIS. Yes, sir. We have under consideration a plan to set up a consumer liaison office, a formal one that would at the moment engage in two functions. First, to open particularized communication channels to consumer organizations to inform them of matters before the Commission which may be—

Mr. MOFFETT. Does that relate to intervention also?

Mr. CURTIS [continuing]. Of interest to them. Secondly, it is to provide counseling to consumers on the manner in which they may participate in our proceedings and liaison with staff who can give them professional counsel on the content and nature of the proceeding and the testimony to be presented.

And then lastly we are planning to assume an intervention funding authority which the conferees on the National Energy Act have preliminarily agreed to. That planning is going forward on the expectation of the legislation.

We do not have, in our opinion, authority to grant intervention funding beyond that out of existing appropriated monies. The Commission sought in the Supreme Court a petition for certiorari to

review the Green County case in which the court, in a rather strong opinion, determined that the Federal Power Commission did not have intervening funding authority. We sought Supreme Court review and that was denied 2 weeks ago.

Mr. MOFFETT. Yes, I am familiar with that decision and I thought it was unfortunate. But you feel as far as intervention is concerned, evening up the odds with regard to information that is presented, that your staff can fulfill that function itself? In other words, you don't have to create something like an Office of Public Counsel?

Mr. CURTIS. I do not regard the staff function in proceedings to be merely custodians of the record.

Mr. MOFFETT. Fine.

Mr. CURTIS. I believe that the staff has an advocacy responsibility to present policy options in that record for Commission determination. For that reason, among other reasons, we have employed through reorganization of the Office of General Counsel, a Chief Trial Counsel who has direct supervisory responsibility for the case presentations for two purposes, one, to provide some insulation between the General Counsel and the underlying casework so that the General Counsel can more effectively and fairly perform his advisory function; and second, to give management direction to those case presentations so that they can indeed do more than serve as custodians of the record.

But I would like to add, because this is a big subject, I do believe that there is a proper role for private consumer or other intervention in our proceedings. I do not believe that all wisdom will reside in the staff, even when actively pursuing its responsibilities.

Mr. MOFFETT. Your record would reflect that. I want to say we have had many departments and agencies come before us and also before the Government Operations Committee on which I serve, since the new administration came to power. Sometimes I wonder whether or not we really did have an election in November of 1976 that meant anything and resulted in any changes.

But I want to say to you and your staff that it is very apparent that a change has taken place in the Commission for the better as far as this member is concerned. I applaud your efforts and look forward to working with you.

Mr. CURTIS. We hope next year at this time you are of a similar mind.

Mr. MOFFETT. I hope so too. Thank you.

Mr. OTTINGER. The gentleman from Tennessee Mr. Gore.

Mr. GORE. Thank you, Mr. Chairman. I certainly enjoyed listening to those questions from my colleague from Connecticut. Very enlightening.

I want to reiterate my belief that the Commission ought to proceed with a review of the tax model used in the 770-A decision. I want to reiterate my belief that it ought to do everything possible to speed up the rebate of monies to the consumers that were damaged in the Texas Eastern-Gulf contract nonperformance. And I want to applaud your decision to appeal the Shell case.

Then I want to explore briefly the question of the independence of the FERC. And after this short period of time ask you if you see the

delegation of personnel hiring responsibilities to DOE as a threat to the Commission's independence?

Mr. CURTIS. As for the question of independence of the agency, I think every member of the Commission recognizes it is our responsibility to guard the independence of that decisionmaking process. We believe we have done so.

Actions taken by the Secretary have been totally consistent with preserving the independence of our decisionmaking process. And, I am pleased to be able to comment that the Secretary has indeed strengthened this Agency's ability to carry out its responsibilities, beyond that which would have occurred had the Commission remained outside of the Department. For example, we would not have obtained the additional supergrades; we would not have obtained the additional positions. Had the Commission remained outside of the Department, we would not have been able to call upon a greater pool of resources and to have the Secretary's support in our regulatory programs. And, this has been very beneficial to the Commission.

As to the personnel office, the Commission, as you know, has entered into an agreement to rely on centralized services, which includes the processing of our personnel actions through the much larger personnel office of the Department, Mr. Gore. It is an agreement that we may revoke by unilateral action, in whole or in part, acting on our own motion should it prove unsatisfactory.

There is a potential that control over the logistics of an agency can evolve into practical control of the agency itself. It is a potential that I think we have the duty to guard against.

Now, the centralized management services have not been fully satisfactory. They have significant shortcomings. But they have great potential because the Secretary can bring to bear greater resources on our personnel problems than we as an individual commission could.

Mr. GORE. If he is sympathetic.

Mr. CURTIS. If he is sympathetic. If he is not sympathetic and it threatens the decisionmaking process, I would emphasize again we can revoke the agreement and withdraw our personnel function to ourself.

I hope it will work. I think there is a great potential there for making it work. And I think that it could achieve the types of economies that this Congress wished to achieve by setting up a Department in the first place.

Mr. GORE. I will yield to the Chairman.

Mr. OTTINGER. How many vacancies do you have at the present time?

Mr. CURTIS. Close to 300.

Mr. OTTINGER. What is the average time processing an application once you have decided that you wanted an individual person on the staff?

Mr. CURTIS. The average time is approximately 60 to 90 days. There are some exceptions to that that are disappointing. There are exceptions where it has taken longer through simple failure of the system to work. And then there are longer periods yet that are involved if certification from a Civil Service Register is involved, which adds approximately 4 weeks as I understand it.

Mr. OTTINGER. In view of the needs of your Agency isn't that an inordinate delay period; and aren't you in fact, with a 20 percent turnover, losing people faster than you are able to put them on and fulfill the functions you are unable to fulfill because you don't have adequate resources?

Mr. CURTIS. There is no question it is hurting us very deeply.

Mr. OTTINGER. I would just like to say that I am very concerned about that potential control the Department of Energy can exercise over the personnel function of the Federal Energy Regulatory Commission.

You know, with the present setup you may have a sympathetic Secretary but it establishes a precedent that I find exceedingly uncomfortable. My own disposition would be to separate those functions. I am also very concerned that you are not able to put on people that are already authorized in order to be able to fulfill your needs.

I would think that we would be well advised to take some action in that regard. You wouldn't have any objection if we line-item some of these functions and specify that certain personnel ought to go into particular slots where your needs are great. And of course I'm not talking about individuals now. I am talking about positions.

Mr. CURTIS. Mr. Ottinger, I think any person who has management responsibility must tell you that they want maximum flexibility. And so I would prefer—as past individual agency heads and members of the executive branch who have testified before this committee—an authorization for such sums as may be necessary. But I recognize that this committee's longstanding policy is not to do that.

Mr. OTTINGER. Well, I don't mind giving you some flexibility within your operation but I have a feeling that the resources devoted to your operation within the Department of Energy—with all your kind words about the Secretary—are just totally inadequate and totally disproportionate to the resources that exist within the agency in order to permit you to do your job.

Mr. CURTIS. If your question is would I object to the Commission having a separate authorization, I think the answer is no. I understand that would be appropriate.

Mr. OTTINGER. I certainly am very inclined to see that happen. I thank the gentleman for yielding.

Mr. GORE. Certainly. How would you like a guarantee of about 1 percent of DOE's budget on a constant basis?

Mr. CURTIS. I like it.

Mr. GORE. At this point in the record I would like to enter into the record the text of the Common Support Agreement that Chairman Curtis referred to earlier, between the Chairman of the FERC and the Director of Administration for the Department of Energy.

Mr. OTTINGER. Without objection so ordered.

[The document referred to follows:]

COMMON SUPPORT AGREEMENT BETWEEN CHAIRMAN, FEDERAL ENERGY REGULATORY COMMISSION AND DIRECTOR OF ADMINISTRATION, DEPARTMENT OF ENERGY

As the Department of Energy Headquarters structure has evolved over the past several months, agreement has been reached on the assignment or responsibility for the provision of management and administrative support services.

Generally speaking, the operational capability for providing each service will be centralized within the principal Headquarters staff or program organization having overall responsibility in that particular functional area. Under this structure, the Assistant Secretary organization, Economic Regulatory Administration, and Energy Information Administration will all obtain support from the appropriate central offices making it unnecessary for them to devote their own staff resources to such functions except for the purposes of coordination and liaison. It is agreed that the Federal Energy Regulatory Commission will be supported by the central staff in a similar manner, as specified in this Agreement.

During the period of initial organization, the Federal Energy Regulatory Commission has attempted to make maximum use of the central Department of Energy support capability where the requirements of the Commission for support are common to those of other Headquarters organizations, although the Federal Energy Regulatory Commission has retained in-house capability for providing program-related support, and for advising and assisting the Commission relative to areas of common support. We believe that this is the most desirable approach since it fully recognizes that the programmatic responsibilities of the Federal Energy Regulatory Commission demand a fully developed internal capability in some support areas such as legal, document and correspondence control, audit and accounting for compliance, public information, as well as appointing, selecting and determining appropriate responsibilities of staff. However, this approach also recognizes that there are general support requirements such as contracting and procurement (except for employment of experts and consultants pursuant to 401 (c) (5) Department of Energy Organization Act), recruiting and personnel administration, payroll, ADP, operation of management information systems, property management, facility maintenance, and equal employment opportunities, which generally can be provided by Central Headquarters Office without jeopardizing the programmatic independence or objectivity of the Federal Energy Regulatory Commission. In addition, this will provide the broader benefits of increased efficiency, maximized staff resource utilization, and more effective management of the support functions. It is further agreed that the Central Office staff will, on request, provide support in areas where expertise is not resident in the Federal Energy Regulatory Commission staff.

Finally, it should be emphasized that this approach need never compromise the Federal Energy Regulatory Commission's position as the final authority on matters within its jurisdiction, even where operational support is provided centrally. For example, even though the Central personnel Office would provide operational personnel support, direct program-related responsibilities, such as defining qualification criteria, determining selection procedures, and selecting employees, would remain with Federal Energy Regulatory Commission officials. In the same manner, though the Management Office might define the structure and format of the Department of Energy Management Directives System, the content and objectives relating to the Federal Energy Regulatory Commission programs are clearly a Commission responsibility. Furthermore, the Federal Energy Regulatory Commission would retain full responsibility for the planning, conduct, and evaluation of its substantive programs, objectives, and internal organization. Moreover, the Federal Energy Regulatory Commission would have authority to exempt itself from policy guidelines or requirements which it determines impair its independent regulatory status or the conduct of its administrative responsibilities.

Given the above considerations, it is desirable for the Federal Energy Regulatory Commission to maintain requisite staff capability in areas where operational support is provided by central staff organizations. We see this as being necessary to enable the Federal Energy Regulatory Commission to communicate effectively with the Central Support Organization, to give independence to the Federal Energy Regulatory Commission's budget preparation process as contemplated by the Act (See Section 401(j), Department of Energy Organization Act), and to permit the Commission to monitor and oversee the furnishing of operational support under the provisions of the Administrative Support Agreement. Further, since the Commission's concurrence is necessary for any policy determination which impacts on the support services being provided to the Federal Energy Regulatory Commission, we consider it imperative that the Commission maintain a knowledgeable staff in certain key areas to advise the Commission as appropriate. This is particularly important in the area of budget formulation

wherein specific authority is given to the Federal Energy Regulatory Commission for development of its budget requests, and in the personnel area, where similar discrete authority is given to the Chairman.

The undersigned agree to examine the effectiveness of this Agreement from time to time, and to modify and/or supplement the Agreement accordingly based upon working experience. If significant problems arise in the operation of this Agreement and cannot be mutually resolved, the Secretary will be notified and the Agreement can be terminated by either party with 90 days' notice.

CHARLES B. CURTIS,
WILLIAM S. HEFFELFINGER.

Mr. GORE. The way I read this agreement, Mr. Curtis, it is awfully vague. And if you decide to pull back the hiring responsibility into FERC, you have to give notice for 90 days, you have to somehow scramble around and reallocate the funds and personnel slots with FERC to handle the responsibilities that have been performed by the Director of Administration.

It seems extremely cumbersome. It might be well to set forth a detailed plan as to how you would accomplish that in the event your independence is threatened. Would you agree?

Mr. CURTIS. I would agree that the common support agreement is not precise in many of its terms. The reason for the 90 day advance notice results more from a concern with the Civil Service requirements as they may relate to determination orders of transferring people back and forth, taking them out of career paths, Congressman, and matters of that nature.

However, a management plan for exactly what steps would be undertaken in the event it became necessary is probably a good practical suggestion.

Mr. GORE. Well, I think it is admirable that you have gotten from Secretary Schlesinger the kind of cooperation you have. And as I understand it, he has given you practically everything you have requested to make FERC work, right down to the letter. Am I wrong in making that statement?

Mr. CURTIS. He has supported our definition of our needs in every case.

Mr. GORE. Well, some were concerned that because he opposed an independent FERC from the very beginning that he might be reluctant to give it the kind of support that it needs to be autonomous. I did not share that concern because I have great confidence in the Secretary. But in the future, one can certainly anticipate a situation where the Secretary might have a different attitude toward the functions performed by FERC. Democrats don't always win the Presidential election. It could create real problems in the future.

It seems to me there are three areas that give you some exposure. The first is the matter of personnel hiring that we have been discussing. The second is the budget functions and the allocation of supergrades positions; the allocation of funds for your operations. And the third is of course the dependence on DOE or EIA for your information and for your data.

I would hope that you would keep your eyes open as you begin this enormous task and come up with some ideas that we can explore with you at a later date on the subcommittee on how we can insulate FERC from the kinds of hazards that are implicit in this dependence on the Secretary.

It is not the best time to explore it in detail today because you are fairly new and the Commission is fairly new. But I see this as the real potential problem in the future. I welcome any comments you want to make on that.

Mr. CURTIS. We would be happy to give this some further thought.

Mr. GORE. Thank you, Mr. Chairman.

Mr. OTTINGER. Just the reliance upon the generosity of the Secretary, for whom I don't have the same degree of confidence as my colleague from Tennessee, bothers me. He has been generous and he has forwarded your requests to OMB, but that in itself creates a dependence that I think is just very unhealthy. It creates with it the ability of him to exercise an influence because you rely on that generosity. And I don't think you should have to rely on that generosity no matter how good any Secretary may be with regard to his treatment of the Commission.

We return to Mr. Braun.

Mr. BRAUN. Chairman Curtis, would you evaluate the Commission's needs for contract support funding authority?

Mr. CURTIS. If you would give me just one moment. We will speak generally, Mr. Braun. We have two major projects. One is the conclusion of the TAPS case, a good part of which will require contracted-for skills and expertise that the Commission does not have in-house.

Another is the Alaska Gas Project which is a matter I know you are quite familiar with and which will require FERC to make extensive reliance on contracted-for, nonrecurring functions.

In addition to that we hope to rely on a greater utilization of contracted-for services in the day-to-day work of the Commission. Now, we have brought with us an array of what we would propose to employ additional contract authority for. Our most immediate needs are for some \$700,000 for the TAPS case; and adding to that a number of other requirements, we end up with a \$3.5 million requirement for additional contract authority needed in fiscal year 1978. We are determining whether we can obtain those funds through a reprogramming of funds elsewhere available in the Department at this very time.

As far as our contracting needs for fiscal 1979, I will have to pull together the individual contracts but primarily they focus on the Alaskan Gas Project and on the TAPS case. Perhaps Commissioner Smith may wish to comment on the Alaskan Gas Project needs for contractual funds.

Mr. SMITH. The immediate tasks associated with the Alaskan Natural Gas Project relate both to the Commission preparing itself for the final certification stages of that project as well as the somewhat unique requirements that project has. The Chairman submitted generic figures on the amounts that would be necessary. I must say that the final projection of total funds will depend to an extent on decisions that are made relative to the Federal inspector. If the Federal inspector is directly funded as opposed to utilizing the constituent agencies for much of his work, then it would not be necessary to fund FERC in those amounts.

If, however, the very extensive fiscal audit program as well as the management audit program that Congress contemplated for that

project come from contributions by the agencies, then I think those sums will become necessary.

I would think that the opportunity for this committee to examine the work plan for that will come relatively soon when the reorganization plan, which sets out the components of the Federal Inspector's Office, is placed before you.

Mr. OTTINGER. One area that I was interested in exploring, and neglected to before, you have, as I understand it, a turnover of somewhere between 15 and 20 percent in your personnel, and that can't be good for an agency. I wondered if you would tell us what some of the conditions are that caused that very high rate of turnover; and what is being done about it; and whether—and I suppose a related question—whether some of these people who are leaving ought to be leaving and how much of an inherited problem do you have in terms of incompetent people that came with the agency?

Then third, I understand that the average salary that is paid within the Commission is drastically lower than that within any of the other departments and agencies, by a factor of more than two. And is anything being done to correct that? It would seem that you are overly staffed with very low paid workers, at least compared to the rest of the agency and, as I understand it, compared to other agencies.

You mentioned a rule-of-thumb figure of \$25,000 per person. Actually the average within the other departments of DOE comes closer to \$34,000 to \$35,000 and within the FERC I understand it is about \$19,000. And that really is a very very marked differential. And I wonder to the extent that is causing problems and what you are doing about it?

Mr. CURTIS. Mr. Ottinger, you are correct that the attrition rate is between 15 and 20 percent. The reasons for that are many. First, I am the third Chairman that the Federal Power Commission had in the space of some 31½ years. So there is a substantial turnover in the leadership of the Commission. And with that frequent a change in administration, there is perhaps a feeling of lack of direction resulting from a lack of continuity in leadership. When a Chairman changes, usually the office heads change as well. That breaks the management chain.

Second, the FPC did not enjoy a good reputation—being caught between very strongly held views on very important, changing jurisdictional issues. That also made it difficult to continue to feel personal reward in public service. And people undoubtedly left for that reason as well.

Last, being essentially overwhelmed by the task, given the resources applied to it, there comes a point in time when even the most highly motivated public servant will conclude that he does not need this aggravation, especially the one who is highly talented and able to obtain work elsewhere.

Fortunately a number of highly talented and dedicated people remain behind. And we are lucky to have them. I think this committee owes them, as I feel, a great sense of debt for their presence and their willingness to remain.

Next, for a period of 1 year the FPC existed under a death sentence. The elected President of the United States had announced in

his campaign his intention that the FPC be abolished through an early act of reorganization. When that President was sworn in, one of his first actions was indeed to send to the Congress a program to abolish the agency, and it was accomplished.

That, combined with the change, the loss of identity and the difficulties of merging into a new department again further demoralized and shook some people out of the tree. There were also those who were discouraged by the specific conflict of interest provisions that the Congress attaches to employees of the Department of Energy.

Those are the kind of basic problems that related to the overall circumstances of the Commission. Particularly, though, there are some specific reasons which have come out in Mr. McDonald's interviews. Primarily there is a sense of a lack of participation. We have implemented a number of procedures which we hope will effectively deal with that.

A lack of pride in the quality of the work-product of the Commission is another factor. In some cases that reflected a disenchantment with the Commission itself and there were those who left because of that.

Basically we need to implement better management devices to improve the quality of our work-product and to instill a sense of professional dedication and give reward to that professional dedication that has been made by Commission staff.

And then lastly it is a matter of putting in place what has been seriously missing—career opportunities, and that has to do with the grade level; training opportunities, which is simply absent at the Federal Power Commission. And there is one problem that in the short term, we just have to live with, and that is there are serious problems with out location. It is unsafe. The building is in deplorable condition.

All of those things combine to suggest to people that they no longer need to put up with the situation at the Commission.

Mr. OTTINGER. I understand the location you are in at the present time is quite a hazardous one; that a pregnant woman employee was recently attacked at 11 o'clock in the morning, or something of that nature, in front of the agency. What are the prospects for moving to safer and more attractive quarters?

Mr. CURTIS. Well, the Secretary has obtained from the President the promise of the Forrestal Building which is very attractively situated. The current plans are to consolidate the Department's headquarters people in that building to the extent practicable, including the Commission. The difficulty is that there are some 8,000 to 9,000 Washington area employees in the Department and the Forrestal Building, when fully available for occupancy, offers space for only 5,000. So a choice has to be made on what parts of the Department to leave outside of the Forrestal Building.

Mr. OTTINGER. Can anything be done to get improved police protection in the area in the meantime?

Mr. CURTIS. Yes, sir. Mr. McDonald is working on that and a number of other areas to improve the physical space, and the attention to cleanliness of the landlord.

Mr. OTTINGER. What about the low status that the agency seems to enjoy with respect to grade level as compared to the rest of the Department?

Is Mr. Schlesinger's largesse going to extend to that area?

Mr. CURTIS. Regarding the average grade level, first, it will be biased upwards by the addition of the supergrades. But, second, the grade level reflects Civil Service assessment of grade levels for certain skill categories and is not an indication of bias on the Secretary's part. Furthermore, comparison of the Commission's grade level with other DOE components probably reflects historical generosity by the Civil Service Commission at the time that ERDA was established and at the time the Federal Energy Administration was established, both of which were equipped with extraordinarily, given overall Government averages, high grade levels. But those agencies, unlike the Federal Power Commission, were established in the modern era of energy awareness.

I think the Congress, recognizing the importance of energy matters to this country and their complexity, made a conscious choice of putting a superior grade level structure into those agencies. That awareness never caught up with the Federal Power Commission that was established in the 20's.

Mr. OTTINGER. Is there anything this committee can do to help with the upgrading there? I mean you are dealing with a highly complicated and sophisticated subject and the people that you need in such areas as compliance and enforcement, for example, are going to have to be people who have considerable professional background. There has to be room in the agency, if you are going to be able to deal with these matters adequately, for you to—

Mr. CURTIS. Maybe Commissioner Sheldon could comment more knowledgeably than I, but I think once you establish the top of the pyramid, the supergrades, all the rest will be pulled up underneath it.

Ms. SHELDON. This committee could very well recommend that a cadre of people, whatever number for enforcement and so on, be outside the Civil Service regulations. I will be happy to help the staff in that regard. You can ask for such things. And this is why ERDA has the high grade level it has, because when it was established the entire agency was outside of the classification system. But there are specialties wherein such requests can be made. And I think this is one way you could get around that problem.

Mr. OTTINGER. I think we would like to hear from you as to particular areas within the agency administration that need to be upgraded or need special attention. I think that is a matter of real concern. It isn't just the quantity of people, but you are going to need people with very specialized backgrounds. And some of those are very hard to find outside the industries that you regulate.

Mr. CURTIS. I have to impress upon you an outrageous example. The Commission right now has authority to hire entering petroleum geologists at a GS-5 level. You can imagine how successful we are in our recruitment.

Mr. DINGELL. Mr. Chairman.

Mr. OTTINGER. I would be glad to yield to the Chairman.

Mr. DINGELL. Thank you, Mr. Chairman. I find this line of questioning quite interesting. I will be suggesting to the staff that we

submit to DOE some rather clear questions as to the number of supergrades that are down there both under regular rules of the Civil Service Commission and also outside the regular Civil Service functioning. And I think Commissioner Sheldon, your comments are an abundance of help to the Commission and we shall pursue them with substantial vigor.

I would like to have, if you could, further amplification. I am particularly concerned about this aspect. We have requested the Department of Energy to submit to us the information on the number of supergrades and other positions which they have down there which remain unfilled and the justifications for them being unfilled and whether or not they could be assigned to you folks at FERC for purposes of cleaning up this backlog which you have regrettably inherited.

Commissioner Sheldon, do you have any comments?

Ms. SHELDON. I do not have any information on how many positions—supergrade positions—the Department has which are not filled. I would only suggest—

Mr. DINGELL. I don't want to lay that on your back.

Ms. SHELDON. This I don't know. I have no information on that. But if they do have any unfilled ones available—

Mr. DINGELL. We shall make inquiry through the staff, and I trust the staff is noting my concern here. Would you want to comment further, though, particularly on the earlier point with regard to this executive-service-type position, if you please?

Ms. SHELDON. The Federal Energy Regulatory Commission is not participating in that particular service.

Mr. DINGELL. Can somebody tell us why?

Mr. CURTIS. Commissioner Sheldon was absolutely correct until February 24 in which we were authorized—

Ms. SHELDON. Excuse me.

Mr. DINGELL. What occurred on the 24th of February? I seem to recall having heard just prior to that time on this.

Mr. CURTIS. The Commission was authorized seven additional supergrades two of which are drawn from the executive service pool. And that is the new authority.

Mr. DINGELL. I am going to give Commissioner Sheldon a 99 on that particular answer.

Mr. CURTIS. It is a recent event and it is my error in not reporting it to the Commission at large.

Mr. DINGELL. How does seven compare with the number in fact needed by your agency?

Mr. CURTIS. It is directionally correct, Mr. Chairman.

Mr. DINGELL. A starving man looks with good feeling upon crumbs, but I am curious whether or not we have more than crumbs here.

Mr. CURTIS. Mr. Chairman, I did make the point earlier, but it is worth emphasizing that the Federal Energy Regulatory Commission has received greater authorizations in terms of positions and in supergrades than would have been available to the Federal Power Commission had it existed outside of the Department, through allocations from the Secretary who has been fully supportive of our needs.

Mr. DINGELL. Mr. Curtis, we laud this. We question, however, whether it is sufficient for your needs. I am aware of the difficulty you face in terms of your relationship with this committee and also with the Secretary, but I would remind you that you are an independent agency by reason of the concerns of certain members of this subcommittee and of the committee.

Mr. CURTIS. I hope you noticed I said "supportive," not "sufficient."

Mr. DINGELL. We will make further inquiries. Commissioner Sheldon, do you want to give us any further amplification on the point that you raised, particularly with regard to the executive service and the flexibility of these positions?

Ms. SHELDON. What I was suggesting was, outside of the regular Civil Service Commission standards we can ask for such specialized positions as it may not be possible to examine for. And I would be happy to talk with your staff people, if you wish, on the nitty-gritty of how we go about that. I don't think you want to go into that at this juncture.

But there are ways to do this, and the Civil Service Commission would be happy to help implement these things.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. OTTINGER. There is one other subject that is rather near and dear to the chairman's heart and to mine that I neglected to ask you about. You have a licensing function for hydroelectric facilities?

Ms. SHELDON. Yes, sir.

Mr. OTTINGER. And those hydroelectric licenses expire from time to time. And there are some of us who rather think that at the expiration of those rather long licenses, that the utilities involved have earned all that they are entitled to earn and maybe some of those ought to revert to the Federal Government and the Federal Government ought to get some return on them.

To my knowledge there has never been a case in which a project has not been relicensed. Do we have any hope that that might happen under your management?

Mr. CURTIS. I don't think there has been any case where there has been recapture of a license, not to my knowledge has there been a recapture of a license facility on its 50-year expiration and its necessity for relicensing. I cannot hold out any view to the committee as to whether that is a practical possibility or not.

I, frankly, have not looked at any case.

Mr. DINGELL. Would the gentleman yield?

Mr. OTTINGER. I would be glad to yield to the Chairman.

Mr. DINGELL. Thank you, Mr. Chairman. I think it is imperative that we have before us the strictures of the *Pillsbury* decision in connection with the matters under current discussion. I wish to assure you, Mr. Chairman, that we are in full concurrence with regard to the urgent need for the agency to inquire carefully into the relicensing and also the recapture.

If you would continue to yield, Mr. Chairman? Is there a policy at FERC with regard to this question of recapture?

Mr. CURTIS. None established by the Federal Energy Regulatory Commission. Maybe Commissioner Smith, from his experience at the Federal Power Commission, might comment on the question.

Mr. SMITH. Mr. Chairman, in the regulation of the licenses projects, questions come up which can be resolved one way or the other. The policy of the staff has been to attempt to deal with those matters in such a way as to leave a project which is susceptible to being recaptured, Mr. Chairman, economically and conveniently.

It is the recognition that the day might come when the national policy requires recapture. And I think the projects are in shape to do that.

They are relatively subtle questions, most of which have to do with whether a particular action takes an integral piece out of what is considered a "project" so that if recapture ever occurred, they would not have a well-functioning project. And I think that work is being done in conformance with that policy.

Mr. DINGELL. Am I correct that the traditions of the former Federal Power Commission were to almost routinely relicense these dams?

Mr. SMITH. No, sir. I think the review of the cases show that a large number of them have become controversial. And I think the processing time reflects considerable difficulty with a number of them.

Mr. DINGELL. I am of the view that the agency has never failed to relicense these projects. Am I correct?

Mr. SMITH. No, sir. I know of no instance in which the Commission has not finally relicensed.

Mr. DINGELL. I am intrigued by your comment about the viability of the project or the system after the relicensing question arose. And if I get on the wrong side of the *Pillsbury* decision, gentlemen and lady, I would request that you so inform me. I am not trying to dictate to you your policy. But I am curious.

As I understand the original law which dealt with these questions, the matter of the review at the end of the 50-year licensing period was either automatically decided in favor of recapture or was at least to be the subject of vigorous decisionmaking by the then FPC. I am unaware of instances in which either event occurred. Could you comment as to (a) what is the law and (b) what have been the actions of the agency under it, please?

Mr. SMITH. Mr. Chairman, I have not regarded the law as creating a presumption in favor of recapture.

Mr. DINGELL. It did create a presumption at least in favor of action by the agency.

Mr. SMITH. Well, I believe we have several cases in which the recapture is a very live one. May I verify that?

Mr. DINGELL. Now, again adhering faithfully to the warnings of the *Pillsbury* decision, can you tell us what those decisions are?

Mr. SMITH. May I consult?

Mr. DINGELL. Of course.

Mr. SMITH. Mr. Chairman, I am incapable of determining whether I have a *Pillsbury* problem or not because I am not familiar with the particular cases.

Mr. DINGELL. Well, out of both respect for you and for that decision—and I do have great respect for you as you know, Commissioner—perhaps you would find it possible to submit an appropriate response for the record on this particular matter.

Could you tell us the number of personnel that you have assigned down there to this particular chore? Perhaps if you can't tell us this afternoon, you could let us know for purposes of the record.

Mr. SMITH. Mr. Chairman, I understand that we have two active cases in which the recapture recommendation has been made by other agencies, not by the Commission's staff.

[The following information was received for the record:]

Identify the cases in which recapture is a current issue.

Answer. Recapture is an issue in the following cases:

A. Chippewa Reservoir (FERC Project No. 108) located on the Chippewa River in Sawyer County, Wisconsin, currently under FERC license to Northern States Power Company.

B. Escondido (FERC Project No. 176) located on the San Luis Rey River in San Diego County, California, currently under FERC license to Escondido Mutual Water Company.

Identify the number of people currently working on relicensing issues.

Answer. Virtually the entire Licensed Projects Division staff expends some time on relicensing/recapture matters. This is so because there is no separate element within the organizational structure which is exclusively assigned to these matters; consequently, each professional staff member is assigned to work on one or more relicense applications. Of the 108 positions specifically designated for hydroelectric licensing work during fiscal year 1979, it is estimated that approximately 28 manyears will be devoted to relicense/recapture cases.

A trial attorney is assigned to each relicensing/recapture proceeding whether or not it is contested. The Office of General Counsel estimates that during fiscal year 1979 approximately 4 manyears will be devoted to these proceedings.

Mr. DINGELL. By other agencies?

Mr. SMITH. Other public agencies.

Mr. DINGELL. By another public agency?

Mr. SMITH. Yes, sir.

Mr. DINGELL. Can you identify that other public agency to us?

Mr. SMITH. Mr. Chairman, if it would be acceptable to you, we can get you a report on the status of those particular cases, including the intervenors and the various positions and where it is in the FERC process.

[The following information was received for the record:]

Identify in the above cases what other public agencies are involved, the case's status, intervenors, and positions of participants.

Answer. 3.A. For Chippewa Reservoir Project No. 108:

(1) Other public agencies involved are: The Department of the Interior; The Department of Agriculture; Wisconsin Department of Natural Resources; Wisconsin Department of Justice; and Wisconsin Public Service Commission.

(2) Case Status: The Department of the Interior, through the Bureau of Indian Affairs, on behalf of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians and the Department of Agriculture, Forest Service, jointly propose Federal takeover of the Chippewa Reservoir Project. A Final Environmental Impact Statement and a supplement thereto were issued by the FERC Staff. Extensive hearings, held both in Wisconsin and Washington, have been completed. Initial briefing has been completed. On December 14, 1977, the Administrative Law Judge issued his decision recommending that a new license be issued to Northern States Power Company. Briefs on exceptions to the ALJ's Decision are currently under preparation.

(3) and (4) Intervenor and the position of participants:

Intervenor:

	<i>Position</i>
Department of the Interior-----	Recapture. ¹
Department of Agriculture, U.S. Forest Service-----	Do.
Governor of the State of Wisconsin-----	Do.
Wisconsin Public Service Commission-----	Uncommitted.
Wisconsin Department of Natural Resources-----	Recapture.
The Lac Courte Oreilles Band of Lake Superior Chippewa Indians.	Do. ¹
Great Lakes Inter-Tribal Council, Inc-----	Do.
Concerned Citizens for the Preservation of the Chippewa Flowage.	Relicense.
Wisconsin Resources Conservation Council-----	Uncommitted.
Save the Chippewa Flowage Alliance, Inc-----	Recapture.
American Indian Movement National Directors, Inc-----	Do.
Wilderness Watch-----	Uncommitted.
Wisconsin Department of Justice-----	Recapture.
Northern Environmental Council-----	Do.

Participants:

Northern States Power Co-----	Relicense.
FERC Staff-----	Do.

¹ Or in the alternative, a non-power license.

3.B. For Escondido Reservoir Project No. 176:

(1) Other public agencies involved are: The Department of the Interior; California Department of Fish and Game; Vista Irrigation District; City of Escondido, California.

(2) Case Status: The Department of the Interior, through the Bureau of Indian Affairs, on behalf of the Rincon, La Jolla, San Pasquel, Pauma, and Pala Bands of Mission Indians, proposes Federal takeover of the Escondido Project. A Final Environmental Impact Statement has been issued by the FERC Staff. Extensive hearings, held both in California and Washington have been completed. Initial briefing has been completed. On June 1, 1977, the Administrative Law Judge issued his decision finding that the FERC does not have jurisdiction over the Escondido Project. Briefs on exceptions to the ALJ's Decision have been filed. A petition for leave to file supplemental briefs has been filed by the Indian Bands.

(3) and (4) Intervenor and position of participants.

Intervenor:

	<i>Position</i>
Department of the Interior-----	Recapture.
California Department of Fish and Game-----	Uncommitted.
Rincon, San Pasquel, La Jolla, Pauma, and Pala Bands of Mission Indians.	Recapture.
San Diego Gas and Electric Co-----	Uncommitted.
Ms. P. U. Hansen-----	Do.

Participants:

Escondido Mutual Water Co-----	Relicense.
City of Escondido, Calif-----	Do.
Vista Irrigation District-----	Do.
FERC Staff-----	Do.

Mr. DINGELL. I think that would be helpful. Let me pursue this a little further, if you please, Mr. Chairman. Can you advise me of what the practice is at the time you license a dam? Now, as I recall the law, when you license a dam, it is supposed to be amortized over the period of the license. So at the end of the time the book value and the asset interest of the holder of the license is supposed to have been reduced to zero. Now, am I correct or incorrect in that appreciation?

Maybe in the interest of time you could submit us your response to that particular point.

[The following information was received for the record:]

MARCH 13, 1978.

Memorandum to: Executive Director.

From: Office of Chief Accountant.

Subject: Treatment of amortization for dam licenses.

A. Licensed project plant and equipment costs ordinarily are not amortized over the term of the license. For both accounting and ratemaking purposes such costs are amortized (depreciated) over the useful life of the facilities, irrespective of the term of the license. For example, an initial license is generally for a term of 50 years, however, the costs of constructing the dam and the reservoir are generally depreciated over periods of 75-100 years.

B. Plant and equipment added during the license period generally is treated for accounting and ratemaking purposes in the same manner as the original plant and equipment. That is the additional plant and equipment costs are depreciated over the remaining useful life of such plant and equipment, irrespective of the unexpired term of the license.

In the event of Federal take-over of a licensed project, the licensee must be paid its "net investment" in the project, not to exceed its fair market value, plus severance damages, if any. (Section 14 of the Federal Power Act.) While the term "net investment" is defined in other parts of the Federal Power Act, questions remain as to how "net investment" would be computed in an actual take-over case.

Mr. DINGELL. If there were, however, add-ons during the economic life or during the 50-year period of the life of the dam, then I would assume that, if those were not fully amortized, under the rules of the Commission that would be a part of the residue which would remain for the Federal Government to compensate the company for on the takeover; is that correct? Maybe you would want to give your response for the record.

Mr. SMITH. Your understanding is correct on that.

Mr. DINGELL. Well, can you explain to me what are the actions of the Commission at the time the question of relicensing comes up—and I understand practically every one of them is going to be coming up within the next 5 or 10 years? Is this a routine matter? Has your staff ever made any recommendations to the Commission with regard to this point? And do you have anybody on the staff who is charged with that responsibility?

Mr. SMITH. Mr. Chairman, I think a large part of the hydro section of the Office of Power is almost wholly devoted to dealing with this question. On a relicensing application, particularly with the new environmental requirements, a very substantial piece of work is dedicated to each and every relicensing that occurs.

The review of the recreational requirements as well as almost any other aspect of it is I believe exhaustive, so much so that a very substantial contribution to our backlog is being created by the regulatory processing of these relicenses.

Mr. DINGELL. I would be very impressed by that statement if you could cite for me any instances where the staff has, as the result of this effort, recommended recapture. You have had recommendations from other agencies but I do not think that you are telling me that your staff has recommended this action.

Mr. SMITH. I am not aware of instances where the staff has done that.

Mr. DINGELL. Well, could you, Commissioner or perhaps the Chairman or any member of the Commission, explain to us why the staff has never made that recommendation?

Mr. CURTIS. Mr. Chairman, I do not know the circumstances for the failure of a staff recommendation. I can only presume it results from a staff conclusion that the public interest does not lie in a recapture. But I think it is fair to say that the whole hydro licensing and relicensing area is a problem for the Commission which has been woefully lacking in resources in the past and one we intend to——

Mr. DINGELL. I am of the view that you are fully correct in this question of resources and I would much appreciate it if you would submit to us specific information on that point, including your request for additional personnel in this area and also a statement of the number of personnel needed by you to adequately carry forward a review of this question of relicensing.

Mr. OTTINGER. If I may, Mr. Chairman? And also the number of projects whose licenses will expire within the next 5 years.

Mr. DINGELL. I think that would be most helpful.

[The following information was received for the record:]

Identify resource requirements for both hydro licensing and relicensing and submit a list of projects whose licenses will expire within the next year.

Answer. 5.A. Resource requirements for both hydro licensing and relicensing are:

Of 108 positions for fiscal year 1979 assigned to hydroelectric licensing work, it is estimated that 28 manyears will be devoted to relicensing and 80 manyears to licensing.

5.B. The attached lists reflect those hydro projects due to expire between January 1, 1978, and December 31, 1983. During this period, eight licenses will expire which are subject to Federal takeover and nine will expire which are not subject to takeover.

PROJECTS FOR WHICH LICENSES WILL EXPIRE BETWEEN JAN. 1, 1978 AND DEC. 31, 1983, INCLUSIVE, WHICH ARE SUBJECT TO RELICENSING OR TAKEOVER¹

License expiration date	License	Project No.	State	County	Stream	Installation (kilowatts)	Facilities under license	Period of license (years)
Aug. 31, 1979	Utah Power & Light Co.	814	Utah	Beaver	Beaver River and tributaries.	3,000	Dam, reservoir, and powerhouse.	50
Dec. 11, 1979	Pacific Power & Light Co.	935	Washington	Clark and Cowlitz	Lewis River	135,000	do.	50
Apr. 10, 1980	Consumers Power Co.	785	Michigan	Allegan	Kalamazoo River	2,550	Dam, reservoir, powerhouse and transmission line.	50
Apr. 21, 1980	Safe Harbor Water Power Corp.	1,025	Pennsylvania	York and Lancaster	Susquehanna River	196,000	Dam and powerhouse	50
May 22, 1980	The Montana Power Co.	5	Montana	Flathead and Lake	Flathead Lake and River	168,000	Dam, reservoir, 2 penstocks, powerhouse, and transmission lines.	50
June 30, 1980	Moon Lake Electric Association	190	Utah	Duchesne	Polecreek Uinta River	1,200	Dam, canal, diversion dam, powerhouse, and a transmission line.	50
June 30, 1981	Appalachian Power Co.	739	Virginia	Pulaski	New River	77,400	Dam, reservoir, powerhouse and transmission line.	50
Sept. 30, 1982	Pacific Gas & Electric Co.	1,962	California	Butte and Plumas	North Fork of Feather River	180,900	2 dams, 2 reservoirs, 2 powerhouse and transmission lines.	35

¹ Sec. 14 of the Federal Power Act (16 U.S.C. 807) reserves the right of the United States to take over the project works upon expiration of the license at a price to be determined under that section, but may be waived pursuant to sec. 10(1) to the act (16 U.S.C. 803(1)). Sec. 14 is not applicable to any project owned by a State or municipality, pursuant to Act of Aug. 15, 1953 (67 Stat. 587).

PROJECTS FOR WHICH LICENSES WILL EXPIRE BETWEEN JAN. 1, 1978 AND DEC. 31, 1983, INCLUSIVE, WHICH ARE NOT SUBJECT TO TAKEOVER¹

License expiration date	Licenses	Project No.	State	County	Stream	Installation (kilowatts)	Facilities under license	Period of license (year)
Aug. 9, 1978	Crisp County Power Commission...	659	Georgia	-----	Flint River	15,700	Dam, powerhouse, storage reservoir, and transmission line.	50
Nov. 6, 1978	Puerto Rico Water Resources Authority.	663	Puerto Rico	Crisp, Dooly, Lee, Sumter, and Worth.	Blanco River and tributaries.	5,000	4 diversion dams, conduits, powerhouse, and transmission lines.	50
Mar. 31, 1979	Citizens Utilities Co.	912	Idaho	Magusbo municipality	Placer Creek	± 298	Dam, reservoir, and powerhouse.	50
Nov. 26, 1979	Myrum City Corp.	946	Utah	Wallace, Shoshone	Blacksmith Fork	± 450	Dam, reservoir, powerhouse, and transmission line.	50
Jan. 20, 1980	Public Utility District No. 1 of Chelan County and Puget Sound Power & Light Co.	943	Washington	Chelan and Douglas	Columbia River	212,100	Dam, reservoir, 2 powerhouses, and transmission lines.	50
Apr. 10, 1980	City of Ottumwa	925	Iowa	Wapello	Des Moines River	3,000	Dams and powerhouse	50
May 1, 1980	New England Fish Co.	1,299	Alaska	Kodiak Island	One Mile Creek	± 53	Diversion dam, pipeline, and 8 turbines.	10
Aug. 23, 1983	City of Ephraim	1,212	Utah	Sanpete	City Creek	± 205	Pipeline and Powerhouse	50
Dec. 8, 1983	City of Radford, Va.	1,235	Virginia	Montgomery and Pulaski	Little River	± 800	Dam, reservoir and powerhouse	50

¹ Sec. 14 of the Federal Power Act (16 U.S.C. 807) reserves the right of the United States to take over the project works upon expiration of the license at a price to be determined under that section, but may be waived pursuant to sec. 10(i) of the act (16 U.S.C. 803(i)). Sec. 14 is not applicable to any

project owned by a State or municipality pursuant to Act of Aug. 15, 1953 (67 Stat. 587).

² Minor license.

³ Includes equivalent bid for 60 Hp (mechanical).

Mr. DINGELL. Could you tell us how many folks you have down there that direct their attention to this and whether they direct their attention to the question of relicensing or recapture, and on what basis they direct their attention to recapture, please?

I don't ask you to give that to us this morning. Just give us your best answer on the particular point.

[The following information was received for the record:]

Describe the process used by hydro staff in determining recapture, non-recapture, and relicensing issues.

Answer. In processing applications for relicensing, the Commission considers any recommendation for project takeover by a Federal Agency. If the Commission determines that a project should be relicensed, it will so order. However, if any Federal department or agency recommends takeover, the Commission will, upon motion of such department or agency, stay the effective date of its order for two years and notify Congress of its action. If by the expiration of the two-year stay, the Congress has not authorized takeover the new license will become effective.

To carry out the Commission's responsibilities under Section 14, Part I, of the Federal Power Act, a detailed accounting review and analysis of the excess earnings of each licensed project in accordance with the Commission's General Policy Statement on "Net Investment" set forth in Order No. 387 (Docket No. R-297) issued August 4, 1969, must be made upon relicensing or takeover. The policy provides that the FERC will estimate the net investment component of a takeover price for a project as equal to the project original cost, less the amount accumulated in the project depreciation reserve, subject to a maximum potential further deduction of the balance accumulated in the project Section 10(d) (Federal Power Act) amortization reserve account. Licensees are required to establish and maintain amortization reserve accounts on a current basis, in accordance with the terms in their licenses. In addition, for each project that would be taken over, severance damages and net reimbursement to the owners must be determined.

The decision as to whether to relicense or recommend Federal takeover of a project must be made in light of the comprehensive development standard of Section 10(a) of the Federal Power Act, i.e., the project adopted shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes. Among the factors to be considered are the willingness of another Federal agency to take and operate the project, economic and financial feasibility, multiple purpose uses of streams, hydraulic and electric coordination of a project with other projects and systems including the effect upon the supply of electric energy to the affected system and the rates charged Licensee's customers, water quality control, recreational development, fish and wildlife conservation, development of aesthetic values, preservation of historical and archeological properties, environmental enhancement and protection measures, and licensee's financial condition, taxes collected by local, State and Federal governments, and the overall public interest.

Mr. DINGELL. Can I inquire also whether you have received any communications in your records over the years from OMB with regard either to personnel for this purpose or to the policy of formerly FPC, and now FERC on this particularly point?

I wish to make it clear, Mr. Chairman, that it is not my purpose to guide your policy in defiance of the *Pillsbury* decision, but I am simply trying to find out whether, in fact, you have a policy or whether in fact you have a mechanism to review this question? I am concerned that you have neither.

I don't try to dictate it but I am simply trying to find out (a) if you have it; and (b) if not, why not; and (c) what we ought to be doing about it?

Mr. CURTIS. I understand the nature of your inquiry, Mr. Chairman, and we will supply this committee with a report on the subject.

[The following information was received for the record:]

Identify the part that OMB played in determining the resources required for hydro relicensing for both the FPC and the FERC.

This question is answered in two parts: (a) FPC, and (b) FERC.

(a) On September 16, 1977, FPC requested 61 additional positions for the hydroelectric licensing program. There was no specific breakout for the relicensing process. However, if the positions would have been approved, approximately three would have been for relicensing. OMB did not act on the request.

(b) On October 21, 1977, FERC asked for an increase of 52 positions for the hydroelectric licensing program. Approximately three positions would have been used for the relicensing process. OMB did not give FERC any additional positions for hydro.

Mr. DINGELL. I am curious as to whether this is related to a policy inside your agency of not wanting to ask for appropriations or to pay for the costs of the dam, after 50 years, remaining unamortized or perhaps some instructions from OMB on this point. When I deal with you people downtown or the regulatory agencies, I always get the feeling that you are in statute independent but in point of fact OMB dictates very largely to you with regard to your policies.

Now, Mr. Curtis, you know I have the most abundant respect for you but I have the very least trust for OMB as you well know.

Mr. CURTIS. Mr. Chairman, I cannot comment on the relationship between the Federal Power Commission and the Office of Management and the Budget, which preceded my experience at the Commission.

Mr. DINGELL. I am aware of that.

Mr. CURTIS. But of course the Congress did, in order to assure our independence, require a disclosure of the request that the Commission makes of the Secretary to be made to OMB so that you might have the benefit of knowing our independent views of the requirements in making comparison to the decisions of the President upon the guidance of the Office of Management and Budget.

Mr. OTTINGER. The committee will stand in recess. Let's go off the record a minute.

[Discussion off the record.]

Mr. OTTINGER. We will resume as quickly as we can get back and go to 1:30. We will have to go and vote.

[Brief recess.]

Mr. OTTINGER. The committee will come to order again. I appreciate your presence today and I understand the hour is late, but there were some other areas which we just wanted to complete the record on. And I think it would be more sensible to do that while you are here than to have you back up again.

I understand that you have been given the responsibility, perhaps have had it all along, for inspecting the dams that the Commission licenses. And I am told that there are some 850 dams and only 23 inspectors. In light of the tragedy that recently took place in Georgia, that is a matter of some concern. I wonder if you

would comment on what you feel your needs are in that area and how you intend to go about fulfilling this obligation so that there will not be any tragedies of that nature on the dams for which you are responsible?

Mr. CURTIS. Mr. Ottinger, we are responsible for dam safety for those licensed projects within the Commission's jurisdiction—those being non-federal projects. The Commission's program for dam safety has been outlined in a letter to Chairman Randolph in the Senate, February 1, 1978, that I would be happy to supply for the record.

Mr. OTTINGER. Without objection that will be included in our record.

[The letter referred to follows:]

FEBRUARY 1, 1978.

HON. JENNINGS RANDOLPH and HON. JAMES A. MCCLURE,
Committee on Environment and Public Works,
U.S. Senate, Washington, D.C.

DEAR SENATORS RANDOLPH AND MCCLURE: This is in reply to your letter of December 16, 1977, requesting information regarding our program for assuring the safety of dams.

At present there are 850 dams under the jurisdiction of the Federal Energy Regulatory Commission (FERC)¹. In addition, it is anticipated that this number will increase to about 1,000 as additional projects are licensed in the near future. The dam safety program of the FERC includes provision for periodic inspection of dams under license or pending before the Commission for licensing. The FERC dam safety program is outlined in a report entitled "Review of Practices Which Could Affect Safety and Integrity of Dams." This report was transmitted to the Federal Coordinating Council for Science, Engineering, and Technology (FCCSET) by letter dated September 6, 1977. A copy of the report is enclosed (Enclosure No. 1). The salient features of the Commission's dam safety program are summarized below for your convenience.

PROJECTS UNDER CONSTRUCTION

In an application for license to construct a new hydro electric project or to modify an existing project, the applicant is required to submit general design drawings and supporting information, analyses and data regarding site explorations, material usage, and stress analyses of the major structures. These data are reviewed by the Commission's technical staff, primarily for the purpose of assuring the safety and adequacy of the proposed structures. Construction cannot start until a license is issued and the general design drawings are approved. After the project is under construction, staff engineers and geologists visit the project, usually at least once a month, to review construction and testing procedures, to note progress and quality of construction, and to determine whether the project is being constructed in accordance with the design drawings approved by the Commission. Additional inspections are made during critical construction stages such as foundation and cutoff trench excavations, abutment treatment, diversion and closure, and initial filling of the reservoir.

Licensed projects under construction are listed in Enclosure No. 2. Included in this list are nine new developments currently under construction and 13 others undergoing major remedial work, rehabilitation, or modifications to install additional hydroelectric generating units.

BOARD OF CONSULTANTS

In all licenses authorizing major construction, a special article is included which requires the licensee to employ a board of qualified independent con-

¹ On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Public Law 95-91, 91 Stat. 565 (August 4, 1977), and Executive Order No. 12009, 42 Fed. Reg. 46267 (September 15, 1977), the Federal Power Commission (FPC) ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977. In addition, the functions of the Bureau of Power, Federal Power Commission, have been assigned to the Office of Electric Power Regulation, FERC.

sultants to review the design, specifications, and construction of the project. Appendix B of Enclosure No. 1 contains the Board of Consultants Article and other articles included in licenses that are related to dam safety. The board is expected to assess the construction inspection program, construction procedures and progress, planned instrumentation, the filling schedule for the reservoir, and plans for surveillance during initial filling of the reservoir. A partial list of consulting boards which have been used to review the design and construction of licensed projects is enclosed (Enclosure No. 3).

PROJECTS IN OPERATION

After construction is completed and the project is placed in operation, normally, it is inspected by staff once a year. During these annual inspections, staff engineers review the overall development from a safety standpoint and also assess whether the licensee is operating and maintaining the facilities in accordance with the license provisions. Licensees are required to inform the Commission promptly of any conditions which could jeopardize the safety of the project, and special inspections are made to assess such problems. Additional staff inspections are also made following natural disasters such as floods, landslides, or earthquakes.

RECREATION INSPECTIONS

The Commission staff also conducts separate inspections to ensure compliance with appropriate license conditions which require licensees to provide recreational facilities for use by the public. Another purpose of these inspections is to ensure that necessary measures are being taken to provide for the safety of recreationists. The frequency of recreational inspections depends upon the recreation potential and use of the particular project. A project which experiences intensive recreational use may be inspected annually, whereas a special recreational inspection would not be made for a project having very little potential for recreational use.

PART 12 CONSULTANTS' SAFETY INSPECTIONS

The concern for safety of licensed dams prompted the Federal Power Commission to establish Part 12 of its Regulations in 1965. These regulations provide for a program of periodic safety inspections of licensed dams by qualified independent consultants at regular 5-year intervals to supplement the inspections of the Commission's staff. This requirement applies to those hydroelectric projects having a dam exceeding 35 feet in height above streambed or a gross reservoir storage capacity in excess of 2,000 acre-feet. The inspections are performed by, or under the responsibility and direction of, qualified independent, consultants employed by the licensees. The basic purpose of the consultant's inspection is to determine whether there are deficiencies or potential deficiencies in the design, quality and adequacy of maintenance, or methods of operation of the project structures which might endanger public safety. A copy of Part 12 of the Commission's Regulations is enclosed (see Appendix C, Enclosure No. 1). Also enclosed are list of Part 12 inspection reports received through fiscal year 1977 (Enclosure No. 4) and a list of consultants who have made Part 12 inspections (Enclosure No. 5).

EMERGENCY ACTION PLANS

The Commission's dam safety program recognizes that accidents may occur even when careful preventative measures have been taken. Therefore, licensees are required to file with the Commission an emergency action plan designed to provide an early warning to downstream inhabitants and property owners if there should be an impending or actual sudden release of water caused by an accident to, or failure of, project structures. The plan must include instructions to be provided on a continuing basis to operators and attendants for actions they are to take in the event of an emergency, measures to be taken to minimize the effects of any accident on downstream life and property, and detailed and documented plans for notifying law enforcement agents, downstream residents, and others that could be endangered.

SPECIFIC QUESTIONS

Our responses to the specific questions in your letter are given below.

Question. 1. How often are dams inspected?

Answer. (a) Our program includes annual inspection of each constructed dam by an FERC staff engineer, or more often, if necessary. Shortage of personnel has, however, prevented full implementation of this program. With additional personnel, as proposed in our budget for fiscal year 1979, it is anticipated that this program can be fully implemented. Currently, while most constructed dams are inspected once a year, all are inspected at least once every 2 years. Dams under construction are inspected monthly, or more often, as necessary.

(b) In addition, dams more than 35 feet high or impounding reservoirs in excess of 2,000 acre-feet are inspected every 5 years by a qualified independent consultant engaged by the licensee.

(c) Dams are also inspected by licensee's work force during normal day-to-day surveillance. In addition, many licensees have an inspection program which schedules a formal inspection every year or once every 2 years.

(d) Some states also have dam safety programs that include inspection of FERC licensed dams.

Question 2. Scope of inspections?

Answer. (a) FERC annual inspections include (1) review history of project's performance to identify safety problems, (2) review instrumentation data to identify any trends that may affect dam safety, (3) observe operation of important electrical and mechanical facilities affecting dam safety, (4) review dam and spillway design, as necessary, for compliance with current and accepted design criteria, (5) a physical inspection of the dam and all appurtenant structures to identify any conditions that may affect the safety of the dam, and (6) review for compliance with license conditions.

In addition, Part 12 reports are reviewed by FERC staff for adequacy and to ensure that recommendations of consultants are implemented.

(b) The consultants' safety inspections include (1) a design review of spillway adequacy and stability of dams and other structures, (2) a physical inspection of dams and appurtenant structures, and (3) a review of instrumentation data.

Question 3. Estimated cost of each inspection?

Answer. (a) The estimated cost of an inspection varies, depending on size and complexity of the project, from \$600 to \$3,000. It should be noted that these costs do not include such matters as review of design and Part 12 inspection reports, and other special analyses.

(b) We do not have data on the costs of the consultants' Part 12 inspections. However, the costs of these inspections would also vary depending upon the size and complexity of the project. In a unique or unusual case the cost could be substantial. An example would be a one-time analysis of the effect of an earthquake on dam stability. The cost of such an inspection would include explorations, laboratory tests, and sophisticated dynamic stability analyses.

(c) Inspections are for the most part made at no cost to the Government. The Commission is authorized pursuant to Section 10(e) of the Federal Power Act to assess annual charges to licensees for the cost of administering its hydroelectric licensing program. Therefore, the costs of inspections made by staff are reimbursable, except for certain exemptions allowable for public licensees. The costs for all consultants' Part 12 safety inspections and the costs for special boards of consultants are borne directly by the licensees.

Question 4. How many agency personnel are assigned to dam safety?

Answer. A total of 25 FERC professional staff members from our five regional offices and the Washington Office are assigned full time to dam safety inspection. Other staff members devote a portion of their time to dam safety inspection and design review work, resulting in a total of approximately 15 additional man-years expended on dam safety by FERC personnel. There are also about 5 man-years for clerical and support staff assigned to such work. Fourteen additional positions for dam safety work are being filled as soon as qualified personnel can be recruited. At that time there will be a total of 54 man-years annually devoted to dam safety.

Question 5. How many were inspected in fiscal year 1977?

Answer. There were 685 inspections of dams under license in fiscal year 1977. These include the annual operation inspections and the inspection of dams under

construction. In addition, there were pre-license inspections of 54 of the about 108 dams at projects not yet licensed, but for which applications are pending. Also, there were 115 Part 12 safety inspections by independent consultants employed by licensees.

Approximately 58 dams under license were not inspected because of personnel limitations and a shortage of travel funds. The dams not inspected were relatively small and were considered to have a low hazard potential. They will, however, be inspected early in 1978.

Question 6. Inspection program during 1978?

Answer. Approximately 1,000 dam inspections by FERC staff are anticipated during 1978. These include 750 Operation Inspections, 150 Construction Inspections, and 110 Pre-License Inspections.

One hundred and forty dams will receive Part 12 safety inspections by independent consultants during 1978.

Question 7. Dam safety work undertaken by contract?

Answer. None of the Commission's dam safety work is undertaken by contract with our agency. As discussed above, however, the Commission, through the requirements of its regulations and the terms of the licenses that it issues, requires licensees to make extensive use of independent consultants. Any licensee of a major project is required to employ an independent board of consultants during design and construction of the project and, after the project is in operation, to have the project inspected by an independent consultant every 5 years. In addition, if a safety problem develops at an operating project, the Commission may require the licensee to employ a special board of consultants. Such consultants assist in determining what remedial measures are needed and review the design and construction of any facilities that might be required.

As already indicated, full implementation of the Commission's dam inspection program has been inhibited to some degree by a shortage of personnel. This has resulted in delays in inspecting some dams and, in some cases, limiting the scope of inspections. As noted above, we are adding personnel to our dam safety program, and have requested additional personnel in our budget for FY 1979. It is also our intention to ask for additional personnel in FY 1980. This will permit the inspection of all projects on a regular schedule, including additional projects as they are licensed, and inspections in greater depth and frequency when required.

The Commission's program for dam safety is an evolving effort. For example, we are currently participating in an overall assessment of the Government's dam safety efforts in cooperation with the study underway by the Federal Coordinating Council for Science, Engineering, and Technology at President Carter's direction. Moreover, we are currently in the process of reviewing our entire dam safety program for FERC to assure that it is fully adequate with respect to projects currently under license, as well as the additional projects that will be licensed in the next few years.

We trust that this information being submitted herewith will be helpful to the Committee. We will be pleased to provide additional information, if desired.

Sincerely,

CHARLES B. CURTIS,
Chairman.

Mr. CURTIS. In short, my assessment of the adequacy of resources in the dam safety area is that they are inadequate and require significant addition. Of the 523 additional staff positions that the Commission had requested, we had proposed to assign 25 of those to the dam safety program—

Mr. OTTINGER. Twenty-five in addition to the twenty-three?

Mr. CURTIS. Yes, sir, which is, as you would observe, an almost 100-percent increase. Indeed, since the time of that initial estimate we have been even more impressed with the needs in this area. And as a consequence, while we did not get the 523, we did get 200 and we have allocated 27 of those positions to the dam safety program. In other words, although we have less than the resources requested, we have determined to assign an even greater number to dam safety, or greater than a 100-percent increase.

Plus, there is a noted deficiency in the training of such people so that they might effectively carry out this responsibility. And we have explored with a number of local universities the possibility of developing an educational program which, of course, we would have to pay for but which would train our inspectors in the engineering departments of the local universities to make them more effective in the dam safety work.

Mr. OTTINGER. Is this an area in which the grade levels available to you are inadequate to get the kind of people that you need?

Mr. CURTIS. I cannot answer that specifically.

Mr. OTTINGER. Can that be supplied for the record?

[The following information was received for the record:]

What is FERC's recommendation on the number and level of people required to adequately carry out our dam safety responsibilities?

Answer. Seventy-one positions, with grade levels, as follows:

Grade:	Number
15-----	3
14-----	10
13-----	17
12-----	9
11-----	16
9-----	7
7-----	3
6-----	2
5-----	2
4-----	2
Total-----	71

Mr. CURTIS. Commissioner Sheldon has undertaken this program responsibility. I wonder if she might respond to it?

Ms. SHELDON. I would merely say that, yes, this is one of the areas where we have at the present time grade 7's, grade 9's, and grade 11's.

Mr. OTTINGER. Well, would you make a recommendation to us on that? Do you feel 50 is adequate for 850 dams?

Mr. CURTIS. The problem our agency has more than anything else is a limited digestive rate. It would be a great mistake, I think, just to throw a large manpower resource at this task unless they are brought in with proper management controls and trained to do the job.

Mr. OTTINGER. I would like your recommendation on this from you, the number and the level of people that are required. Do you have money for education and training of such people?

Mr. CURTIS. Not specifically.

Mr. OTTINGER. We would like your recommendations in that area, too, because this is obviously a situation in which we will all be held severely at fault if we don't take action appropriate to any dangerous situation that may exist.

[The following information was received for the record:]

Training Cost Associated with Dam Safety—\$30,000 2-2 week courses at \$15,000 per year.

Mr. CURTIS. I should mention that there is a contemplation in the budget that there would be flexibility through the means of re-

programing money to the various needs of the agency. If that is not in fact likely to result from our appropriations process, then we would need specific authorization for certain of these functions.

Mr. OTTINGER. Well, we would like your recommendation. Now, I am given to understand that the people who inspect dams also have other responsibilities related. Can you give us just quickly a description of that other responsibility?

Mr. CURTIS. Well, let me recount. We have 25 staff personnel in five regional offices which have the full-time responsibility for dam safety.

Other staff members devote part time, which will aggregate to an additional 15 man-years. I think it fair to say that the additional staff is predominantly concerned with other matters and dam safety is a minor portion of their responsibility. And as one might expect, I hope fairly to comment, that minor responsibilities are usually given minor attention.

Mr. OTTINGER. Well, you will be giving us your recommendations in writing for the record.

I would like to recognize Mr. Braun. I think he has just two or three other areas that we would like to have to complete the record.

Mr. BRAUN. Chairman Curtis, I would like to discuss enforcement with you for a moment. What activities do you foresee the enforcement office undertaking in the near future within the Commission?

Mr. CURTIS. I am sorry, Mr. Braun, I did not hear the full question.

Mr. BRAUN. What activities do you foresee the enforcement office undertaking?

Mr. CURTIS. The enforcement office is developing a statement of mission and functions as well as a program plan that would hopefully benefit from the comments of other segments of the Commission from their experience as well as the members of the Commission itself. Now, that is not finalized as yet. Ms. Hollis, who is the office head of the Office of Enforcement has prepared a statement of intention as to the conduct of that office's activities, which I would be happy to supply for the record, recognizing that it is preceding a formalized program plan for the office, and it may be subject to change.

Now, personally I see the office as primarily engaged in court litigation to seek injunctive enforcement of the legal requirements of the acts which we administer and the regulations and orders thereunder as well as civil and criminal penalty actions under those laws.

I think that the Commission has perhaps made too little use of its authority to enjoin conduct and therefore gain the assistance of the peril of a criminal contempt of court for repeated violations of the act. It is a device used by the Securities and Exchange Commission with great success and one that I personally would look favorably on.

Second, I would view the Office of Enforcement as eventually evolving into the singular arm of investigation of the Commission.

So that the investigatory pursuits authorized by the Commission in formal or special orders can be undertaken by a part of the Commission that is independent from and not also serving line responsibilities for other work of the Commission, which may conflict with the pursuit of the individual investigation.

I think it is fair to say that we are beginning very modestly with an office contingent of 20. We are holding in reserve 27 of our 200 authorized positions so that they might be employed as the needs of the Office of Enforcement are established. But I think it very important, as I tried to point out in response to Chairman Dingell's questions, that we do this carefully and well if we are to obtain the respect for the fairness of our process and the confidence that we will do our enforcement work competently. And that to me suggests measured increments to the development of a meaningful enforcement capacity, which the Federal Power Commission has lacked.

Mr. BRAUN. In the past year has the Commission had the ability to obtain complete and instantaneous information on the status of every matter filed with the Commission?

Mr. CURTIS. No, it has not.

Mr. BRAUN. All right. Now, Chairman Curtis, I would like to point out to you that just about 2 years ago that Chairman Dunham of the Federal Power Commission testified before the Oversight and Investigations Subcommittee that

One of the first steps that the FPC would be taking is the implementation by June 1976 of a fully automatic data processing system which will enable us to get complete and instantaneous data on the status of every matter filed with the Commission.

This new case control system will utilize an automatic data processing capacity and will permit us to identify the backlog situation in each type of case. With this information in hand we will be able to shift staff allocations and make other changes necessary to break bottlenecks and reduce the amount of time for processing of cases.

This new system should be fully operative by June of this year.

Now, it is my understanding that system went into operation in September of 1976 and over the past 4 or 5 years the FPC has devoted over \$9 million to this system. Can you provide the subcommittee with an evaluation of the success of that particular system?

Mr. CURTIS. Yes, Mr. Braun. Let me make some preliminary comments. The contract with an outside contractor for the software development services was between \$9 million and \$10 million. It was largely devoted, however, to a project which involved reducing some 60 forms down to a number of 14, I believe, and to automating those data filing with the Commission. Now, that function has gone over to the Energy Information Administrator largely.

A small part of that contract dealt with the case management system that Chairman Dunham's comments refer to.

Our case management system that we have spoken of today is built on the rudiments of a case management system that was developed pursuant to that contract. It was not as fully implemented as perhaps the information available to you had suggested. It certainly was not used.

No management system will work unless there is a commitment to it. One of the difficulties with the previous system is that it was developed externally and imposed upon the Commission. We have attempted to avoid that result in our efforts. Indeed, a good deal of labor has gone into developing the system from within so that the staff not only have a real understanding of its constituent parts, but a belief in its workability and a willingness to make it work.

Second, once you put it in, you've got to follow it up by a serious and continual management review, which uses the tools. If you don't do that, then the data becomes stale, and once stale, is useless. And you might as well have not gone through the effort. We are committed to avoid that mistake.

But those are two of the primary reasons that it did not work before.

The program that has been developed for the Commission here—by the way, largely profiting from the experience that was developed in the first effort at a meaningful management system—the system that we have attempted to develop differs in another important respect in that it maintains a project manager's system which is a single staff member who is in charge of the docketed item to take it from beginning to end. So that we have someone who (a) identifies with the project and (b) can be held accountable for moving it through its memorial date.

The other system was premised upon passing the baton from office to office, and it simply broke down.

Mr. BRAUN. Who is handling the new management information system? Did you contract out?

Mr. CURTIS. No, we are developing it from within. Mr. McDonald is handling it largely through the primary assistance of Larry Anderson.

Mr. BRAUN. I would like to move on to one final area, Mr. Chairman, and that is the need to resolve energy critical cases, which the Commission defines as "those directly affecting the supply of information to the nation." Some of the preliminary materials that you supplied us for this hearing indicated that there were 17 total electric energy critical projects involving some \$931 million of total dollar value; and that there are 55 critical natural gas projects, amounting to over \$3 billion. Can you tell me whether or not the fiscal year 1979 budget provides adequate resources to decide these cases expeditiously?

Mr. CURTIS. I can't give you a firm answer to that at this point, Mr. Braun, because the purpose of the management system is to give an analytical tool which will identify bottlenecks and then to apply solutions to those bottlenecks to permit the decision process to go forward.

In some cases that will mean more resources. In some cases it will not. We know, for example, that a significant bottleneck exists at the Commission itself in the Office of what is now Opinions and Review and used to be Office of Special Assistance. We are applying additional resources to that office of very significant measure. And we will probably increase its work force by at least 100 to 150 percent in the next year. That we do have the resources to do.

Now, when we get through analyzing these projects and also a set of very important rate cases which will add to these critical projects, we will be able to give you a better picture on adequacy of resources.

Right now our best guess is that the 200 additional positions will be adequate to our needs, given our ability to get people on board, train them, and effectively utilize them.

But based on the benefit of getting this system in place and having experience with its use, that if we can then demonstrate—through greater knowledge—inadequacies, then we will have to come back to the Congress for a supplemental. But right now we don't have the case to make for supplemental resources for beyond the 200 additional positions now in the budget.

Mr. BRAUN. When do you estimate that your new system will be in place that will give us the answers to these critical questions?

Mr. CURTIS. Within six months. But I would want to emphasize we want to make sure this thing is working before we totally rely on it. One of the great mistakes made in automation is to all of a sudden switch over on to an automated system and everything else goes down when the automated system goes down. We won't make that mistake. We are going to be careful to make sure it works.

Mr. OTTINGER. I would appreciate it if you would keep us apprised periodically of progress of this effort.

Mr. CURTIS. I would be happy to do that. As a matter of fact, I would like to offer a briefing to the staff on the full system as well as to any member of the committee who might wish to go through the steps in it.

We have found out some intriguing things. To illustrate, one of the first steps was to set out what are the processes observed by the Commission in doing its several functions. We discovered that there was not a standardized process for something as fundamental as a major hydro license for example.

By standardizing the process we then provide some management tools that can make that process work more effectively.

Mr. OTTINGER. I wondered, and this was a suggestion of Mr. Potter, counsel to the subcommittee, about the feasibility of utilizing the Commission's resources more effectively in cleaning up this backlog. I wondered if you have the authority and what you would think about having individual Commissioners decide these backlog cases, subject to an appeal to the full Commission.

It might be a way of utilizing your resources in getting these backlogs cleaned up more rapidly. I understand there is precedent for it in other agencies.

Mr. CURTIS. Yes, sir, there is precedent, as Chairman Dingell's comment would indicate. There is at the ICC an authority to delegate not only to boards of members of the Commission but also employee boards, certain of the decisionmaking responsibilities, with or without appeal to the Commission.

We are exploring the delegation question rather strenuously. The difficulty is this. And that is, what decisions does the Congress fundamentally feel to be of such importance that it wants the discipline of a collegial body to decide?

Now, I would welcome any guidance from this committee that they may wish to give. I would hope that somewhere we come out along the lines of Commissioner Holden's suggestion: there are major decisions and there are minor decisions and maybe the Congress does not want this Agency to have the authority to be exempt from the statutory requirements in whole. Maybe the Congress could conclude that only major decisions need be considered by the Commission as a whole, and minor decisions could be delegated to staff.

Mr. OTTINGER. Do you need statutory authority to do that or is that something you can do under the existing statutory authority that you have?

Mr. CURTIS. The General Counsel has advised me that we have this authority in the area of oil pipeline regulation where we can rely on the ICC statutory authority which transferred to us, and in which case we have set up an employee board. But otherwise, under the Power Act and the Natural Gas Act we do not have the authority to delegate final decisionmaking responsibility to a single Commissioner or to a member of the staff; we may be able to do it if we provide an opportunity for appeal to the Commission.

The question is, in this highly litigious area in which the Commission gets sued on almost everything it does, no matter how it decides a case, I am not sure that will really expedite the process because there are many types of cases that will automatically get appealed to the Commission.

So we are trying to locate the best candidates for delegation, where we wouldn't just be adding a step to the process.

Mr. OTTINGER. Can you, in a fairly prompt time period, in other words time for us to consider it in connection with this authorization, submit to us a recommendation of what you think might be useful in this area?

Mr. CURTIS. I would be happy to. I think it would be most useful if that is a recommendation of the full Commission. I would like to take it to the Commission to make an official recommendation.

[The following material was received for the record:]

Under provisions of the Federal Power Act and the Natural Gas Act, the Commission does not have authority to delegate final decision-making responsibility to a single Commissioner or to FERC staff. The only exception to this is in the area of oil pipeline regulation, where ICC statutory authority, which has been transferred to FERC, allows the Commission to set up employee boards for the purpose of decision-making.

Currently, the Commission agenda contains items which are highly critical—that is, they have a direct impact on the supply of energy to the Nation—and others that are not. Under present law and procedures, with few exceptions, the Commission must consider all items, no matter how trivial.

The Commission has begun a comprehensive review of its actions for the purpose of reducing the number of cases on its agenda, so that those cases involving major policy issues can be given the attention they deserve. More specifically, a working group has been created to review the requirements of the Natural Gas Act and the Federal Power Act. Our experience indicates that some of the procedures required by those laws may no longer be necessary and other could be simplified. The working group's efforts are expected to result in fairly extensive legislative proposals.

A second area where improvement is possible is in the Commission's rules of practice and procedures. An Assistant General Counsel has been assigned to

head a group which will review and revise the Commission's rules of practice and procedure. We believe there is an opportunity here for significant changes to expedite matters before the Commission.

Finally, we are in the process of examining areas where initial decision-making authority may be delegated to staff or assigned to a single Commissioner. While, as noted above, under existing law final decision-making authority cannot be delegated, we believe in many cases, particularly where routine matters are involved, the parties will abide by decisions of staff and not appeal to the full Commission.

Mr. OTTINGER. I yield to the Chairman.

Mr. DINGELL. I simply wanted to echo the comments of my good friend and colleague, Mr. Ottinger, who is our chairman today, on the matter that he has just been discussing with you. The committee has sufficient respect and affection for you, Mr. Curtis, that I think we would look with kindness on almost any suggestion that you were to make to us on this matter and we would hope that we would have it soon.

Now, if we don't have it in time for inclusion in this matter, we would certainly in any event like to see it here before us so that we might be able to act on it in the proper and necessary fashion. And with the permission of my good friend, I would suggest we don't want it cleared through anybody, we just want it from you as a drafting service. And that specifically includes OMB and other good folks who like to tell you folks down there how to conduct your independent affairs.

Mr. OTTINGER. I would also hope you can do this in such a way you are not bound at all. We don't have to require you to use these procedures; we can authorize you to use expedited procedures. And you can take that into consideration in deciding what you submit to us.

Does the gentleman from Michigan have any further questions he would like to ask?

Mr. DINGELL. I am curious about the number of administrative law judges. Has this question been gone into?

Mr. OTTINGER. Yes, I did raise the question and we do have an answer on the record.

Mr. DINGELL. I would ask, Mr. Chairman, permission to continue. I saw this morning in the Association Press an article entitled "U.S. to Propose Faster Licensing of Atom Plants." I find this a desirable goal. I wonder if your agency has been consulted with regard to this proposal, Mr. Curtis. Have you been consulted?

Mr. CURTIS. No, sir.

Mr. DINGELL. Sir?

Mr. CURTIS. No, sir.

Mr. DINGELL. You have not?

To dispense for a moment with the parts of that article which I find offensive, as do many of my colleagues in the House and the members of the committee and which I will discuss with Mr. Schlesinger at a time later, I wonder if it wouldn't be good policy for the expertise of the Commission to be utilized for purposes of laying out the administration's policy?

Mr. CURTIS. My guess is that the administration felt that they had a number of agencies and departments that were being utilized in

the development of that policy. I do not have an explanation of why we do not have an official role in that.

We were not given an official request to participate.

Mr. DINGELL. We will be asking you your views on this matter.

I have a further curiosity about the idea in connection with this. Am I incorrect in my assumption that the first question that should be decided would be whether or not a powerplant should be built at a particular site, and then the question of the kind of powerplant that should be built at that site would be addressed. Am I correct in that appreciation or is that wrong?

Mr. CURTIS. I am not fully cognizant, Mr. Chairman, of the varying difficulties in siting different types of energy facilities. I think it fair to say that we as a nation should be careful that we do not through process change, encourage the selection of a particular facility for the generation of electricity or for any other energy option.

We hopefully will make those determinations on other more persuasive basis than simply the simplicity of licensing.

Mr. DINGELL. I think I am in agreement, particularly since, as I understand it, the site will be set aside for a period of 10 years. And I am not sure whether I have met anybody inside the city of New York that wants to have a nuclear plant sitting in their backyard, or in the middle of my district for that matter.

Thank you, Mr. Chairman.

Mr. OTTINGER. I would add LNG to that. We talked with Mr. Murphy before and he talked about the safety of locating that LNG port in Staten Island. I would like to point out the prevailing winds are toward Westchester and that makes me very uncomfortable.

I would like to commend staff counsel, Mr. Braun, for doing an exceptionally good job and thank the Commission and the Executive Director for their indulgence and their responsive answers. I would like to inform the Commission that Mr. Brown, the ranking minority member, and perhaps others would like to submit questions for the record. And we would hope the Commission would respond to such questions and that they would be put in the appropriate place in the record.

So if there is no further business, the subcommittee will stand adjourned.

[Whereupon, at 1:30 p.m. the subcommittee adjourned, subject to the call of the Chair.]



