ENERGY EMERGENCIES

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

INQUIRIES INTO A NUMBER OF MATTERS RELATED TO INFORMATION ON THE COAL STRIKE OF LAST YEAR, ENERGY POLICIES AND EMERGENCIES

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ENERGY EMERGENCIES

FRIDAY, NOVEMBER 17, 1978

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

The subcommittee met, pursuant to notice, at 9:35 a.m. in room 2123, Rayburn House Office Building, Hon. John D. Dingell, chairman, presiding.

Mr. DINGELL. The subcommittee will come to order.

This morning the subcommittee inquires into a number of matters related to information on the coal strike of last year, energy policy and emergencies.

This last winter this Nation faced serious problems as a result of a coal strike. The winter before, we experienced other hardships as a result of a natural gas shortage. There is a potential for substantial difficulty to the economy from disorders now existent in the Middle East.

The country has learned that energy supply emergencies have dramatic consequences for particular regions of the country and for the country as a whole. Factories may be closed, people may be laid off from their jobs, and the public health and safety may be endangered.

Last March this subcommittee held hearings and briefings on the impact of the coal strike and the efforts of the Department of Energy to alleviate the impact of coal shortages.

Although I was satisfied with a number of actions that DOE had taken, I was concerned that there had been inadequate planning for the winter.

At the conclusion of the coal strike, the Chair requested the General Accounting Office to examine DOE's efforts in this area and to report their findings to the subcommittee.

The Chair observes with some distress that the Department of Energy did not show the kind of cooperation that the Chair thought was necessary to a committee of the Congress in a legitimate inquiry.

Indeed memoranda which were circulated around amongst the administration evidenced a rather substantial desire on the part of the administration to be less than fully cooperative and forthcoming with the subcommittee.

In any event, the General Accounting Office has completed the study and their findings are alarming.

During the course of the GAO investigation, the Energy Department's Inspector General performed his own investigation of DOE's

emergency planning. The two reports are in substantial agreement in their criticisms of DOE's activities in this area.

The Chair wishes to observe that it is not the purpose of this committee to castigate DOE and was not at the time that we initiated our undertakings in this matter.

The Chair does wish to have it clearly understood that the subcommittee intends to maintain a continuing inquiry as to the behavior of the Department of Energy, and as to the effectiveness of Government programs.

It is the hope of the subcommittee that we can do this in a cooperative and friendly fashion. However, it is the wish of the Chair that it be known by all that if DOE does not wish to cooperate, then the subcommittee will take whatever measures are necessary to assure that they either change their views or that they do cooperate.

In short, the two reports indicate that the Department of Energy is not prepared to meet its responsibilities in emergency planning. The DOE Inspector General stated:

> In our view, the most important message from the general tenor of comments (by DOE) on the report is that a sense of urgency is lacking, or at least unequal to the importance of emergency preparedness.
>
> DOE has existed for nine months, but it still has few, if any, actual plans. Responsible offices appear satisfied with a situation which is "under consideration," "to be resolved," or "in need of further study."

The Chair also asked the GAO to investigate statements made by Energy Department officials and others in the administration which forecasted unemployment levels which could result from the coal strike.

Those statements, made to the press and to the courts, forecast unemployment of 3.5 million workers. Actually, Bureau of Labor Statistics surveys showed that no more than 23,400 workers were laid off as a result of the coal shortage.

The Chair rejoices at this and believes that it indicates some evidence of good handling by the Department of Energy and by the administration. But the Chair is curious why this subcommittee has so much difficulty getting the information upon which the administration's judgments were made, or upon the reliability of the studies made.

The Chair also expresses great curiosity whether this is in fact an open administration which seeks to make information available to the Congress in response to requests. Some information, the Chair notes, was only received by the subcommittee staff last night.

The administration numbers, however, were based upon a computer model prepared in conjunction with the Council of Economic Advisers.

The Energy Department contends that the 3.5 million figure represented a "worst" case projection, and planning had to be based upon it. Unfortunately, the estimate was not presented to the American public in that light, and both the GAO and the Inspector General have found that the use of that figure severely strained DOE's credibility.

Unless the Government is candid in its use of statistics, the American people will not listen to pleas for conservation during

real emergencies but instead will treat the DOE as "the boy who cried wolf."

There are indications that the estimate may have been so inaccurate that it did not even represent a "worst case." GAO, though, has not been able to completely answer that question because they claim that the Council of Economic Advisers failed to provide them with certain information about the computer model.

Indeed, CEA provided GAO with a memorandum from the Justice Department which states:

> It would appear to us that there is a substantial basis upon which a decision might be made not to share this information with the Comptroller General's staff. From the information given us by GAO, we cannot readily ascertain the authority underlying the request.

The Chair observes that that request and the information underlying it were a request by this subcommittee so that we could see how DOE is conducting its affairs.

Now, to continue, "Nor can we assess the relevance or importance of the information sought."

The Chair observes that it is not the prerogative of that agency to decide the relevance or the importance of information sought in connection with a congressional inquiry. We will again inquire as to the propriety of their behavior.

Citing the Justice Department memorandum, Deputy White House Counsel Margaret A. McKenna said, in a September 14, 1978 letter to me, that "CEA is not required to provide information concerning this matter." We shall inquire also as to that matter.

She added, however, that CEA would voluntarily "share certain materials with GAO". The Chair will inquire as to the propriety of why they will pick and choose that which they will share with the Congress and the GAO making an inquiry in response to a proper congressional request.

I understand that since Ms. McKenna's letter the CEA released a summary of the requested data to the GAO. Thus, the CEA chose to be the judge of what data it would release and withhold and the form of the release, something which the Chair finds obnoxious as a Member of the House seeking information to serve the responsibilities of the Congress.

I cannot imagine why the administration believes that the data must be cloaked in secrecy. Surely it does not involve national security. The President has not invoked executive privilege in this case, according to a November 15, 1978, letter to me from the Justice Department. [See p. 6.]

Indeed, that agency states that the administration firmly adheres to:

> The principle first announced by President Kennedy and restated by Presidents Johnson and Nixon that a constitutional privilege can be claimed only by or at the direction of the President, and that no official in the Executive Branch, however high his position, may assert the privilege on his own behalf.

Absent such a claim in this case, I fail to understand the legal basis for withholding the requested data, either from GAO or from the subcommittee.

Today at our hearings I expect the Council, the Justice Department and the GAO to inform this subcommittee about the nature

of any information which CEA has withheld and the justification for doing so.

If the President has not invoked executive privilege, as is now contended, I expect CEA either to provide both the subcommittee and GAO the full requested material or to explain the basis for keeping the data secret.

Last night the subcommittee staff received a letter from the CEA enclosing a number of documents. The CEA letter claims that other than documents already in the public domain and notes, draft materials or memoranda to the President, "* * * the enclosed documents represent in substance the complete record of CEA's activities during the coal strike."

Time has not permitted us to review these materials to determine the accuracy of this statement. I will ask the GAO to do so. However, I commend the CEA for its new enlightment.

But I continue to ask why the CEA had to wait until the advent of a congressional hearing to bring forth these documents which, incidentally, appear to be largely composed of DOE memoranda and technical data that on the surface, at least, do not deserve such notoriety.

Today at our hearings I expect the Council and Justice Department to inform us why these materials were withheld and to state clearly the justification for doing so.

Also, I want to know if the memoranda to the President is being withheld by his direction under the doctrine of executive privilege or if the CEA is doing so by its own whim or caprice.

If that is the situation then the Chair requests the memoranda and will so do at the time that the agency appears.

Today's hearings will also explore issues relating to the organization of DOE's emergency planning programs. Although the Inspector General recommended coordination be handled by a senior official in the office of the deputy or under secretary, responsibilities have instead been split in a rather curious fashion, among the Director of Administration and the Assistant Secretary for Policy and Administration.

I note that the Inspector General raises some interesting points on this issue in his testimony, and I share his concerns and have others, too.

Finally, we expect to examine the Department of Energy's extensive use of contractor assistance in emergency preparedness programs. There are far too few knowledgeable individuals at DOE on these matters and unlimited contracts are of little value in an energy emergency.

These contracts are often poorly supervised. The results of one contract to provide assistance in preparing the emergency information system was "not considered adequate" according to Deputy Secretary O'Leary's detailed statement to the subcommittee, but DOE spent $121,000 before the contract was terminated.

Fewer contracts and better supervision of all contracts could have prevented this outrageous waste of the taxpayers' money.

The Chair observes that I am much concerned about the fact that there has been, I think, excessive use of contracting out of Government business, which has been accompanied in many instances either by actual or apparent evidence of conflict of interest,

and by apparent inadequate supervision of expenditure of public funds, something which the Chair believes could be better done at less cost within house.

The witnesses today on our first panel are Mr. J. Dexter Peach of the General Accounting Office, and DOE Inspector General J. K. Mansfield. They will be followed by DOE Deputy Secretary John F. O'Leary, CEA member Lyle E. Gramley and Deputy Assistant Attorney General Larry Hammond.

The Chair also invited the Federal Energy Regulatory Commission to testify, but in recognition of FERC's time constraints in implementing the Natural Gas Policy Act, I agreed that FERC need not testify. However, I understand two staff personnel from FERC are here to answer questions if needed.

[The letter referred to by Chairman Dingell follows:]

UTY ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

Department of Justice
Washington, D.C. 20530

NOV 15 1978

The Honorable John D. Dingell
Chairman
Subcommittee on Energy and Power of the
Committee on Interstate and Foreign Commerce
Room 3204
House Office Building Annex No. 2
Washington, D.C. 20515

Dear Mr. Chairman:

The Attorney General has asked me to respond to your letter of November 2, 1978, concerning a memorandum from this Office to the Counsel to the President, dated August 31, 1978. That memorandum dealt with a request for certain information addressed by the General Accounting Office (GAO) to the Council of Economic Advisers (CEA).

Your letter suggests that this Office's memorandum authorized CEA, rather than the President, to claim Executive privilege. I wish to point out initially that Executive privilege has not been claimed in this case. The GAO asked for two groups of documents. First, it sought:

> A description of the computer model developed by CEA to measure the unemployment impact of the coal strike including (1) assumptions used, (2) variables used, and (3) any limitations of the model.

This information was made available to GAO in the report from CEA. Indeed, we understand that CEA offered to make the computer model itself available to GAO, but that the offer was declined.

The second request of GAO was as follows:

Memoranda from CEA to the White House and/or DOE concerning the computer model output on unemployment estimates and any comments, suggestions, or recommendations by CEA as to which estimate to use for policy decisions.

As you know, requests for documents between Cabinet Officers or other close Presidential advisers and the President raise disclosure questions under what the Supreme Court has identified as the presumptive privilege of confidentiality. United States v. Nixon, 418 U.S. 683, 705-713 (1974). Such documents are not absolutely privileged and, indeed, when requests come from congressional officials fulfilling appropriate legislative functions those requests are approached in an effort to accommodate the legitimate needs of both the Legislative and Executive branches. United States v. American Tel. & Tel. Co., 567 F. 24 121, 127 (CA, DC, 1977).

It is our understanding that on our advice the GAO request in this case was handled in the same way that other such requests have been handled. Since this was the first time that a congressional request had been made to CEA for documents, that agency sought advice from the Office of the White House Counsel. And, in response to an inquiry from that Office, the Office of Legal Counsel provided the memorandum which you have seen. As the memorandum itself makes clear, we advised that the request should be approached in the same fashion that other similar requests are treated, and in fact it is our understanding that a reasonable accommodation was achieved whereby CEA prepared a full summary of the events in question and shared that memorandum with GAO. To our knowledge, the matter has progressed no further. We are unaware that there has been any further request, and therefore there has been no occasion to consider the invocation of any constitutional privilege.

In closing, I wish to reaffirm that this Administration and the Office of Legal Counsel firmly adhere to the principle first announced by President Kennedy and restated by Presidents Johnson and Nixon that a constitutional privilege can be claimed only by or at the direction of the President, and that no official in the Executive branch, however high his position, may assert the privilege on his own behalf. In response to your request I will be in attendance at the hearing on Friday, November 17, and would be pleased to answer any other questions you or other members of the subcommittee may have.

Sincerely,

Larry A Hammond

Larry A. Hammond
Deputy Assistant Attorney General
Office of Legal Counsel

cc: The Honorable Jack Brooks
Chairman
Committee on Government Operations

The Honorable Elmer B. Staats
Comptroller General of the United States
U. S. General Accounting Office

Mr. DINGELL. The Chair now recognizes our first panel, Mr. J. Dexter Peach, Deputy Director, Energy and Materials Division, U.S. General Accounting Office, and the Honorable J. K. Mansfield, Inspector General, Department of Energy, 20 Massachusetts Avenue, Washington, D.C.

The Chair will hear, I think, first Mr. Peach unless, gentlemen, it be your desire that matters be conducted otherwise.

The Chair observes, Mr. Peach, that you follow Mr. Monte Canfield, who is a distinguished public servant. We are content that you will serve with equal distinction. We look forward to working with you.

If you have any of your staff or such that you would like to bring to the witness table with you, we would be quite delighted to have them join you at this time.

If, gentlemen, you would each, before we commence, identify yourselves for the assistance of our reporter, and whoever accompanies you at the witness table, we will welcome you for your testimony in the order indicated.

STATEMENTS OF J. DEXTER PEACH, DIRECTOR, ENERGY AND MINERALS DIVISION, GENERAL ACCOUNTING OFFICE; HENRY WRAY, ASSISTANT GENERAL COUNSEL, ACCOMPANIED BY CLIFFORD GARDNER, SUPERVISORY AUDITOR; AND J. K. MANSFIELD, INSPECTOR GENERAL, DEPARTMENT OF ENERGY

Mr. PEACH. Thank you, Mr. Chairman.

I am accompanied by two members of the staff of the General Accounting Office, Mr. Chairman. I am accompanied by Mr. Cliff Gardner, on my immediate right, who was team leader for our work on the energy emergency planning area, and Mr. Henry Wray, who is our assistant general counsel.

Mr. DINGELL. Gentleman, the Chair is happy to welcome you.

Mr. PEACH. Mr. Chairman and members of the subcommittee, we appreciate your invitation to appear before the subcommittee to discuss the review you asked us to carry out on energy emergency contingency planning at the Federal and State levels.

We will be discussing our findings and conclusions in the context of whether energy emergencies can be managed more effectively.

Let me begin, Mr. Chairman, by summing up briefly the major conclusions of our report, "Improved Energy Contingency Planning Is Needed To Manage Future Energy Shortages More Effectively."

[This publication may be found in the subcommittee file.]

They are:

The centerpiece of the Department of Energy's energy emergency preparedness effort was the Energy Emergency Planning Guide. However, the guide was merely a list of proposed measures that might be taken at Federal, State, or local levels. Not all of those measures were feasible alternatives.

DOE's most effective response to the midwinter coal strike of 1977–78 came from two hastily organized ad hoc task forces to manage possible shortages of coal and electricity. In concentrating on power supplies, however, DOE failed to monitor consumer costs adequately.

Federal actions were a minor factor in the relatively successful management of the energy emergency. The two major factors were the foresight and planning of the electric utilities and the demonstrated willingness and ability of the States to respond with minimal Federal intervention.

The administration, for reasons which are unclear, seriously overestimated the impact of the strike on unemployment levels. Access to Council of Economic Advisers' data that could clarify the reasons has been withheld during our review.

Except for minor improvements, most Federal and State agencies will face this coming winter in about the same state of preparedness as last year. These changes include somewhat better staffing, revisions in the Planning Guide and the learning experience of last winter.

There were deficiencies in DOE's handling and monitoring of contractual services for contingency planning. The use of contractors has been greatly expanded in current planning and will require close monitoring to insure satisfactory performance.

Mr. Chairman, I will discuss each of these points in a little more detail and then conclude with our recommendations.

In the early summer of 1977 the Federal Energy Administration was giving top priority to planning for emergency conditions which might result from energy shortages during the 1977–78 winter.

An interagency task force was established to develop energy emergency contingency plans and to prepare initiatives for any needed legislation, but the actual planning effort was delegated to a seven-member working group of FEA officials.

The major product of this contingency planning effort was the Energy Emergency Planning Guide: Winter of 1977–78, issued by the newly formed DOE. This planning guide was not the product originally envisioned.

Instead of a contingency plan with specific programs to be implemented at certain stages of an emergency, the planning guide simply listed proposed measures that might be taken at Federal, State, or local levels prior to, or in the event of, an energy emergency.

The guide fixed no responsibilities for monitoring these actions or for assessing and reporting on the progress being made in their implementation. Furthermore, some of the listed emergency measures were dependent on congressional approval of a National Energy Act or other specific legislation.

When these legislative measures were not approved, the emergency actions could not be taken. The guide contained no alternative actions to cope with such potential problems.

There were other measures specified in the planning guide which could not be readily implemented, such as facilitating increased imports of natural gas, securing legal authority for mandatory Federal and State measures, and implementing energy information systems.

These kinds of measures take time to develop, which means they are generally not applicable as short-term solutions to immediate problems. The decision to include these measures in the guide appears to be due to the lack of technical expertise in the work group responsible for the guide.

Only a few of the proposed measures for Federal or State actions were actually undertaken or completed, including those within DOE. One of the more successful preemergency measures was the establishment of DOE's Energy Emergency Center.

The Center—an energy information and communication clearinghouse between Federal, State, and local government agencies—opened on December 1, 1977, as scheduled.

The Center's effectiveness was minimized for several weeks, however, because it was housed in temporary quarters, had mostly untrained staff, minimal equipment, and no operating procedures.

As the winter progressed, these problems were resolved and the Center was useful in serving as a central information point for energy data.

Some State officials were critical of the accuracy and timeliness of the data sent to them from the Center. But they generally viewed the Center operations favorably as a single-reference point within the Federal sector during emergency situations.

Most of the States we visited had developed, to some extent, contingency plans to meet their perceived needs. Most of these plans, however, were not complete enough to send to DOE at the beginning of the winter.

DOE officials thus could not assess their adequacy and work with the States to coordinate proposed Federal and State actions. Some of the States relied on disaster relief plans. Because contingency plans for energy emergencies are sufficiently different from disaster plans, we believe they should be considered separately and closely coordinated with Federal contingency plans.

The most impressive preemergency actions to minimize the effects of the impending coal strike were taken by the electric utility companies. On their own volition, and long before serious efforts were undertaken by Federal officials, the utilities began to build up their coal inventories to record heights.

Now to our assessment of DOE's emergency actions.

When coal shortages reached a point where they appeared to jeopardize the electric utilities' ability to continue meeting power demands, DOE reacted by forming two ad hoc task forces to manage possible shortages of electricity and coal. The use of such task forces was not included in the planning guide, yet it was probably the best method of obtaining a quick assessment of the unfolding problems. DOE's failure to assign high-level responsibility for energy emergency contingency planning probably accounts for the hurried implementation of the ad hoc task forces.

Although the performance of these task forces was generally adequate under the circumstances, we believe that major benefits, in terms of improved Federal credibility and reduced economic costs, could have been achieved through better planning.

For example, the electric power task force was concerned only with generating and transmitting power to where it was needed and not with the costs that were incurred by the utilities and passed on to their customers.

Because of this lack of cost monitoring, allegations have been made that consumers were charged excessive prices and FERC has had to conduct an extensive post-strike audit of utility costs and charges. This audit is not only costly to both the Government and

the utilities but also raises questions of industry credibility during energy emergencies.

DOE did make a positive contribution to the management of the emergency by staffing the task forces with Government personnel familiar with energy industry operations on the task forces. They were able to develop an effective ad hoc system for monitoring energy supplies and provide this information to high-level decision-makers.

DOE's ability to accurately assess the energy supply situation during the winter was probably the direct result of the input of the ad hoc task forces, and probably led to the Government's decision, which we believe was correct, to maintain a hands-off posture during the energy emergency.

Most utility and State personnel we talked to approved of the Government's maintaining a low profile. It appears that DOE plans to continue this hands-off approach, but with a refinement of the process.

Based on our brief review of the revised planning guide, for example, it appears that the roles to be played by responsible DOE officials will be better defined.

As effective as the task forces proved to be, we believe that they would have been more effective if they had been provided for in the planning guide. If so, the task forces could have been: (1) Already formed; (2) told what their goals were so that methods to achieve them could have been formulated, and (3) been involved earlier in an active program to cultivate industry contacts for emergency coordination with DOE during the winter.

Two major factors contributed to the relatively successful management of last winter's energy emergency. One factor was the foresight and planning involved in the electric utilities' coal stockpiling, coupled with the extensive interconnections of the affected area's electrical generation and transmission system. The other factor was the demonstrated willingness and ability of the States to respond to energy emergencies with minimal Federal intervention.

These factors probably overshadow all the planning and energy management activities of DOE before, during, and after last winter's energy shortage. We have seen nothing that would change this view for similar energy emergencies in the future.

An increase in unemployment levels was a possible major economic consequence of a lengthy coal strike. Two basic methods were used by Federal agencies to track these levels. One method used direct contacts with affected business concerns to assess the actual unemployment levels. The other method used a computer analysis of anticipated actions to determine the consequences under various scenarios.

The direct survey method, as carried out during the past winter by the Bureau of Labor Statistics, showed a relatively small number of workers unemployed for strike-related reasons in the States comprising the east central area reliability coordination agreement region. The BLS weekly surveys found that out of a work force of about 14 million, weekly unemployment ranged from 9,500 to 25,500. One factor that may have contributed to this low figure was the increasing deliveries of coal during February and March 1978.

The computer model, developed jointly by DOE, BLS, and the Council of Economic Advisers showed a best-case projection of unemployment amounting to about 27,000, a figure comparable to the maximum unemployment level reported by BLS. The model also showed a worst-case estimate of 3.5 million unemployed in the east central region by mid-April 1978, under the assumptions that coal deliveries would fall to their low point of 300,000 tons per week and State curtailment plans for electric power would be imposed.

We were told by CEA officials that these estimates resulted because the computer model made a direct linkage between unemployment and coal deliveries. Other Government officials, however, told us that no reliable causal relationship can accurately be established between energy curtailments resulting from diminished coal deliveries and numbers of workers unemployed.

For reasons we could not determine, the administration elected to use the computer-generated worst-case scenario of 3.5 million workers unemployed, both in the public media announcements and in support of the Taft-Hartley injunction.

As you are aware, Mr. Chairman, we have had a series of delays in obtaining documentation on this matter from CEA. They did provide some of the data we requested, but it was not received until after our audit work was completed and the report was ready for issue. However, the key information we needed on CEA's analysis of the computer projections was not provided. We therefore could not determine completely the rationale for the administration's use of the worst case scenario.

We were provided copies of data by DOE that had been given to administration officials during the winter. These data concerned the upward trend in coal deliveries, the extent of power transfers, the results of curtailing industrial users 15–25 percent, and related documents on unemployment statistics. This information was all supportive of the BLS survey findings.

We do not believe the administration acted as prudently as it could have, given the wide range of information it had available to it. We do believe that, as a minimum, the administration should have informed the public as to the actual unemployment and coal delivery levels, various projections of unemployment given differing assumptions, and the probability of these unemployment levels actually occurring.

In contrast, however, it appears that the credibility gap regarding energy information has been widened. This could make it difficult to obtain public cooperation in future energy emergencies which may be more severe.

We believe that in the Government's dealings with the public its goals will best be served if such information is presented candidly and forthrightly.

In your request for our testimony, Mr. Chairman, you specifically asked that I be accompanied by a representative of GAO's Office of General Counsel to address our reaction to the Justice Department memo of August 31, 1978. Our Office of General Counsel has prepared a statement for the record which Mr. Wray will briefly summarize at the end of my statement.

As to the use of contractors by DOE, DOE used contractual services amounting to nearly $200,000 to assist the working group

in preparing the Planning Guide and in implementing some of the preemergency measures. The results of these contracts were mixed. Some contractors achieved their objective, such as the completion of the Planning Guide itself. Other contractors produced products, however, that were either not timely or not useable.

In at least one case, the delay was in DOE's contract processing procedures during the reorganization. This, for example, held up the production of the Energy Handbook to complement the Planning Guide. This was especially unfortunate, since the Handbook appeared to us to be potentially more useful than the Planning Guide.

In another example, involving the development of procedural guidelines for the Emergency Center, the lack of contractor monitoring by knowledgeable DOE staff probably contributed to poor contractor performance. In this case, however, we believe DOE should have been able to develop these guidelines without contractor assistance.

DOE is continuing to use contractual services in its on-going emergency preparedness planning activities.

In addition to the $7.5 million budgeted in fiscal year 1979 for the development of the Energy Emergency Management Information System, contracts amounting to about $2 million have been signed for at least eight separate projects.

We are concerned about: The contract costs; the complexities of work envisioned; the need for such extensive contracting services in view of the improved capabilities of State agencies to handle emergency situations; and the ability of DOE to effectively monitor these contracts in view of the relatively few personnel it has assigned to the emergency preparedness effort.

These concerns raise questions as to how effective and how necessary these contracting efforts will be in helping DOE to discharge its contingency planning responsibilities.

As to current efforts to improve emergency preparedness, although the Nation managed to get through the winter's energy emergency without widespread disruptions, there were several areas where deficiencies existed and where corrective actions were needed.

Mr. DINGELL. Pardon me, sir. I think you did not read some parts of your statement. You were concerned about contract costs, complexity of work envisioned, the need for extensive contracting services in view of the improved capabilities of State agencies, and the ability of DOE to effectively monitor these contracts. Did you miss those?

Mr. PEACH. I think I read them, Mr. Chairman, but I will be glad to go back over them.

Mr. DINGELL. Oh, you are summarizing. I don't want you to express less than adequate concern over these matters, because these are matters of considerable concern to the committee.

Mr. PEACH. I think that your concerns are valid. One of the things we have been increasingly concerned about in GAO is a tendency for a considerable amount of contracting for a variety of things on the part of the Department. We have initiated as a very broad scale look at the contracting and procurement process of the

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Department, and we plan to undertake a series of specific assignments in this area.

Mr. DINGELL. Thank you. I didn't mean to interrupt. But I want to make very clear that I hope you have these concerns as expressed in the prepared statement I have been following and also as have been expressed by the Chair on many different occasions.

Mr. PEACH. We certainly do, Mr. Chairman.

Mr. DINGELL. If you will forgive me once more. We are going to make some inquiries as regards this kind of information, both before we commence our authorization hearings for the next year and also before the Appropriations Committee, because I think this is a rich opportunity for conflict of interest here. I think there is rich opportunity for special preference to different folks, insider information, and avoiding all manner of Federal statutory requirements upon agencies, which it looks to me like they may be trying to get out of down there at DOE.

Mr. PEACH. Certainly we will be glad to work with you both on a formal and informal basis as you go about structuring your hearing process in this area next year, Mr. Chairman.

Mr. DINGELL. We will need your help very badly, because we found your agency to be most able and capable, properly oriented on these matters.

You may proceed, sir.

Mr. PEACH. Although the nation managed to get through the winter's energy emergency without widespread disruptions, there were several areas where deficiencies existed and where corrective actions were needed. While some of the deficiencies can be corrected by DOE actions, most of the required actions will require the close cooperation of Federal and State agencies as well as the energy industries.

The need for improving energy emergency preparedness has been recognized and efforts to bring about these improvements at the Federal and State levels have been ongoing through the months following the coal strike settlement.

However, except for a revised planning guide at DOE and the benefit of the experiences gained during the past winter, most Federal and State agencies will face this coming winter in about the same state of preparedness as existed for the 1977–78 winter. Because of last year's learning experience, State and electric utility industry officials should have a greater degree of confidence in their ability to manage future energy shortages. They recognize, however, that they need Federal assistance in certain areas, such as improved data management and coordination of emergency operating plans and procedures.

DOE's current planning efforts are concentrated principally in: (1) Developing the Energy Emergency Management Information System; (2) revising the Energy Emergency Planning Guide, (3) reorganizing the Energy Emergency Center; and (4) improving the coordination between State and Federal agencies.

The Management Information System project has required extensive groundwork. Staffing, which has been minimal, has recently been expanded. At the present time it consists of the Director, three staff members detailed from other DOE components, and a secretary. If the objectives of the System are attained, it could be a

very useful source of information, particularly as it relates to energy emergencies.

The revisions to the Planning Guide appear to have enhanced its usefulness to potential users, but it still remains a reference document rather than an actual plan.

We believe that DOE still needs to take the lead in coordinating and monitoring Federal energy emergency actions. Specific responsibilities need to be assigned for proposed actions. The best use of task forces needs to be determined, and decisions need to be made in advance of the organization, assignment of responsibilities, and staffing of the task forces.

We also believe a single responsible high level administrator needs to be designated to coordinate emergency preparedness planning and have authority to order the implementation of the various Federal actions needed regardless of the agency involved.

Improvements in the Energy Emergency Center operations are needed and have been recognized by responsible officials. Proposed changes include coordinating a number of separate activities and upgrading the facilities and equipment within the Center.

An improved data management system which is currently being incorporated into center operations should also help overcome previous complaints about the accuracy and timeliness of information sent out from the Center during the past winter.

The coordination of Federal, State, local and industry emergency preparedness plans remains one of DOE's major unresolved problems. We found that some States maintained a provincial attitude toward electricity produced within their own borders, even though such electric power was a vital segment of the total electrical energy needs of a neighboring State.

The interstate and regional environment in which many of the energy industries operate make it imperative that contingency planning encompass more than an individual State or locality. Responsible officials at all levels have recognized this need and DOE has devoted a share of its resources to improving this coordination.

Most of this coordination effort will take 1 to 3 years to complete. We believe that discussions with knowledgeable Federal, State and industry officials need to be ongoing to identify past problem areas and seek mutually agreed-on solutions for the immediate future.

DOE should be initiating discussions with State agency officials on ways to remove barriers to regional planning within the context of meeting individual State needs and encouraging the States to work together to achieve compatible contingency and energy curtailment plans.

We believe that because DOE did not have early access to State contingency plans, it did not have a good understanding of how States were prepared to manage energy shortages. Had DOE been more aggressive in obtaining and analyzing these plans, we believe that some regional supply problems may have been avoided.

DOE proposes to improve this situation through the use of contractual assistance.

We believe that DOE should look to its own staff to develop strategies and plans for improvement.

We believe that such Federal-State coordination should be encouraged and expanded as necessary and if it is many of the prior problems will be greatly reduced if future energy shortages should occur.

To insure that DOE's efforts are properly directed and managed, we have recommended to the Secretary that, at the Federal level, an interagency energy emergency agreement be developed which would designate the actions that can be taken, how they would be taken, and who has the responsibility and authority to take them.

We have also recommended that DOE's current planning process be critically reviewed to insure that:

Only those needs that cannot be met by State and industries be considered;

Proposed emergency actions involving the energy industries are approved by energy technical specialists;

The Planning Guide is revised to contain: (1) Sufficient details on Federal programs and assistance to make it more useful: (2) proposed actions that can be realistically implemented; and (3) wherever possible, specific plans of action; and

The development of the Energy Emergency Management Information System be given top priority.

To minimize poor contractor performance, we have concluded that DOE needs to critically evaluate its current contingency planning efforts to insure that all current programs are necessary and properly staffed. We have specifically recommended that the Secretary, DOE, more closely monitor the contractual services used in the energy contingency planning process so that the results of such services are both timely and useful.

Mr. Chairman, that concludes my prepared statement on the findings and recommendations contained in our report.

You also asked that we comment on a number of issues related to DOE's emergency preparedness planning that were raised in our report and in a report prepared by DOE's Inspector General on the same topic. In response to that request, we are submitting a separate detailed statement for the record.

[Testimony resumes on p. 49.]

[The detailed statement and attachments of Mr. Peach follow:]

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY
Expected at 9:30 a.m.
Friday, November 17, 1978

DETAILED STATEMENT
FOR THE RECORD
OFFERED BY
J. DEXTER PEACH, DIRECTOR
ENERGY AND MINERALS DIVISION
BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

Mr. Chairman and Members of the Subcommittee:

At your request we are submitting this detailed statement for the record covering our response to questions included in your letter of invitation to appear before the Subcommittee. On the questions that concerned matters we did not specifically cover during our review, we have provided, where applicable, comments based only on our general observations. On other questions, we have provided the detailed information requested.

USE OF CONTRACTORS BY DOE IN EMERGENCY PREPAREDNESS ACTIVITIES

DOE used four different contractors and five contracts to assist the energy emergency planning staff in developing and publishing the Energy Emergency Planning Guide: Winter of 1977-78 and to implement some of the measures proposed in the Guide. A listing of these five contracts with costs, contract objectives, and contract status is given in Appendix I. Four of the contracts were completed, with the National Oceanography and Atmospheric Administration (NOAA) contract continuing until January 1979.

Although each contractor fulfilled the contract requirements, not all of the products proved to be useful, or were used, by the DOE staff in the emergency planning effort. A brief summary of each contract follows.

The contract awarded to the American Management Systems, Inc. (AMS) was the largest in terms of cost. It was issued to AMS without bid because of the time constraints under which DOE's emergency planning group were working and because of AMS's prior work with FEA and their extensive experience in the energy field. The contract was (1) to provide assistance to the planning group in developing the Energy Emergency Planning Guide, (2) design the Energy Emergency Center (EEC), and (3) develop operating procedures for the Center.

Because of the press of time to get the Planning Guide published, AMS subcontracted with Price, Waterhouse, Inc. to develop the Center's design and operating procedures. AMS completed its work on the Planning Guide in November 1977.

Price, Waterhouse worked with the DOE staff to develop the policy on how the Center should be set up and then drafted a set of operating procedures to be used by the Center personnel when it was activated. For reasons we could not determine, the DOE staff made no use of these operating procedures when the Center was opened on December 1, 1977. The Center Director told us that she was generally unaware of what Price, Waterhouse personnel had been doing although the management of the Center was her responsibility. As a result of not using the contractor-developed procedures, the Center opened without any written guidelines for its organization and operation making it less effective than it might have been.

An important corollary to the Winter Emergency Planning Guide was a proposed handbook on Federal assistance during energy emergencies. This handbook was designed to trigger the initial actions by State or industry officials in seeking Federal assistance. To be useful, the handbook was required to be available by December 1, 1977; therefore DOE believed noncompetitive procurement was justified.

The proposed contract with Jack Faucett Associates was initiated prior to the close of FY 1977. Because of the heavy workload of the FEA contracting office at that time, the contract was not finalized and was carried over into FY 1978. According to DOE officials responsible for developing the Planning Guide, the contract was caught up in DOE's contract review procedure following its organization on October 1, 1977, and was not approved until after November 8, 1977.

The contractor completed a first draft of the handbook on December 9, 1977, and a final draft was provided on January 10, 1978. Twenty-five copies of the handbook and the reproducible master were provided to DOE in late January in compliance with the contract.

The Director of the Energy Emergency Center said that the DOE reorganization had tied up personnel needed to arrange for the distribution of the handbook. Since its distribution would be delayed until the winter was nearly gone, DOE saw no need to finish the project and no final copies of the handbook were published and issued.

We reviewed the draft copies of the handbook and believe it would have been of more use to State and industry officials than the Planning Guide. It was designed to be easily updated making it a useful reference

document in the future as well as for the 1977-78 winter. We are not aware of any plans for the handbook, or something similar, to be prepared for the 1978-79 winter as a complement to the revised Planning Guide.

We did not specifically assess the use of contractors as a viable way of preparing for, and carrying out, emergency functions. Our observations of DOE's experience with contractors during the 1977-78 emergency preparedness effort, however, leads us to the conclusion that there is considerable uncertainty attached to obtaining a useful and timely product from such contracts.

Actions taken to deal with emergencies or emergency preparedness usually require a quick response time, and DOE's efforts during the planning phase for the 1977-78 winter was no exception. A quick response requires the contracting agency to expedite the contracting process, thereby limiting the time agency personnel can spend writing adequate specifications and soliciting bids to keep the cost down. Any delays in the contracting process further limits the time allowed for contract performance. The result is--as was evidenced in some cases during the past winter--a product that is no longer needed because it is received too late. It may also result in a poorly prepared product that has limited usefulness.

We conclude that although contracting may be a viable way to accomplish a project, the responsibility rests on the contracting individual or agency to (1) determine the need for the product, (2) determine whether specifications can be prepared that clearly delineate the required end product, (3) provide adequate monitoring to insure that

the end product will be produced according to the specifications, and (4) assess the trade-offs of doing the work with agency personnel.

DOE is continuing to use contractual services in its on-going emergency preparedness planning activities. Contracts amounting to about $2 million have been authorized for at least eight separate projects. (Appendix II).

COORDINATION OF EMERGENCY PLANNING

Our review did not specifically cover the issue of coordination as did DOE's Inspector General report. During our review of DOE's efforts to develop the Planning Guide and manage the emergency caused by the coal strike it was apparent that while parts of the program may have been organized and coordinated with other groups, the total effort lacked a sense of direction and certainly lacked a designation of responsibility and authority.

Aside from the interagency coordination which must be directed from the top levels of all agencies, the diversity of DOE's internal efforts to plan for and manage energy emergencies of all kinds requires strong central direction and authority. We would agree with the Inspector General's position that "...the complexity of energy problems and the importance of emergency planning in this area makes the need for a full-time DOE emergency coordinator with a full-time staff inevitable. Such a coordinator must have the overriding authority to insure consistency and common direction in the emergency preparedness planning of the individual offices."

We do not believe that DOE's actions in dividing this responsibility and placing it on officials in a staff position within the Department will meet the need expressed by the Inspector General's report and that we observed exists in DOE.

COMMENTS ON THE INSPECTOR GENERAL'S REPORT

We have reviewed the findings developed by the Inspector General's office in relation to the results of our audit work. In those areas that were covered by both audits, we find general agreement between the two reports. The differences that we noted could generally be attributed to the differences in the time periods covered by each audit. The Inspector General's audit was essentially completed by mid-June and our audit extended to early September 1978.

We have looked closely at the Inspector General's findings numbered 3 and 7 from their legal perspective. We have also contacted DOE's General Counsel and were told that they have rendered opinions on the matters cited--the potential conflict of interest with industry personnel serving without pay on Federal emergency task forces and the matter of DOE releasing proprietary data to State agencies. These opinions will be provided to the Subcommittee at the hearing on November 17, 1978.

In view of this action by DOE, we have chosen not to comment on these two findings. If DOE's response at the hearing is not satisfactory, we can discuss the possibility of providing our comments at a later time.

ECONOMIC IMPACT OF THE
ENERGY EMERGENCY

In its attempt to assess the possible consequences of the coal strike on unemployment levels, the Council of Economic Advisors, (CEA), in conjunction with DOE and Bureau of Labor Statistics (BLS) officials, developed a computer model to analyze a number of variables that were assumed to be relevant to the economic effects of the coal strike. The results of these analyses were "best" and "worst" case scenarios showing possible unemployment levels ranging from a low of 27,000 unemployed workers in the ECAR region--given increased coal deliveries in March/April--to a high of 3.5 million unemployed workers--if coal deliveries fell to 300,000 tons per week and State energy curtailment plans were implemented.

We attempted to obtain all the information available regarding these unemployment estimates from the CEA staff so that we could better analyze the rationale for the use of the "worst" case scenario by the Administration. CEA initially rejected our request for the data we felt was necessary to do this analysis, but later did provide some general data on the computer model, assumptions used, and samples of the models output. The documents provided did not met our needs, and as a consequence, we were limited in responding to the Congressional request for this analysis.

The following discussion briefly outlines (1) our efforts to obtain the necessary data, (2) our evaluation of the data that was finally provided to us, (3) our evaluation of the usefulness of a computer model in these kinds of situations, and (4) our assessment of the Administration's use of the unemployment estimates produced by the computer model.

GAO efforts to obtain computer model data

Our initial efforts to obtain information on the development and use of the Administration's unemployment estimates resulting from the coal strike led us to various officials in Commerce, FERC, DOE, and EIA. Everyone admitted to some knowledge of the estimates but no one had the kind of documentation we were looking for, ie., a description of the model, the assumptions used and their basis, the variables incorporated into the model, and an analysis of the output. The EIA staff had attempted to develop a computer model for forecasting unemployment levels but the results were determined to be too subjective, judmental, and with too many errors to represent valid estimates. After some delay in responding to our request for copies of documents on the EIA model, we were finally referred to CEA as the repository of all the information we had been looking for.

In late June, 1978, therefore, we met with a CEA official who had been active in developing the CEA computer model. He explained how CEA got involved in developing the model, the variables used (coal supplies, deliveries, burn rates, curtailment levels, and unemployment levels), and

where they obtained the data (curtailment schedule of utilities from DOE, unemployment data from BLS, and coal deliveries from EIA). CEA said the coal delivery data was the most critical but was of very low quality. However, it was all they had so it was used. One additional bit of data CEA had was the minimal economic effect on industry and commercial concerns in Indiana of electric power curtailments which ranged from 15-25 percent.

A number of computer runs were made with the model. By changing the variables on each run,the model showed that with coal deliveries at 300,000 tons per week unemployment would start to become a serious problem in late March. At 600,000 tons per week, problems would begin in April and at 900,000 tons per week there would be no serious unemployment. When the use of the Taft-Hartley provision became likely, the administration had to make policy decision on which estimate to use. CEA chose to recommend to the Administration the "pessimistic" projection because:

--Coal deliveries were increasing, and consumption was decreasing. This was offset, however, by the historical perspective that violence was usually associated with similar strike actions, and if violence did occur, coal deliveries might diminish to the low point of 300,000 tons a week or less.

--The disjointed posture of the United Mine Workers' union did not appear to lend itself to early resolution of the strike issues.

--The validity of coal source information was questionable and the reliability of continued coal supply was doubtful.

--The outlook for an occurrence of the "worst" case scenario appeared to outweigh the possibility of the "best" case scenario actually happening.

The CEA official said he would provide us copies of memos sent to EIA explaining the model, but could not provide copies of memos from CEA to the DOE Secretary. These would have to come from CEA's Chief Economist.

In mid-July, after having had no success in obtaining documentation on the model or copies of memos analyzing the computer output for the Administration, we orally requested from another CEA official the following documentation:

--Memoranda from CEA explaining the model that was developed and all the assumptions and variables involved.

--All the estimates made and updated by CEA based on the information obtained from BLS and EIA.

--Memoranda from CEA to the White House transmitting the unemployment estimates and CEA's recommendations on which estimates should be made public.

We were later told by the CEA official we would have to submit our request in writing as there was some question about CEA providing this documentation to GAO.

On July 28, 1978, we met with CEA officials, including the Chief Economist, and presented our formal written request. (See Appendix III)

At this meeting we indicated our concern that seemingly routine-type data was being withheld from us and reiterated our futile efforts during the previous weeks to obtain the data. The CEA officials said that they would be as expeditious as possible in satisfying our request but it would require White House legal clearance.

Subsequent to our July 28, 1978, meeting the President's Deputy Counsel questioned our authority for obtaining the requested data. On August 11, 1978, GAO's General Counsel sent a letter to the Deputy Counsel citing the statutory authority under which GAO claimed access to the data. (Appendix IV).

On September 14, 1978, the Deputy Counsel wrote a letter to GAO's General Counsel stating that "while we do not believe that GAO has the authority to obtain the information sought, officials of CEA have agreed on a voluntary basis to provide information concerning last winter's coal strike." (Appendix V). Included with this letter was a Justice Department memorandum concerning our request. While the White House used the memorandum in asserting GAO's lack of authority to obtain the information sought, the Justice Department was equivocal in supporting such a conclusion.

On September 25, 1978, the Special Assistant to the CEA Chairman provided a staff summary of actions taken by CEA during the coal strike. The summary described the development of the computer model and the output that was utilized by CEA in evaluating potential economic dislocations resulting from the coal strike. The summary also stated that

"We have prepared this material as a service to GAO and to the Congress. However, our submission of this material should not be construed to establish any precedent for future GAO requests for information from the Council of Economic Advisors."

The summary provided a brief overview of the parameters and assumptions which constituted the computer forecasting model. The summary noted that "Attention is concentrated on the conservative cases because they were most relevant in the government's planning effort to protect the health, safety, and welfare of the population." According to the summary the model consisted of the following "prudent planning assumptions":

1. Effective coal stocks - As of 2/25 this figure was set at 15 million tons. This figure was a 30 percent discount of available coal because of poor quality and bad location, and was supported by the best judgement of DOE personnel most familiar with utility stocks.

2. Electricity Curtailment Plan - This was described as percentage cutbacks in electricity output defined with respect to normal daily coal consumption. These plans roughly corresponded to the plans of utilities in the East Central region at the time.

3. Coal Deliveries into the East Central Region - Normal coal consumption averaged 2.8 million tons a week. The delivery figure was placed at 300,000 tons a week based on average weekly deliveries experienced prior

to the week of February 11, which generally ran between 300,000 and 350,000 tons. Even though deliveries in the last weeks of February jumped to 800,000 and 900,000 respectively, CEA claimed that prudent planning required a lower figure because of possible aberrations in the figures or the possibility of violence or other types of disruptions.

4. Noncoal Generation and Wheeled-in Power from other Regions - This was assumed to be 10 percent and 8 percent of normal electricity consumption respectively. Actual figures in late February showed the corresponding figures to be 13 percent and 14 percent, but the lower estimates, which, according to CEA, were more consistent with prudent planning, were utilized to account for noncoal outages becoming more likely and the ability to import power from other regions declining over an extended period of time.

Besides these brief descriptions, the CEA staff also provided samples of actual computer runs of the model, with definitions of the terms used in the runs. In addition to the sample runs, unemployment charts that we had previously been seeking were provided. The final component of CEA's submission was the affidavit of the Chairman of CEA which used some of the model output in support of the request for an injunction under Taft-Hartley.

43-130 0-79-3

GAO evaluation of the CEA-provided data

Although CEA's summary and related material were helpful in describing its actions in developing the unemployment forecasts, much of the information had already been obtained from other sources and was reflected in our report. We did not receive the documentation that would have allowed us to determine how CEA evaluated the computer output in relation to other known data nor did we get copies of memoranda containing CEA's recommendations on how the computer estimates should be used. Consequently, a determination as to why it was felt necessary to hold to the most conservative estimates and relay that position to the public, could not be made.

Usefulness of computer models in emergency situations

We believe that the use of computer forecasting models can be useful in emergency situations. When forecasts of future events are needed, but the number of variables is too large to be manually manipulated, the computer is a useful tool to perform such manipulations in a relatively short period of time.

It is obvious, however, that the output of a computer model is no better than the data provided for analysis. Consequently, if the forecasters have questions about the quality or validity of the available data to be used, or cannot quantify some of the key variables, then it would appear that the value of the output should be analyzed and assessed for accuracy accordingly.

In our discussions with both CEA and other agency data specialists, several factors that influenced the CEA model's reliability were brought out that should have limited the Administration's reliance on the unemployment estimates produced.

1. The direct causal link between coal deliveries and unemployment is weak. It generally takes a number of adverse conditions occurring together (bad weather, high curtailments, no alternate fuels, etc.) to completely close a business. Problems occurring one at a time can usually be compensated for. Furthermore, curtailments of power or fuel supplies to a business may result in substitituing manpower for machines. Productivity would decrease, however, and the model would show a proportionate increase in unemployment when employment may be staying constant or even increasing.
2. Knowledge gained during the 1973 oil embargo showed that the number of hours lost is a much more meaningful figure than number of people laid off.

3. The U.S. had no comparable coal strike experience to use as a benchmark except for the 1972 coal strike in England and Western coal had not been a major factor in previous strikes.
4. The computer model cannot accomodate to the measures taken by operating managers to avert lay-offs, including decisions to retain a labor force beyond the profitable point to minimize the impact on a local economy.

We would have to conclude, therefore, that the key is not in discounting the use of computer models but rather in critically examining the output in terms of the validity of the assumptions and variables that were used as input data.

Assessment of the Administration's use of the unemployment estimates

The Administration's dilemma as to which of several unemployment scenarios to promote was solved by assuming the "worst" case of a possible 3.5 million unemployed workers in the ECAR region by mid-April 1978. Its position was supported by the statement "...in the final analysis the public was best served by that strategy."

We have to take exception to that conclusion for several reasons.

1. There was no obvious logical support for the "worst" case scenario. It was at complete variance to all indicators that employment was being affected only minimally by the strike, coal deliveries were continually rising, and consumption was continually decreasing through February and March.

2. CEA's assessing a high probability of coal deliveries dropping back to 300,000 tons per week and violence closing down all non-union mines does not seem supportable in view of the conditions that had existed for 4-5 weeks prior to the assessment.
3. It appears to us that the public is best served, and the credibility of the government enhanced, if the facts as they are known are spelled out as clearly as possible. The Administration had a range of possible consequences, it had trend data, and firm survey statistics on what the economic conditions were. We see nothing to stop Federal planning for the "worst" case situation and it should do that if there is a reasonable probability it is likely to occur.

CONTINGENCY PLANNING

We believe that in encouraging "more aggressive and coordinated contingency planning between States and the utility industry" DOE needs to expand on its role as a moderator, working through both the National Governor's Conference and the utility industry's reliability councils. Problem and need identification is probably the area of most significance and once this identification is made, proposed solutions can be discussed with State and industry representatives. If the proposed solutions require technical or financial support, then DOE should arrange to provide if the States cannot.

From its national perspective, DOE is in a position to identify needs much better than each individual State. With its recently acquired authority under the National Energy Act, DOE can develop additional interstate data, such as contingency plans for utilities in the interstate bulk power market. Such data will reflect potential problems for States served by these utilities. These problems can then be discussed in terms of needs that are common to both States and industry.

Some State agencies will need outside funding to adequately conduct emergency planning and DOE will now have access to some funds for this purpose under terms of the Act.

In addition to monetary and technical support, however, DOE has a role to play as a catalyst in bringing States and industry together to discuss mutual problems and seek satisfactory answers. In our discussions with electric utility companies serving interstate markets, we found that they are aware of the problems caused by the lack of regional coordination and planning. One of DOE's priorities in this area, then, is to help the States recognize the need to participate in multi-state emergency planning.

EMERGENCY MANAGEMENT INFORMATION SYSTEM

We have been informed by EIA that the Program Plan for the Energy Emergency Management Information System has been completed and hearings were held on November 16, 1978. The staff has been expanded to include three staff members in addition to the Director and secretary. We have been told, however, that the additional staff are on detail from other DOE locations and we do not know if this assignment is permanent or not.

STAFFING

Our audit efforts were concentrated in the short term emergency planning area of DOE. Therefore, our comments will be limited to that aspect of emergency preparedness. We did not find an overstaffing of positions in this area, but rather questioned the lack of staff assigned when measured against the tasks to be done. Throughout most of the past summer, for example, one individual carried most of the responsibility for emergency preparedness planning for the 1978-79 winter. This

included revising the Planning Guide and arranging for numerous contracts dealing with various aspects of the Guide. The individual was assisted by contractor personnel, however, and in August was finally provided additional agency staff. The lack of staff support from within the agency and the reliance on contractor support with minimal ability to monitor their activities incurs the risk of the results being non-productive as mentioned before.

There has been some reorganization of the short term emergency planning office with a division of responsibilities. We do not know how this reorganization will affect DOE's ability to respond to emergency conditions.

DOE CONTRACTS FOR WINTER 1977-78
CONTINGENCY PLANNING

Contractor	Contract date	Contract cost	Procurement method	Contract objective
American Management Systems, Inc. 1/	8/77	$71,173	Add on to existing contract	Integrate information and measures obtained from various Federal and State agencies into a clear, comprehensive guide to prepare for energy emergencies.
Jack Faucett Associates	11/77	25,000	Sole Source	Development of a handbook on Federal assistance during energy emergencies.
American Management Systems, Inc.	11/77	30,436	Sole Source	Prepare for, conduct, and evaluate demand-restraint workshops for state and local governments held in five DOE regional offices.
National Governor's Association	11/14/77	9,600	Purchase Order	Provide DOE with a comprehensive report on State Energy Emergency Management Systems.
National Oceanography and Atmospheric Administration	10/77	49,000	Interagency Agreement	Experiments on long-range national weather forecasting.

1/ $9,940 of this contract was sub-contracted to Price-Waterhouse, Inc. in November 1977 to prepare written procedures for the operation of the Energy Emergency Center.

CURRENT DOE CONTRACTS FOR EMERGENCY PLANNING

Contractor	Amount	Procurement Method	Contract Description
Auerbach Associates	$ 48,300	Sole Source	ERA Emergency Procedures Analysis
Systems Consultants	90,600	Sole Source	STEP/ERA Multi-Year Program Plan
Argonne National Laboratory	90,000	Sole Source	Analysis and Evaluation of Energy Emergency Plans
Oak Ridge National Laboratory	225,000	Sole Source	Energy Emergency Planning
Forte, Inc.	10,000	Mini-competition	Editing and Printing of FY 1979 Energy Emergency Planning Guide
Pacific Northwest Laboratory	258,000	Sole Source	Revise economic analysis and environmental assessment for four conservation contingency plans required by EPCA of 1975
MIT	839,851	Sole Source	New conservation contingency plans for motor fuels
Oak Ridge National Laboratory	500,000	Sole Source	New conservation contingency plans for residential, commercial, and industrial customers

APPENDIX III

JUL 27 1978

The Honorable Charles L. Schultz
Chairman, Council of Economic
Advisors

Dear Mr. Schultz:

The U.S. General Accounting Office (GAO) is reviewing contingency planning efforts and actions taken by Government agencies and industry to avert or alleviate energy shortages. This work is being done by our Energy and Minerals Division at the request of Mr. John Dingell, Chairman, Subcommittee on Energy and Power, House Committee on Interstate and Foreign Commerce. In his letter to GAO the Chairman specifically asked us to evaluate the estimate of unemployment due to last winter's coal strike which was developed by the Administration and released to the public in early March 1978.

We have discussed the circumstances surrounding the formulation of this unemployment estimate with staff at each of the agencies involved—the Department of Energy (DOE), the Bureau of Labor Statistics (BLS), and the Council of Economic Advisors (CEA). We have also obtained some data and documentation from DOE and BLS pertaining to this estimate. However, to present as complete a picture as possible to the Subcommittee Chairman, we need the following documentation from CEA.

—A description of the computer model developed by CEA to measure the unemployment impact of the coal strike including (1) assumptions used, (2) variables used, and (3) any limitations of the model.

—Memoranda from CEA to the White House and/or DOE concerning the computer model output on unemployment estimates and any comments, suggestions, or recommendations by CEA as to which estimate to use for policy decisions.

The Chairman has requested that we submit our report by September 1978. Therefore, if we are to consider the above information in finalizing our report, we must have it by August 4, 1978.

If you have any questions or would like to discuss this matter further, please contact either Gerald Elsken or Clifford Gardner of the Energy and Minerals Division at 275-3551.

Sincerely yours,

[illegible]

Henry Eschwege
Director

(ELSKEN/my/7/27/78)

bc: Mr. Canfield, EMD
Mr. Peach, EMD
Mr. Kelley, EMD
Mr. Elsken, EMD

APPENDIX IV

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-140339

AUG 11 1978

Margaret McKenna, Esquire
Deputy Counsel to the President

Dear Ms. McKenna:

Recently, GAO auditors made two requests for White House records they need in order to perform their work. One request (See ENCLOSURE I) was for materials related to the selection of appointees to the U.S. Metric Board. The other request (See ENCLOSURE II) was for materials related to the Administration's estimate of unemployment resulting from last winter's coal strike. The GAO work in these areas is being performed pursuant to requests from an individual Congressman and a House Committee respectively. In response to the GAO requests for access to White House records, you asked for a letter from my Office setting out GAO's legal authority for such access.

GAO's right to access to the records in question stems from 31 U.S.C. §54, which provides in part:

> "All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. * * *"

The term "departments and establishments" is defined at 31 U.S.C. §2 as including "any executive department, * * * office, agency, or other establishment of the Government." This definition clearly includes White House offices.

The requested information is essential to the work of GAO auditors. With regard to the information related to the appointment of the U.S. Metric Board, it is not our purpose to review the recommendations made by White House advisors to the President, but only to assure that statutory requirements concerning such appointments have been followed.

I hope that this letter resolves any questions you may have had regarding this matter, and that the requested records will be made available without too much further delay. If you have any other questions, please give me a call.

Very truly yours,

Paul G. Dembling

Paul G. Dembling
General Counsel

Enclosures - 2

APPENDIX V

THE WHITE HOUSE

WASHINGTON

September 14, 1978

Dear Mr. Dembling:

Thank you for your August 11 letter concerning GAO's two requests for access to White House records. I apologize for the delay in responding.

I requested the Justice Department to analyze the jurisdictional questions involved. They have prepared a memorandum and I have enclosed it for your information.

While we do not believe that GAO has the authority to obtain the information sought, officials of CEA have agreed on a voluntary basis to provide information concerning last winter's coal strike.

If there is any other information we can provide, please feel free to contact me.

Sincerely,

Margaret A. McKenna
Deputy Counsel to the President

Mr. Paul G. Dembling
General Counsel
U. S. General Accounting Office
Washington, D. C. 20548

Enclosure

Department of Justice
Washington, D.C. 20530

31 AUG 1978

MEMORANDUM FOR THE HONORABLE ROBERT J. LIPSHUTZ
Counsel to the President

Re: Right of General Accounting Office to Obtain Information

I am responding to Ms. McKenna's memorandum of July 27, 1978, asking for our advice with respect to two requests for information, each dated July 27, 1978, received from an official in the General Accounting Office (GAO). One, addressed to Ms. McKenna, relates to appointments to the United States Metric Board; the other, addressed to the Chairman of the Council of Economic Advisers (CEA), relates to data and memoranda connected with last winter's coal strike. We note that the requests were not signed by the Comptroller General but by a subordinate GAO official.

We conclude that the Comptroller General lacks authority to obtain the information sought.

I.

The request addressed to the Chairman of the CEA states that it is made in connection with an evaluation of the Administration's estimate of unemployment due to last winter's coal strike, which evaluation is being conducted by the GAO at the request of the Subcommittee on Energy and Power of the House Committee on Interstate and Foreign Commerce. The GAO asks specifically for the following data:

> A description of the computer model developed by CEA to measure the unemployment impact of the coal strike including (1) assumptions used, (2) variables used, and (3) any limitations of the model.

> Memoranda from CEA to the White House and/or DOE concerning the computer model output on unemployment estimates and any comments, suggestions, or recommendations by CEA as to which estimate to use for policy decisions.

The request thus has three elements: A computer model, memoranda to the White House, and memoranda from CEA to the Department of Energy. We have been informed by the CEA that the computer model was developed for the following purposes: Advice to the President and preparation of an affidavit by the Chairman of the CEA to be used in connection with the Taft-Hartley proceedings during last winter's coal strike. We also have been advised that the memoranda from CEA to the White House and from CEA to the Secretary of Energy also dealt with the preparation of the computer model and with advice to the President.

Our analysis proceeds from what we believe are now well accepted basic premises. First, the Comptroller General is an officer of the Legislative Branch. He has long been so viewed by Congress and by the Executive Branch. See, e.g., 1977-78 U.S. Government Manual 51; Corwin, Tenure of Office and the Removal Power, 27 Colum. L. Rev. 354, 396 (1927); Willoughby, The Legal Status and Functions of the General Accounting Office, 12-16 (1927). See also Reorganization Act of 1949, 63 Stat. 205; Reorganization Act of 1945, 59 Stat. 616. His functions derive from and must be based upon the performance of appropriate congressional functions. Second, confidential Executive Branch communications are presumptively privileged. See U.S. v. Nixon, 418 U.S. 683 (1974); Nixon v. G.S.A., 433 U.S. 425 (1977). We think it clear that this privilege, in order to be meaningful, must extend beyond the President personally to those who serve under and advise him. Thus, confidential communications between close Presidential advisers also fall within the "presumptive privilege" identified by the Supreme Court. See U.S. v. Nixon, 418 U.S. at 682 ("A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions * * * *"); Nixon v. Administrator, 97 S. Ct. at 2792 n. 10 (acknowledging the "legitimate governmental interest in

the confidentiality of communications between high government officials, e.g., those who advise the President"); Nixon v. Sampson, 389 F. Supp. 107, 150 n. 112 (D.D.C. 1975).

This conclusion is based on the same practical considerations that led the Supreme Court in Gravel v. U.S., 408 U.S. 606, 617 (1972), to conclude that a Senator's legislative aide is entitled to the protections afforded by the Speech and Debate Clause.

Third, we think it must also be acknowledged that, unlike the privilege governing sensitive military, diplomatic, and foreign affairs matters the presumptive privilege for confidential communications is not absolute. Congress has well recognized and appropriate constitutional functions which it appropriately must carry out, and where collisions occur between those appropriate congressional functions and the Executive Branch's need to preserve confidentiality a careful weighing of the respective interests must be undertaken. See Nixon v. G.S.A., supra; U.S. v. A.T. & T. Co., 567 F. 2d 121 (D.C. Cir. 1977); Senate Select Committee on Presidential Campaign Activities v. Nixon, 498 F. 2d 725 (D.C. Cir. 1974). As stated in the most recent decision by the D.C. Circuit Court of Appeals, where genuine and substantial competing interests are raised there is "an implicit constitutional mandate to seek optiminal accommodations through a realistic evaluation of the needs of the conflicting branches in the particular fact situation." U.S. v. A.T. & T. Co., 567 F. 2d at 127.

With these basic considerations in mind the Comptroller General's subordinate's request can be analyzed. First, it would appear that the three sorts of documents requested fall within the presumptive constitutional privilege and, therefore, a decision not to disclose the requested documents might be properly based on the determination that disclosure here would interfere with necessary relationships of confidentiality. For the reasons stated above, we think that the decision not to disclose could extend not only to the direct communications between the Chairman of CEA and the President but also to the communications between the Chairman and Secretary Schlesinger

and to the computer work-up done in order to assist the Chairman in providing advice to the President.

Before finally arriving at that conclusion, however, we think attention should be given to the Comptroller General's subordinate's reasons for seeking the material and the authority upon which that request is based.

In response to an inquiry from Margaret McKenna, the General Counsel to the General Accounting Office stated in a letter dated August 11, 1978 that GAO's "right to access to the records" in question stems from 31 U.S.C. § 54. This statute, which is GAO's basic provision with respect to its authority to seek documents derives from § 313 of the Budget and Accounting Act of 1921, 42 Stat. 26, and reads as follows:

> § 313. All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. The authority contained in this section shall not be applicable to expenditures made under the provisions of section 291 of the Revised Statutes [31 U.S.C. § 107].

As a matter of normal statutory construction we seriously doubt whether this provision provides a foundation for the request made in this instance. By its terms, § 313 directs "all departments and establishments" */ to comply with

*/ In view of the broad definition of the term "departments and establishments" in section 2 of the Budget and Accounting Act (31 U.S.C. § 2), we assume arguendo that the term includes the Executive Office of the President, in which the CEA is located, and the White House Office.

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requests from the Comptroller General for information concerning the "powers, duties, activities, organization, financial transactions and methods of business of the respective offices." Since the information in question here plainly does not relate to the powers, duties, organization, financial transactions and methods of business of the CEA, this provision can only apply if the term "activities" is given its very broadest meaning.

The very breadth of that term suggests the application of the ejusdem generis rule of statutory construction to ascertain its true import. Since the other terms of the section refer to organizational and fiscal matters we can properly regard the word "activities" as relating to activities of that nature. That view is supported by the fact that § 313 was enacted at a time when the Comptroller General's functions were limited to those areas. Since the information sought here does not relate to fiscal or organizational matters, we seriously question whether the request can be based directly on § 313.

Although the most recent letter from the General Counsel of GAO does not explicitly so state, the Comptroller General himself has heretofore taken the position that § 313 does not constitute an independent source of investigatory power. Instead, that section has been cited as an aid in carrying out powers and responsibilities elsewhere conferred on the Comptroller General. In other words, if some statute directs the Comptroller General to investigate, review or evaluate, § 313 has the function of enabling him to obtain that information from the Executive Branch. In the words of Comptroller General Staats, § 313 is of a "supportive" nature.*/

While we have not been directed by the General Counsel to any other applicable provision, § 204(a) of the Legislative Reorganization Act of 1970, as amended, is the only statute

*/ Memorandum submitted by the Comptroller General in Defense Production Act Amendments, Hearings before the Subcommittee on Production and Stabilization of the Committee on Banking, Housing and Urban Affairs, U.S. Senate, 92d Cong., 2d Sess. on S. 669 and 1901, pp. 51, 53. See also in this connection Morgan, The General Accounting Office, 51 North Carolina Law Review 1279, 1352-1353 (1973).

of which we are aware which could serve as a basis for this request. That section directs the Comptroller General "to review and evaluate the results of government programs and activities carried on under existing laws." 88 Stat. 326. When this section was originally enacted in 1970 it was limited to fiscal and budgetary matters. H. Rept. 91-1215, p. 80. While certain amendments in 1974 made only minor changes in the wording of § 204(a), the relevant conference report discloses a congressional purpose to expand the scope of this section so as to enable Congress to utilize the facilities of GAO in connection with its legislative oversight functions. */

*/ The pertinent portion of the Conference Report on the Congressional Budget Act of 1974, S. Rept. 93-924, p. 72, reads:

SECTION 702. REVIEW AND EVALUATION BY COMPTROLLER GENERAL

The Senate amendment expanded the review and evaluation functions and duties of the Comptroller General, including assistance to committees and Members.

The conference substitute is a revision of the Senate provision. It amends section 204 of the 1970 Legislative Reorganization Act to expand GAO assistance to Congress. As amended, section 204(a) provides that the Comptroller General shall evaluate Government programs at his own initiative, when ordered by either House, or at the request of a congressional committee. Section 204(b) provides that upon request, the Comptroller General shall assist committees in developing statements of legislative objectives and methods for assessing program performance. The managers consider oversight of executive performance to be among the principal functions of congressional committees and they recognize that the usefulness of program evaluation can be enhanced by the clear expression of legislative objectives and the employment of modern analytic methods. The managers further believe that statements of intent can be most appropriately developed by the committee of jurisdiction. Members must be provided upon request with all related information after its release by the committee for which it was compiled.

The request for information concerning the computer model may come within the scope of § 204(a) if it can fairly be said to relate to some legislative oversight of the manner in which programs and activities of the CEA are carried on under existing law. The only substantive piece of legislation involved in the Chairman's activities here was the preparation of an affidavit under the Taft-Hartley Act. It should first be noted that this activity is not among the statutory functions imposed on CEA under § 4(c) of the Employment Act of 1946. 15 U.S.C. § 1023(c). To the contrary, when the Chairman of CEA prepared and executed the affidavit he was not administering a program subject to legislative oversight but was acting in his capacity as an adviser and assistant to the President.

Assuming arguendo that the preparation and execution of a Taft-Hartley affidavit by the Chairman of the CEA might come within the scope of § 204(a) in connection with the exercise of legislative oversight of the manner in which the Taft-Hartley Act is administered, the fact is that it appears from the request that the House Subcommittee on Energy and Power is not engaged in legislative oversight with respect to Taft-Hartley and does not appear to have jurisdiction over that program or activity. Hence, § 204(a) would not appear to constitute an authority for the review and evaluation by the Comptroller General of the manner in which the Taft-Hartley Act is administered.

We presume, although it is not entirely clear, that it might be claimed that this investigation is addressed to the more general question whether there is in existence adequate legislation to avert energy shortage crises in the future. */ If this is GAO's interest it is not clear to us how the information requested should prove relevant to that inquiry. We believe that in order to make the kind of "accommodation" suggested by the District of Columbia Circuit Court of Appeals you would want to know a good deal more about the reasons why this particular information is being requested. Ordinarily, the examination of a single historical incident would not serve as a very useful aid in evaluating the need for legislation. Moreover, to the extent that the examination of a particular episode is deemed important we would think that the relevant factual details could be gathered without requiring the disclosure of this kind of confidential information.

In summary, it would appear to us that there is a substantial basis upon which a decision might be made not to share this information with the Comptroller General's staff. From the information given us by GAO we cannot readily ascertain the authority underlying the request. Nor can we assess the relevance or importance of the information sought. We suspect, however, that a more detailed factual inquiry would likely demonstrate that the interest in preserving the confidentiality of Executive Branch communications would exceed the interest GAO might identify in support of this request.

*/ There is a suggestion to this effect in the letter to Chairman Schultze dated July 27, 1978.

Mr. PEACH. Now, Mr. Chairman, I would like to turn it over for just a few moments to Mr. Wray to summarize for you the legal analysis of the Justice Department memorandum that we also had prepared for the record.

Mr. DINGELL. Mr. Wray, we welcome you for that purpose. We would at this time observe without objection the whole of your comments will appear in the record.

We now recognize you for your summary.

STATEMENT OF HENRY WRAY

Mr. WRAY. I will be very brief, Mr. Chairman.

I thought rather than going into the details of the legal arguments presented in the statement I might summarize and briefly comment on the manner in which this request developed.

As Mr. Peach indicated, we requested two types of information from CEA—information relating to the computer model they developed and also documents which explained their analysis and suggestions concerning use of the model.

We went through a period of months in discussions, meetings and letter writing before our request was sufficiently formalized, apparently, to be considered by the White House.

I think our other prepared statement goes into some detail concerning the history of our efforts in this regard.

Mr. DINGELL. The Chair observes that the complete statement of Mr. Peach, together with its appendices, will be inserted at the appropriate place in the record.

You may continue.

Mr. WRAY. The response that we finally got was a September 14 letter from the Deputy White House Counsel that essentially expressed the belief that we had no right to the information requested.

Mr. DINGELL. A matter in which we were in substantial disagreement.

Mr. WRAY. Yes, sir. Enclosed with that letter was the August Justice Department memorandum which has been referred to before.

It is true that the Justice Department memo begins by stating the conclusion that we lack authority to request the information. But we found on reading the full body of the memorandum that it really contains no firm conclusions concerning our access rights.

There is discussion for some pages of our statutory basis for access in this case, and questions are raised by the memorandum, but no conclusions are reached on this point.

The main thrust of the Justice Department memo is that they believe a case could be made for invoking executive privilege if certain determinations were made in this case.

Mr. DINGELL. As a matter of fact, they state, "We conclude the Comptroller General lacks authority to obtain the information sought."

Mr. WRAY. That is what they say on page 1.

Mr. DINGELL. On that, they will be inquired with some diligence.

Mr. WRAY. In getting into the executive privilege discussion, the memorandum points out the importance of a balancing process

where there is a clash between executive interests in confidentiality and the legislative need for information.

Mr. DINGELL. We shall inquire as to what the confidentiality of that happens to be and what the need for balancing a request for information from a committee of Congress would be.

Mr. WRAY. I think we would be interested in knowing what that process is.

The balancing that is apparent to us from the Justice Department memorandum is somewhat one-sided in our view. Unhappily, we didn't come off very well in the Justice Department's unilateral balancing process.

On the one side the Justice Department——

Mr. DINGELL. I think we can anticipate the next time you make inquiries by request of this committee you will find them more cooperative.

Mr. WRAY. Apparently so.

In terms of the case to be made for executive privilege, the Justice Department memorandum sets forth very broad and abstract theories of presumptive privilege. In contrast to that, the discussion of our access request tends to examine it in rather minute detail and assume the worst in each aspect of our request.

In any event, in fairness to the Justice Department, their memorandum, as we understand it, didn't really purport to be a decision on whether executive privilege would be invoked.

What the Justice Department did was refer the matter back to the White House, advising them to conduct a more detailed factual inquiry into the availability of executive privilege here.

As far as we can determine, there were no further efforts by the White House to consider our needs or engage in some sort of balancing process or to seek our input into a possible accommodation in this case.

Rather from what we can see, the White House has chosen to treat the Justice Department memorandum as a ruling that we have no right of access without getting into the question of executive privilege.

The end result of all this is that we have very little information. As Mr. Peach indicated, the CEA did volunteer certain information to us on one aspect of our request. It gave us nothing in terms of the documents relating to CEA's evaluation of the computer model.

We have——

Mr. DINGELL. Have you ever received that information?

Mr. WRAY. We did receive, I think by letter dated September 25, some information from CEA. I think that was basically a statement prepared for our use, describing the model and the assumptions used in the model.

Mr. DINGELL. Have you received it full of the information?

Mr. WRAY. No, sir.

Mr. DINGELL. You have not.

Mr. WRAY. We have received nothing in response to the second aspect of our request, which was for documents showing how CEA analyzed the data and how it suggested that the data be used.

So, we have the Justice Department pointing to the White House and suggesting a possible claim of executive privilege and the

White House referring us to the Justice Department memorandum as apparently a firm ruling denying our right to the information.

It is obviously very difficult to do business this way. I think this situation, this particular case illustrates a problem which really transcends the way that this case developed.

We don't have any authority now to pursue our statutory rights of access. A judicial remedy is not available at the moment. So, what we do is attempt to sit down with executive agency officials when problems arise and see if we cannot negotiate some sort of reasonable accommodation.

In some cases it is possible, through serious face-to-face negotiations, to accommodate whatever the executive branch concerns are with our needs in a particular matter. At least we do as well as we can in that process.

But in this case we were not even able to enter into negotiations to determine exactly what the problems are. We have no records, no real explanation of why the records were denied, and we don't really know who denied them at this point.

Mr. DINGELL. The Chair would like to make an observation that where these negotiations, with regard to the data are involved, that take place between GAO and the executive branch.

On matters which are under inquiry by request of this subcommittee, the Chair wishes to be informed, as does the subcommittee. When there is a constraint imposed upon information requested by this subcommittee, it is also the wish of the subcommittee to be fully informed of the limits of the constraints.

The Chair wants it very clear that I do not recognize, except in the most extraordinary circumstances, the power of the Executive to withhold information from the Congress. We had one President that did that.

As I understand the history of the country, he left on a helicopter after a rather tearful farewell speech in which he set out the need of this Nation to have plumbers.

I am not sure whether we need plumbers so badly, or whether we need another departure by helicopter because a President sought to withhold information.

Now, you may proceed.

Mr. WRAY. Yes, sir.

As I say, we never even got to the negotiation stage in this case. I think we share the same concerns about the extent to which records can be denied to us. But we are still trying to reach first base in this case, and determine why we were not given the records.

We still don't have anything resembling a firm legal position to support that portion of the request that was very clearly denied.

That is all I have, Mr. Chairman.

Mr. DINGELL. The Chair has observed that the full text of your statement, together with any additional comments that you might desire, will be inserted without objection at this point in the record.

[Testimony resumes on p. 58.]

[Mr. Wray's summary of the legal analysis of access to records denials follows:]

LEGAL ANALYSIS OF ACCESS TO
RECORDS DENIAL

As discussed in our detailed statement for the record, we made numerous attempts to obtain from the Council of Economic Advisers (CEA) records concerning the coal strike unemployment estimates. Finally, the Deputy Counsel to the President denied our request, apparently on the basis of an August 31 Justice Department memorandum. CEA later provided us certain information "on a voluntary basis," but this information did not meet our needs.

Considerable time was lost in meetings and letter-writing before the White House was satisfied that our access request was presented with the requisite formality to warrant its consideration. Now we have a denial based on a Justice Department memorandum that, while it raises questions concerning the statutory authority for our request, concludes that a decision to invoke "executive privilege" would be legally justified if certain determinations were to be made by the White House.

In this regard the Justice Department memorandum, concludes as follows:

> "In summary, it would appear to us that there is a substantial basis upon which a decision might be made not to share this information with the Comptroller General's staff. From the information given us by GAO we cannot readily ascertain the authority underlying the request. Nor can we assess the relevance or importance of the information sought. We suspect, however, that a more detailed factual inquiry would likely demonstrate that the interest in preserving the confidentiality of Executive Branch communications would exceed the interest GAO might identify in support of this request."

Thus the Justice Department in effect returned the matter to the White House for "a more detailed factual inquiry" as to whether "executive privilege" could or should be invoked. This "more detailed factual inquiry" apparently was not conducted. At least we were never called upon to further explain our request; nor were we asked to participate in any effort to reach an accommodation. Likewise the White House has never purported to invoke "executive privilege."

The ultimate result in practical terms is that after spending months considering our request to obtain specified documents for the audit, the Executive branch refused us the documents, questioning without denying our statutory rights of access and alluding to without invoking executive privilege.

Turning to an analysis of the Justice memorandum, the memorandum addresses several issues concerning GAO's statutory right of access and whether there is a legal basis for invoking "executive privilege" in response to our request. */ The relationship between the statutory and "executive privilege" arguments is not clear. We will discuss each issue separately.

As we explained to the White House, our statutory right of access to the records in question is section 313 of the Budget and Accounting Act, 1921, 31 U.S.C. §54, which provides in relevant part:

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*/ There is no need for extended discussion of assertions in the memorandum that appear to have little or no relevance to the issues here. For example, the memorandum recites three propositions that it regards as "well accepted basic premises." The first is that the Comptroller General, as "an officer of the Legislative Branch," can only perform "appropriate congressional functions." While this premise is incorrect--see United States ex rel. Brookfield Constr. Co., Inc. v. Stewart, 234 F. Supp. 94, 99-100 (D.D.C. 1964); cf., Buckley v. Valeo, 424 U.S. 1, 128 at fn. 165 (1976)-- it is also irrelevant since GAO's interests here in conducting an audit and reporting to Congress clearly involve an "appropriate congressional function." The second Justice Department premise--that executive privilege "must extend to confidential communications between close presidential advisers"--may prove to be correct, but is hardly "well accepted" under existing judicial precedent. In any event, as discussed later, we question whether much of the information GAO requested here could be so characterized. The third premise is that where "collisions occur" between congressional functions and the Executive's need for confidentiality, there is "an implicit constitutional mandate to seek optimal accomodations through realistic evaluation of the needs of the conflicting branches in the particular fact situation." While this is an admirable principle, the history of the present matter indicates a singular lack of interest by the Executive branch in efforts to evaluate realistically the competing needs and seek accommodations.

> "All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require
>
> of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. * * *"

The Justice memorandum assumes that section 204(a) of the Legislative Reorganization Act of 1970, as amended, 31 U.S.C. §1154(a), is the statutory basis for the audit. Section 204(a) provides:

> "The Comptroller General shall review and evaluate the results of Government programs and activities carried on under existing law when ordered by either House of Congress, or upon his own initiative, or when requested by any committee of the House of Representatives or the Senate, or any joint committee of the two Houses, having jurisdiction over such programs or activities."

The Justice memorandum raises the following specific issues concerning GAO's authority to obtain the coal strike information under the above-quoted statutory provisions:

1. The information requested here "plainly" does not relate to CEA's "powers, duties, * * * organization, financial transactions, [or] methods of business" within the meaning of 31 U.S.C. §54. The term "activities" in this section, as well as the other terms therein, seems limited to "fiscal or organizational matters." This interpretation is supported by the fact that GAO's functions were limited to such matters at the time 31 U.S.C. §54 was enacted. Therefore, it is questionable whether this section applies.

2. GAO's audit authority under 31 U.S.C. §1154 likewise appears questionable because:

a. The CEA activities here involved are not among the Council's statutory functions. Rather, they relate to the

Council Chairman's preparation of a Taft-Hartley Act affidavit in his capacity as an adviser and assistant to the President. Therefore, no CEA "programs or activities carried on under existing law" are present for purposes of GAO audit pursuant to 31 U.S.C. §1154.

b. Even if CEA's work on the Taft-Hartley affidavit as such constitutes a program or activity potentially subject to section 1154, it is not within the jurisdiction of the congressional subcommittee that requested the audit in this case.

c. Even if the audit addresses broader questions of the adequacy of legislation to avert future energy crises (thereby apparently avoiding the objections in a and b above), the information sought is, in Justice's view, of very limited usefulness for this purpose.

With respect to point 1, the language of 31 U.S.C. §54 speaks for itself; there is nothing in the language which even suggests, much less plainly indicates, that GAO's right of access thereunder is limited to fiscal and organizational matters. Rather, the scope of this section is every bit as broad as the language states. This is confirmed by the fact that Congress, while continually expanding the scope of GAO's audit functions with respect to Federal agencies, has seen no need to change our basic access to records authority in 31 U.S.C. §54 as originally enacted. See, e.g., H.R. Rep. No. 95-1586, at 8 (1978). We might add that the Justice memorandum's interpretation of section 54 would not only completely undermine those statutes assigning GAO audit functions well beyond "fiscal and organizational matters," but runs counter to the longstanding practice of Executive branch agencies in consistently furnishing us information on all aspects of their activities.

The issues raised by Justice concerning the applicability of 31 U.S.C. §1154 are also baseless. The first argument on this point attempts to divorce CEA's activities here in advising the President from its statutory functions. This effort is misdirected since the Employment Act of 1946 specifically mandates CEA to advise the President and prepare studies for him on a broad range of economic issues. Thus, for example, section 4(c) of the Act, 15 U.S.C. §1023(c), provides in part:

> "It shall be the duty and function of the Council [of Economic Advisers]--
>
> * * * * *

> "(2) to gather timely and authoritative information concerning economic developments and economic trends, both current and prospective * * * and to compile and submit to the President studies relating to such developments and trends;
>
> * * * * *
>
> "(5) to make and furnish such studies, reports thereon, and recommendations with respect to matters of Federal economic policy and legislation as the President may request."

The second point is that if the applicable program or activity is the Taft-Hartley Act, the congressional subcommittee requesting the audit has no legislative jurisdiction. The audit was not, of course, limited to the Taft-Hartley Act. As the audit report clearly shows, the subject matter extended to much broader energy concerns. In any event, 31 U.S.C. §1154 authorizes GAO to conduct audits at its own initiative. Thus, even if this audit was beyond the subcommittee's jurisdiction--which it clearly was not--GAO's authority would not be affected in the least.

The final point raised is that even if the audit falls within 31 U.S.C. §1154, the information sought does not strike the Justice Department as being particularly relevant or useful. It is not clear whether this portion of the Justice memorandum is meant to address our statutory right to the information (as opposed to the "accommodation" aspect of its "executive privilege" argument). If it does relate to our statutory authority, it would introduce a novel proposition of administrative law--that the party requested to supply information becomes the judge of its usefulness and probative weight. We would refer the Justice Department to an earlier Attorney General opinion construing 31 U.S.C. §54 for the correct statement of the law:

> "It will be observed that the Comptroller General states that this requirement [for information] is made necessary in order that a satisfactory audit may be made. What papers or data he should have to make such an audit would seem to be a matter

solely for his determination." 34 Ops. Att'y Gen. 446, 447 (1925).

In sum, the issues raised by the Justice Department concerning our statutory right of access in this case are wholly without merit.

The memorandum also suggests a possible "executive privilege" claim on the coal strike request. "Executive privilege" is a complex and controversial subject. While the courts have recognized the existence of the privilege, they have yet to firmly delimit its scope and effect in such areas as the nature and extent of communications covered; and the precise factors to be applied, and their relative weight, in balancing the interest in confidentiality against the need for disclosure.

However, the short answer in this case is that no Executive branch official has purported to invoke the privilege in response to our request for access. As noted previously, the White House declined the Justice Department's invitation to do so. We would add several brief observations.

It is difficult to see how the documents in question, at least in large part, would be potentially subject to executive privilege, or even why the Executive branch would wish to treat them as "confidential." Our expectation is that many of the documents would deal with the technical aspects of developing an accurate prediction system and what estimates to use. This is also suggested by the non-original materials that we were given voluntarily. Thus it is not at all apparent that this information would involve the sort of free-flowing consideration of policy options executive privilege is designed to protect. See, e.g., United States v. Nixon, 418 U.S. 683, 708 (1974).

In any event, the Justice Department makes no attempt to explain or even consider any specific justification for applying the privilege here, preferring to rely on the most abstract theory of "presumptive privilege." This approach of "presuming" the best case for privilege is particularly notable in contrast to the memorandum's efforts to assume the worst regarding every aspect of our request.

A number of access to records controversies have developed over the years between GAO and Federal agencies. In the absence of a judicial forum to resolve such issues, we have attempted to sit down with agency officials and reach the most satisfactory arrangements possible on a case-by-case basis. It may be unrealistic to expect that the competing interests can be satisfied in all cases. We would expect, however, that all of our requests for access will at least elicit prompt and serious efforts at negotiation, and if this is not fruitful, a clear statement of the grounds for denying access. Neither occurred in this case.

Mr. PEACH. Mr. Chairman, I would like to add one thing to Mr. Wray's statement. I would like to emphasize that the situation we are faced with here is not an unusual situation for GAO in terms of having some difficulty, getting access to information, where GAO thinks its access rights are clear.

When our right of access is brought into question, our only opportunity is one of negotiating and trying to convince that our access rights are there. Failing that——

Mr. DINGELL. Mr. Peach, you are not on the defensive here. I want that very clear. Certain other agencies of government are, but you are not.

Mr. PEACH. I understand. Failing that, the next avenue is for a committee, such as your committee in this case because you made the request, to take a strong interest in the issue and try to follow through and see that the information is made available.

But one thing that we have argued strongly for in GAO, and feel we need, is a right to go into court on our own behalf to follow through on our access authorities as we find necessary.

There was a bill last year that got through the House but did not get through the Senate, that would give us that right. Without that particular type of legislative authority to the extent we want to enforce our access rights, we have to go back to the Justice Department to do it.

You can see what kind of circle we get into in that kind of a case. I just wanted to underline that. This is a circle that we often find ourselves in, not just in this case, but in others.

Mr. DINGELL. Well, I am in full sympathy with your position on that. We will take a look at that legislation. It is not in the jurisdiction of this committee, but it strikes me that it is desperately needed.

Mr. Peach, I do want you to know when you inquire as to information at the behest of this committee you will have its fullest support.

Mr. Mansfield, I guess it is the privilege of the Chair to recognize you at this time.

The Chair observes we ask only of you to carry out your statutory responsibilities, to be most diligent in your activities down there at the agency.

I believe that the statute requires that you are under the duty to inquire into matters inside the agency, that you are to report only to the Secretary. Am I correct?

Mr. MANSFIELD. Only to the Secretary, sir, or to the extent he delegates it to the Deputy Secretary.

Mr. DINGELL. To the extent that he delegates?

Mr. MANSFIELD. Our statute says that we shall report directly to the Secretary or to the extent he makes delegation of authority to the Deputy Secretary.

Mr. DINGELL. Am I under the view that he has made such a delegation? Has he done so in writing?

Mr. MANSFIELD. Not that I am aware of, sir.

Mr. DINGELL. Is there, in your view, a requirement that this delegation be done in writing or is it simply an oral delegation?

Mr. MANSFIELD. I would believe it should be done in writing.

Mr. DINGELL. I would, too. Is there a policy in your agency as regards to that matter?

Mr. MANSFIELD. I don't know the answer to that, sir.

Mr. DINGELL. Could you inform this committee of that because we do have a curiosity. We have had our troubles with that.

Mr. MANSFIELD. I would be glad to.

Mr. DINGELL. With regard to your independence, which we intend to defend with some vigor, we would appreciate it if we had that; also, as to whether or not that delegation would be on a case-by-case basis or whether it be done in general.

The sentence I think in the statute to which we direct our attention is that:

> The Inspector General shall report to and be under the general supervision of the Secretary or to the extent such authority is delegated the Deputy Secretary, but shall not be under the control of or subject to supervision by any other officer of the department.

Parenthetically, at the proper point the Chair would appreciate your describing to us the clearance procedure as regards your papers.

I happen to think that you performed a rather outstanding service in regard to your comments, with regard to the matter under inquiry by this committee. But the Chair has been informed that there were certain clearances imposed upon you as regards your report on that matter.

Is that correct or incorrect?

Mr. MANSFIELD. That is incorrect, sir.

Mr. DINGELL. I am delighted to hear that.

It is, however, a fact that you did refer certain of these papers to other persons inside the department, did you not?

Mr. MANSFIELD. My testimony today or the report?

Mr. DINGELL. No, the findings you had made.

Mr. MANSFIELD. Correct, sir.

Mr. DINGELL. Is that clearance or not clearance?

Mr. MANSFIELD. That was done in conformity with the procedures in effect at the time I became the Inspector General. We are reviewing all those procedures now, sir.

Mr. DINGELL. You are reviewing them.

Mr. MANSFIELD. Correct.

Mr. DINGELL. Am I to infer, then, that means they are no longer in play or that those procedures persist?

Mr. MANSFIELD. They have already been modified to a considerable extent.

Mr. DINGELL. Would you advise us how they have been modified, please?

Mr. MANSFIELD. Yes, sir.

The procedure in effect at the time I became the Inspector General at the end of May was a highly formal, stylized and, in my opinion, overly bureaucratic one of writing a comprehensive series of findings which went beyond just that and had some statements of opinion in them, and referring them to interested parties in the agency for comment.

It is my belief that a more appropriate course—several things I think which should be done, and we are now in the process of doing and have been doing.

First, I think what we want to do is make sure that we are factually correct.

Mr. DINGELL. I have no complaint with that. But I do have real problems with you being supervised in the conduct of your statutory responsibilities or having your work product cleared.

Mr. MANSFIELD. I believe it is appropriate for us to do checking to made sure we are factually correct.

In my opinion the process we have in effect is much too long to accomplish that and attributes to delays in issuing our report.

We are going to be doing three things in that respect. We will construe quite narrowly the matters on which we want to seek consultation with the interested parties and they will relate to questions of fact and not opinion.

Second——

Mr. DINGELL. I want to stress that with regard to questions of fact but not questions of opinion.

Mr. MANSFIELD. Correct, sir.

Second, we will try to do an increasingly professional job in our investigations and inspections and audits so we reduce the necessity of checking these facts because, if we are doing our job properly, we shouldn't have to do much of that.

Third, and finally, there were in effect procedures when in some instances parties in the agencies were allowed 60 days to comment and to me that is an inordinately long period of time and it should be something which can be checked out in a few days and hence speed up the process of issuing our reports.

Mr. DINGELL. How much do you intend to allow your opinion or the opinion of your agency, not the opinion, but your findings as regards the facts, to be persuaded by discussion of others inside the department? That is quite an important question to this committee.

Mr. MANSFIELD. I can tell you in the case of the report which is before you today, sir, not a single thing of substance was changed in the report as a result of going through this discussion.

I am saying in other words our recommendations and conclusions were in this case totally unaltered by the responses we got from——

Mr. DINGELL. Is there anything in the policies or your written instructions which would impair your abilities to persist in that course?

Mr. MANSFIELD. No, sir.

Mr. DINGELL. Very good.

Well, if you will identify yourself fully for the purpose of the record, we will be pleased to receive your statement.

Mr. MANSFIELD. I might insert, sir, I am not prepared to go to jail as the Inspector General. I am working under a statute and I expect to obey that statute.

Mr. DINGELL. We fully expect you will go down in history as a distinguished Inspector General. We intend to afford you all assistance towards that end.

Mr. MANSFIELD. Thank you, sir.

STATEMENT OF J. K. MANSFIELD

My name is J. K. Mansfield. I am the Inspector General of the United States Department of Energy. I am here by myself this morning.

Mr. Chairman, this is my first appearance before your distinguished subcommittee and I am glad to be here.

You have asked me to testify about an Inspector General report our office issued on September 15, 1978, after doing a review of the energy emergency preparedness program of the Department of Energy.

Our review brought to light a number of instances in which we thought the Department had done a good job. For example, we thought that on the whole the department responded effectively to last winter's coal strike—even though my colleagues believed that more detailed contingency planning would have made the Department's response still more effective.

Also, we thought the DOE has done a good job of improving its relations and communications with State offices concerned with energy emergencies. Similarly, we concluded that the departmentally sponsored efforts to try to improve long-range weather forecasting—are the weeks ahead likely to be colder or warmer than usual—are commendable.

As against these and other examples of good work, we found instances of where we thought the DOE emergency program was in need of improvement. The attachment to this statement summarizes our findings in this regard. [See p. 64.]

I will now comment on the specific topics you asked me to discuss during this hearing.

First, coordination. At the time of our review, eight major organizational elements in the department had important energy emergency responsibilities. However, there was no one person in the department whose full-time job it was to oversee and coordinate across-the-board the wide range of DOE emergency activities and who was placed high enough in the Department's organizational structure to be able to cause timely corrective action to be taken when program weaknesses appeared.

In this situation our office recommended that there be appointed a full-time Energy Emergency Coordinator who would be a senior member of the office of either the Deputy Secretary or Under Secretary.

The Department in recent weeks has taken an approach to this problem which differs from the one we in the Inspector General's Office recommended. It has established an energy management emergency group, chaired on a part-time basis by the Assistant Secretary for Policy and Evaluation, to coordinate DOE responses to energy emergencies and to coordinate overall energy emergency planning.

At the same time, the Department has named the Director of Administration the Emergency Coordinator and has given him part-time responsibilities for monitoring overall agency emergency preparedness matters.

This course of action, Mr. Chairman, concerns us on several counts.

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First, we question whether the Department's approach places the coordination function at a high enough level in the Department.

Second, we foresee difficulties in deciding what will be done by the Assistant Secretary for Policy and Evaluation on the one hand, and what will be done by the Director of Administration on the other hand.

Third, both the Assistant Secretary for Policy and Evaluation and the Director of Administration, and especially the latter person, have very heavy responsibilities outside the emergency planning area, and we question whether it is prudent management practice to impose upon them the additional responsibilities they are now being asked to discharge under the Department's approach to the energy emergency coordination problem.

According to information given us by his office, the Director of Administration has been responsible for overseeing activities in more than 50 different areas of important departmental endeavor.

Many of his responsibilities are especially critical during these early days of the Department's life. I have in mind such mundane-sounding but very important matters as trying to insure that personnel actions move forward in a timely manner, that mail does not get lost, and that the office moves of people at the 19 diffrent existing locations of the Department here in the Washington area take place with the least possible disruption.

We in the Inspector General's Office fear it may be very hard for the Director of Administration to give his responsibilities as Emergency Coordinator the time and attention they will deserve and need and at the same time give his responsibilities in connection with such matters as the above the time and attention they will also need and deserve.

A shorthand way of summarizing the heart of our concern with the course of action adopted by the Department in regard to this matter of coordination might be as follows:

We in the Inspector General's office believe that the Department's approach represents a part-time solution to a full-time problem.

I turn now to the second item you asked me to comment on, the use of contracts in the Department of Energy emergency preparedness program.

During our review, we looked only glancingly at the use of contractors in the DOE energy emergency program, and we do not now have any judgments concerning the need for these contracts and the value of the work being done under them. We will be doing more looking at the contracts in the months ahead, and we will make appropriate recommendations if we find cause for concern.

Third, update of findings in our report.

The attachment to my statement describes what the Department says it had done in response to our report as of late September. With the exception of what was done regarding the problem of coordination, we are on the whole pleased with the DOE responses to our findings.

A number of these responses, however, are still in the planning stage and we will, from time to time, make checks to try to insure that the plans become translated into action.

Fourth, defense versus nondefense planning. Certain of the organizational changes made in response to our report seem to us to be good ones in terms both of promoting closer coordination of defense and nondefense planning and of correcting previous planning imbalances which favored nondefense emergencies. We will do checking in the future to see how well these new organizational units are staffed and managed.

Fifth and finally, the matter of processing of Inspector General reports. None of us in the Inspector General's Office is satisfied with the amount of time it has been taking us to complete our reviews and issue our reports.

Part of our problem probably relates to the plain newness of our operation. I am now less than 6 months old on my job; our three Assistant Inspectors General have been with us an average of only 10 weeks each, and the Deputy Inspector General joined us less than 2 weeks ago.

I also believe that certain of the report processing procedures which were in effect when I joined our office were needlessly cumbersome and time consuming. We are changing them.

As an example, we are now adopting measures which should shorten the amount of time it takes to check out the factual accuracy of our reports.

As another example, 2 months ago we started making direct referrals of Inspector General cases with possible criminal implications to the Department of Justice. This should considerably speed up the referral process.

This completes my prepared statement. I will be pleased to answer any questions the subcommittee may have.

[Testimony resumes on p. 71.]

[Attachment to Mr. Mansfield's prepared statement follows:]

STATUS REPORT

ON

DEPARTMENT OF ENERGY RESPONSE

TO

INSPECTOR GENERAL'S INSPECTION REPORT

Findings	DOE Response
1. The creation of DOE, its organization, and the procedures it established have not improved upon the pre-existing inadequate state of energy emergency planning within the Federal Government.	Considerably in advance of the initiation of the Inspector General's Review and independent of that effort, many actions were taken to improve the Department's emergency preparedness. We have reviewed assignments of emergency preparedness functions and responsibilities and made changes where necessary, established a new energy management emergency response group, designated one office to coordinate energy management emergency planning and identified a number of other actions which are either underway or being planned. A draft plan for the Emergency Energy Management Information System has been issued and is about to be made final. The Economic Regulatory Administration (ERA) has reorganized its internal emergency preparedness functions and has evaluated lessons learned during the recent coal strike.
2. There is no single activity or individual within DOE that has responsibility for the overall Department emergency preparedness function.	The Energy Management Emergency Group (EMEG), chaired by the Assistant Secretary for Policy and Evaluation (PE), has been established to coordinate DOE responses to energy emergencies. PE has also been assigned responsibility to coordinate overall energy emergency planning and policy matters. Budget authority and planning and response activities remain with program organizations. The Director of Administration has been appointed as the Department's Emergency Coordinator. His chief role will be to facilitate coordination among emergency preparedness participants and to coordinate general emergency preparedness matters with such agencies as the Defense Civil Preparedness Agency, Federal Preparedness Agency, etc

Findings	DOE Response
3. The DOE response to the need for national defense related electric emergency planning and preparedness was deficient and deteriorating.	The assignment of the emergency stand-by organizations to ERA has been reaffirmed. We have initiated a study to determine the role and usefulness of the stand-by emergency organizations and to examine those organizations with respect to ERA contingency plans. Organizational action taken by ERA abolished the separate Short-term Emergency Planning, Major Emergency Planning and Emergency Mobilization Divisions. ERA reorganizational alignment set up the Emergency Planning Division with responsibility for all ERA emergency planning. Responsibility for operational matters for the Emergency Electric Power Administration (EEPA) has been delegated to the Office of Utility Systems and for the Emergency Petroleum and Gas Administration (EPGA) and Emergency Solid Fuels Administration (ESFA) delegated to the Office of Fuels Regulations.
4. There was no clear policy established within DOE as to what constituted an energy emergency for which the Department had the responsibility to respond.	The Economic Regulatory Administration is preparing an operations manual which will consolidate delegations of authority, mission and function statements and roles and responsibilities of DOE offices in short-term emergencies to faciliate Departmental response. The Office of Policy and Evaluations as the overall energy emergency planning office will refine the definition of energy emergencies.

Findings	DOE Response
5. Planning for both national defense and non-national defense energy emergencies suffered because of distinction between the two in the establishment of ERA subordinate organizations.	The Economic Regulatory Administration has merged the Short-term and Major Emergency Program divisions and the Emergency Mobilization Division. In their place is an Emergency Planning Divisi responsible for all ERA emergency planning. EEPA is assigned to the Office of Utility Systems which will be responsible for its operational aspects as will the Office of Fuels Regulations be responsible for EPGA and ESFA and their operational aspects.
6. Non-national defense electrical emergency planning was not done within the ERA organization assigned specific responsibility for energy emergency planning.	See Response #5. Finding has been fully addressed.
7. The legal basis must be resolved for the quick transfer of information to the states in an emergency.	The Energy Emergency Management Information System (EEMIS) Task Force established June 1, 1978, has addressed this issue. The Office of the General Counsel responded to this legal issue by a memorandum to the Administrator of the Energy Information Administration (EIA) stating that there appear to be no legal obstacles to sharing with states under emergency conditions information exempt from disclosure under the Freedom of Information Act. EEMIS Program Plan calls for establishing data-sharing arrangements between DOE and states to allow sharing to occur under proper safeguards.

Findings	DOE Response
8. A policy decision was needed to clarify the role of Regional Representatives in day-to-day operations and more specifically during emergencies.	Defining the role of Regional Representatives and that of field organizations in general have been identified as necessary next steps in the DOE emergency preparedness mission. Action on this item is in the planning process.
9. The Office of State Relations in the Office of Intergovernmental and Institutional Relations appeared to have no well-defined role in the planning or operation of the Department's emergency preparedness responsibilities.	Full development of the IR role vis-a-vis emergency planning and response is a necessary next step in the DOE emergency preparedness mission. Action on this item is in the planning process.
10. The energy emergency response organization within DOE needed a top management policy directive. (This finding actually dealt with requirements for a response group, a facility and procedures to facilitate response.)	An Energy Management Emergency Group to respond to energy management emergencies has been established. Next steps are to fully develop functions and procedures of this group. In addition, an Emergency Operations Center (EOC) facility to serve all Headquarters organizations is planned for the Forrestal Building. Planning commenced in January 1978. Facility is expected to be completed by September 1979.
11. A predesignated, pre-equipped Operations Center did not exist from which the Energy Emergency Task Force could operate during periods of an energy emergency.	Planning for an Emergency Operations Center (EOC) in the Forrestal Building began in January 1978. It is expected that the facility will be ready in September 1979. For the coming winter, the Energy Emergency Center will be located at 2000 M Street.
12. Consideration should be given to study the feasibility of establishing a Mobile Energy Emergency Operations Center to supplement the proposed DOE Energy Emergency Operations Center.	Noted.

Findings	DOE Response
13. DOE had not developed a policy or program with respect to the training of DOE personnel to respond to energy emergency situations.	ERA will conduct a test and evaluation program based primarily on simulations of possible energy emergency situations. These simulations will provide necessary training. Responsibility for this program has been given to the Office of Fuels Regulations. A separate training course is planned for this fall.
14. Cooperation between the public and private sector during periods of emergency was positively demonstrated by the joint DOE/ECAR Task Force which operated at Canton, Ohio.	Completed.
15. Draft coal allocation regulations and implementing instructions were prepared on a timely basis.	Completed.
16. Personnel staffing priorities should be reevaulated with respect to natural gas emergency planning.	The Emergency Planning staff draws upon the expertise of appropriate personnel from other DOE offices who are made available when necessary.
17. The time, staff, and money devoted to revision of the Winter Energy Emergency Planning Guide did not appear to be justified in light of the marginal usefulness of the Guide to states interviewed.	ERA is in the process of re-evaluating the usefulness of the Guide.
18. Economic impact in terms of unemployment developed by the Council of Economic Advisors was apparently not correlated with the actual demand/supply data developed by the DOE/ECAR Task Force during the recent energy emergency.	Reports of coal supply/consumption in ECAR were used in the weekly forecasts of the range of unemployment impact. Models used in future emergencies will also be updated based on changing conditions. (Draft EEMIS Program Plan due October 2.)

Findings	DOE Response
19. The DOE effort to obtain timely and reliable unemployment impact data during the coal strike was a failure.	The requirement for reliable and timely unemployment impact data is addressed in the EEMIS Program Plan (Draft plan due October 2).
20. There was no standardized format or uniform base for developing and reporting energy related information.	An integrated energy emergency data base will be developed under the EEMIS program (Draft EEMIS Program Plan due October 2).
21. The long-range weather forecasting experiment showed ingenuity and creativity.	Completed.
22. Information supplied by DOE concerning coal stock piles and consumption was neither timely nor usable in the form it was provided to the states.	The EEMIS Program Plan will address this issue. ERA has conducted a requirements analysis of state data needs for input into the EEMIS Program Plan through on-site visits and a state EEMIS workshop held August 1978. Regional public hearings on EEMIS will be held in mid-November.
23. There had been inadequate staff resources applied to the EEMIS project.	Appropriate resources will be applied to this project.
24. Integrating the states into the EEMIS will be difficult.	These relationships addressed by state energy officials at State Workshop on EEMIS Program Plan held August 16-17, 1978 and in the EEMIS Program Plan. (Draft plan due October 2.)
25. There was inadequate planning for data needs in the event of an embargo.	ERA is aware of need for the definition and development of data systems and has incorporated these into its ongoing work schedule for EEMIS plan development. ERA has conducted a requirements analyses of Federal and State needs.
26. There was inadequate standing procedures for the transfer of information to the states in an emergency.	This item has been addressed in the EEMIS Program Plan (Draft plan due October 2).

Findings	DOE Response
26. (continued)	On-site visits to State ene offices conducted to determi needs.
27. States felt that communications with the Federal Government was vastly improved between the 1976-77 and 1977-78 winter, through the establishment of the EEC.	Completed.
28. Reliance upon informal contacts in times of emergency proved to be inefficient.	A formal contacts list has always been maintained and i updated and revised regularl
29. There was a need for increased coordination efforts within DOE to insure that all state organizations with a role in energy emergency activities were properly informed.	Complete. No action require ERA will ensure continuation of present procedures.
30. The existing telephone log of the EEC was difficult to evaluate, as there was no structured format for recording calls, and in some cases, calls were not recorded at all.	Completed.

Mr. DINGELL. Mr. Mansfield, the committee commends you for a very helpful and, I think, a good statement.

Mr. MANSFIELD. I thank you for those generous words, sir.

Mr. DINGELL. Well, the DOE is not likely to get too many today.

The Chair does observe that we would like to receive on a regular basis your reports regarding your activity in DOE as they involve the jurisdiction of this committee and I would assume each and every report you file would fall in that category. So I assume you will put us on your mailing list so we get those punctually.

Mr. MANSFIELD. The law under which I operate is quite clear on that point, sir.

Mr. DINGELL. Mr. Mansfield, you commented on one point that is troublesome to the Chair and that is specifically as regards contracts. You state:

> During our review we looked only glancingly at the use of contractors in the DOE energy emergency program, and we do not now have any judgments concerning the need for these contracts and the value of the work being done under them.

Are you engaged in some scrutiny of that matter at this time?

Mr. MANSFIELD. Yes, sir.

Mr. DINGELL. Would you describe it?

Mr. MANSFIELD. I might insert, sir, that if $121,000 was spent on a contract that did not accomplish its goals, there is a presumptive case that at least one of the contracts was not very good.

We are going to be doing very much of what I gather Dexter Peach and his GAO colleagues are going to be doing in this area of contracting. We are going to be taking a look at contracts in many different areas.

We have started, for example, in the solar energy area to make sure, one, are they accomplishing things they are supposed to accomplish?

Two, are they being properly monitored?

Three, is this a more expensive way of doing work than could be done by direct-hire employees?

Four, are contractors doing work which should be done by direct-hire employees?

Mr. DINGELL. Don't you have a breakdown in two categories? First, is research work that may very well be desirable to be contracted out and the other is day-to-day administrative work which probably should be done inside the agency.

Mr. MANSFIELD. If it would be of any help to you, I would be glad to tell you my general philosophy toward the use of contractors.

Mr. DINGELL. I would like to hear it.

Mr. MANSFIELD. This is my second incarnation as Inspector General. I was one in State a few years ago and I have done a good deal of reflecting on this question.

As a general principle—and there will be exceptions to this—I think contractors can perform very, very useful work on highly specialized, quite narrowly defined questions where it would not be possible for an office such as ours or the Department as a whole to have expertise.

I can cite one illustration of that. We have been making some reviews of the weatherization program. We came across an instance where insulating material being furnished by a supplier seemed to us to be of dubious quality. We did not have the techni-

cal competence to judge that. It was sent to a laboratory in Boston, Mass., and they will be coming back with a report on the technical nature of this insulating material. That, I think, is a valid and legitimate use of contractors.

But I have seen in my own experience far too many instances—I am not talking about DOE now; I am talking about the Government in general, from what I observed, where contractors are being called upon to perform functions which I think should properly be done by the people who run this Government, and in many of those instances I think the cost to the taxpayer ends up being much higher and in many instances I think the quality of the work product tends to be lower than the work product you would get from a normal Government employee.

Mr. DINGELL. You mentioned also what happens to the processing of Inspector General reports. Can you tell us, what does happen as regards the processing of your reports? Where do they go? What is done with them? Are they filed in due course and promptly forgotten or is there some action taken by the agency and is there a policy on this matter?

Mr. MANSFIELD. No, sir. The addressee of the report will, of course, differ widely, depending—the addressee may be Secretary Schlesinger, or, if it is a more minor matter, the addressee may be an assistant secretary in charge of a particular operation, and what we do is make our recommendations and see what happens.

Mr. DINGELL. Perhaps you could tell us, do you have a written policy of your office or is there a written policy in DOE as regards what transpires once your reports are filed?

Mr. MANSFIELD. No, sir.

Mr. DINGELL. There is not?

Mr. MANSFIELD. We will have in a few months, and we are in the midst of adopting a whole series of procedures and this matter will also be addressed.

Mr. DINGELL. When do you figure that will be done, sir?

Mr. MANSFIELD. As quickly as possible, sir. I would hesitate to commit myself to a date now.

I can go back and talk to my colleagues and get their judgment——

Mr. DINGELL. My concern is, I don't want to have your report filed and duly forgotten.

We have an abundance of unused paper in the Government.

Mr. MANSFIELD. That is a concern we share with you.

I am sure our reports will not be filed and forgotten. We will institute a regular followup procedure.

If a recommendation we are told is being complied with, we will in due course go out and check and see whether it is in fact being complied with.

Mr. DINGELL. I have curiosity both as to what happens to the report after it is filed and your followup practices. It is all too easy to have unpleasant things of this sort ignored and one is much more comfortable doing so, I am told.

Mr. MANSFIELD. I do not regard it as our mission to write reports on which nothing is done. I regard it as our mission to help prevent and detect fraud or abuse and to promote efficiency and economy in the real world of action.

Mr. DINGELL. You also make comments here you are unsatisfied with the amount of time taken to complete issues in the reports. That is a matter which does trouble me and I would like to have it known that the Chair feels quite strongly that this time should be diminished significantly and the staff will probably have some suggestions on how we handle unpleasant matters of this kind which you might find useful.

Mr. MANSFIELD. Mr. Chairman, I am glad you mentioned that, sir. I would be remiss if I did not tell you how much we have valued and profited from the observations of counsel and some of the letters you have sent to me and in our conversations with your staff. They have been extremely helpful to us in helping us think our way through these matters.

Mr. DINGELL. It is our hope to have that relationship with you.

Mr. MANSFIELD. I might add, Mr. Chairman, that my first two Washington assignments were up here on Capitol Hill, and I have never been more happily or productively employed than I was on the Hill. I regard myself as a child of the Hill and I am aware of the vast body of expertise and knowledge that is contained in this end of town.

Mr. DINGELL. Thank you.

We observe that your report was completed approximately in June, yet was not filed until September. A large part of that was occasioned by a period of consultation and written comments which followed that, some of which the Chair finds rather fractious.

Mr. MANSFIELD. I think there is no question but that the time period was much too long. There were four things attributed to it.

One, the process we have been talking about, checking out the findings where the agency was excessively long.

Second, I thought the report would have more impact if it could be written in a shorter manner, and we tried our hand at that, and we concluded we could not do that without taking some of the flesh out of the report.

Third was the very prosaic situation that my colleague who headed the inspection team was at the time in Europe for 3 weeks on vacation and there were a couple of factual things I wanted to check with him and I couldn't.

Mr. DINGELL. His timing does not appear to have been the best.

The Chair would like to direct some questions to Mr. Peach.

Mr. Peach, am I correct in my understanding that the GAO first asked for the data from the Council of Economic Advisers in oral form in mid-July 1978 and you were informed that the request should be in writing?

Mr. PEACH. That is essentially correct, Mr. Chairman. It is the usual nature that we will orally ask for the information and in this particular case we then had to submit a request in a written form.

Mr. DINGELL. You then presented the written request to CEA on July 28 and at that time the President's Deputy Counsel questioned your authority, is that correct?

Mr. PEACH. Yes; we presented the written request and that ultimately resulted in the questioning of our authority. We presented the request on July 28.

Mr. DINGELL. Then the general counsel of GAO sent a letter to the deputy counsel August 11, 1978, setting forth the GAO authority. Is that correct?

Mr. PEACH. That is correct.

Mr. DINGELL. Now, was there another issue of concern to the GAO mentioned in your letter relative to materials needed by GAO from the executive branch?

Mr. PEACH. Yes; I might ask Mr. Wray to address that. He is more familiar with it from the legal standpoint.

Mr. DINGELL. That would be acceptable. Could both you and Mr. Wray please explain that matter and the current status of that request?

Mr. WRAY. The second request related to an audit we were requested to do by Congressman Rudd concerning the appointment of members of the U.S. Metric Board. A statute requires that the President appoint Metric Board members from lists of qualified persons submitted by various groups and Mr. Rudd asked us to determine for the people ultimately appointed to the Board, whether their names did come from the lists submitted in accordance with the statute.

Both the CEA and Metric Board matters were going at more or less the same time and were treated in a similar manner.

As you point out, our August 11 letter to the White House concerned both requests. The Justice Department memorandum of August that was discussed earlier concerning the CEA matter also, we discovered I think in late October, addressed our request on the Metric Board matter too and that was a little confusing because the first copy we got didn't refer to it.

Mr. DINGELL. The Chair will yield to counsel.

Mr. FINNEGAN. Am I correct in my understanding that the Justice Department memorandum, a copy of which was provided to the chairman, was really in two parts, the first part dealing with the CEA and the second part dealing with this other matter?

Mr. WRAY. Yes.

Mr. FINNEGAN. Are you now telling us as to the other matter you never received that part until later on?

Mr. WRAY. We didn't receive the second part until some time in mid-October.

Mr. FINNEGAN. How was it transmitted to you at that time?

Mr. WRAY. Well, after we got the first letter from the White House in September concerning your request, we knew we had asked for two items and hadn't received anything on the other portion.

We called the White House numerous times trying to find out what happened to our request in that matter and at some point in October we received another letter from the Deputy White House Counsel referring us again to the prior Justice Department memorandum, another copy of which was enclosed.

When we read the second copy, we found out it included a part 2.

Mr. FINNEGAN. Is the CEA now withholding that data based on that memorandum, too?

Mr. WRAY. That doesn't involve CEA, but the data is still being withheld.

Mr. FINNEGAN. Is there a claim of executive privilege involved?

Mr. WRAY. The situation is pretty much the same as the CEA matter. We are not sure.

The second part of the Justice Department memorandum again raises some questions about our statutory rights, but winds up suggesting that the President might wish to invoke executive privilege if he determines that there is some need for confidentiality.

Mr. FINNEGAN. But he did not do so?

Mr. WRAY. Not to our knowledge. All we have is the Justice Department memo which concludes nothing and the White House response saying, "Here is the Justice Department memorandum. Thank you."

Mr. DINGELL. Am I correct in getting the assumption that the Department of Justice sent a memo to the White House in which they suggested this information is (a) without your statutory authority and (b) subject to possible incursions into the executive privilege, and then this is quoted back to you as being the basis for the White House refusal of information so listed by your agency on behalf of a committee of Congress?

Mr. WRAY. Yes, sir.

Mr. DINGELL. It appears essentially then to be an exercise in bootstrapping.

Mr. WRAY. Yes, sir.

Mr. DINGELL. Wherein they refer back and forth between documents and you never really have a fair opportunity to challenge the basis upon which the agency acts?

Mr. WRAY. Yes, sir; that is a great concern.

One doesn't know how to deal with it. It is like the shifting sands, I suppose.

Mr. DINGELL. On September 14, 1978, the GAO and this subcommittee received a letter from the deputy counsel at the White House claiming CEA is not required to provide data to the GAO and that the GAO lacked authority to obtain such data.

The deputy counsel enclosed a memorandum from the Justice Department's legal counsel.

Did GAO interpret that memorandum as concluding a decision by the CEA for the White House to invoke executive privilege would be legally justified if certain determinations were made by the White House?

Mr. WRAY. I think that is what Justice was advising the White House, if they made the determinations.

Mr. DINGELL. What did Justice say on this point, can you tell us?

Mr. WRAY. In terms of viability of executive privilege?

Mr. DINGELL. Even though the President might not choose to assert that executive privilege?

Mr. WRAY. No; I don't think so. I don't think they were purporting to invoke executive privilege?

I think they were presenting a framework for the White House to consider had they wanted to invoke executive privilege. That is my understanding.

Mr. DINGELL. Did Justice ever ask you to explain the request further or discuss with you your legal authority to obtain the CEA data?

Mr. WRAY. No.

Mr. DINGELL. Did Justice also raise a question about this subcommittee's jurisdiction concerning the CEA data?

Mr. WRAY. One of their arguments did involve the subcommittee's jurisdiction. They have a series of alternative arguments concerning our statutory authority. The statutory authority involved here gives us authority to review the results of government programs and activities at the request, among other things, of a committee naming jurisdiction over the activity.

Mr. DINGELL. This requires the observation by the Chair that I was unaware that the White House or Department of Justice had become the arbiters of this or any other jurisdiction of Congress. Justice never consulted the Chair or any member of the subcommittee staff about this jurisdictional issues. Did they consult the GAO?

Mr. WRAY. No. I might say I am not sure how serious an argument that is in their memorandum. I think at that point they were suggesting that perhaps the purpose of our audit was to determine how a Taft-Hartley affidavit is prepared. I think they may have been somewhat——

Mr. DINGELL. The Chair will make it quite plain that we do not inquire into Taft-Hartley matters in this committee except as they might relate to energy supply.

Did Justice, CEA, or the White House seek accommodation from the GAO concerning the data requested?

Mr. WRAY. Not really. What they did was, some time in late September, send us the writeup concerning the description of the computer model and I think some of the printouts and that was basically it. It was a unilateral decision on their part as far as I know.

Mr. PEACH. Mr. Chairman, if I might intercede a moment, we are in possession of a copy of a letter that was furnished the Comptroller General yesterday that was sent to you from the Justice Department concerning this matter. In this letter they allude to information that was furnished us by the CEA in late September, and in effect take the position that because they furnished certain information, which fell far short of what was requested, that they thought perhaps they had complied with the request.

They also assert they had not considered invoking executive privilege at this time.

Mr. DINGELL. You say they were considering it?

Mr. PEACH. No; they made clear in the letter that they are going to continue the previous administration's position that the President must invoke executive privilege if it is to be invoked.

We asked for two things and it might be good to make it clear for the record. We asked for a description of the computer model developed by CEA to measure the unemployment impact of the coal strike, including the assumptions used, variables used, and any limitations of the model.

The information furnished us by CEA in September basically gave that type information except it did not include a discussion of the limitations of the model.

We asked for any memorandums from CEA to the White House and/or Department of Energy concerning the computer model output on unemployment estimates and any comments, sugges-

tions, and/or recommendations by CEA as to which estimate should be used for policy decisions. We were not given any of that information.

Mr. DINGELL. The GAO legal analysis states:

> The ultimate result in practical terms is that after spending months considering our request to obtain specified documents for the audit, the executive branch refused us the documents, questioning without denying our statutory rights of access and alluding to without invoking executive privilege.

Mr. Peach, are you in agreement with that statement?

Mr. PEACH. Yes.

Mr. DINGELL. Mr. Wray?

Mr. WRAY. Yes.

Mr. DINGELL. The subcommittee understands that on September 25, 1978, GAO did receive some documents from CEA. I believe those are the matters alluded to by you.

Mr. PEACH. Yes.

Mr. DINGELL. I assume your description covers those documents unless you would wish to add to it at this time?

Mr. PEACH. No; that is correct.

Mr. DINGELL. Would you indicate your view of the timeliness of this response?

Mr. PEACH. Obviously, Mr. Chairman, it placed us in a position where we issued our report without even considering this information that we received in September. We felt it was prudent after a due period of time to proceed and issue our report to you telling you what we could about this situation and also telling you what we couldn't tell you in view of the information we were not furnished. So it was untimely.

Mr. DINGELL. Can you tell us what CEA said about this being a precedent for future GAO requests?

Mr. PEACH. They said it wasn't to be construed as a precedent. I have their letter here.

Mr. DINGELL. I assume they viewed it as precedental?

Mr. PEACH. Precedental, yes.

It says:

> Our submission of this material should not be construed to establish any precedent for future GAO requests for information from the Council of Economic Advisers.

Mr. DINGELL. I think it would be appropriate at this point that that document should be inserted in the record, so, without objection, the letter referred to will be inserted in full at this point in the record.

[The letter referred to was not available to the subcommittee at the time of printing.]

Mr. DINGELL. Did the submission include any memorandum from CEA to the Secretary of DOE or to the President or any memorandums internal to the Department of Energy?

Mr. PEACH. No, sir.

Mr. DINGELL. It did not?

Remember, I referred to three categories, memorandums from CEA to DOE or the secretary thereof.

Mr. PEACH. No.

Mr. WRAY. It didn't include any memorandums at all.

Mr. DINGELL. Did it include any memorandums to the President?

Mr. WRAY. No.

Mr. DINGELL. Did it include any memorandums in material to the Department of Energy?

Mr. PEACH. No.

Mr. DINGELL. Your detailed statement indicates at page 10 that there were memos to the DOE from CEA. What is your basis for this statement?

Mr. PEACH. Essentially that comes from information we obtained through DOE sources in the course of doing our audit. An auditor doing a particular assignment has many different sources of information that he is following, and through contacts with DOE we were aware such things did exist.

Mr. DINGELL. You got it from DOE but not from CEA?

Mr. PEACH. Right.

Mr. DINGELL. So what you got essentially was the information, but not the document?

Mr. PEACH. That is right. Basically we saw information laying out the basic results of model runs. Thus, we were aware that a channel of information did exist and we were also aware through contacts with the Department of Energy, the Bureau of Labor Statistics, and others, that there was a good deal of information available which raised questions about certain of the model results and indicated they should be treated with some due care in the way they were used.

Mr. DINGELL. Treated with some due care in the way they were used or released?

Mr. PEACH. Specifically, the use of the worst case example, when most of the other information you could get from other sources indicated that the situation was not deteriorating in any way.

Mr. DINGELL. So essentially what you got was information without ability to review the doucment to ascertain whether in fact the information (a) was representative of the contents of the documents, or (b) was coexistence with the content of the document?

Mr. PEACH. That is right and I would characterize it one other way. Essentially we could get information about what the model produced but no information on the limitations of the model as they may exist. We were given no information about the probability of the various scenarios created by the model occurring, or information about the recommendations as to how these scenarios should be used and presented to place them in the proper light for decisionmaking purposes. I think that information is key to our understanding of the administration position.

You can have models but you also have to look at the results of models to see if you think they represent the real world, and you have to use due care in terms of how you present those results and what they represent, or what they don't represent.

Mr. DINGELL. The subcommittee has a letter dated November 15, 1978, from Justice which states that Justice was unaware of any further requests for data and therefore there has been no occasion to consider the invocation of any constitutional privilege.

Did you consider the CEA submission either adequate or fully responsive?

Mr. PEACH. No, sir, we did not, and I hope we have made that clear by our testimony here today. This is something that we do intend to pursue further.

We thought it was clear on the face of it from the nature of our discussions that we were really requesting two categories or kinds of data here and we only got one.

They furnished us information in the first category, not information in the second category.

Mr. DINGELL. Did you tell Justice, CEA, or the White House this?

Mr. PEACH. We have not been in direct communication with them on this. We have had discussions and most of the discussions centered around the legal question. There have been some contacts with the White house and Justice in consideration of the legal position which Justice furnished the White house and in terms of trying to resolve this basic access question.

Mr. DINGELL. Are you telling me you made them aware of the fact that you regarded their submissions to you as being incomplete?

Mr. PEACH. I am saying I don't think we have—I though we were clear that they were not giving us all the information that we wanted. This letter from the Justice Department is the first evidence I have seen that indicates they are taking the position we gave you something and we thought that was enough and we didn't hear anything else, so we thought the matter was resolved. However, the information that we were furnished falls far short of what we asked for and only responds to one category of the request and not the second category.

Mr. DINGELL. Am I to infer that there was then an additional request that has been ignored by CEA, the White House, and Justice?

Mr. PEACH. We still consider our request to be active for that second part of the data relating to the memorandum from the CEA, the White House, and DOE concerning the computer and how it was used.

Mr. DINGELL. Have you informed any of the three agencies——

Mr. PEACH. We don't have an official piece of correspondence that exists that has informed them of this.

Mr. DINGELL. It strikes me at the request of the committee that it would be appropriate that you make such communication to them.

Mr. PEACH. Right. Now that I am aware this is their position, which I only became aware of yesterday, this is something we do expect to pursue with them.

Mr. DINGELL. I assume, however, that the response was sufficiently inadequate that it did not clearly on its face indicate satisfaction of the request made; am I correct?

Mr. PEACH. Yes, sir.

Mr. DINGELL. Now, based on the study you have made, using this inadequate data, what is your assessment of the administration's use of the so-called worst-case estimates?

Mr. PEACH. Very simply, in using the worst-case estimate and without presenting other information that was available at that point in time regarding Bureau of Labor Statistics and other data indicating actual unemployment trends, mineral unemployment re-

sults that occurred in some States that had experienced electric powers curtailments, and information indicating coal deliveries were actually trending upward and were not moving down toward the worst-case kind of situation—we didn't think it presented a fully realistic kind of picture.

My understanding of the administration position is that, basically, they thought worst-case planning would best protect the public interest, so they presented the worst-case. We feel in this case it just didn't present a full, clear picture of what was likely to happen. The actual situation tracked closer to the best case and that raised a question about credibility of Government planning and information in these areas in future situations where we may have more difficult emergency conditions to deal with.

Mr. DINGELL. Can you give us an estimate of the probability associated with CEA's worst case?

Mr. PEACH. No, sir.

Mr. DINGELL. Can you tell me why you cannot?

Mr. PEACH. Again, we don't have good information fully depicting what the limitations of the model were. We don't have good information on their own staff analysis although we assume there must have been some done concerning the likehihood of the various scenarios occurring and the degree of probability you should associate with each of those. We think, to give a good feeling, we should be able to look at those, assess them, see how they measure up under analysis, and then give an opinion.

Mr. DINGELL. I find I concur.

Can you tell me what are some of the assumptions under the worst-case scenario and how they compared with the known facts?

Mr. PEACH. Just a minute, Mr. Chairman, because these get to be technical, I want to make sure I have material to refer to so that I can get them correct.

Page 12 of my detailed statement has some information in this regard, and my detailed statement does go into more depth regarding the access to information question.

Because the model tracked a basic relationship between coal deliveries and unemployment, one of the assumptions was that coal deliveries would drop to 300,000 tons a week in the particular east coast reliability area thay they were primarily very concerned with.

Prior to February 11th, coal deliveries to the to this area were running 300,000 to 350,000 tons per week. In point of fact, the deliveries during the last weeks of February jumped to 800,000 and 900,000 tons per week.

CEA, from our understanding, claimed prudent planning required using the lower figure of 300,000 because of problems they experienced in the figures they had, inadequacies in the figures, and the possibility of violence or other types of disruptions associated with past coal strikes.

The model assumed that power that would be wheeled in from other regions could be 8 to 10 percent of normal electricity consumption. Actual figures in late February showed the corresponding figures were about 13 to 14 percent, but CEA again felt like prudent planning would require them to stick with using the lower

figures in terms of the amount of power transfers taking place between regions.

And, of course, the other thing was just comparing the results of the model when it showed 3.5 million unemployed against an actual unemployment trend that reached a high of 25,500.

Obviously that is a significant difference and there was at least one State, Indiana, where power was curtailed and cut back between 15 and 25 percent, yet major unemployment did not materialize in that area. That was another point that they were aware of. Those are some of the factors and how they chose to deal with them.

Mr. DINGELL. I would like to address now the question of contracts.

Mr. Peach, your detailed statement indicates there is "considerable uncertainty attached to obtaining a useful and timely product" from the use of contracts by DOE.

The following questions occur: What is your understanding as to the reasons why DOE turned to contractors for winter emergency planning, and did the contracts provide typing and clerical assistance to DOE?

Mr. PEACH. That is an area I might ask Mr. Gardner to respond to.

Mr. DINGELL. That would be entirely appropriate.

Mr. PEACH. I would just like to say that I thought Mr. Mansfield's statement earlier was a good one with respect to the general philosophy about contracts. If you have a situation where you can narrowly define a specific task that you want to be performed, you can make it clear to the contractor what you want him to do, and have the people there to monitor the performance under that contract to make sure he measures up. In short, you have a situation where you can get a good contract.

Where these are not present, you have a situation where you can likely run into problems. In this particular case, the question is what to do where you need something in a real hurry for these emergency planning kinds of situations. Is a contract the best way to meet your needs or do you have to look within to your personnel sources? Mr. Gardner might want to comment further.

Mr. DINGELL. Mr. Gardner?

Mr. GARDNER. Mr. Chairman, in response to that we might want to go back to how the winter planning actualy started, as we have in our report. It started out in July of 1977 as an interagency task force and, as I recall, that first meeting they had in early July, 55 people of the various agencies were represented in attendance. After that one meeting, the decision was made that FEA would take the responsibility for actually doing the planning and preparing this planning effort, and it ended up with a seven-member FEA group which actually did the work.

Now, as to our understanding in tracking what happened through the summer, time elapsed rather quickly for them and they were faced with getting a product out for draft as early as possible in September.

I think the timing in this particular phase was an important reason why they chose to go the contractor route. They only had seven people and a short time frame, and the task was formidable.

That seems to be, from our talking to the people involved, why they used the contracting approach in this case.

Mr. DINGELL. Did you ascertain that contractors in this instance made policy for DOE?

Mr. GARDNER. No, we did not.

Mr. DINGELL. Can you tell us what are some of the problems associated with the use of contractors?

Mr. GARDNER. In the cases we looked at, and we recognize that they are relatively few in terms of DOE's entire contracting process, probably the biggest problems that we observed were the lack of monitoring and the lack of adequate specifications for what the contractor was really supposed to do.

Mr. DINGELL. Can you indicate to me whether these contracts were adequately monitored by the Department of Energy?

Mr. PEACH. Mr. Chairman, we have instances we detailed in our report where we do not feel they were adequately monitored, and actually the results that came out of the contracts were not as useful as they should have been. The development of a handbook was one example. That represented a situation where you needed something in a real hurry, and they got tied up in internal contract processing procedures, didn't get the contract out, and ended up getting their handbook for dealing with emergency situations some time after the first of the year after we were almost getting through the winter, and then deciding that, well, we probably shouldn't even complete it now.

In this particular case, we looked at the handbook and felt it could have been potentially more useful than the planning guide because of the degree of specificity it contained.

We found another example where, because the contract was not monitored, no use was made of the results of the contract. It was to develop procedures for setting up an information center, and that center was set up and actually began operating with little or no procedures. It took them a couple of months to get their act together even though they had a contract that was supposed to have developed those procedures.

Mr. DINGELL. The Chair will observe at this point that we will be requesting the assistance both of GAO and DOE with regard to the question of whether these contracts are properly monitored, when the subcommittee enters into its consideration of the authorization for the Department of Energy.

Gentlemen, can you tell me whether the Department of Energy officials, such as the Director of the Energy Emergency Center, utilized the results of the contracts fully?

Mr. PEACH. Mr. Gardner.

Mr. GARDNER. It is our understanding from our discussions with her that the use of that contract, which was to prepare the procedural guidelines for the center, were not used. When the center opened for operations on December 1, there were no procedural guidelines for the use of the staff and the director to proceed.

Mr. DINGELL. I detect some question as to whether the taxpayers got their money's worth from these contracts.

Gentlemen, do you have comment on your views on this matter?

Mr. PEACH. That is a specific question. I might try to answer and give you a broad answer. Obviously, if you have a contract and the

results of that contract were not used at all, you didn't get your money's worth. Again, you get back to the tough question of defining areas where you can use contracts to get what you want, and a lot of time I think that is where the basic problem comes in.

We try to contract in an area but we don't define it well enough and end up not getting what we want.

Mr. DINGELL. Gentlemen, you provide with your testimony two tables of DOE contracts. Of the 13 contracts, 9 I observe were sole source.

Can you, Mr. Peach, inform this committee what that means, and do you agree that such extensive use of sole source contracting is sound?

Mr. PEACH. I will take a shot at that, Mr. Chairman. What it means essentially is that the decision was made to go to a single source they thought was well qualified in the area without seeking any further competition.

As a general rule in GAO, we believe competition in the contracting area is good and should be sought wherever possible. On the other hand, in this particular case I presume, by and large, the justification was the time frame and the fact we were dealing with getting plans and things together for the winter's potential energy emergency; consequently, we needed to go sole source to get the information now.

Mr. Mansfield may have something to add.

Mr. DINGELL. Mr. Mansfield, do you have a comment on that point?

Mr. MANSFIELD. I think that sole source, single source contracts, let without competition should be entered into only under the most exceptional circumstances.

They should be scrutinized very, very clearly and there should be very, very compelling reasons for foregoing the normal competitive process.

Mr. DINGELL. The Chair observes that the contract of Jack Fawcett Associates—which was never used, in the amount of $25,000, cost $2,000, was never completed—was the development of a handbook on Federal assistance during energy emergencies. That is the one we have been discussing, was a sole source contract.

Mr. PEACH. That is right.

Mr. DINGELL. We tend to agree with the proposition that this may probably not be the best way to proceed.

The Chair notes from the GAO table that several of these contracts are being performed at the DOE National Laboratories. In fact, the Chair observes that more than $1 million in contracts for emergency planning are being done under sole source procurement at these laboratories.

Are you aware of any particular expertise of these laboratories in emergency planning?

Mr. PEACH. I am not aware of the particular expertise that is involved here. The laboratories, of course, have been involved in trying to stake out a role for themselves, and I think the Department has been involved in trying to help them do this. In fact, the GAO has a report in this area stating that the laboratories should become involved in nonnuclear energy matters in the areas where they have expertise.

But as to the extent of assessing where they have particular expertise, and the rationale of going to them for these contracts, we have not.

Mr. DINGELL. Well, are you aware of exactly what were the charges that were involved in these sole source contracts to the national laboratories?

Did they involve, let's say, only the question of the actual cost of the work, or did they involve the carrying of a large part of the overhead, both as regards personnel, retirement, and also as regards other programs which might have been carried forward at the national laboratories?

Mr. PEACH. I don't think we have any comment to make on that particular area, Mr. Chairman.

To be candid, we did not follow through on these particular contracts and go out and specifically look into what the national laboratories were doing in these areas, what are their qualifications, and how did the work relate to other things they were doing, in their total charter.

Mr. DINGELL. I must confess that this piques my curiosity. What should be the policy of Governemt as regards this matter? In dealing with these national laboratories, should they be able to charge off other overhead and portions of other programs against this particular——

Mr. PEACH. The national laboratories are the kinds of institutions that are used by DOE for a variety of efforts in the energy area.

In each instance, of course, the particular entity of the Department of Energy requesting the work has to make the arrangements and in effect enter into a contract with that particular national laboratory.

Now, the same kind of rules ought to apply with that type of contract that apply for any other contract; that is, having a specifically defined area that you think those people can really help you with, and delineating the contract in that manner, and monitoring it very closely to see they are giving you what you want.

So, I think you need to apply those same kinds of rules. Contracting is done in a variety of areas with national labs, not just in the energy area.

Mr. DINGELL. Could you make us a quick inquiry on these points?

Mr. PEACH. We would be glad to, Mr. Chairman, and furnish you something for the record regarding these contracts.

[The following information was received for the record:]

DOE PROCUREMENT AND CONTRACTING PRACTICES

GAO has not examined in detail the methods used by the national laboratories in computing costs charged to DOE program offices for sole source contract work. We did, however, pursue this question with DOE's program technicians and procurement officials in Washington and with DOE Performance Evaluation and Financial Systems officials at the Argonne and Oak Ridge National Laboratories.

The contracts in question were given to the Oak Ridge and the Argonne Laboratories. Both of these facilities are Government-owned and contractor-operated. The work performed at these laboratories is usually determined jointly by laboratory personnel and Federal agency program technicians, although in some cases the agency technicians will unilaterally propose a study or work program and request the laboratory to do the work. The funds necessary to reimburse the laboratories are incorporated in the DOE annual budget and take the form of a master contract

for the year. As projects are proposed, they become, in a sense, subcontracts between the laboratory and the responsible program office.

In addition, the laboratories are usually in a position to take other unplanned projects for DOE and for other Federal entities. The Argonne national laboratory is divided into cost centers with each center responsible for all direct costs plus a share of the laboratory's indirect overhead costs. As work is proposed, a contract price is determined which consists of all direct costs plus a share of the indirect costs. When the contract is completed, the actual costs incurred are computed and this is the amount actually billed to the appropriate program office. Usually the laboratory considers the original agreed-upon contract price as the maximum amount that it can charge unless other arrangements are made. The Director of Performance Evaluation in DOE's Chicago regional office told us that his office audits these contracts periodically to assure the laboratories are only charging for actual costs incurred.

The Oak Ridge Laboratory uses a similar system for allocating indirect costs to their contract proposals. The Director of DOE's Performance Evaluation office at Oak Ridge stated they periodically audit the contracts as they do at the Argonne Laboratory.

We are looking into DOE's procurement and contracting practices and will consider these matters further.

Mr. DINGELL. I think it would be useful to us, having that information.

The Chair now yields to Mr. Finnegan.

Mr. FINNEGAN. Mr. Mansfield, turning back to your report, you will recall that the chairman wrote to you on September 7, 1978, about the draft report and expressed concern that the report had been finished back in June, but yet had not been released.

In fact, the subcommittee had a copy of the draft report and it was dated June 12, 1978. Is that correct?

Mr. MANSFIELD. Yes; if it is the findings portion of the report.

Mr. FINNEGAN. That is correct. Now, I understand also that in the covering memorandum that was sent from you to various officials of the Department—Mr. Alm, Mr. Bardin, Mr. Coleman, Mr. Heffelfinger, Mr. Hughes, Mr. Kerr, Mr. McDonald, Mr. McIsaac, and Mr. Moses—you indicated that they were to have their responses back by June 21.

Mr. MANSFIELD. That is correct.

Mr. FINNEGAN. Now, did they all respond by that time?

Mr. MANSFIELD. The responses, as I recall, were not all in by June 21. They were fairly largely in by the middle—essentially the middle of July.

There was one exception to that, which was the Office of General Counsel. In that case, I don't think there has ever been a formal response on their part to our findings.

Do not hold me too closely on those dates, Mr. Finnegan, but I think they are essentially correct. I will go back and recheck that with my associates.

Mr. DINGELL. You advise that there has never been a response from the Office of General Counsel?

Mr. MANSFIELD. I am sorry.

Mr. DINGELL. You say you advise there has not been a response from the Office of General Counsel?

Mr. MANSFIELD. We have a draft response, but not a formal one. It is still in the form of a draft.

Mr. DINGELL. Well, I am curious how the Inspector General functions when folks either don't respond or simply give him a draft response.

Would you like to tell us how you function when you get that, or whether you were in fact receiving cooperation or able to carry out your job fully.

Mr. MANSFIELD. In this case we went ahead and issued our report without the formal response of the Office of General Counsel. I think you will find it indicated in our report that the response was given to us in draft.

Mr. DINGELL. Very well.

Mr. Finnegan?

Mr. FINNEGAN. Now, I understand or we are informed that the report, together with the comments, were available to you early in July and that the gentleman that you referred to earlier as being in Europe didn't really go to Europe until sometime in August.

Mr. MANSFIELD. That is correct.

Mr. FINNEGAN. All right.

Now we understand also that there was a covering letter or memorandum from you on this point, on this report. You indicated earlier, of course, that the Department has not delegated the authority under the statute from the Secretary to the Deputy Secretary regarding recommendations of the Inspector General, is that correct?

Mr. MANSFIELD. Yes, sir.

Mr. FINNEGAN. Now, the original letter, the draft letter that was attached to that report, who was it addressed to?

Mr. MANSFIELD. I don't recall. Do you have it in front of you, sir?

Mr. FINNEGAN. No; I do not.

Mr. MANSFIELD. Are you referring to the memo of June 12, which I do have in front of me. That is addressed to Mr. Alm.

Mr. FINNEGAN. It was a June 12 memorandum to Mr. Alm.

Mr. MANSFIELD. Yes. Messers Alm, Bardin, Coleman, Heffelfinger, Hughes, Kerr, McDonald, MeIsaac, and Moses.

Mr. FINNEGAN. We also understand there was a transmittal letter on the report which transmittal letter was addressed actually to the Secretary, is that correct?

Mr. MANSFIELD. That is my recollection.

Mr. FINNEGAN. All right.

Subsequently, though, the transmittal letter was readdressed and this time to the Deputy Secretary. Can you tell us why?

Mr. MANSFIELD. I would have to go back and refresh my memory on that, sir. My recollection is—no, sir, I would have to refresh my memory on that.

Mr. DINGELL. Would you give us that response, please, for the record. Would you advise us also, if you please, Mr. Mansfield, whether in fact this was done by reason of a delegation by the Secretary pursuant to the statute, or was it done for some other reason?

Mr. MANSFIELD. I will advise you, sir.

[The information requested was not available to the subcommittee at the time of printing.]

Mr. DINGELL. I must assume that if you were to readdress it to the Deputy Secretary you would have done so by reason of a delegation from the Secretary in conformance with the statute, is that right?

Mr. MANSFIELD. I might say, sir, that the actions we are talking about were all done in my second week in my job. It was a period of considerable——

Mr. DINGELL. Mr. Mansfield, you have our sympathy this morning. We wish you to understand that our actions are in support of your independence.

Mr. MANSFIELD. Yes, sir, I will give you the most accurate reconstruction I can in writing of what happened and the reasons for it.

Mr. DINGELL. Am I fair in assuming that if you were to redirect this from the Secretary to the Deputy Secretary, you would have done so by reason of a delegation from the Secretary to the——

Mr. MANSFIELD. There is no such delegation in writing that I know of, sir.

Mr. DINGELL. Well, there is an explanation other than the fact that this authority was delegated to the Secretary, that would occasion your transferring or redirecting the communication to the Deputy Secretary.

Mr. MANSFIELD. The redirection was not done because of any delegation from the Secretary.

Mr. DINGELL. I am then curious as to why this was done.

Mr. MANSFIELD. I will give you the most accurate reconstruction I can of that, sir. I again apologize for the fact that I arrived on the job May 26.

Mr. DINGELL. I don't think an apology is necessary. I am just curious as to whether there was some reason why this was redirected from the Secretary to the Deputy Secretary, in view of the fact that you are to work with the Secretary except for those responsibilities that are delegated somewhere else.

We would like to know why it was other than you statutory responsibility to deal with either the Secretary or his delegate.

Mr. Finnegan?

Mr. FINNEGAN. In addition to that, we understand the letter was somewhat changed, the transmittal letter, to strike out a paragraph or information that advised the Secretary that the report would under law be transmitted to Congress, and second, that the Secretary had again by law 30 days to provide his comments on the report.

Mr. MANSFIELD. Yes; that I have ver clear recollection of.

Mr. FINNEGAN. Why was that deleted?

Mr. MANSFIELD. Our statute says the following in connection with this matter:

> The Inspector General shall report immediately to the Secretary, to the Federal Energy Regulatory Commission as appropriate, and within 30 days thereafter to the appropriate committees or subcommittees of the Congress whenever the office becomes aware of particularly serious or flagrant problems, abuses or deficiencies relating to the administration of programs and operations of the department.
>
> The Deputy and Assistant Inspectors General shall have particular responsibility for informing the Inspector General of such problems, abuses, and deficiencies.

We are still, of course, in our formative stage of our operation. But my general philosophy is that this portion of the statute should be complied with, with discretion, and we should not, so to speak, debase the currency by exercising our responsibilities under this unless it is a very, very flagrant problem or abuse.

Then, of course, at that stage a subjective judgment would enter in, are the things we have been talking about in our report at the stage where they are flagrant deficiencies.

My judgment was that they were not of such a nature—that is, the shortcomings that we found—to make it prudent for us to submit to conform with this part of our statute.

Mr. FINNEGAN. So you are relying on the language of flagrancy and being the determination of whether you would submit a report within 30 days.

Now, the chairman a few minutes ago, I believe, requested that all reports—and I assume he means all reports regardless of your determination of flagrancy—be provided to the subcommittee on a prompt basis. I assume——

Mr. MANSFIELD. Yes, sir. Of course, you have already had a number of our reports. I do not at the moment recall any particular disassociated with getting them to you in a timely fashion.

Again, I interpret this portion of the statute as being one that we would not follow in the case of a normal report.

Mr. FINNEGAN. Well, the question really arises, though, what really happened between about the 1st of July, July 5 or so, when all of the documents were received, comments were received, and September 15, when we finally received the final report.

There is an allegation made by someone whom we will not name at the moment that the report laid on your desk and nothing happened with it until the chairman wrote to you on September 7.

Mr. MANSFIELD. I can tell you, I think, quite accurately what happened, Mr. Finnegan, in detail.

The first thing that happened is when I joined the office on May 26, the entire management structure of the office disappeared on that day. It was composed of people on detail.

We did not get our executive officer on board for 2 weeks, as I recall, It was another 3 weeks before our senior investigator came on.

It was a period when it was very, very touch and go in an administrative sense. I had on my desk a huge pile of documents needing proceeding. So, one of the reasons for the delay was just associated with this plain newness of our operation.

I didn't know the people I was working with. I was trying to get adjusted.

The second thing which happened is I though the report would have more impact if it could be written more concisely.

I and some others tried my hand at that, and I concluded this was a losing proposition because I was unable to shorten the report without at the same time taking some of the meat and flesh out of it.

The third thing which happened was we discovered in the report a factual inconsistency between the two parts on a very major question; that is, the question of who the emergency coordinator should report to.

In one part of the report our draft had the coordinator reporting to the Secretary or the Deputy Secretary. In the other portion of our report the draft had him reporting to the Deputy Secretary or the Under Secretary.

Those, of course, are significant differences. This was discovered shortly after Mr. Humza, our team leader, went off to Czechoslovakia. In retrospect, I am sure we could have gotten this out in timelier fashion.

I could have phoned Mr. Humza, for example, in Czechoslovakia and asked him to reconcile this difference. The fact is I did not.

Mr. FINNEGAN. All right.

During this period of about July 5 to the time it was finally released, did you discuss the report with any other official within the department other than people within the Inspector General's office?

Mr. MANSFIELD. No, no, sir.

Mr. FINNEGAN. None, whatsoever. Including the Director of Administration, the Deputy Secretary?

Mr. MANSFIELD. No, sir. Let me see. I am sure I did not discuss it with the Director for Administration. My recollection on the Deputy Secretary is that the first discussion of the report with him came when we were preparing to respond to the request for the report.

Mr. DINGELL. Can you inform us whether you communicated with the Director of Administration regarding this matter or did the Director of Administration communicate with you?

Mr. MANSFIELD. There were either one or two earlier communications from the Director of Administration to me.

Mr. DINGELL. From the Director of Administration. One or two?

Mr. MANSFIELD. One or two, yes, sir. I recall one in either my first or second week on the job, in which the Director of Communication asked me was I aware and were my people aware of the fact that there was another review of this matter going on under the sponsorship of the Director of Administration.

Mr. DINGELL. The Director of Administration was running a review at the same time?

Mr. MANSFIELD. Yes.

Mr. DINGELL. What was the character of his discussion with you about this parallel review?

Mr. MANSFIELD. He wanted to know—he said he wanted to make sure that I was aware of the review which was going on. I thanked him. I talked to our people They told me the nature of his review.

I asked them was there any inconsistency or conflict between—that is, did the fact that he was conducting a review impinge in any way upon the review we were undertaking. They answered no.

Now, that is the only contact I can recall with the Director of Administration.

There may have been one other one in which I called him and I said I am satisfied it is appropriate for us to take our review. I can't recall whether I made such a phone call.

Mr. DINGELL. Mr. Finnegan.

Mr. FINNEGAN. You say you can discuss it with the Deputy Secretary at some point in time. He did transmit the report to the chairman, is that correct?

Mr. MANSFIELD. I am sorry.

Mr. FINNEGAN. The deputy chairman did transmit the report to the Secretary. How did that take place? Did you discuss that with him?

Mr. MANSFIELD. Yes. My recollection is you asked us to submit to you the report by Friday afternoon.

Mr. FINNEGAN. September 15?

Mr. MANSFIELD. I am sorry.

Mr. FINNEGAN. September 15?

Mr. MANSFIELD. Yes. I think it was a Friday, a Thursday or Friday.

I informed the Deputy Secretary that we were sending this report to you. He requested a chance to look at the report. There was a meeting in the Deputy Secretary's office. For the first time he saw our report.

I phoned I think it was you, Mr. Finnegan, or it may have been Mr. Schooler or someone else. I said the Deputy had expressed a desire to look at this report and he expected to get it to you as quickly as possible.

Mr. DINGELL. Say the last sentence again. He expected what as soon as possible?

Mr. MANSFIELD. That you would get it very, very shortly. There then followed a weekend——

Mr. DINGELL. You mean that the Deputy Secretary would get to look at this report as soon as possible?

Mr. MANSFIELD. No, no. That you. There then followed a weekend in which several of the concerned officials—I assume, by my recollection, it was largely the group of people on this distribution list we talked to, looked at the report, and it was sent to you either Monday or Tuesday by the Deputy Secretary unchanged.

Mr. DINGELL. Were any changes made following——

Mr. MANSFIELD. Not a comma, sir.

Mr. DINGELL. Who was it that participated in the meeting?

Mr. MANSFIELD. In the meeting?

Mr. DINGELL. The Deputy Secretary. But who else? Anybody else?

Mr. MANSFIELD. The Deputy Secretary refreshes my recollection that in the meeting was Mr. Fygi, the Deputy General Counsel; Mr. Cameron Graham, who was at the time the executive assistant to the Deputy Secretary; and Mr. Zausner, who was then with the General Counsel's Office, and who is now Mr. O'Leary's executive assistant.

I am quite confident that someone was there from the Economic Regulatory Administration. It may have been Miss Rollins. I cannot recall.

There was also a gentleman there from the policy and evaluations staff. There may have been someone there from Mr. Heffelfinger's operation, but I cannot recall that. This again is something we should be able to check and get you an accurate response.

Mr. DINGELL. We are interested in who was present, who received copies of this review. We, of course, are always curious about Mr. Heffelfinger.

Mr. MANSFIELD. I am sorry.

Mr. DINGELL. I say we are always curious about Mr. Heffelfinger's undertakings. Of course, we are always anxious to have you transmit your information to us. We like to know what you think, not what Mr. Heffelfinger or some of the other folks have to think.

Well, gentlemen, we thank you all for your presence. The Chair observes in view of the fact there may be some questions that would arise, we would appreciate it if you, Mr. Mansfield and Mr. Peach, could remain with us.

If you could remain with us while we discuss matters—no, I think it might be well if you did stay at the table.

So, we will invite to join you now our old friend Mr. John F. O'Leary, Deputy Secretary; Mr. Larry Hammond, Deputy Assistant Attorney General; and Mr. Lyle E. Gramley, member of the Council of Economic Advisers.

Gentlemen, if you would come forward to the table, please, and each identify yourselves, we would be delighted to receive your testimony.

The Chair observes we probably would be going at this in a rather more simple fashion if the GAO had been able to get the information they wanted without too much difficulty and had the committee received a more cooperative response from the administration.

We hope that we will be able to proceed in a more cooperative fashion in the future, without the necessity for having hearings to see to it that information is made promptly available to the committee unstrained, unchewed, unfiltered, and without the potential for the plea of executive privilege, which I find distressing, particularly where it is undocumented and not claimed by the President, as is the policy of the administration.

Gentlemen, we will hear first from Mr. O'Leary.

Mr. O'Leary, it is a pleasure to welcome you back before the committee. We are delighted to see you again.

STATEMENTS OF JOHN F. O'LEARY, DEPUTY SECRETARY, DEPARTMENT OF ENERGY, ACCOMPANIED BY ERIC FYGI, ACTING DEPUTY GENERAL COUNSEL; HAZEL R. ROLLINS, DEPUTY ADMINISTRATOR, ECONOMIC REGULATORY ADMINISTRATION; ALVIN L. ALM, ASSISTANT SECRETARY, POLICY AND EVALUATION; C. WILLIAM FISCHER, DEPUTY ADMINISTRATOR, ENERGY INFORMATION ADMINISTRATION; LYLE E. GRAMLEY, MEMBER, COUNCIL OF ECONOMIC ADVISERS, EXECUTIVE OFFICE OF THE PRESIDENT, ACCOMPANIED BY PETER GOULD, EXECUTIVE ASSISTANT TO THE CHAIRMAN; LARRY A. HAMMOND, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF THE LEGAL COUNSEL, DEPARTMENT OF JUSTICE, AND HERMAN MARCUSE, COUNSEL

Mr. O'LEARY. Mr. Chariman, it is a pleasure to be before the committee again.

I have with me this morning Mr. Eric Fygi, the Acting Deputy General Counsel of the Department of Energy, and somewhere in this large assembly there are other people I might have to call upon from time to time particularly representatives from EIA.

I think I saw Mr. Al Linden in the room, who may be called upon. Miss Hazel Rollins is with us. She may offer testimony. There may be one or two others as the morning goes along, Mr. Chairman.

Mr. DINGELL. The Chair does note, I think, Mr. Heffelfinger is not with us this morning?

Mr. O'LEARY. Mr Heffelfinger is not with us. I think the Deputy Director of Administration, Mr. Davis, may be. Yes, Mr. Davis is here.

Mr. DINGELL. Mr. Heffelfinger's activities in your agency are always a matter of concern to this committee.

Mr. O'LEARY. I understand that. Another one you have great interest in——

Mr. DINGELL. We like Mr. Alm a great deal.

Mr. O'LEARY [continuing]. Mr. Alm, Assistant Secretary for Policy and Evaluation is with us.

Mr. DINGELL. We are curious about the curious dispersion of responsibilities between Mr. Alm and Mr. Heffelfinger, a matter to which we hope you will address yourself.

Mr. O'LEARY. I would like to address that right now, Mr. Chairman.

Mr. DINGELL. You may proceed.

Mr. O'LEARY. Mr. Chairman, I have a statement that has been filed. Similarly I have a series of 16 questions and answers that have been provided to the subcommittee. They provide the testimony in chief for this morning. I would like to summarize, if I may. [See p. 104.]

Mr. DINGELL. Without objection, your full statement will appear in the record. We will recognize you.

Mr. O'LEARY. The first thing I would like to address myself to is last year's winter emergency.

I think the Chair should note, and the record should clearly show, that last year in July we took notice of the fact that the United Mine Workers of America's contract would expire on December 6, 1977.

Being both personally and as an institution closely attuned to the potential for a long drawn-out strike, we began in June, with some formality in July, an effort to get us to the point where we could handle a potential winter emergency arising from a coal strike.

Mr. DINGELL. Mr. O'Leary, I want to tell you that we think you handled the matter well. I just want you to understand, though, in the supervision of the affairs of this committee we always find ourselves distressed where executive privilege is claimed or where information is not promptly forthcoming.

Those are some of the things that cause us distress this morning and some of the things which occasion the hearing.

Mr. O'LEARY. Mr. Chairman, I will address that. I want to tell you that I think we handled that emergency well, too. As a matter of fact, I think that a good deal of the difficulty that has arisen over the numbers, particularly the unemployment numbers, comes from what I would regard in retrospect, and after a good deal of examination with the staff who were in charge of this effort from a very, very successful effort that was quietly run by staff members from the Department of Energy.

In the context, I particularly want to single out Bart House. Bart was the fellow that we had implementing our so-called coal strategy, and he put suppliers and potential buyers together very quietly.

You recall that we had a hearing before your committee. I apprised you, again quite quietly, of the efforts that were going on.

I think that Mr. House is generally acknowledged to be one of the key contributors to the relatively plentiful supplies of coal that came into the region during that period of time.

You may recall, Mr. Chairman, that at the low point about 300,000 tons of coal was available to the so-called ECAR region. That was about December 15. By the end of the strike we were receiving on a weekly basis close to 1.6 million tons.

Indeed, we were receiving into the region about the amount that was burned. Just referring very lightly to the unemployment forecasts that were made, they of course were based upon a continuation of the 300,000 ton delivery rate.

Mr. Chairman, I want to say that the reason that we were able to expand beyond 300,000 tons was because of very, very strong organizational efforts on the part of industry, both buyers and sellers, of the work by Bart House and his associates that I referred to earlier, strongly seconded by activities at the State level, and because the United Mine Workers did not choose to disrupt transportation routes during that period of time.

In retrospect, I think it was altogether possible, that we could almost overnight have gone back to that 300,000 ton a week delivery schedule, with the consequences of very, very severe unemployment arising from that 111-day supply interruption.

At any rate, I want to tell you, Mr. Chairman, not as one who directly participated, but as one who overviewed that operation, I am proud of the contribution the Department of Energy made, proud of the oversight hearings you held during that difficult time and the contribution they made, and have nothing but praise for the work of the States and particularly for the work of industry during that period of time in moving coal into the region.

Second, Mr. Chairman, you know that a week after the strike began, or shortly after, we opened up an operations office in Canton, Ohio, to work on the electrical side of the situation and my recollection is that during the most severe period of the strike we were participating in the movement of electricity into that region that was essentially 100 percent, mindful of the economics of the flow of the electricity that could have been moved into that region at peak period something approaching the equivalent of 8,000 megawatts capacity.

I take a great deal of pride in that accomplishment as well, and I think it is shared by industry, by the States and altogether I would regard the performance of all the parties involved during last winter's emergency as a model operation for Government and for industry. I think it was primarily because we recognized from the very outset—a point that is made repeatedly in the GAO report—what industry should do, and that it was really their primary responsibility as the people who paid the bills to do the work. We also recognized what State government should do and what the Federal Government should do, and we did not try to overplay the Federal hand but rather operated in a mode as cooperators, expediters, facilitators and I think it worked very, very well.

Mr. Chairman, may I take a few minutes with regard to the Iranian situation while we are on this point?

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We are now seeing production rising something above 3 million barrels a day form a low of a little bit above 1 million barrels a day. We are quite optimistic the production in Iran will continue to rise and we would hope to see it within a relatively short period of time back up to the 6 million barrels a day or thereabouts that is the normal mode of production from Iran.

Mr. Chairman, in taking a look at the possible consequences of a protracted outage from Iran, the Department took a number of steps that may be of interest to you. We looked very carefully at where we could find additional oil and we found there was a significant volume under contract to the SPR that, had it been necessary, could have been devoted to domestic uses and we set up arrangements with the defense petroleum supply people and with our own SPR management people to effect, as early as last Monday of this week, diversions, should they become necessary.

That machinery is now in place.

We began the working group, chaired by the Energy Information Administration, which had the assignment of analyzing information regarding natural gas availability and nonutility capacities to switch from oil to gas.

The report of that group was submitted to the EPC, the emergency management group, on November 13.

FERC prepared draft regulations for implementation of the several options available in this context, that is, diverson of intrastate gas to the interstate market and production of shut-in supplies. This activity was going ahead separately from the Iran situation in order to publish draft FERC regulations to implement the National Energy Act. It wasn't necessary as it turned out, but nonetheless we were in a high state of readiness and are in a high state of readiness should it have become necessary to move additional gas to replace oil for industrial and utility requirements.

In the area of fuel switching, ERA developed a paper on the options. The necessary regulations already existed, Mr. Chairman. OGC (general counsel) prepared draft Clean Air Act waivers to permit switching from oil to coal uses, again should that have become necessary.

The ERA prepared standby crude and product allocation and price control regulations for immediate publication as of last Monday. Revision of standby international allocation regulations for immediate publication has also been undertaken. These regulations were less critical as they apply only to the final mandatory phase of the allocation system of the 19-nation International Energy Agency.

The people under Al Alm, Assistant Secretary Alm, contacted EPA to obtain an agreement to suspend the enforcement of MMT and low-lead rules and received estimates of the likely savings if the situation required it.

Policy and Evaluation and International Affairs briefed senior EPA officials as part of this effort.

Mr. DINGELL. Could I ask the level of cooperation that you have received from EPA? Have they responded to your communications?

Mr. O'LEARY. Assistant Secretary Alm is with us and I think he should respond to that.

Mr. DINGELL. We would be delighted to hear from Secretary Alm.

Mr. O'LEARY. Rather than a panel, this is approaching the dimesions of a mob, Mr. Chairman.

Mr. DINGELL. We have on occasion had larger panels, but it is rare.

Mr. ALM. Mr. Chairman, our consultations with the Environmental Protection Agency were very cooperative. They advised us as to what these two steps would bring about in terms of oil savings and indicated a willingness, if the situation in Iran deteriorates, a willingness to apply these with respect to the regulatory authorities.

Mr. DINGELL. They have indicated a willingness to do so but have not put in place changes in their rules and regulations?

Mr. ALM. No. In terms of the Clean Air Act waivers, they do not have to make a change in their regulations at all. In terms of MMT, they have no statutory basis for changing the regulation anyway. They would have to take the action of suspending enforcements and with respect to the low-lead regulation they indicated a willingness to change those regulations if the situation warranted.

I might mention that the savings from the latter action would be very small. The bigger action would be the suspension of the MMT enforcement.

Mr. DINGELL. I think you ought to give us, if you please, Mr. Alm, not at this time, but a statement of the status of each and every one of the understandings you have with regard to these matters with EPA.

I note you have talked of MMT and of low-lead and I understand certain other actions they have to take. I believe it would be helpful if you were to give us those other actions and also the amount of savings you can get.

Rather than give us the amount of savings at this time, you might give us the other agreements that you have or their status with EPA.

I saw this in the paper today, that DOE was to do this thing. I was curious about DOE doing this since I knew these were matters in the province of EPA, and can you inform us of the level of agreement and whether the agreements on these matters are final or not?

I tend to be rather distrustful of EPA.

Mr. ALM. Well, the agreements as far as I am concerned are final with one caveat and that is tht the question of when to invoke various measures, including measures of DOE, obviously depends on the severity of the situation.

Mr. DINGELL. I would assume that would be roughly calibrated to the lights going out in Mr. Costle's house and his limousine running out of gas.

Mr. ALM. My understanding is they would be invoked somewhat sooner than that.

Mr. DINGELL. I would hope for the benefit of the ordinary citizen that would be so. Knowing Mr. Costle, I don't have that assurance.

Mr. O'LEARY. Mr. Chairman, in addition to those activities we developed a listing of voluntary measures which could have been implemented and probable levels of savings associated with these measures and we canvassed our own facilities to estimate probable levels of savings which might have been achieved with a cutback,

such as those we would do during the coal strike had they been necessary.

We contracted the Department of Commerce on November 8 to suspend granting export license approvals for west coast petroleum and products. You will recall, Mr. Chairman, one of the series of measures we put in place last June contemplated export of heavy residual oil from California.

We recognized the inconsistency between the June position and the November fact situation so we sought to cut that off and did so last week.

In additional, and finally, Mr. Chairman, we established an economic committee comprised of representatives from DOE and the Council of Economic Advisors to analyze economic impacts of various levels of shortfall and price change.

Mr. Chairman, that is a quick summary of the actions that we took.

Let me describe the situation that I think we would have faced as a nation had the Iranian situation continued. Iran produces about 6 million barrels a day, about 5.5 million barrels a day for export. With the continuation of the very severe cutback in production, virtually all of that could have disappeared.

In the second and third quarters of the year that would not have made a great deal of difference because there was sufficient flexibility in the rest of the world supply system to pick up the shortfall of roughly 5 million barrels a day. In this particular time of year, in the two heavy fuel burning quarters, it could have caused a difficulty.

We found that the rest of the producers, particularly OPEC producers, were able on relatively short notice to pick up about half the shortfall, between 2 and 2½ million barrels a day. A substantial amount would have come from Saudi Arabia, and other small bits of production here and there around the world, leaving a deficit or around 2 million barrels a day.

Our share of that, incidentally, Mr. Chairman, on a straight statistical basis, would have been on the order of 400,000 barrels a day and easily recovered by the response mechanism I outlined.

But the stocks were very high.

Crude stocks in the United States and around the world are at seasonal peaks now and it is no great thing to be able to pull down 100 million to 150 million barrels of stock on a mobile basis without any significant deterioration in the capacity to meet product requirements.

That would have come into play, I believe, had the Iranian situation continued. As it is, we probably won't have to exercise that stock reduction.

We did note, however, significant price increases in the spot market. For example, the Rotterdam price for crude was up in the market about $1.50, and in some instances I am told about $2 for specialized grades of crude. Also product prices appear to have gone up, particularly heavy oil, by something in the same range, $1.50 to $2.

We hope now that situation is stabilizing, and those crude and product price increases will back off.

Mr. Chairman, I think in summary, aside from the price increases in the spot market, and I want to emphasize they were not generally applicable but only to the small amount of oil that flows in the spot market, that is about all the consequences for consumers in the United States or abroad that we felt or would have felt from the continuation of the Iranian strikes.

Mr. DINGELL. This was as regards to crude?

Mr. O'LEARY. Crude and product, Mr. Chairman.

Mr. DINGELL. As regards to product, I understand your refinery capacity and product supplies tended to be rather tighter than crude. Is that correct?

Mr. O'LEARY. Mr. Chairman, there is an enormous excess refining capacity abroad, outside the United States, that could have picked up the product shortfall had the Iranian refineries been off the world market. The Caribbean refineries are running about 60 percent of capacity; the Italian, and other European refineries, at somewhat the same level.

So there is no shortage of refinery capacity and even had there been a prolonged outage of the Iranian refinery industry, it would not have influenced the overall availability of product significantly, except that we do have that panic buying of people becoming concerned where the next shipment was coming from which drove up the price to the levels I described.

Mr. DINGELL. Product supply did tend to be tighter and more responsive to upward pressure on price than crude, is that correct?

Mr. O'LEARY. Yes. Even before the strike, Mr. Chairman, I had reports from the utility industry that the New York price for resid was going up. In part I believe this was in anticipation of the possible actions by OPEC to drive up the general price of crude and thereby the products on the world market at their meeting in December. There is always at these times, pending the OPEC's annual or semiannual meetings, a certain amount of speculative change in the product market.

Mr. DINGELL. Mr. O'Leary, I want you to give careful thought before you respond to this question as to whether you wish to answer it at this particular time.

I have a curiosity as to whether or not the impact of this Iranian strike was not to place an upward pressure on the prices such that it might influence OPEC to move their prices more in an upward direction than they might otherwise have done. Is that feeling a correct one?

Mr. O'LEARY. Mr. Chairman, I have no hesitation in addressing that question and we have heard that suspicion before and, of course, reviewed the data available to us to find out if there were any basis to it. I give you my opinion, there is no basis to that sort of allegation.

Mr. DINGELL. I have great respect for you and I am heartened by your opinion.

The Chair is going to yield to counsel because he is aware of concerns of members as regards to the resid market in the Northeast.

Mr. FINNEGAN. Mr. O'Leary, I understand there has been some increase in the price in the Northeast area, and some members

have expressed concern about it. Could you indicate some reasons as to why or is it tied to the Iranian problem?

Mr. O'LEARY. Mr. Finnegan, as I indicated a few minutes ago, the price increases predated the Iranian problem. A firming of the heavy oil market in the New York market began the middle of October. This, I believe, arises from two consequences:

First, that is the time of year when resid demand begins to firm up. People begin to do their tanking at that point in time. There has been an interesting phenomenon at work. There has been a deliberate hesitation on the part of stockers outside the United States to build up their inventories because the trajectory of the dollar vis-a-vis other currencies gave a very strong bonus to people who postponed inventory building and all of a sudden inventories appear to have been at a level where people actually reentered the market feeling they had gotten as much out of the dollar situation as they were going to and began to bid against one another in order to build up seasonal stock. That was normal for the season but was reinforced by the dollar difficulties.

The second point was the point I referred to a moment ago in answer to the Chairman's question. That had to do with anticipation, which again is not at all unusual, of possible price increases for crude and therefore of products, resulting from the OPEC meetings that are scheduled for this January.

These two elements began to impact on price, and, as I say, it was measurable by October 15, well before the Iranian situation began to develop.

Mr. FINNEGAN. Thank you, Mr. O'Leary.

[Testimony resumes on p. 156.]

[Mr. O'Leary's prepared statement and attachment follow:]

STATEMENT OF JOHN F. O'LEARY, DEPUTY SECRETARY, DEPARTMENT OF ENERGY

Mr. Chairman and members of the Committee, I appreciate the opportunity to appear before you today to discuss the Department of Energy's emergency preparedness activities and Departmental actions taken during last winter's coal strike.

Planning for last winter's energy problems began in the summer of 1977 in anticipation of a work stoppage. Pre-emergency planning, under the leadership of the Federal Energy Administration, resulted in the development of a series of plans to lessen the adverse effects of a strike to the maximum degree possible. Among other actions, a winter energy emergency planning guide was prepared, published and distributed to responsible Federal, State and local government officials; an Energy Emergency Center was established to coordinate State, Federal and local energy emergency activities; demand restraint workshops were conducted with State representatives; special emergency energy data systems were designed and implemented prior to the onset of the strike; and a Winter Energy Data Bulletin was organized and published beginning on November 1, 1977. We recognized the need for cooperation and coordination with State and local governments and utilities and established and cultivated lines of communication with them, which all agreed were quite successful. To further this coordination, an Emergency Field Operations Center was established in Canton, Ohio, which also was quite successful.

As the strike continued, we regularly published current supply and demand data on a weekly basis and followed supply and conservation strategies, exercised by States and utilities, to increase the amounts of electric power imported into the impacted area and to curtail electricity demand. Additionally, we identified and coordinated the movement of coal from new sources to utilities in the seriously affected east central region.

Throughout the work stoppage, strike-related blackouts did not occur. Moreover, except for voluntary and State-mandated curtailments, electric service of all utility customers continued uninterrupted.

With respect to the situation in Iran, the Department has already activated its emergency response mechanisms. We have had almost daily meetings of the Emergency Policy Committee, an Assistant Secretarial level group which coordinates Departmental emergency preparedness policy and planning efforts. This group has been analyzing data on the potential economic impact, formulating alternative courses of action, and making appropriate recommendations to the Secretary and Deputy Secretary.

We all realize, however, that despite our generally successful response to the coal strike and our current readiness to respond to events such as are occurring in Iran, we still have problems to overcome. Some of these problems have been variously identified and addressed in the recent GAO report, the IG report, and the earlier report of an internal task force which studies the Department's emergency preparedness. We are working to solve these problems, and I can assure you that the Department places a high priority on emergency preparedness and on assuring our ability to respond in a timely and effective manner to all emergencies.

For example, we recognize the importance of an Energy Emergency Management Information System. The development of this plan is a top priority of the Department. A program plan was completed on October 1, 1978. All public hearings on the plan were completed yesterday. We will incorporate appropriate comments into the final plan and adjust our system development accordingly.

We also see the need for a Federal interagency energy emergency agreement designating what actions can be taken by the various Federal agencies during an energy emergency and who in each agency has responsibility for each action;

how task forces within DOE and between DOE and other agencies will be staffed and organized; and who on these task forces has authority to require action to be taken, regardless of the Federal agency involved. Informal interagency agreements have already been entered into. By the end of December 1978, we will be ready to formalize these agreements. In addition, by that time we will have an Operations Manual which will consolidate delegations of authority and mission and function statements to identify roles and responsibilities of each DOE division involved in emergency preparedness and the resultant interaction between ERA and these divisions during energy emergencies. After the formation of the Federal Emergency Management Agency next spring, we will review with the new agency how energy emergency preparedness will best relate to its responsibilities.

We have also proposed and held hearings upon and are prepared to issue Standby Crude Oil and Petroleum Product Allocation and Price Control Regulations which will define responsibilities in advance of any contingencies requiring their actual activation.

In discussing DOE's emergency preparedness activities it is important to distinguish among: (1) those which are directed at dealing with energy emergencies, such as a coal strike or an interruption of petroleum imports; (2) those which address other types of emergencies with which DOE is concerned, such as operational and natural phenomena (disaster) emergencies which affect Departmental facilities and operations, including emergencies involving special nuclear materials and nuclear weapons; and (3) those which involve the overall administrative coordination of emergency preparedness activities. The responsibility for coordinating the Departmental response during an energy emergency has been vested in the Energy Management Emergency Group (EMEG) which is chaired by the Assistant Secretary for Policy and Evaluation. The Deputy Secretary will settle matters which cannot be resolved within the group.

In addition to establishing the EMEG, which functions only during an energy emergency, the Department has formalized its energy emergency policy and planning activities by establishing a system to develop emergency planning policy and to coordinate the development of emergency plans or components of plans for use by the EMEG should an energy emergency situation arise. This system is governed by the Emergency Policy Committee, which also is chaired by the Assistant Secretary for Policy and Evaluation. It is through this committee that the Assistant Secretary for Policy and Evaluation fulfills his role of being responsible for emergency preparedness policy and his responsibility to coordinate overall energy emergency planning.

In the case of non-energy emergencies the responsibility for action lies with other DOE offices. Responsibility for ensuring preparedness for continuity of Government in national emergencies is given to the Director of Administration, response to operational and natural phenomena emergencies is the responsibility of the Assistant Secretary for Environment. The Assistant Secretary for Defense Programs is assigned the responsibility to respond to emergencies involving special nuclear materials and nuclear weapons, including terrorists, sabotage, and other security threats to those materials and weapons, as well as to DOE energy facilities such as the Strategic Petroleum Reserve.

The Director of Administration is DOE's Emergency Coordinator. He does not direct the Department's operational responsibilities during an emergency. Rather, he provides general and administrative coordination, overview, and monitoring of overall DOE emergency preparedness activities on a day-to-day basis. The Emergency Coordinator for DOE has responsibility for, among other things, coordinating DOE participation in interagency emergency task forces, working groups, and committees, coordinating with external emergency preparedness agencies, and coordinating with other DOE officers.

In essence, we welcome scrutiny and examination of our emergency preparedness programs, because our goal is to be prepared for all emergencies, and such scrutiny and examination can aid in our attainment of that goal.

I am pleased to respond to the questions set forth in your letter of November 6, 1978, in the same order submitted.

DOE RESPONSES TO SUBCOMMITTEE QUESTIONS

Question 1

Please provide your best information concerning the supplies of natural gas, gasoline, heating oil, coal, and other fuels in each region of the Nation during the forthcoming 1978-79 winter season and your projections as to adequacy of those supplies during this season. Also indicate any shortages and the reasons therefore anticipated in any region or State due to other causes. For example, a recent edition of The Energy Daily indicates possible shortages in areas served by the TVA.

Answer

Forecasts of supplies and their adequacy for home heating oil, coal, and gasoline are not made on a regional basis. Natural gas regional projections are the result of an annual survey of gas distribution companies.

Natural Gas

Overall, the national natural gas supply/demand situation is favorable for the 1978-79 winter season.

Estimates from gas distribution companies as reported to the EIA show that projected natural gas deliveries to end use customers under normal winter conditions will total 8,378 billion cubic feet (Bcf) marking a decline of 278 Bcf or 3.2 percent from last winter's actual deliveries of 8,656 Bcf. The decline in projected deliveries is based on a lower projected demand for the 1978-79 winter under normal winter conditions as compared to end user demand necessitated by the 1977-78 8.4 percent colder than normal winter.

Recent estimates reported to the Federal Energy Regulatory Commission from 29 interstate pipelines, which transport 99 percent of gas handled by interstate pipelines, show an expected natural gas availability of about 6,780 Bcf for the 1978-79 winter. This is only slightly less than the 6,815 Bcf actually delivered during the 1977-78 winter, one of the coldest on record in many major marketing areas. (Please note that the aforementioned volumes cannot be considered absolute since intercompany transfers, which are about the same each year, are included in the totals.)

Although final data is not available for natual gas in underground storage on November 1, 1978, it is expected that it will

approximate the November 1, 1977, level of 2,813 Bcf for working gas in storage since preliminary October 1, 1978, volumes exceeded that of one year earlier by about 11 Bcf.

There appears to be substantial surplus volumes of natural gas that are available in some intrastate markets, primarily Texas and Oklahoma, in addition to surplus Canadian volumes. Estimates of availability of emergency purchase gas, excluding Canadian surplus, are approximately 171 Bcf under normal winter conditions as compared to an estimated 163 Bcf delivered under emergency transactions last winter. These projected surplus volumes could be made available by direct transportation and through displacement to further alleviate the effects of any Iranian related petroleum product shortages as well as any abnormally cold winter demands.

The Preliminary Report of Natural Gas Deliveries and Curtailments to End Use Customers provides a detailed breakdown of projected deliveries and curtailments by DOE Region, State, and type of end use customer (see Attachment 1).

Propane

Projected total national demand for propane for alternate fuel uses during the 1978-79 heating season is based upon the actual usage during the 1976-77 heating season which was the most severe winter experienced for the past one hundred years (see Attachment 2). The actual usage (demand) during the 1976-77 heating season was adjusted for changes in population, conservation, availability of natural gas (and other factors) to derive projected total national demand for propane during the 1978-79 heatig season.

ERA projects a total national demand of 166,854,000 barrels of propane based upon colder than normal winter demand situation for the 1978-79 heating season compared to the actual usage (demand) of 177,530,000 barrels of propane for the 1976-77 heating season, a projected decrease of 6 percent in demand.

Reports from gas distribution companies show a projected total national demand of 11,083,000 barrels of propane alternate fuel use for the 1978-79 heating season in normal winter conditions.

Primary stocks of propane (in inventory) as of November 1, 1978, totaled 90,471,000 barrels compared to 93,441,000 barrels as of

the same date in 1976. On March 31, 1979 (the projected end of the 1978-79 heating season), the projected primary stocks of propane in inventory based upon a colder than normal winter demand situation are expected to total 49,454,000 barrels which amounts to a drawdown of 41,017,000 barrels of propane from stocks (in inventory). This added to the production of propane from natural gas processing plants, refineries, and imports will adequately satisfy the projected total demand for propane during the 1978-79 heating season.

Thus, the projected total national supply of propane appears adequate to satisfy the projected total national demand for propane during the 1978-79 heating season even if the 1978-79 winter is of severity comparable to the severity of the 1976-77 winter. Therefore, no problems are anticipated that may be attributable to the projected total national supply of propane.

Although the total national supply of propane was adequate to satisfy the total demands for propane during the 1976-77 winter, and is projected adequate to satisfy the total demands for propane during the 1978-79 winter--even if the 1978-79 winter is more severe than the 1976-77 winter--the combined effects of limitations of the propane distribution (transportation) systems, when combined with the distributive effects of storage and import facilities could result in localized short term supply shortfalls in certain regions and States similar to those occurring during the 1976-77 winter. Attachment 3 provides an analysis by region of the potential for such shortfalls.

Gasoline

Based on data gathered in connection with the "Findings and Views Concerning the Exemption of Motor Gasoline from the Mandatory Petroleum Allocation Regulations" as updated by the supplement to the September 1977 report, DOE projects that stocks of motor gasoline will be adequate through 1978 and 1979 (includes winter of 1978-79), and that total gasoline supply will meet projected demand. Continued strong demand for motor gasoline since Labor Day has impacted normal stock buildup which should abate with the onset of normal winter weather.

Barring a reduction of crude and product imports due to the Iranian situation or an unexpected reimposition of an embargo, we expect that supplies of gasoline will be adequate to satisfy anticipated demand during the 1978-79 winter season.

Home Heating Oil

The inventory level of middle distillate (heating oil) at the beginning of the 1978-79 heating season is reported to be about 19 percent below that at the start of the 1977-78 heating season, and demand for the 1978-79 heating season is anticipated to be about 2.5 to 4 percent higher than that for the 1977-78 heating season for a normal winter, and up 5 percent for a colder than normal winter (see Attachment 4). Nevertheless, we expect that the cold weather demand (including alternate fuel requirements resulting from natural gas curtailment) can be met by increasing production 4-5 percent, and imports to levels achieved in the 1976-77 heating season which was, by far, the coldest winter in recent years. The proposed increased production and import rates are well within the capability of the petroleum industry, U.S. and worldwide, respectively. Therefore, no shortages of heating oil due to a lack of total supply are expected to occur in the 1978-79 heating season.

Barring a reduction of crude and product imports due to the Iranian situation or an unexpected reimposition of an embargo, we expect that supplies of heating oil will be adequate to satisfy anticipated demand during the 1978-79 winter season.

Residual Fuel Oil

The inventory level of residual fuel oil at the beginning of the 1978-79 heating season is reported to be about 15 percent below that at the start of the 1977-78 heating season, and demand for the 1978-79 heating season is anticipated to be about 1.5 to 2.5 percent higher than that for the 1977-78 heating season for a normal winter, and up about 5 percent for a colder than normal winter (See Attachment 5). Nevertheless, we expect that this demand (including alternate fuel requirements resulting from natural gas curtailment) can be met by maintaining the domestic production rates achieved in the past two heating seasons and by importing at the average rate of the 1976-77 heating season which was, by far, the coldest winter in recent years. The proposed production and import rates are well within the capability of the petroleum industry, U.S. and worldwide, respectively. Therefore, no shortages of residual fuels due to a lack of total supply are expected to occur in the 1978-79 heating season.

Barring a reduction of crude and product imports due to the Iranian situation or an unexpected reimposition of an embargo, we expect that supplies of residual fuel oils will be adequate to satisfy anticipated demand during the 1978-79 winter season.

Coal

We expect that there will be a sufficient combination of stocks and production of coal to meet all anticipated demand for the 1978-79 winter unless there were to be an unexpected disruption of either transportation systems or production due to labor disputes. A rail strike is still a possibility. The Presidential Fact Finding Board's report is due shortly. The unions cannot strike for 30 days after the issuance of the report. However, if no settlement occurs in that period, a rail strike could result.

Coal production during September and October was about 14.6 million tons per week. Even though production during the holiday period may drop to about 10 million tons per week, a total of about 364 million tons is expected for the 26 week period ending March 31, 1979. Total coal stockpiles as of August 31, 1978, were about 122 million tons. Therefore, we should be in a position to satisfy demand, projected in the 360 to 375 million ton range, without difficulty. In addition, effective production could probably be increased in moderate amounts above the current production estimates if additional demand dictates.

DOE/EIA-0137/1

ATTACHMENT 1

Energy Data Report

U.S. Department of Energy
Energy Information Administration
Washington D.C. 20461

October 1978

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Preliminary Report of Natural Gas Deliveries and Curtailments to End-Use Customers

PRELIMINARY REPORT

OF

NATURAL GAS DELIVERIES AND CURTAILMENTS
TO END-USE CUSTOMERS
1978-1979 HEATING SEASON
(NOVEMBER-MARCH)

Prepared in the Office of Energy Data and Interpretation, October 3, 1978.

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FIGURES

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INTRODUCTION

These data are the preliminary results of a survey tabulated by the Energy Information Administration of over 1,500 gas companies that supply natural gas to end-use customers. Information presented are actual data for the 1977-1978 heating season (November through March) and projected data for the 1978-1979 heating season as compiled from gas company responses reported on Form EIA-50.[1] Projected data have been reported by respondent gas companies based on the assumption of normal winter demands in their market areas. Actual data for deliveries represent metered volumes of natural gas and supplemental gaseous fuels such as SNG, LNG, and propane-air delivered by gas companies to end-use customers. Excluded from deliveries are volumes of gas sold for resale. Curtailments represent volumetric reductions from contract quantities, reductions from normal historical quantities, or reductions from other bases the reporting firm may select. Totals of firm and interruptible types of service may not equal totals for customer categories due to minor discrepancies in individual company reporting. Table totals may not add due to rounding. All volumes are at 14.73 PSIA. Preliminary data published in this report are not expected to vary significantly from the final tabulation of this survey.

TOTAL DELIVERIES AND CURTAILMENTS (TABLES 1 AND 2)

Total deliveries of natural gas to end-use customers for the 1978-1979 winter heating season are projected to be 8,378 billion cubic feet (Bcf), decreasing 3.2 percent from the 8,656 Bcf delivered during the 1977-1978 winter season and decreasing 3.3 percent from actual deliveries during the 1976-1977 heating season. Curtailments of natural gas are projected to increase 6.8 percent above last winter's mark of 1,364 Bcf, reaching 1,457 Bcf in the 1978-1979 period and to decline 27.3 percent or 546 Bcf below the 1976-1977 winter's mark of 2,003 Bcf. Projected information, as noted above, assumes the presence of normal weather.

Projected deliveries are decreasing from last winter's levels in eight of the ten DOE regions with slight increases posted in Regions 8 and 9 (Rocky Mountains and Far West). Curtailments are projected to increase in six of the ten DOE regions. Declines are projected in Regions 3, 4, 5, and 7. The largest volumetric curtailment increase is in the State of California (Region 9), up more than 73 Bcf. South Carolina (Region 4) indicates the largest volumetric decrease in curtailment levels, off nearly 21 Bcf. However, the entire curtailment volume in California and virtually the entire volume in South Carolina is classified as interruptible service.

[1] Form EIA-50, Alternative Fuel Demand Due to Natural Gas Curtailment, is a Department of Energy form used in a survey of all domestic natural gas companies which deliver gas to end-use gas customers. Form EIA-50 replaces former FEA Form G-101-A-2 and FPC Form 69.

DELIVERIES AND CURTAILMENTS BY FIRM AND INTERRUPTIBLE SERVICE (TABLES 3 AND 4)

Interruptible curtailments as a whole are projected to increase 10.4 percent while deliveries are projected to fall by the same percentage from the 1977-1978 heating season. Deliveries are projected to decline in eight regions, increasing in Regions 3 and 7. Similarly, curtailments are projected to decline in the aforementioned Regions 3 and 7, as well as in Region 4. Increased curtailments are projected in the remaining seven regions.

Firm deliveries and curtailments follow the basic pattern exhibited in the interruptible type of service, deliveries down and curtailments up. Although decreasing less on a percentage basis, firm deliveries are projected to account for the bulk of the total volumetric change in deliveries. With regard to total curtailments, projected interruptible curtailments are responsible for both a larger percentage and larger volumetric change.

DELIVERIES AND CURTAILMENTS BY CUSTOMER CATEGORY (TABLES 5 THROUGH 9)

Nationally, Residential deliveries are projected to decline from 3,503 Bcf to 3,422 Bcf, off 2.3 percent from the 1977-1978 winter. Regionally, declines are projected for nearly all States throughout the nation except those in the Western and Rocky Mountain areas. This regional pattern also holds true for deliveries projected for Commercial customers.

Nationally, deliveries to Commercial customers are projected to decline 3.8 percent, down 61 Bcf from actual deliveries of 1,586 Bcf reported for the 1977-1978 winter heating season. Deliveries to Industrial customers are projected to increase, up 0.2 percent from 2,441 Bcf while deliveries to Other customers are projected to decrease 1.3 percent from 125 Bcf. Deliveries for Electric Utilities are projected to decline 13.8 percent, down 139 Bcf from 1,001 Bcf.

Curtailments are projected to increase nationally for all customer categories but Residential and Other, with Electric Utilities accounting for the major portion of the increase. Of the 93 Bcf increase in curtailments, 66 Bcf can be attributed to the Electric Utilities category. Increased Industrial curtailments account for the remaining 27 Bcf. The Commercial and Other categories show changes in curtailments of less than 0.5 Bcf and Residential curtailments projected for the coming winter, as in past years, show no change from 0.0 Bcf.

FIGURE 1

DEPARTMENT OF ENERGY - REGIONS

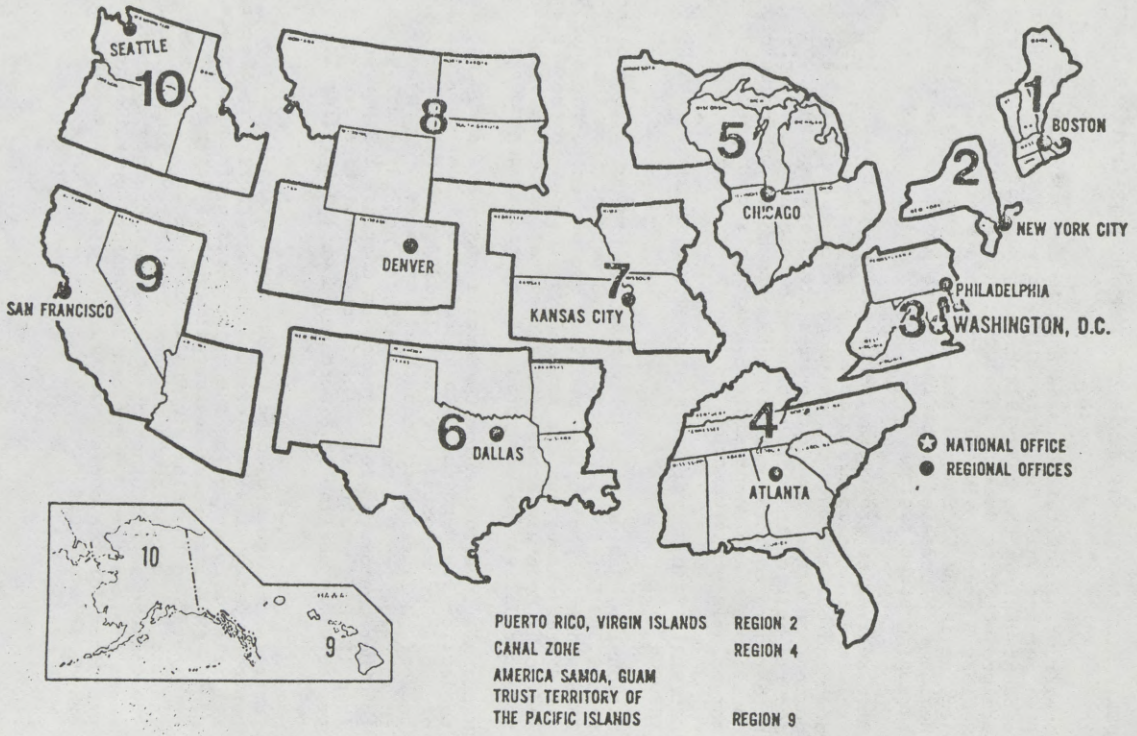

TABLE 1
DELIVERIES AND CURTAILMENTS TO END-USE CUSTOMERS FOR THE HEATING SEASON (NOV-MAR)
Total , BY TYPE OF SERVICE AND BY CUSTOMER CATEGORY
ALL VOLUMES IN MILLIONS OF CUBIC FEET (MMCF)

TYPE OF SERVICE AND CUSTOMER CATEGORY	1976-1977 ACTUAL[1]		PRELIMINARY 1977-1978 ACTUAL[2]		PRELIMINARY 1978-1979 PROJECTED[2]		1978-1979 PROJECTED CHANGE AS A PERCENTAGE 1976-1977 ACTUAL		1978-1979 PROJECTED CHANGE AS A PERCENTAGE 1977-1978 ACTUAL	
	DELIVERIES	CURTAILMENT	DELIVERIES	CURTAILMENTS	DELIVERIES	CURTAILMENTS	DELIVERIES	CURTAILMENTS	DELIVERIES	CURTAILMENTS
TOTAL	8,667,743	2,003,045	8,656,297	1,363,768	8,377,720	1,457,135	-3.3	-27.3	-3.2	6.8
TYPE OF SERVICE										
FIRM	7,754,720	1,187,524	7,668,750	568,856	7,492,845	579,446	-3.4	-51.2	-2.3	1.9
INTERRUPTIBLE	913,023	815,521	987,547	794,911	884,875	877,690	-3.1	7.6	-10.4	10.4
CUSTOMER CATEGORY										
RESIDENTIAL	3,723,482	-0-	3,503,397	-0-	3,421,569	-0-	-8.1	0.0	-2.3	0.0
COMMERCIAL	1,584,573	105,274	1,586,210	48,885	1,525,422	49,227	-3.7	-53.2	-3.8	0.7
INDUSTRIAL	2,358,774	942,123	2,440,545	590,278	2,444,582	617,355	3.6	-34.5	0.2	4.6
ELECTRIC UTILITY	894,537	926,989	1,000,556	708,352	862,479	774,488	-3.6	-16.5	-13.8	9.3
OTHER	121,582	30,220	125,366	16,321	123,713	16,115	1.8	-46.7	-1.3	-1.3

[1] Source: FEA Form G-101-A-2 and FPC Form 69. These data represent final tabulations and may show minor variations from data previously published.

[2] Source: Form EIA-50, Alternate Fuel Demand Due to Natural Gas Curtailment.

NOTE: Totals of firm and interruptible types of service may not equal total for customer categories due to minor discrepancies in individual company reporting. Total may not add due to rounding.

TABLE 2
TOTAL DELIVERIES & CURTAILMENTS TO END-USE CUSTOMERS FOR THE HEATING SEASON (NOV - MAR)
ALL VOLUMES IN MILLIONS OF CUBIC FEET (MMCF)

PRELIMINARY

REGION AND STATE	1977-1978 ACTUAL		1978-1979 PROJECTED		1978-1979 PROJECTED CHANGE AS A PERCENTAGE OF 1977-1978 ACTUAL	
	DELIVERIES	CURTAILMENTS	DELIVERIES	CURTAILMENTS	DELS	CURTS
REGION 1						
CONNECTICT	40,587	1,087	37,255	2,141	-8.2	96.9
MAINE	1,230	0	1,287	0	4.6	0.0
MASS	97,872	796	97,088	1,415	-0.8	77.8
N HAMPSHRE	5,209	293	5,264	293	1.1	20.6
RHODE IS	13,564	0	12,995	0	-4.2	0.0
VERMONT	2,272	177	2,245	159	-1.2	-10.4
REGION 1 TOTS	160,733	2,303	156,133	4,008	-2.9	74.0
REGION 2						
NEW JERSEY	184,939	20,149	140,168	27,570	-15.0	36.8
NEW YORK	381,140	22,769	370,032	29,424	-2.9	29.2
REGION 2 TOTS	566,078	42,918	510,199	56,994	-6.6	32.8
REGION 3						
DELAWARE	9,161	1,705	8,479	1,745	-7.4	2.4
WASH DC	18,525	0	18,265	0	-1.4	0.0
MARYLAND	90,015	12,538	91,702	8,636	1.9	-31.1
PENN	415,130	18,471	407,211	17,950	-1.9	-2.8
W VIRGINIA	71,190	10,937	73,184	14,403	2.8	-3.6
W VIRGINIA	83,062	1,852	85,573	1,893	2.8	2.2
REGION 3 TOTS	687,087	49,503	684,214	44,627	-0.4	-9.8
REGION 4						
ALABAMA	114,971	53,097	112,381	59,101	-2.3	11.3
FLORIDA	68,439	44,815	64,238	45,932	-6.1	2.5
GEORGIA	145,014	56,551	138,331	55,323	-4.6	-2.2
KENTUCKY	112,766	17,205	108,185	15,253	-4.1	-11.4
MISS	70,970	60,259	61,847	65,485	-11.7	8.7
N CAROLINA	90,027	44,029	89,253	43,317	-1.5	-1.6
S CAROLINA	65,701	63,557	62,257	62,898	-3.3	-32.5
TENNESSEE	105,036	34,476	99,123	33,811	-5.6	-7.3
REGION 4 TOTS	710,024	375,988	675,614	361,120	-4.8	-4.0
REGION 5						
ILLINOIS	725,970	35,882	662,891	44,837	-8.7	25.0
INDIANA	267,549	18,505	264,340	16,016	-1.2	-13.5
MICHIGAN	568,471	7,456	521,963	7,413	-8.8	-0.6
MINNESOTA	145,403	39,978	135,086	38,502	-7.1	-1.2
OHIO	580,560	29,040	597,116	10,683	2.9	-63.2
WISCONSIN	209,565	19,255	202,171	23,145	-3.4	20.2
REGION 5 TOTS	2,477,518	150,115	2,383,768	141,596	-3.8	-5.7
REGION 6						
ARKANSAS	106,585	47,204	103,143	90,704	-3.0	4.0
LOUISIANA	322,416	122,938	296,372	130,603	-8.1	6.2
NEW MEXICO	67,397	7,766	64,401	7,167	-4.5	-7.7
OKLAHOMA	278,602	3,940	270,979	2,681	-2.7	-33.6
TEXAS	1,390,902	10,190	1,522,358	22,234	-4.9	118.2
REGION 6 TOTS	2,165,662	232,073	2,061,292	253,349	-4.8	9.2
REGION 7						
IOWA	140,611	43,868	156,202	41,962	-2.7	-4.3
KANSAS	211,271	68,491	213,789	72,509	1.2	5.9
MISSOURI	211,366	48,840	196,814	46,492	-6.9	-4.5
NEBRASKA	85,805	41,363	80,569	35,467	-6.1	-14.3
REGION 7 TOTS	649,053	202,401	647,373	196,430	-3.2	-3.0
REGION 8						
COLORADO	146,215	2,225	145,338	4,229	-0.7	90.1
MONTANA	36,806	3,125	33,555	2,962	-7.8	-5.2
N DAKOTA	16,239	1,134	15,609	1,146	-3.9	1.1
S DAKOTA	17,050	4,430	15,831	3,334	-7.1	-24.7
UTAH	57,356	2,328	57,745	4,176	0.7	79.4
WYOMING	28,775	1,742	27,583	2,100	-4.1	19.9
REGION 8 TOTS	292,041	14,993	295,661	17,948	1.2	19.7
REGION 9						
ARIZONA	58,965	13,068	58,218	30,262	-8.0	67.5
CALIFORNIA	679,553	267,019	698,948	340,664	2.9	27.6
HAWAII	1,396	0	1,405	0	0.7	0.0
NEVADA	22,503	7,704	28,673	7,955	18.5	3.2
REGION 9 TOTS	762,417	292,791	781,244	378,880	2.5	29.4
REGION 10						
ALASKA	39,255	0	34,765	0	-11.4	0.0
IDAHO	24,754	0	27,472	137	11.0	0.0
OREGON	45,332	430	44,565	1,618	-1.7	276.1
WASHINGTON	76,338	187	75,421	429	-1.2	173.1
REGION 10 TOTS	185,685	617	182,223	2,184	-1.9	217.7
*** U.S. TOTALS	8,656,297	1,363,748	8,377,720	1,457,135	-3.2	6.8

Source: Form EIA-50, Alternative Fuel Demand Due to Natural Gas Curtailment.

TABLE 3

FIRM DELIVERIES & CURTAILMENTS TO END-USE CUSTOMERS FOR THE HEATING SEASON (NOV - MAR)
ALL VOLUMES IN MILLIONS OF CUBIC FEET (MMCF)

PRELIMINARY

REGION AND STATE	1977-1978 ACTUAL		1978-1979 PROJECTED		1978-1979 PROJECTED CHANGE AS A PERCENTAGE OF 1977-1978 ACTUAL	
	DELIVERIES	CURTAILMENTS	DELIVERIES	CURTAILMENTS	DELS	CURTS
REGION 1						
CONNECTICT	39,057	176	36,595	170	-6.3	-3.6
MAINE	1,211	0	1,265	0	4.4	0.0
MASS	94,751	174	95,545	62	0.8	-64.5
N HAMPSHRE	5,150	29	5,236	35	1.7	19.1
RHODE IS	13,560	0	12,989	0	-4.2	0.0
VERMONT	1,366	0	1,335	0	-2.3	0.0
REGION 1 TOTS	155,096	379	152,964	267	-1.4	-29.7
REGION 2						
NEW JERSEY	157,267	0	139,936	0	-11.0	0.0
NEW YORK	373,792	1,586	363,752	0	-2.7	-100.0
REGION 2 TOTS	531,058	1,586	503,687	0	-5.2	-100.0
REGION 3						
DELAWARE	8,977	1,603	8,470	1,640	-5.6	2.3
WASH DC	17,452	0	17,086	0	-2.1	0.0
MARYLAND	79,480	1,710	77,857	116	-2.0	-93.2
PENN	410,817	13,023	404,485	11,312	-1.5	-13.1
VIRGINIA	66,089	5,374	68,521	4,313	3.7	-19.7
W VIRGINIA	82,544	1,844	84,830	1,883	2.8	2.1
REGION 3 TOTS	665,358	23,554	661,248	19,263	-0.6	-18.2
REGION 4						
ALABAMA	92,923	20,031	89,639	25,224	-3.5	25.9
FLORIDA	34,149	14,016	31,524	17,621	-7.7	25.7
GEORGIA	122,538	175	115,987	35	-5.3	-80.2
KENTUCKY	110,542	13,676	106,814	11,705	-3.4	-14.4
MISS	67,808	56,329	59,610	61,605	-12.1	9.4
N CAROLINA	48,381	11,512	47,081	11,765	-2.7	2.2
S CAROLINA	38,262	2,118	33,723	2,012	-1.6	-5.0
TENNESSEE	101,357	21,702	96,338	18,457	-5.0	-15.0
REGION 4 TOTS	611,978	139,559	580,715	148,423	-5.1	6.4
REGION 5						
ILLINOIS	706,276	14,783	643,737	15,531	-8.9	5.1
INDIANA	264,553	14,903	261,375	12,602	-1.2	-15.4
MICHIGAN	519,314	326	496,709	593	-4.4	81.8
MINNESOTA	118,522	783	111,409	1,643	-6.0	109.9
OHIO	576,352	28,040	592,049	9,902	2.7	-64.7
WISCONSIN	167,910	1,986	163,150	3,102	-2.8	56.2
REGION 5 TOTS	2,352,986	60,820	2,268,428	43,373	-3.6	-28.7
REGION 6						
ARKANSAS	102,461	83,728	99,785	86,484	-2.6	3.3
LOUISIANA	283,181	122,756	259,123	130,395	-8.5	6.2
NEW MEXICO	65,835	6,616	66,841	5,859	1.5	-11.4
OKLAHOMA	222,269	3,546	216,561	2,331	-2.6	-34.3
TEXAS	1,172,207	4,778	1,115,751	6,145	-4.8	28.6
REGION 6 TOTS	1,845,953	221,424	1,758,060	231,214	-4.8	4.4
REGION 7						
IOWA	135,964	1,058	130,465	831	-4.0	-21.5
KANSAS	173,424	57,771	173,648	61,469	0.1	6.4
MISSOURI	204,907	30,435	188,277	30,138	-8.0	-1.0
NEBRASKA	77,238	5,912	72,634	5,663	-6.0	-4.2
REGION 7 TOTS	591,221	95,174	565,024	98,100	-4.4	3.1
REGION 8						
COLORADO	109,165	297	121,814	310	11.6	4.2
MONTANA	26,628	0	24,570	0	-7.7	0.0
N DAKOTA	13,817	0	12,964	0	-6.2	0.0
S DAKOTA	14,184	0	12,883	0	-9.2	0.0
UTAH	37,833	0	42,479	0	12.3	0.0
WYOMING	21,857	286	21,577	279	-1.3	-2.3
REGION 8 TOTS	223,483	583	236,286	589	5.7	1.0
REGION 9						
ARIZONA	58,965	18,068	54,218	30,262	-8.0	67.5
CALIFORNIA	472,207	0	548,315	0	16.1	0.0
HAWAII	1,396	0	1,405	0	0.7	0.0
NEVADA	22,503	7,709	26,673	7,955	18.5	3.2
REGION 9 TOTS	555,070	25,777	630,611	38,217	13.6	48.3
REGION 10						
ALASKA	30,948	0	26,930	0	-13.0	0.0
IDAHO	23,337	0	25,988	0	11.4	0.0
OREGON	32,075	0	32,879	0	2.5	0.0
WASHINGTON	50,247	0	50,026	0	-0.4	0.0
REGION 10 TOTS	136,607	0	135,822	0	-0.6	0.0
*** U.S. TOTALS	7,668,750	568,856	7,492,845	579,446	-2.3	1.9

Firm Service: Service from schedules or contracts under which the seller is expressly obligated to deliver specific volumes within a given period and which anticipates no interruptions, but which may permit unexpected interruption in case the supply to higher priority customers is threatened.

Source: Form EIA-50, Alternative Fuel Demand Due to Natural Gas Curtailment.

TABLE 4
INTERRUPTIBLE DELIVERIES & CURTAILMENTS TO END-USE CUSTOMERS FOR THE HEATING SEASON (NOV - MAR) .
ALL VOLUMES IN MILLIONS OF CUBIC FEET (MMCF)

PRELIMINARY

REGION AND STATE	1977-1978 ACTUAL		1978-1979 PROJECTED		1978-1979 PROJECTED CHANGE AS A PERCENTAGE OF 1977-1978 ACTUAL	
	DELIVERIES	CURTAILMENTS	DELIVERIES	CURTAILMENTS	DELS	CURTS
REGION 1						
CONNECTICT	1,530	911	661	1,971	-56.8	116.4
MAINE	19	0	22	0	18.9	0.0
MASS	3,121	622	1,543	1,353	-50.6	117.5
N HAMPSHRE	59	214	28	258	-52.9	20.6
RHODE IS	3	0	6	0	73.4	0.0
VERMONT	906	177	910	159	0.4	-10.4
REGION 1 TOTS	5,638	1,924	3,169	3,742	-43.8	94.5
REGION 2						
NEW JERSEY	7,672	20,149	232	27,570	-97.0	36.8
NEW YORK	7,348	21,183	6,280	29,424	-14.5	38.9
REGION 2 TOTS	15,020	41,332	6,512	56,994	-56.6	37.9
REGION 3						
DELAWARE	184	102	9	106	-95.3	3.9
WASH DC	1,074	0	1,180	0	9.9	0.0
MARYLAND	10,536	10,828	13,845	8,520	31.4	-21.3
PENN	4,317	5,448	2,726	6,639	-36.8	21.9
VIRGINIA	5,101	9,563	4,662	10,090	-8.6	5.5
W VIRGINIA	518	9	543	10	4.8	16.3
REGION 3 TOTS	21,729	25,949	22,965	25,364	5.7	-2.3
REGION 4						
ALABAMA	22,048	33,066	22,742	33,878	3.2	2.5
FLORIDA	34,270	30,799	32,714	28,310	-4.5	-8.1
GEORGIA	22,477	56,376	22,344	55,288	-0.6	-1.9
KENTUCKY	2,224	3,530	1,371	3,547	-38.4	0.5
MISS	2,262	3,929	2,237	3,881	-1.1	-1.2
N CAROLINA	1,647	32,512	2,172	31,553	31.9	-3.0
S CAROLINA	9,439	61,439	8,534	40,886	-9.6	-33.5
TENNESSEE	3,679	14,774	2,785	15,355	-24.3	3.9
REGION 4 TOTS	98,045	236,425	94,899	212,697	-3.2	-10.0
REGION 5						
ILLINOIS	19,695	21,099	19,154	29,306	-2.7	38.9
INDIANA	2,996	3,603	2,965	3,414	-1.1	-5.2
MICHIGAN	29,157	7,130	25,255	6,820	-13.4	-4.3
MINNESOTA	26,881	39,194	23,676	37,859	-11.9	-3.4
OHIO	4,209	1,000	5,067	781	20.4	-22.0
WISCONSIN	41,655	17,269	39,222	20,043	-5.8	16.1
REGION 5 TOTS	124,592	89,295	115,340	98,223	-7.4	10.0
REGION 6						
ARKANSAS	3,884	3,476	3,398	4,220	-12.5	21.4
LOUISIANA	39,235	178	37,249	208	-5.1	17.1
NEW MEXICO	1,562	1,150	1,560	1,308	-0.1	13.7
OKLAHOMA	56,333	433	54,418	311	-3.4	-28.3
TEXAS	218,695	5,412	206,607	16,089	-5.5	197.3
REGION 6 TOTS	319,709	10,649	303,233	22,135	-5.2	107.9
REGION 7						
IOWA	24,648	42,810	25,737	41,131	4.4	-3.9
KANSAS	37,847	10,720	40,140	11,040	6.1	3.0
MISSOURI	6,770	18,246	8,537	16,354	26.1	-10.4
NEBRASKA	8,568	35,451	7,935	29,804	-7.4	-15.9
REGION 7 TOTS	77,832	107,227	82,349	98,330	5.8	-8.3
REGION 8						
COLORADO	27,050	1,927	23,524	3,919	-13.0	103.4
MONTANA	9,778	3,125	8,985	2,962	-8.1	-5.2
N DAKOTA	2,422	1,134	2,645	1,146	9.2	1.1
S DAKOTA	2,666	4,430	2,948	3,334	2.9	-24.7
UTAH	19,523	2,328	15,266	4,176	-21.8	79.4
WYOMING	6,918	1,466	6,006	1,821	-13.2	24.2
REGION 8 TOTS	68,558	14,410	59,375	17,359	-13.4	20.5
REGION 9						
ARIZONA	0	0	0	0	0.0	0.0
CALIFORNIA	207,346	267,014	150,634	340,664	-27.4	27.6
HAWAII	0	0	0	0	0.0	0.0
NEVADA	0	0	0	0	0.0	0.0
REGION 9 TOTS	207,346	267,014	150,634	340,664	-27.4	27.6
REGION 10						
ALASKA	8,307	0	7,835	0	-5.7	0.0
IDAHO	1,423	0	1,485	137	4.4	0.0
OREGON	13,258	530	11,686	1,618	-11.9	205.1
WASHINGTON	26,091	157	25,395	429	-2.7	173.1
REGION 10 TOTS	49,078	687	46,400	2,184	-5.5	217.7
*** U.S. TOTALS	987,547	794,911	884,875	877,690	-10.4	10.4

Interruptible Service: Service from schedules or contracts under which the seller is not expressly obligated to deliver specific volumes within a given time period, and which anticipates and permits interruption on short notice, or service under schedules or contracts which expressly or by implication require installation of alternative fuel capability.

Source: Form EIA-50, Alternative Fuel Demand Due to Natural Gas Curtailment.

TABLE 5

RESIDENTIAL DELIVERIES & CURTAILMENTS TO END-USE CUSTOMERS FOR THE HEATING SEASON (NOV - MAR)
ALL VOLUMES IN MILLIONS OF CUBIC FEET (MMCF)

PRELIMINARY

REGION AND STATE	1977-1978 ACTUAL		1978-1979 PROJECTED		1978-1979 PROJECTED CHANGE AS A PERCENTAGE OF 1977-1978 ACTUAL	
	DELIVERIES	CURTAILMENTS	DELIVERIES	CURTAILMENTS	DELS	CURTS
REGION 1						
CONNECTICT	23,096	0	21,673	0	-6.2	0.0
MAINE	419	0	427	0	2.0	0.0
MASS	62,618	0	63,073	0	0.7	0.0
N HAMPSHRE	2,873	0	2,937	0	2.2	0.0
RHODE IS	10,683	0	10,388	0	-2.8	0.0
VERMONT	838	0	809	0	-3.5	0.0
REGION 1 TOTS	100,525	0	99,305	0	-1.2	0.0
REGION 2						
NEW JERSEY	99,272	0	89,188	0	-10.2	0.0
NEW YORK	241,393	0	234,024	0	-3.1	0.0
REGION 2 TOTS	340,665	0	323,212	0	-5.1	0.0
REGION 3						
DELAWARE	5,223	0	5,021	0	-3.9	0.0
WASH DC	13,022	0	12,771	0	-1.9	0.0
MARYLAND	57,212	0	54,940	0	-4.0	0.0
PENN	213,405	0	199,873	0	-6.3	0.0
VIRGINIA	43,567	0	43,180	0	-0.9	0.0
W VIRGINIA	38,613	0	34,319	0	-11.1	0.0
REGION 3 TOTS	371,042	0	350,103	0	-5.6	0.0
REGION 4						
ALABAMA	44,336	0	46,631	0	5.2	0.0
FLORIDA	11,082	0	10,536	0	-4.9	0.0
GEORGIA	73,482	0	68,293	0	-7.1	0.0
KENTUCKY	62,485	0	57,254	0	-8.4	0.0
MISS	24,834	0	21,115	0	-15.0	0.0
N CAROLINA	27,737	0	25,435	0	-8.3	0.0
S CAROLINA	17,810	0	17,984	0	1.0	0.0
TENNESSEE	39,488	0	37,118	0	-6.0	0.0
REGION 4 TOTS	301,254	0	284,366	0	-5.6	0.0
REGION 5						
ILLINOIS	367,800	0	330,193	0	-10.2	0.0
INDIANA	129,581	0	129,776	0	0.2	0.0
MICHIGAN	257,188	0	241,460	0	-6.0	0.0
MINNESOTA	74,815	0	71,550	0	-4.4	0.0
OHIO	308,330	0	282,294	0	-8.4	0.0
WISCONSIN	86,032	0	86,167	0	0.2	0.0
REGION 5 TOTS	1,223,746	0	1,141,440	0	-6.7	0.0
REGION 6						
ARKANSAS	36,694	0	33,846	0	-7.8	0.0
LOUISIANA	59,274	0	53,595	0	-9.6	0.0
NEW MEXICO	17,662	0	20,059	0	13.6	0.0
OKLAHOMA	61,528	0	58,549	0	-4.8	0.0
TEXAS	174,336	0	168,192	0	-3.5	0.0
REGION 6 TOTS	349,494	0	334,242	0	-4.4	0.0
REGION 7						
IOWA	72,637	0	69,422	0	-4.4	0.0
KANSAS	74,254	0	75,960	0	2.3	0.0
MISSOURI	121,489	0	113,568	0	-6.5	0.0
NEBRASKA	42,955	0	38,788	0	-9.7	0.0
REGION 7 TOTS	311,334	0	297,738	0	-4.4	0.0
REGION 8						
COLORADO	58,648	0	66,206	0	12.9	0.0
MONTANA	14,613	0	13,539	0	-7.4	0.0
N DAKOTA	7,814	0	7,113	0	-9.0	0.0
S DAKOTA	8,869	0	8,270	0	-6.8	0.0
UTAH	25,894	0	29,086	0	12.3	0.0
WYOMING	9,611	0	9,353	0	-2.7	0.0
REGION 8 TOTS	125,448	0	133,567	0	6.5	0.0
REGION 9						
ARIZONA	19,653	0	25,576	0	30.1	0.0
CALIFORNIA	307,505	0	374,842	0	21.9	0.0
HAWAII	648	0	654	0	0.9	0.0
NEVADA	8,096	0	8,910	0	10.1	0.0
REGION 9 TOTS	335,901	0	409,982	0	22.1	0.0
REGION 10						
ALASKA	4,184	0	4,268	0	2.0	0.0
IDAHO	5,330	0	8,277	0	55.3	0.0
OREGON	13,082	0	13,295	0	1.6	0.0
WASHINGTON	21,387	0	21,374	0	-0.1	0.0
REGION 10 TOTS	43,983	0	47,216	0	7.3	0.0
*** U.S. TOTALS	3,503,397	0	3,421,569	0	-2.3	0.0

Residential Category: Customers using natural gas in residential dwellings, including apartments, for heat, air conditioning, cooling, water heating, and other residential uses.

Source: Form EIA-90, Alternative Fuel Demand Due to Natural Gas Curtailment.

TABLE 6

COMMERCIAL DELIVERIES & CURTAILMENTS TO END-USE CUSTOMERS FOR THE HEATING SEASON (NOV - MAR)
ALL VOLUMES IN MILLIONS OF CUBIC FEET (MMCF)

PRELIMINARY

REGION AND STATE	1977-1978 ACTUAL		1978-1979 PROJECTED		1978-1979 PROJECTED CHANGE AS A PERCENTAGE OF 1977-1978 ACTUAL	
	DELIVERIES	CURTAILMENTS	DELIVERIES	CURTAILMENTS	DELS	CURTS
REGION 1						
CONNECTICT	10,016	166	9,090	330	-9.2	99.4
MAINE	319	0	374	0	17.0	0.0
MASS	22,144	42	23,118	56	4.4	34.7
N HAMPSHRE	1,735	0	1,763	0	1.6	0.0
RHODE IS	2,185	0	2,040	0	-6.6	0.0
VERMONT	509	0	508	0	-0.3	-83.4
REGION 1 TOTS	36,909	207	36,892	387	0.0	86.3
REGION 2						
NEW JERSEY	38,542	2,110	32,061	3,334	-16.8	58.0
NEW YORK	78,831	5,036	77,485	5,174	-1.7	2.8
REGION 2 TOTS	117,373	7,145	109,546	8,508	-6.7	19.1
REGION 3						
DELAWARE	2,083	3	1,922	3	-7.7	1.4
WASH DC	3,877	0	3,879	0	0.1	0.0
MARYLAND	9,594	154	9,246	132	-3.6	-14.3
PENN	72,136	2,288	68,043	1,502	-5.7	-34.4
VIRGINIA	15,940	1,449	15,729	1,511	-1.5	4.3
W VIRGINIA	16,334	4	14,328	3	-12.3	-32.4
REGION 3 TOTS	119,964	3,898	111,148	3,150	-6.8	-19.2
REGION 4						
ALABAMA	18,094	908	17,881	1,022	-4.7	12.5
FLORIDA	12,960	85	12,751	88	-1.6	4.6
GEORGIA	34,695	1,451	32,605	1,094	-6.0	-3.0
KENTUCKY	24,272	2,227	22,463	1,995	-7.5	-28.4
MISS	12,258	80	11,436	36	-6.7	-85.5
N CAROLINA	11,721	3,507	10,603	3,965	-9.5	13.1
S CAROLINA	7,991	268	7,669	307	-4.0	14.4
TENNESSEE	28,634	3,798	26,536	3,384	-7.3	-10.9
REGION 4 TOTS	150,625	12,325	141,303	11,890	-6.2	-3.5
REGION 5						
ILLINOIS	169,467	2,739	157,205	2,930	-7.2	7.0
INDIANA	51,806	1,474	50,485	1,084	-2.6	-26.4
MICHIGAN	140,030	210	133,271	349	-4.8	66.0
MINNESOTA	43,250	7,905	42,253	7,188	-2.3	-9.1
OHIO	119,167	532	110,782	674	-7.0	26.6
WISCONSIN	51,290	1,452	49,150	1,907	-4.2	31.3
REGION 5 TOTS	575,009	14,313	543,145	14,131	-5.5	-1.3
REGION 6						
ARKANSAS	22,143	90	20,463	65	-7.7	-27.3
LOUISIANA	21,713	3	18,660	0	-14.1	-100.0
NEW MEXICO	10,063	3	10,859	6	7.9	133.3
OKLAHOMA	33,255	78	30,198	33	-9.2	-57.4
TEXAS	86,540	0	82,452	0	-4.7	-35.5
REGION 6 TOTS	173,714	174	162,613	105	-6.4	-39.6
REGION 7						
IOWA	41,455	2,363	39,634	2,436	-4.4	3.1
KANSAS	32,233	825	29,836	222	-7.4	-73.1
MISSOURI	53,273	1,996	47,548	985	-10.7	-50.7
NEBRASKA	23,499	3,244	23,266	3,006	-1.0	-7.3
REGION 7 TOTS	150,460	8,428	140,284	6,648	-6.8	-21.1
REGION 8						
COLORADO	31,663	59	34,806	99	9.9	67.9
MONTANA	10,960	0	10,111	0	-7.8	0.0
N DAKOTA	7,581	578	7,474	536	-1.4	-7.3
S DAKOTA	6,300	1,201	6,186	1,138	-1.8	-5.2
UTAH	12,132	17	13,122	203	8.2	1088.2
WYOMING	6,488	0	6,032	10	-7.0	7730.2
REGION 8 TOTS	75,132	1,855	77,730	1,985	3.5	7.0
REGION 9						
ARIZONA	11,743	0	13,968	0	18.9	0.0
CALIFORNIA	137,491	495	147,866	2,082	7.5	321.0
HAWAII	729	0	732	0	0.5	0.0
NEVADA	2,234	0	2,237	0	0.1	0.0
REGION 9 TOTS	152,197	495	164,803	2,082	8.3	321.0
REGION 10						
ALASKA	5,013	0	6,101	0	21.7	0.0
IDAHO	5,683	0	5,544	21	-2.4	0.0
OREGON	8,547	45	8,669	313	1.4	592.6
WASHINGTON	17,585	0	17,643	7	0.3	0.0
REGION 10 TOTS	36,828	45	37,958	341	3.1	653.8
*** U.S. TOTALS	1,586,210	48,885	1,525,422	49,227	-3.8	0.7

Commercial Category: Customers engaged primarily in the sale of goods or services.

Source: Form EIA-50, Alternative Fuel Demand Due to Natural Gas Curtailment.

TABLE 7

INDUSTRIAL DELIVERIES & CURTAILMENTS TO END-USE CUSTOMERS FOR THE HEATING SEASON (NOV - MAR)
ALL VOLUMES IN MILLIONS OF CUBIC FEET (MMCF)

PRELIMINARY

REGION AND STATE	1977-1978 ACTUAL		1978-1979 PROJECTED		1978-1979 PROJECTED CHANGE AS A PERCENTAGE OF 1977-1978 ACTUAL	
	DELIVERIES	CURTAILMENTS	DELIVERIES	CURTAILMENTS	DELS	CURTS
REGION 1						
CONNECTICT	7,455	922	6,472	1,811	-13.2	96.5
MAINE	390	0	381	0	-2.3	0.0
MASS	11,245	374	9,931	482	-11.7	29.1
N HAMPSHRE	485	123	453	161	-6.6	31.6
RHODE IS	696	0	567	0	-18.5	0.0
VERMONT	691	138	697	123	0.9	-11.1
REGION 1 TOTS	20,962	1,556	18,501	2,578	-11.7	65.6
REGION 2						
NEW JERSEY	25,703	12,017	18,503	18,043	-28.0	50.1
NEW YORK	45,532	6,637	44,198	7,204	-2.9	8.6
REGION 2 TOTS	71,234	18,653	62,701	25,247	-12.0	35.4
REGION 3						
DELAWARE	1,853	1,655	1,535	1,697	-17.1	2.5
WASH DC	265	0	265	0	0.3	0.0
MARYLAND	20,181	8,802	24,373	5,311	20.8	-39.7
PENN	124,556	14,866	134,356	14,977	7.9	0.8
VIRGINIA	11,734	11,814	14,598	11,021	24.4	-6.7
W VIRGINIA	28,109	1,846	36,718	1,885	30.6	2.1
REGION 3 TOTS	186,696	38,982	211,845	34,891	13.5	-10.5
REGION 4						
ALABAMA	48,921	48,682	44,878	54,528	-8.3	12.0
FLORIDA	31,530	23,075	28,721	25,651	-8.9	11.2
GEORGIA	31,591	44,285	32,906	45,284	4.2	2.3
KENTUCKY	20,361	14,329	24,445	13,001	20.1	-9.3
MISS	25,812	19,415	24,296	22,514	-5.9	16.0
N CAROLINA	10,217	39,836	12,862	38,639	25.9	-3.0
S CAROLINA	15,696	31,907	15,200	30,338	-3.2	-4.9
TENNESSEE	35,009	31,220	33,758	29,342	-3.6	-6.0
REGION 4 TOTS	219,136	252,750	217,066	259,298	-0.9	2.6
REGION 5						
ILLINOIS	179,377	25,374	172,388	33,952	-3.9	33.8
INDIANA	84,923	16,396	82,840	14,342	-2.5	-12.5
MICHIGAN	137,529	6,848	134,717	6,753	-2.0	-1.4
MINNESOTA	24,438	18,046	18,658	21,681	-23.6	20.1
OHIO	147,429	28,108	198,777	9,500	34.8	-66.2
WISCONSIN	66,714	10,780	64,019	12,095	-4.0	12.2
REGION 5 TOTS	640,411	105,551	671,399	98,324	4.8	-6.8
REGION 6						
ARKANSAS	45,329	25,620	46,701	27,648	3.0	7.9
LOUISIANA	142,079	53,595	128,907	59,510	-9.3	11.0
NEW MEXICO	15,046	1,476	13,826	2,589	-8.1	75.5
OKLAHOMA	80,188	2,960	87,305	2,303	8.9	-22.2
TEXAS	534,478	5,526	516,032	8,599	-3.5	55.6
REGION 6 TOTS	817,120	89,176	792,771	100,648	-3.0	12.9
REGION 7						
IOWA	43,853	15,223	43,954	15,249	0.2	0.2
KANSAS	71,468	21,490	76,705	20,566	7.3	-4.3
MISSOURI	32,237	20,746	33,086	18,007	2.6	-13.2
NEBRASKA	15,615	8,711	15,666	5,976	0.3	-31.4
REGION 7 TOTS	163,173	66,170	169,411	59,798	3.8	-9.6
REGION 8						
COLORADO	21,109	840	21,410	1,443	1.4	71.8
MONTANA	10,181	3,003	9,352	2,807	-8.1	-6.5
N DAKOTA	548	436	633	517	15.6	18.6
S DAKOTA	1,775	2,237	1,227	2,034	-30.9	-9.1
UTAH	15,461	1,936	13,205	3,456	-14.6	78.5
WYOMING	11,798	1,750	11,380	2,082	-3.5	19.0
REGION 8 TOTS	60,871	10,201	57,207	12,338	-6.0	21.0
REGION 9						
ARIZONA	18,840	4,460	11,608	12,405	-38.4	178.1
CALIFORNIA	143,901	1,772	140,311	9,335	-2.5	426.7
HAWAII	0	0	0	0	0.0	0.0
NEVADA	4,871	364	6,078	652	24.8	79.0
REGION 9 TOTS	167,612	6,596	157,998	22,391	-5.7	239.4
REGION 10						
ALASKA	20,138	0	14,621	0	-27.4	0.0
IDAHO	13,713	0	13,659	116	-0.4	0.0
OREGON	23,704	485	22,590	1,305	-4.7	169.0
WASHINGTON	35,775	157	34,814	422	-2.7	168.8
REGION 10 TOTS	93,330	642	85,683	1,842	-8.2	187.0
*** U.S. TOTALS	2,440,545	590,278	2,444,582	617,355	0.2	4.6

Industrial Category: Customers engaged primarily in a process which creates or changes raw or unfinished materials into another form or product.

Source: Form EIA-50, Alternative Fuel Demand Due to Natural Gas Curtailment.

TABLE 8
ELECT UTIL DELIVERIES & CURTAILMENTS TO END-USE CUSTOMERS FOR THE HEATING SEASON (NOV - MAR)
ALL VOLUMES IN MILLIONS OF CUBIC FEET (MMCF)
PRELIMINARY

REGION AND STATE	1977-1978 ACTUAL		1978-1979 PROJECTED		1978-1979 PROJECTED CHANGE AS A PERCENTAGE OF 1977-1978 ACTUAL	
	DELIVERIES	CURTAILMENTS	DELIVERIES	CURTAILMENTS	DELS	CURTS
REGION 1						
CONNECTICT	3	0	5	0	0.5	0.0
MAINE	0	0	0	0	0.0	0.0
MASS	649	177	65	546	-90.0	209.1
N HAMPSHRE	0	0	0	0	0.0	0.0
RHODE IS	0	0	0	0	0.0	0.0
VERMONT	19	0	20	0	5.8	0.0
REGION 1 TOTS	671	177	88	546	-86.9	209.1
REGION 2						
NEW JERSEY	1,095	5,090	228	5,261	-79.1	3.3
NEW YORK	1,309	10,271	766	16,668	-41.5	62.3
REGION 2 TOTS	2,403	15,361	994	21,929	-58.6	42.8
REGION 3						
DELAWARE	3	47	2	46	-24.6	-2.5
WASH DC	0	0	0	0	0.0	0.0
MARYLAND	11	1,809	0	1,861	-100.0	0.6
PENN	190	502	167	502	-12.5	0.0
VINGINIA	42	443	0	445	-100.0	9.5
W VINGINIA	1	0	3	0	305.2	0.0
REGION 3 TOTS	247	2,441	171	2,898	-30.7	1.8
REGION 4						
ALABAMA	1,566	5,538	2,457	5,538	56.9	0.0
FLORIDA	7,801	21,419	7,515	19,882	-3.7	-7.3
GEORGIA	1,478	8,802	767	6,532	-48.1	-25.8
KENTUCKY	1,793	259	146	332	-91.9	28.3
MISS	5,341	40,766	1,044	42,935	-80.1	5.3
N CAROLINA	0	192	0	102	0.0	0.0
S CAROLINA	779	30,553	0	11,476	-100.0	-62.4
TENNESSEE	1	0	1	0	1.1	0.0
REGION 4 TOTS	16,798	105,838	11,930	86,757	-29.0	-19.6
REGION 5						
ILLINOIS	9,232	7,666	3,014	7,797	-67.3	2.0
INDIANA	108	898	160	996	48.5	10.6
MICHIGAN	13,057	398	11,412	511	-12.6	22.0
MINNESUTA	609	12,648	545	9,039	-10.8	-28.5
OHIO	989	163	305	251	-69.1	54.6
WISCONSIN	4,388	5,451	1,773	7,854	-59.6	39.0
REGION 5 TOTS	28,383	27,004	17,212	25,699	-39.4	-4.8
REGION 6						
ARKANSAS	2,053	61,495	2,130	62,991	3.8	2.4
LOUISIANA	43,216	49,336	89,196	71,094	-4.5	2.5
NEW MEXICO	17,516	6,288	16,097	4,571	-8.1	-27.3
OKLAHOMA	101,333	942	92,904	505	-8.3	-67.6
TEXAS	575,926	4,660	535,713	13,617	-7.0	192.2
REGION 6 TOTS	740,042	142,720	736,044	152,577	-6.6	6.9
REGION 7						
IOWA	2,117	25,526	2,689	25,507	27.0	-7.9
KANSAS	30,770	45,976	28,786	51,441	-6.4	11.9
MISSOURI	3,633	25,591	1,630	27,480	-55.0	7.4
NEBRASKA	3,041	29,348	2,493	24,465	-18.0	-9.9
REGION 7 TOTS	39,560	126,491	35,602	128,893	-10.0	1.9
REGION 8						
COLORADO	9,831	1,176	7,692	2,490	-21.8	111.8
MONTANA	100	123	109	156	8.2	25.6
N DAKOTA	14	55	29	119	112.4	29.9
S DAKOTA	0	949	0	124	0.0	-87.0
UTAH	2,355	369	859	396	-63.5	7.1
WYOMING	24	0	24	0	-0.1	0.0
REGION 8 TOTS	12,324	2,673	8,713	3,202	-29.3	19.8
REGION 9						
ARIZONA	6,953	13,606	510	17,857	-92.7	31.2
CALIFORNIA	88,593	264,710	34,599	328,830	-60.9	24.2
HAWAII	0	0	0	0	0.0	0.0
NEVADA	7,247	7,346	9,369	7,304	29.3	-0.6
REGION 9 TOTS	102,792	285,662	44,478	354,991	-56.7	23.9
REGION 10						
ALASKA	7,304	0	7,215	0	-1.2	0.0
IDAHO	33	0	34	0	0.5	0.0
OREGON	0	0	0	0	0.0	0.0
WASHINGTON	0	0	0	0	0.0	0.0
REGION 10 TOTS	7,337	0	7,248	0	-1.2	0.0
*** U.S. TOTALS	1,000,556	708,552	862,479	774,488	-13.8	9.3

Electric Utilities Category: Establishments engaged in the generation, transmission, and/or distribution of electrical energy.

Source: Form EIA-50, Alternative Fuel Demand Due to Natural Gas Curtailment.

TABLE 9
OTHER DELIVERIES & CURTAILMENTS TO END-USE CUSTOMERS FOR THE HEATING SEASON (NOV - MAR)
ALL VOLUMES IN MILLIONS OF CUBIC FEET (MMCF)
PRELIMINARY

REGION AND STATE	1977-1978 ACTUAL		1978-1979 PROJECTED		1978-1979 PROJECTED CHANGE AS A PERCENTAGE OF 1977-1978 ACTUAL	
	DELIVERIES	CURTAILMENTS	DELIVERIES	CURTAILMENTS	DELS	CURTS
REGION 1						
CONNECTICT	17	0	18	0	0.5	0.0
MAINE	103	0	106	0	3.1	0.0
MASS	1,199	204	901	330	-24.9	62.0
N HAMPSHRE	116	120	111	132	-4.7	9.4
RHODE IS	0	0	0	0	0.0	0.0
VERMONT	215	39	212	36	-1.8	-7.8
REGION 1 TOTS	1,651	363	1,347	497	-18.4	37.0
REGION 2						
NEW JERSEY	329	932	188	933	-42.8	0.0
NEW YORK	14,026	826	13,559	377	-3.3	-54.3
REGION 2 TOTS	14,354	1,758	13,747	1,310	-4.2	-25.5
REGION 3						
DELAWARE	0	0	0	0	0.0	0.0
WASH DC	1,362	0	1,349	0	-0.9	0.0
MARYLAND	3,016	1,733	3,143	1,332	4.2	-23.1
PENN	4,847	815	4,774	969	-1.5	18.9
VIRGINIA	1,853	1,231	1,677	1,386	-9.5	12.6
W VIRGINIA	5	3	5	5	0.4	56.3
REGION 3 TOTS	11,083	3,782	10,948	3,692	-1.2	-2.4
REGION 4						
ALABAMA	2,058	15	1,178	12	-42.8	-19.2
FLORIDA	5,074	241	4,722	351	-6.9	45.2
GEORGIA	3,768	2,013	3,763	2,013	-0.1	0.0
KENTUCKY	3,806	391	3,807	324	0.0	-17.0
MISS	3,786	0	3,960	0	4.6	0.0
N CAROLINA	351	580	311	612	-11.4	5.6
S CAROLINA	1,424	828	1,404	817	-1.4	-1.4
TENNESSEE	1,906	1,449	1,712	1,083	-10.2	-25.3
REGION 4 TOTS	22,176	5,516	20,857	5,211	-5.9	-5.5
REGION 5						
ILLINOIS	96	125	86	159	-10.2	27.3
INDIANA	1,131	138	1,079	144	-4.6	4.6
MICHIGAN	667	0	703	0	5.5	-100.0
MINNESOTA	2,293	1,388	2,081	1,549	-9.2	11.6
OHIO	4,656	238	4,959	271	6.5	14.3
WISCONSIN	1,140	1,439	1,262	1,331	10.7	-7.5
REGION 5 TOTS	9,982	3,327	10,170	3,454	1.9	3.8
REGION 6						
ARKANSAS	122	0	66	0	-46.2	0.0
LOUISIANA	6,125	0	6,017	0	-1.8	0.0
NEW MEXICO	7,100	0	7,558	0	6.6	0.0
OKLAHOMA	2,299	0	2,012	0	-12.5	0.0
TEXAS	19,622	3	19,971	18	1.8	469.9
REGION 6 TOTS	35,267	3	35,622	18	1.0	440.9
REGION 7						
IOWA	549	756	511	773	-7.0	2.3
KANSAS	2,549	206	2,530	280	-0.8	36.1
MISSOURI	735	287	978	20	33.0	-93.0
NEBRASKA	656	21	452	21	-31.0	-3.8
REGION 7 TOTS	4,489	1,270	4,471	1,094	-0.4	-13.8
REGION 8						
COLORADO	14,965	190	15,224	198	1.7	31.8
MONTANA	543	0	445	0	-18.1	0.0
N DAKOTA	284	69	361	54	27.1	-15.8
S DAKOTA	84	43	74	39	-11.3	-8.7
UTAH	1,514	5	1,473	122	-2.7	2192.9
WYOMING	855	2	793	9	-7.3	405.0
REGION 8 TOTS	18,245	265	18,370	422	0.7	59.4
REGION 9						
ARIZONA	1,776	0	2,554	0	44.0	0.0
CALIFORNIA	2,064	38	1,332	417	-35.5	1011.2
HAWAII	19	0	19	0	-1.0	0.0
NEVADA	55	0	78	0	42.4	0.0
REGION 9 TOTS	3,914	38	3,985	417	1.8	1011.2
REGION 10						
ALASKA	2,618	0	2,559	0	-2.2	0.0
IDAHO	0	0	0	0	0.0	0.0
OREGON	0	0	0	0	0.0	0.0
WASHINGTON	1,589	0	1,638	0	3.1	0.0
REGION 10 TOTS	4,207	0	4,197	0	-0.2	0.0
*** U.S. TOTALS	125,366	16,321	123,713	16,115	-1.3	-1.3

Other Category: Municipalities and government agencies.

Source: Form EIA-50, Alternative Fuel Demand Due to Natural Gas Curtailment.

U.S. SUPPLY AND DEMAND BY HEATING SEASON

PROPANE

MBBL

	PROJECTED 1/		ACTUAL 2/			
	1978-79 COLDER	1978-79 NORMAL	1977-78	1976-77	1975-76	1974-75
PRIMARY STOCKS INVENTORY						
INVENTORY: NOV. 1	90,471	90,471	88,345	93,441	88,392	79,911
MAR. 31	49,454	65,455	61,471	51,467	68,967	56,756
NET DRAWDOWN	41,017	25,016	26,874	41,974	19,425	23,155
(MBD)	(272)	(166)	(178)	(278)	(128)	(153)
PRODUCTION TOTAL	118,614	118,614	119,069	117,272	119,795	120,108
(MBD)	(786)	(786)	(789)	(777)	(788)	(795)
IMPORTS TOTAL	7,223	7,223	13,312	18,284	10,959	10,733
(MBD)	(48)	(48)	(88)	(121)	(72)	(71)
DEMAND TOTAL	166,854	150,853	159,255	177,530	150,179	150,996
(MBD)	(1,105)	(999)	(1,055)	(1,176)	(988)	(1,000)

DATA SOURCE:

1/ ERA ESTIMATE
2/ EIA

ATTACHMENT 2

ATTACHMENT 3

REGIONAL ANALYSIS OF THE POTENTIAL FOR PROPANE SHORTFALLS

Region I

- Storage capability amounts to 3.3 million barrels.
- Historical heating season demand amounts to 4.8 million barrels.
- Import terminals are located at Everett, Massachusetts, Portsmouth, New Hampshire, and Providence, Rhode Island.
- Few localized spot shortages similar to those occurring during 1976-77 severe weather conditions which delayed deliveries over secondary roads to end users could occur if the 1978-79 winter is of severity comparable to that of the 1976-77 winter.

Region II

- Storage capacity nearly equals the total 1976-77 heating season deliveries.
- Import terminals are located at New York City Harbor, near Philadelphia, Pennsylvania, and Newington, New Hampshire.
- Texas Eastern Pipeline with a capacity of 78,000 barrels per day serves the region.
- Few localized spot shortages similar to those occurring during the 1976-77 severe weather conditions which delayed deliveries over secondary roads to end users could occur if the 1978-79 winter is of severity comparable to that of the 1976-77 winter.

Region III

- Storage capacity amounts to 2 million barrels.
- Seven million barrels of propane were delivered within the region during the 1976-77 heating season.
- Import terminals are located at Philadelphia, Pennsylvania, and Norfolk, Virginia.
- Texas Eastern Pipeline system with a capacity of 40,000 barrels per day serves the region.

- Supply shortfalls comparable to those experienced during periods of extreme cold weather during the 1976-77 winter could reoccur if the 1978-79 winter is of severity comparable to the 1976-77 winter. This could result from the need for the pipeline to go on allocation during periods of peak winter demands.

Region IV

- Most susceptible of all regions to supply shortfalls related to limitations on transportation systems.

- Storage capacity is limited and is not strategically located. Eighty percent of storage capacity is located in Mississippi.

- Import terminal is small and not strategically located (Miami, Florida).

- The Dixie Pipeline with a capacity of 392,000 barrels per day serves North Carolina, South Carolina, Georgia, Alabama, Mississippi, and other States. Half of pipeline capacity is used to supply Alabama and Mississippi. Therefore, capacity remaining to serve Carolinas and Georgia is limited. No pipeline transportation system is available to serve Kentucky and Tennessee.

  Capacity of Dixie Pipeline increased since the 1976-77 winter but increase may be inadequate to satisfy projected demand for winter of severity comparable to the 1976-77 winter in Carolinas, Tennessee, and Kentucky.

- Shortfalls could reoccur in this region (in these States) if the severity of the 1978-79 winter is comparable to that of the 1976-77 winter.

Region V

- Storage capacity is limited to a volume approximately one-third of the local demand during periods of peak demand equivalent to the 1976-77 winter.

- Import terminals located within this region: none.

- Five major pipelines provide adequate capacity to supply demand greater than the demand during the 1976-77 winter.

- Only localized short-term shortfalls in certain States similar to those that occurred during the 1976-77 winter could occur if the severity of the 1978-79 winter is comparable to that of the 1976-77 winter.

Region VI

- The U.S. petroleum industry for production, storage, imports, and transportation systems is concentrated within this region.

- No shortfalls are anticipated within the region.

Region VII

- Storage capacity within this region exceeds deliveries within the region by a large margin.

- Five major pipeline systems traverse the region.

- No shortfalls anticipated within the region even if the 1978-79 winter is of severity comparable to that of the 1976-77 winter.

Region VIII

- This region is adequately supplied by local refineries, by the Phillips Pipeline, and by railway tank car transportation systems.

- No shortfalls are anticipated within this region even if the 1978-79 winter is of severity comparable to that of the 1976-77 winter.

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Region IX

- A large import terminal is located at Los Angeles, California.
- Fifty refineries, 20 of which are major, are located within the region close to the market.
- The climate is temperate, 80 percent of the total deliveries are local, and there are little or no surges (peaking) in demand. Transportation systems capacity are adequate to satisfy demands.
- No shortfalls anticipated within the region.

Region X

- An import terminal is located at Ferndale, Washington.
- Historically, the total demand for propane within the region is small.
- No shortfalls for propane occurred during the last two winters. No shortfalls anticipated within the region.

U.S. SUPPLY AND DEMAND BY HEATING SEASON
MIDDLE DISTILLATES
MBBL

	PROJECTED 1978-79 Colder	PROJECTED 1978-79 Normal	ACTUAL* 1977-78	1976-77	1975-76	1974-75	1973-74
Primary Stocks Inventory							
Inventory: Nov. 1	217,059	217,059	267,392	235,599	226,113	209,908	202,965
Mar. 31	130,000	130,000	137,897	141,882	138,306	161,111	128,822
Drawdown	87,059	87,059	129,495	93,717	87,807	48,797	74,143
(MBD)	(577)	(577)	(858)	(621)	(581)	(323)	(491)
Production:	526,891	526,891	473,218	503,135	425,466	416,032	410,334
(MBD)	(3,489)	(3,489)	(3,134)	(3,332)	(2,818)	(2,755)	(2,718)
Imports:	50,550	37,750	30,189	56,321	23,214	54,172	58,769
(MBD)	(335)	(250)	(200)	(373)	(154)	(359)	(389)
Apparent Demand:	664,500**	651,700**	632,902	653,173	536,487	519,001	543,246
(MBD)	(4,401)	(4,316)	(4,192)	(4,326)	(3,553)	(3,437)	(3,598)

Data Source: *Monthly Energy Review - U.S. Department of Energy
** Based on DOE Short-Term Petroleum Demand Model

U.S. SUPPLY AND DEMAND BY HEATING SEASON
RESIDUAL FUELS
MBBL

	PROJECTED 1978-79 Colder	PROJECTED 1978-79 Normal	ACTUAL* 1977-78	1976-77	1975-76	1974-75	1973-74
Primary Stocks Inventory							
Inventory: Nov. 1	81,345	81,345	95,896	79,117	81,858	58,679	54,964
Mar. 31	60,000	60 000	62,193	71,186	65,132	64,148	47,222
Drawdown	21,345	21,345	33,703	7,931	16,726	-5,469	7,742
(MBD)	(141)	(141)	(223)	(52)	(111)	(-36)	(51)
Production:	264,250	264,250	267,696	268,714	204,039	200,301	159,217
(MBD)	(1,750)	(1,750)	(1,773)	(1,780)	(1,351)	(1,326)	(1,055)
Imports:	250,405	235,405	208,453	248,695	217,048	232,362	275,406
(MBD)	(1,659)	(1,559)	(1,381)	(1,647)	(1,438)	(1,539)	(1,824)
Apparent Demand:	536,000**	521,000**	509,858	525,334	437,813	427,194	442,365
(MBD)	(3,550)	(3,450)	(3,377)	(3,479)	(2,900)	(2,829)	(2,930)

Data Source: *Monthly Energy Review - U.S. Department of Energy
** Based on DOE Short-Term Petroleum Demand Model

Question 2

Please provide us a copy of the "recommendations" approved by Mr. O'leary on August 23 and referred to in his September 19 letter to us.

Answer

The recommendations approved by Mr. O'Leary are included in the DOE Emergency Preparedness Task Force Report, Attachment A. The basic issues decided by the Deputy Secretary are included in the Action Memorandum preceding the Report. Section IV of the Report, Recommendations (p.14), includes a more thorough discussion of the DOE emergency preparedness organization and management concept.

Question 3

Please provide a copy of the report (and all related documents) and recommendations of Major General Leslie W. Bray, Jr., concerning petroleum embargoes and indicate who participated in this study, when it took place, and its cost.

Answer

The report and recommendations of General Bray may be found at Attachment B. Participants in the study were Leslie Bray and Edward Timperlake of The Analytic Sciences Corporation. The study was commenced on May 11, 1978, and completed 6 weeks later. The cost of the report was $9,910.

In summary, the Bray report recommended (at Section 4):

- o Establishing a planning system which includes a process for timely identification and resolutions of major policy issues and options.
- o The planning system should not modify or revise existing assignment of responsibilities on DOE organizational structure.
- o System should specify product to be produced.
- o Monitor and ensure specific reporting mechanisms to identify deficiencies.
- o Establish a senior level management review structure.

Question 4

Please provide a copy of the Task Force report and recommendations and indicate who participated in that study, when it took place, and its cost.

Answer

a. A copy of the Task Force Report and recommendations is included at Attachment A.

b. Emergency Preparedness Task Force participants:

Co-Chairman	William S. Heffelfinger, Director of Administration Eric Fygi, Acting General Counsel
Members*	David Bloom, Policy and Evaluation Berton Roth, Procurement and Contracts Management

Bryan Siebert, Defense Programs
Tom Isaacs, Devense Programs
F. Raymond Zintz, Environment
Anthony Cordesman, Resource Applications
Robert Pressley, Economic Regulatory Administration
James Morris, International Affairs
William Heavey, Federal Energy Regulatory Commission
Andrew Zausner, General Counsel
K. Dean Helms, Administration
Charles W. Curtis, Administration

*Though not formal members, the task force also worked with James Furse, Intergovernmental and Institutional Relations, and Robert Volk, Energy Information Administration.

c. The study took place during the period of February 6, 1978, through August 14, 1978.

d. The study cost is estimated at approximately $37,600. It should be noted that this is strictly an estimate. No records were maintained on the cost of the study. It should be noted that the study was done by DOE personnel with no contractor assistance.

Question 5

The IG called for a DOE coordinator residing at the Deputy Secretary/Undersecretary level. Mr. O'Leary responded by assigning this responsibility to the Director of Administration. The Assistant Secretary for Policy and Evaluation has been assigned "responsibility to coordinate overall energy emergency planning."

Both of these officials have numerous other duties. They cannot possibly perform those and these added responsibilities well. Something is bound to suffer. Further, neither has line responsibility over other DOE officials. Finally, it is not clear why two officials are needed in place of one, nor is it clear who is in command at any given time. Which of those officials, for example, would a State official or industry official contact in the case of an emergency and which one would we look to as the one responsible for an action or failure thereof?

We request your comments on this matter of coordination.

Answer

In discussing DOE's emergency preparedness activities it is important to distinguish among: (1) those which are directed at dealing with energy emergencies, such as a coal strike or an interruption of petroleum imports; (2) those which address other types of emergencies with which DOE is concerned, such as operational and natural phenomena (disaster) emergencies which affect Departmental facilities and operations, and emergencies involving nuclear weapons; and (3) those which involve the overall administrative coordination of emergency preparedness activities. The responsibility for coordinating the Departmental response during an energy emergency has been vested in the Energy Management Emergency Group (EMEG) which is chaired by the Assistant Secretary for Policy and Evaluation (ASPE). The Deputy Secretary will settle matters which cannot be resolved within the group. A description of the responsibilities of this group can be found in the Emergency Preparedness Task Force Report of August 14, 1978, page 65.

In addition to establishing the EMEG, which functions only during an energy emergency, the Department has formalized its

energy emergency policy and planning activities by establishing a system to develop emergency planning policy and to coordinate the development of emergency plans or components of plans for use by the EMEG should an energy emergency situation arise. This system is governed by the Emergency Policy Committee (EPC) which also is chaired by the ASPE. It is through this committee that the ASPE fulfills his role of being responsible for emergency preparedness policy and his responsibility to coordinate overall energy emergency planning. (See Attachment C for a draft statement of the Energy Emergency Planning System (EPS).

In the case of non-energy emergencies the responsibility for action, subject to overall policies established by the EPC, lies with other DOE offices. Responsibility for ensuring preparedness for continuity of Government in national emergencies is given to the Director of Administration (AD), response to operational and natural phenomena emergencies is the responsibility of the Assistant Secretary for Environment (EV), and response to emergencies involving nuclear weapons, terrorists and security threats is assigned to the Assistant Secretary for Defense Programs (DP). The Emergency Preparedness Task Force Report describes more fully AD's and EV's assignments in these roles beginning at pages 47 and 52, respectively. (The report does not go into detail concerning emergencies related to nuclear materials and security threats.)

The Director of Administration has been given Emergency Coordinator (EC) responsibility, a full description of which can be found in the Emergency Preparedness Task Force Report of August 14, page 40. The DOE Emergency Coordinator role is to provide a focal point for general and administrative coordination, overview, and monitoring of overall DOE emergency preparedness activities and programs. The EC does not direct the Department's operational responsibilities during an emergency. The EC for DOE has responsibility for, inter alia, coordinating DOE participation in interagency emergency task forces, working groups, and committees for coordinating with external EP agencies and for coordinating with other DOE officers.

The time which the Assistant Secretary for Policy and Evaluation or the Director of Administration will have to devote to these activities will not adversely affect the quality of the work put out by their offices. In non-emergency situations, their personal involvement will be that of executive manager and coordinator. Thus, in the case of energy emergency planning, the major responsibility for developing specific response plans rests with those Assistant Secretaries who sit on the EPC, while the day-to-day coordination of planning activities will be the responsibility of the PE staff. In actual emergency situations the nature of the Department's activity will change in order to deal with the situation at hand and to provide whatever support is required to the Secretarial Principals. In such an event, the various Assistant Secretaries and Administrators will, as appropriate, shift the focus of their activity and commit the required personnel and other resources to the emergency effort, subordinating other, less important activities. The ASPE, having no direct program management responsibilities, has the greatest flexibility to shift resources to address an emergency situation.

During energy emergencies the Economic Regulatory Administration (ERA) has the operational responsibility for issuing and implementing appropriate regulations, providing technical assistance to States, and working with industry officials to ameliorate energy impacts. In order to facilitate and expedite this process, ERA established the Energy Emergency Center as the focal point for initial contacts with State energy office officials. The ERA Office of Utility Systems acted as the focal point for contacts with State regulatory commissions. As the coordinating unit, it would be the responsibility of the EEC to provide information to States, refer the action to the appropriate program office and keep other DOE offices involved in emergency preparedness (e.g., Secretary, ERA

Administrator, Coordinator, etc.) informed of Federal/State actions being taken, status of energy situation, etc. ERA's Offices of Fuels Regulation and Utility Systems have long established relationships with industry representatives and State regulatory commissions. These offices comprised the Task Forces described in the GAO report as effective means for dealing with energy emergencies. These relationships would continue in the event of an energy emergency situation.

This role does not conflict with that of AD and PE as designed in the Emergency Preparedness Task Force Report.

Question 6

In response to Draft Finding No. 3., the General Counsel's office said:

> DISCUSSION: In the course of the discussion of the finding, two legal questions are raised. The first concerns the need for OGC to resolve whether there is a conflict of interest problem posed by utility company operating executives serving as U.S. Government employees without compensation affiliated with the Emergency Electric Power Administration (EEPA). A formal inquiry raising this question has only fairly recently been sent to OGC and this office is presently working on a response.
>
> The second legal question raised in the discussion of this finding concerns the delegation of emergency powers for the Secretary to the EEPA. OGC has not determined whether the delegation by the Secretary of Interior to the predecessor of EEPA has continued vitality. The simplest way to resolve the ambiguity would be for the Secretary to execute a delegation of powers to the EEPA. Typically, DOE delegation orders contain "savings" provisions, whereby any actions taken by the delegate consistent with the order, but taken prior to the order, are ratified, so that the lack of a formal delegation would not of itself necessarily render the EEPA unable to operate in an actual emergency.

Please provide us a copy of the General Counsel's response to these "legal questions." If the response is not yet completed, please indicate why, stating precisely when the General Counsel began to consider it, where it is located within OGC, and when the responses will be provided to us.

We also request the OGC "response" or similar information as to its status concerning Finding No. 7 of the IG.

Answer

There are no documents constituting a General Counsel "response" to the legal questions raised in the discussion of the Inspector General's Finding No. 3.

With respect to the conflict of interest question, it was determined that an Attorney General opinion had addressed this issue. See Attachment D. In short, that opinion led the General Counsel's office to the conclusion that while EEPA could function as a planning entity, it could not be utilized in an emergency because of the prohibitions of 18 USC Section 208. As a consequence, it was decided that legislation amending Section 208 would be sought in any emergency requiring the functioning of EEPA.

With respect to the legal questions concerning the delegation of the Secretary of Interior's powers to EEPA and its continued validity, it was determined that in the event of an emergency requiring the functioning of EEPA such delegation as would be necessary could be made.

Therefore, from our perspective the legal questions have been resolved, although certain actions would be required to be carried out, both by the Department and the Congress, before EEPA could fully function in an emergency.

With respect to similar information concerning the status of IG Finding No. 7, the OGC has determined that no legal barriers exist to prevent the transfer of information to States; it is an EIA policy decision (see Attachment D-1). The EEMIS Program Plan calls for development of data sharing arrangements with States in FY 1979, and access on a pilot basis by winter 1979.

Question 7

What is the current status of the location of the DOE Emergency Operation Center in the Forrestal Building?

Answer

Space sufficient for accommodating the emergency needs of all DOE Headquarters elements has been set aside in the east wing of the basement of the North Building in the Forrestal complex. A detailed space utilization and floor plan has been prepared and is being used to determine the engineering and architectural requirements of the center.

Upon completion of internal review and determination of scope of work, we will request GSA to contract for architecture, engineering, and construction services. Presently, we estimate that construction will begin in 6 months.

During the interim, the Department will continue to maintain its 24-hour Emergency Operations Center in Germantown to respond to nuclear, terrorist, environmental and certain related energy emergencies.

Question 8

In response to Finding No. 10, the ERA states an "operations manual" was being prepared. What is its status? Who is preparing it? Is a contractor involved? What is its cost and purpose?

Answer

Purpose: The purpose of the operations manual is to:

a. Formalize and further develop the energy emergency management capabilities and operations of the ERA.

b. Consolidate delegation of authority and mission and function statements to identify roles and responsibilities of each DOE division involved in emergency preparedness and the resultant interaction between ERA and these divisions during energy emergencies.

c. Provide a mechanism to track all activities of the ERA operations center and maintain a measure of quality control of the coordinated activities and to eliminate gaps and duplication to insure efficien and timely response to emergency situations.

Status: The following tasks related to the development of the operations manual have been completed:

a. A Review Committee of representatives from DOE elements which have emergency management responsibilities has been formed and briefing held on September 22, 1978, on the manual's objectives, content, and schedule.

b. Workplan developed and distributed to Review Committee.

c. Interviews completed with appropriate DOE and other Federal agency staffs.

d. First deliverable is in preparation and is due in late November describing roles and responsibilities of various organizational units and their activities related to fulfilling these responsibilities. In addition, the draft report will identify the input and output of each activity.

The schedule for completion of tasks has been adhered to. The manual will be completed in late December 1978.

Manual Preparation: ERA's Energy Emergency Center is responsible for the preparation of the operations manual and is being assisted by Jack Faucett Associates. The contract cost is $145,727.

Question 9

What is the current status of the revisions of the WEEP Guide, the cost thereof, and the identity of the contractor? Please explain why this revision is being made with contractor assistance and indicate if it was a sole source contract. Also, state the cost of the contract and its term.

Answer

Two contractors and one DOE laboratory performed tasks supporting the revision of the Energy Emergency Planning Guide. FORTE, Inc., provided graphic services and began work in April 1978. Systems Consultants, Inc. (SCI) provided technical assistance in guide revisions and started in August. The total cost of the two contractors was $11,483. In addition, Argonne National Laboratory also provided technical and analytical support at a cost of $8,800. The FORTE contract was competitively awarded through DOE Administrative Services. The SCI work was provided under an existing DOE contract.

The contract support was required because of limited availability of in-house resources and the need for rapid response.

The results of this effort were judged inadequate and DOE made the decision not to distribute the document in its present form.

However, by the end of December 1978, we will have the operations manual referred to in Question 8 and the first phase of a handbook for distribution to Federal and State officials. A final handbook will be distributed by the summer of 1979.

Question 10

How many positions within each office of the DOE with energy emergency preparedness duties are now available on a full-time basis for that purpose and how many of these positions are vacant?

Answer

Organization	Total Positions	Filled	Vacant
Administration	4	3	1
Policy and Evaluation	8	5	3
Economic Regulatory Administration	36	28[1/]	8
International Affairs	1	1	0
Energy Information Administration	16[2/]	5[3/]	14
Federal Energy Regulatory Commission	1	1	0
Resource Applications	196[4/]	164	32
General Counsel	17	17	0
Total	279[5/]	224	58

1/ One detailed to Federal Preparedness Agency.

2/ Four data support positions are included. In addition, the Department is reviewing EEMIS program requirements for up to 15 additional full-time permanent positions to be provided through internal DOE reallocations for direct program activities.

3/ Of these, two are permanent employees and three are detailees.

4/ Strategic Petroleum Reserve--113 positions in the field; 83 in headquarters.

5/ While these are the positions devoted to energy emergency preparedness on a full-time basis, others devote part of their time to such matters. In addition, in an actual emergency situation, whatever manpower is deemed necessary would be assigned to responding to the emergency.

Question 11

(a) Who prepared the EEMIS Program Plan? If contractors were involved, identify them, indicate their duties, state whether they were sole source, the term of the contracts, and the costs.

(b) How many positions within DOE are for EEMIS and how many of those positions are filled?

(c) Please provide a detailed explanation of the planned use of funds in FY 1979 for EEMIS.

Answer

(a) The EEMIS Project Office prepared the program plan with support from the Computer Sciences Corporation (CSC) which provided inputs to the preliminary draft of the EEMIS Program Plan (dated September 1, 1978). The contractor was tasked to support the EEMIS Project Office in the preliminary analysis of data requirements, system development concepts and production of the Program Plan document. The work was tasked (Task 5864 EEMIS Program Plan) under contract EA-77-C-01-6033, a task order contract set up by the DOE Office of the Controller for management planning support. The initial amount of this task was $187,000, and the project was to run from June 6, 1978, to December 31, 1978. However, CSC's effort was

not considered adequate and their work was terminated on September 15, 1978. The amount of $121,000 had been expended on the task prior to its termination. The EEMIS Project Office has completed all subsequent work on the Program Plan in-house.

(b) Currently, there are 16 positions in EIA for EEMIS. In addition, the Department is reviewing EEMIS program requirements for up to 15 additional full-time permanent positions to be provided through internal DOE reallocations for direct program activities. Two of the existing positions are filled on a full-time permanent basis. Additionally, there are three detailees in the EEMIS Project Office from other parts of DOE.

(c) Two major EEMIS development efforts are planned by EIA for FY 1979; the estimated cost will be about $4 million. The first effort to be provided by the Brookhaven National Laboratory, is to provide a suitable EEMIS data structure, access the modelling, forecasting and simulation devices needed to support EEMIS, and the development of an information development/collection strategy. The second effort, general systems development, is to provide an interim EEMIS capability (as limited-scope operational system using currently collected data) and to complete design specifications for the full-scale EEMIS. This will be a competitive procurement.

Three additional efforts are envisioned. An agreement is to be negotiated for $25,000 with the National Governors' Association to support EEMIS liaison efforts with the State energy offices. This agreement is to provide on-going State participation in EEMIS development efforts and to define criteria for selection of EEMIS pilot States. A similar working relationship with the National Association of Regulatory Utility Commissioners will be supported, to provide liaison with State regulatory offices. It is estimated that this effort will cost about $15,000. A third agreement is to be negotiated with the Minnesota State Energy Office to provide for special planning and research services concerning the modelling and data structure of EEMIS. The estimated cost is $9,000.

In addition, contracts to support the design and interim implementation of an EEMIS monitoring and communication system between State and Federal organizations during energy emergencies will be awarded by ERA in FY 1979 for Energy Emergency Center operations. This effort is closely coordinated between EIA and ERA. The estimated cost is approximately $950,000.

Question 12

The GAO report contains a number of recommendations. Please state what the DOE plans to do to implement each one and the timetable for such implementation.

Answer

The Department of Energy was forwarded a copy of the GAO Report on November 8, 1978. Many of the GAO recommendations are already in the process of implementation; others are under consideration.

A timetable for implementing each recommendation will be forwarded under separate cover.

Question 13

Please provide a table showing all contracts entered into by the DOE and FEA during FY 1977, 1978, and 1979 with the use of emergency preparedness funds. The table should --

(a) identify the contract by number and purpose,

(b) identify the contractor,

(c) give the term of the contract,

(d) describe the duties or tasks of the contractor and the timetable for each and state if he met the timetable,

(e) state the cost of each contract,

(f) state who within FEA and DOE monitored each such contract, and

(g) other pertinent data.

Answer

Information requested is provided in attached tables for FY 1977 and FY 1978. No contracts have been awarded to date utilizing FY 1979 funds.

EMERGENCY PREPAREDNESS CONTRACTS
FY 1977 FUNDING

(a) CONTRACT NO./PURPOSE	(b) CONTRACTOR	(c) TERM	(d) TASK AND STATUS	(e) COST	(f) MONITOR
EM-77-C-01-8752 Contingency Planning	Price Waterhouse	3/18 - 11/6/77	Study to develop an emergency percentage reduction contingency plan. Completed	$270,000	Brown Massell
P-06-77-6691-0 (GS-0-3S-46484) Rationing Plan P-03-77-5732-0	American Management Systems	8/1 - 8/8/77	Develop report on various options and alternatives available in preparing a gasoline and diesel rationing plan. Completed 8/77	$ 5,700 -	Massell -
GS-0-3S-46484 Winter Emergency Guide	American Management Systems	8/8 - 9/30/77	Develop winter energy emergency planning guide. Completed 10/2/77	$ 71,173	Yafee
P-06-77-5838-0/1 (GS-0-3S-46484) Rationing Plan	American Management Systems	9/30 - 12/2/77	Develop system and operational plan for using vehicle registrations as the basis for determining gasoline and diesel ration allotments. Completed 2/78	$332,450	Williams
EM-77-C-01-8759 Rationing Plan	SRI International	9/15 - 10/31/77	Develop procedures for reducing the lead time for implementing the gasoline and diesel fuel rationing plan from 90 to 30 days. Completed 12/77	$133,750	Brown Massell
EM-77-6-01-8760 Rationing Plan	Arthur Young & Co.	9/12 - 12/15/77	Develop and deliver a draft operational concept and draft interim system for rationing gasoline. Completed 12/77	$325,165	Brown Massell
EM-77-C-01-8761 Gasoline Ration Procedural Guide	Price Waterhouse	9/1 - 10/31/77	Develop gasoline procedural guide Draft plan outline - 9/27/77 Issue paper on gasoline allocation interface - 10/31/77 1st Draft Gasoline Plan - 11/7/77 Final Draft Gasoline Plan - 12/5/77	$497,186	Heringman Williams

EMERGENCY PREPAREDNESS CONTRACTS
FY 1978 FUNDING

(a) CONTRACT NO./PURPOSE	(b) CONTRACTOR	(c) TERM	(d) TASK AND STATUS	(e) COST	(f) MONITOR
Purchase Order No. EJ-78-X-01-4251 DOE Preparedness Activities	The Analytic Sciences Corporation	5/11/78 - 6/23/78	Prepare an overall appraisal of U. S. Government Planning and Preparedness activities for pertoleum related contingencies with particular focus on DOE statutory responsibilities. Reports and briefing of results were completed in accordance with schedule. (Refer to Question 3)	$9,910	Bloom
ET-78-C-01-6439 Comprehensive Petroleum Contingency Plan	The Analytic Sciences Corporation	6/15/78 - 2/15/79	Assist in the development of a framework for producing a comprehensive plan to be used in responding to petroleum related contingencies. Assist in the early stage development of a contingency response system to be used in the event of petroleum related contingencies. Report and test design due within eight months. Work in process is meeting all goals satisfactorily.	$87,233	Bloom

EMERGENCY PREPAREDNESS CONTRACTS
FY 1978 FUNDING

(a) CONTRACT NO./PURPOSE	(b) CONTRACTOR	(c) TERM	(d) TASK AND STATUS	(e) COST	(f) MONITOR
EL-78-X-01-5221 SPR Deterrent and Drawdown Policy	Egon Balas	9/25/78 - 1/ 29/79	Develop parametric study by matrix game policy model to analyze SPR sizing and to determine deterrent value. In process.	$ 9,950	Sheinberg
EL-78-X-01-5295 Parametric Benefit/Cost Decision Tree Model	International Planning Management Corporation	8/24/78 - 10/30/78	Develop probability model of SPR benefits and cost using a decision tree approach. Final report completed 10/30/78.	$ 9,064	Tiplitz
EL-77-C-01-8792 Petroleum Industry Inventory	Evaluation Research Corporation	9/12/78 - 11/30/78	Analyze feasibility, desireability and practicality of relying on sources of supply other than inventories of refiners and importers and the SPR to assist in relieving shortages during a supply interruption. Draft report received. Work in process and on schedule.	$51,515	Van der-Voort

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EMERGENCY PREPAREDNESS CONTRACTS
FY 1978 FUNDING

(a) CONTRACT NO./PURPOSE	(b) CONTRACTOR	(c) TERM	(d) TASK AND STATUS	(e) COST	(f) MONITOR
EB-78-C-01-6179 1977/78 Winter Emergencies	American Management Systems, Inc.	11/9/77 - 12/9/77	Developed discussion materials and provided support for the conduct of regional workshops of federal, state, and local workers to prepare for potential winter of 1977/78 emergencies. Final product excellent and on schedule.	$ 30,436	Yaffe
EB-78-C-01-6185 Emergency Handbook	Jack Faucett Associates, Inc.	11/8/77 - 12/3/77	Assisted in development of a handbook on Federal assistance during energy emergencies. Contractor described available programs, including benefits and constraints. Work completed satisfactorily in March 1978 but too late for past winter dissemination.	$ 24,800	Allen
EB-78-1-01-6247 Ration Coupon Storage	U. S. Army	1/27/78 - 6/30/80	Provision of security services and storage facilities for Gasoline Ration Coupons.	$ 12,350	Herigman
EB-78-X-01-2992 to (GS-03S-46484) Gasoline Rationing	American Management Systems, Inc.	3/8/78 - 4/30/78	Performed technical analysis towards development of an economic impact analysis and inflationary impact statement for the standby gasoline rationing plan. Completed satisfactorily on schedule.	$ 92,675	Williams
EB-78-X-01-3265 Rationing Plan	The Urban Institute	3/1/78 - 3/15/78	Assessed the quantitative effects of the DOE rationing plan on the used car market. Completed on schedule	$ 3,692	Herigman
EB-78-C-01-6299 Priority at the Pump	Resource Planning Associates	8/31/78 - 11/30/78	Collect, organize, examine and evaluate data concerning measures employed during oil embargo 1973/74 to control the distribution of motor gasoline at the retail level. In process and on schedule.	$32, 538	Berry

EMERGENCY PREPAREDNESS CONTRACTS
FY 1978 FUNDING

(a) CONTRACT NO./PURPOSE	(b) CONTRACTOR	(c) TERM	(d) TASK AND STATUS	(e) COST	(f) MONITOR
EB-78-C-01-6404 Permanent Revision of Standby Product Regulations	Resource Planning Associates	9/21/78 - 2/21/79	Analyze the economic impacts of possible revisions to standby petroleum product allocation regulations for use in the event of an energy emergency. In process and on schedule.	$163,620	Vass
Modification to ET-78-C-01-3003 Contingency Planning	Systems Consultants, Inc.	5/11/78 - 1/30/79	Assist in the evaluation and recommendation of management options and operating plans for short term energy emergencies. Draft plans received on schedule.	$ 90,844	Eckhardt
EB-78-C-01-6412 Standby Petroleum Product Price Regulation	Gordian Associates	9/21/78 - 3/21/79	Analyze alternatives to Standby Petroleum Product Price Regulations. Work in process.	$ 83,917	Mampe
EB-77-C-01-6450 Rationing Plan	R. L. Polk and Co.	8/28/78 - 11/30/78	Development of alternative procedures to evaluate or improve motor vehicle registration files relative to their use in a coupon distributing system during a Gasoline Emergency. In process and on schedule.	$ 86,444	Massell
EC-77-C-01-8590, M00 Emergency Monitoring of Natural Gas	R. Shriver Assoc.	8/11/78 - 3/11/79	Redesign data collection forms, develop data verification procedures relative to DOE's Natural Gas Emergency Monitoring capabilities. Work progressing on schedule.	$ 59,948	Allen
EB-78-C-01-6598 Emergency Center Operations	Jack Faucett Associates, Inc.	9/7/78 - 1/4/79	Short term Energy Emergency Operations Manual. Contractor to propose alternative options for structure and procedures for DOE Emergency Center Operations. Progressing on schedule, draft due late November.	$145,727	Allen
1978/79 Analysis of Selected Emergency Plans	Argonne National Laboratory	5/15/78 - 12/1/78	Will provide technical assistance in developing the 1978/79 Winter Emergency Plan and analyze selected actions on natural gas and Emergency Air Quality waivers. Draft plans received on 6/15/78 and work proceeding on analyses.	$ 90,000	Eckhardt

EMERGENCY PREPAREDNESS CONTRACTS
FY 1978 FUNDING

(a) CONTRACT NO./PURPOSE	(b) CONTRACTOR	(c) TERM	(d) TASK AND STATUS	(e) COST	(f) MONITOR
EB-78-C-01-6370 Rationing Plan	American Management Systems, Inc.	5/8/78 - 1/31/79	Perform technical analysis and research relevant to comments received during proposal period of the DOE Gasoline Rationing Plan. In process, on schedule.	$168,200 of $268,965	Williams
Task Order 38 to EX-76-A-01-2295 Conservation Contingency Plans	Massachusetts Institute of Technology	6/19/78 - 6/30/79	Survey potentials concepts, analyze developmental considerations and evaluate options for standby conservation measures for motor fuels. Phase I completed on schedule.	$839,851	Friedman
Task Order 11 EF-78-C-01-2643 Simulated Emergency Exercises	Auerbach Associates, Inc.	5/2/78 - 11/25/78	Contractor to design disruption scenarios and develop and test simulated emergency exercises. Preliminary information developed and decision made not to continue effort as functions transferred.	$ 48,300	Sarsfield
EB-78-C-01-6363 Natural Gas Curtailment Priorities	Jack Faucett Associates	9/29-78 - 8/31/79	Collect data, utilize econometric models, analyze current priorities, etc. relative to DOE's establishment of gas delivery priorities during periods of curtailment. Work plan on schedule.	$626,371	Bass
EB-78-C-01-8604-M00 1 EEMIS Requirements	Logistics Management Institute	6/16/78 - 10/6/78	Determine information and communication system requirement options for the Energy Emergency Management Information System (EEMIS). Draft report not satisfactory. Completion extended to November.	$135,000	Allen
EA-77-C-01-6033 Task 5864 EEMIS Program Plan	Computer Sciences Corporation	6/6/78- 12/31/78	To support EEMIS Project Office in the preliminary analysis of data requirements, system development concepts and production of the Program Plan Document. Task terminated in September. (See Question 11)	$121,000	Dean Yaffe
EB-78-C-01-6373 Emergency Allocations	Resource Planning Associates	9/15/78 - 12/15/78	Collect and examine data concerning the marketing supply and demand of asphalt during last seven years to develop scenarios for possible allocation regulations of asphalt during an energy emergency Work is in process, deliverable date to be extended to 1/31/79.	$ 49,700	Caldwell

EMERGENCY PREPAREDNESS CONTRACTS
FY 1978 FUNDING

(a) CONTRACT NO./PURPOSE	(b) CONTRACTOR	(c) TERM	(d) TASK AND STATUS	(e) COST	(f) MONITOR
Natural Gas Analysis	Oak Ridge National Laboratory	6/1/78 - 9/30/78	Provided analytical assistance of Federal/State/ Local actions relative to Natural Gas Network in an emergency. Completed satisfactorily 9/30/78.	$225,000	Eckhardt
Update Analysis of Conservation Plans	Pacific Northwest Laboratory	9/1/78 - 3/31/79	Provide impact analysis (economic and environmental) for four Energy Conservation Contingency Plans. Work proceeding on schedule.	$258,000	Friedman
Rationing Plan - White Market Study	Pacific Northwest Laboratory	9/30/78 - 1/15/79	Conduct economic and system analysis of a hypothetical gas ration coupon "white market" and examine its potential imperfections. Work proceeding on schedule.	$ 60,000	Massell
Crude Oil Reporting System	Pacific Northwest Laboratory	9/30/78 - 11/31/78	Analyze current DOE crude oil data reporting systems and their effectiveness and availability during energy emergencies. Work in process, deliverable date extended to 1/31/79.	$300,000	Kane
EA-78-X-01-1119 State Energy Emergency Systems	National Governors Association	11/1/77 - 12/31/77	Summarized the current state energy emergency management systems and provision of a plan for synthesizing vital elements of each system. Completed satisfactorily.	$ 9,600	Allen
EB-78-X-01-4274 EEMIS Liaison with States	National Governors Association	8/16/78 - 9/1/78	Performed technical assistance relative to Energy Emergency Management Information System (EEMIS) workshop and reported on states' needs relative to EEMIS. Workshop held with state officials in August 1978.	$ 4,500	Allen
EB-78-C-01-6435 Refinery Yield	Bonner and Moore	9/18/78 - 4/18/79	Develop computerized systems for the evaluation of oil refinery costs to assist DOE in maintaining an adequate petroleum product supply, without economic distortion, in the event of shortages. Work on schedule.	$ 74,497	Kourkoumelis

EMERGENCY PREPAREDNESS CONTRACTS
FY 1978 FUNDING

(a) CONTRACT NO./PURPOSE	(b) CONTRACTOR	(c) TERM	(d) TASK AND STATUS	(e) COST	(f) MONITOR
EA-77-C-01-6033 Crude Oil Reporting Systems	Computer Sciences Corporation	9/1/78 - 5/31/79	Review and improve current crude oil reporting systems and process flows. Initial report on file structure delivered on schedule.	$ 55,000 of $ 80,000	Murray
EB-78-C-01-6489 Crude Oil Allocation System	Computer Performance Assoc.	6/30/78 - 6/30/79	Provide analysis assistance in redesign and enhancement of the Crude Oil Allocation System required by the Emergency Petroleum Allocation Act. Work effort on schedule.	$ 69,927 of $144,927	Welch
EB-78-C-01-6353 National Power Grid Study	Arthur D. Little	7/27/78 - 12/27/78	Examine technical feasibility and economic benefits/costs, risks, and regulatory problems associated with alternative national bulk power grid concepts. Identify potential improvements in system economy and reliability with special emphasis on expanding inter-regional bulk power transfers during periods of fuel supply disruptions or other emergencies. National power grid efforts in process and on schedule.	$130,552 of $139,457	Masud
EB-78-C-01-6508 National Power Grid	Systems Control, Inc.	8/4/78 - 12/4/78	Analyze power grid concepts as part of National Power Grid Study.	$ 24,162	Masud
EB-78-C-01-6513 National Power Grid	Culp, Dwyer, Guterson & Grader	8/4/78 - 1/4/79	Analyze Federal and State statutes and Regulatory Practices relative to National Power Grid Study.	$ 38,230	Masud
EB-78-C-01-6512 National Power Grid	Utility Consulting	7/21/78 - 12/21/78	Analyzing bulk power grid capability as part of National Power Grid Study.	$ 28,986	Masud
EB-78-C-01-6511 National Power Grid	Harza Engineering Co.	7/22/78 -	Analyzing coal by wire possibilities as part of National Power Grid Study.	$ 78,070	Masud

EMERGENCY PREPAREDNESS CONTRACTS
FY 1978 FUNDING

(a) CONTRACT NO./PURPOSE	(b) CONTRACTOR	(c) TERM	(d) TASK AND STATUS	(e) COST	(f) MONITOR
EB-78-C-01-6359 Utility Interconnections	Systems Control, Inc.	9/28/78 - 9/28/79	Provides utility system analyst support in such areas as interconnections, wheeling, power pooling to enable DOE to be more responsive to utility reliability issues during an emergency. On schedule.	$125,000	Brown
EB-78-C-01-6674 Utility Interconnections	Gilbert - Commonwealth	9/29/78 - 9/29/79	Provides utility system analyst support in such areas as interconnections, wheeling, power pooling to enable DOE to be more responsive to utility reliability issues during an emergency.	$125,000	Brown

EMERGENCY PREPAREDNESS CONTRACTS
FY 1978 FUNDING

(a) *CONTRACT NO./PURPOSE	(b) CONTRACTOR	(c) TERM	(d) TASK AND STATUS	(e) COST	(f) MONITOR
*ET-78-C-01-3352 Refinery Cost and Capacities	Gordian Assoc.	9/26/78 - 11/30/78	Study of Prohibition against Refiling and Cost Study of Refiners Accounting Systems Cost. Project on schedule.	$ 35,468	Sarsfield
*ET-78-C-01-3353 Rationing Plan	Gordian Assoc.	9/26/78 - 1/30/79	Develop rationing operational concepts. Proceeding on schedule.	$185,000	Sarsfield
*ET-78-C-01-3376 Propane Cost and Availability	Price Waterhouse	9/30/78 - 12/31/78	Determine producers propane non-product cost. In process and on schedule.	$ 69,167	Sarsfield
*ET-78-C-01-3333 Fuel Cost and Availability	CEXEC, Inc.	9/30/78 - 1/1/79	Evaluation of Federal incentives for small refiners In process and on schedule	$ 24,957	Sarsfield
		9/30/78 - 1/12/79	Evaluation of crude oil allocations and refinery yield control. Draft report due 11/15/78, work on schedule.	$ 19,916	Sarsfield
		9/30/78 - 12/31/78	Evaluation of quality differentials. In process and on schedule.	$ 13,351	Sarsfield
*ET-78-C-01-3332 Fuel Cost and Availability	CEXEC, Inc.	9/30/78 - 1/1/79	Study of non-U.S. Carribbean refiners and analysis of costs and production. First draft due 11/15/78.	$ 14,036	Sarsfield

*All contracts listed are quick reaction work order contracts awarded on a competitive basis.

EMERGENCY PREPAREDNESS CONTRACTS
FY 1978 FUNDING

(a) *CONTRACT NO./PURPOSE	(b) CONTRACTOR	(c) TERM	(d) TASK AND STATUS	(e) COST	(f) MONITOR
*ET-78-C-01-3337 Fuel Cost	Gruy Federal Inc.	9/30/78 - 2/15/79	Study of crude oil ownership and acquisition cost in developing guidelines for base period operation. Scope expanded and on schedule.	$ 33,000	Sarsfield
*ET-78-C-01-3361 Rationing Plan	PRC Energy Analysis Co.	9/30/78 - 1/30/79	Study of coupon issuance points (i.e. banks, post-offices etc.) Work in process on schedule.	$100,640	Sarsfield
*ET-78-C-01-3345 Rationing Plan	American Management Systems	9/30/78 - 12/10/78	Update and revision of Standby Rationing Plan. Work in process on schedule.	$120,747	Sarsfield
*ET-78-C-01-3358 Fuel Availability	Arthur Young & Co.	9/27/78 - 9/30/79	Propane rate structure study. Work in process	$ 67,895	Sarsfield
		9/27/78 - 12/31/78	Study of crude oil profile of domestic producers. Work in process.	$135,395	Sarsfield
*ET-78-C-01- Quick reaction work order contracts (4)	18 Contractors	9/30/78 - 9/30/79	Qualified and retained for following tasks for Regulation and Emergency Preparedness Activities A. Review and Evaluation B. Special Studies C. Contingency Plans and Evaluation D. Economic Analysis and Environmental Impact	$102,500 ($2,500 ea.)	Sarsfield

*All contracts listed are quick reaction work order contracts awarded on a competitive basis.

EMERGENCY PREPAREDNESS CONTRACTS
FY 1978 FUNDING

(a) CONTRACT NO./PURPOSE	(b) CONTRACTOR	(c) TERM	(d) TASK AND STATUS	(e) COST	(f) MONITOR
EQ-78-C-01-8929 Administrative Support	Commerce Clearing-house, Inc.	thru 9/30/79	Responsible for composition publication and distribtuion of Federal Energy Guidelines including Emergency Preparedness Regulations.	$169,000 of $490,000	Bradley
ORDER EA-77-C-01-6033 Management Support	Computer Sciences Corporation	9/1/78 - 11/30/78	Develop preliminary process flows and requirements for Management Information System covering ERA's major programs including Emergency Preparedness	$ 50,000 of $120,000	Brown
Administrative Support	Forte, Inc.	4/25/78 - 10/1/78	Graphic services for Energy Emergency Planning Guides.	$ 10,000	Eckhardt

Question 14

Please explain why, during the coal strike, the direct survey method of the Bureau of Labor Statistics was apparently abandoned in favor of the model approach of the CEA?

Answer

The Bureau of Labor Statistics survey was not abandoned in favor of the model approach of the CEA. The BLS survey started on February 12, 1978, and was terminated on March 23, 1978. This survey was intended to report actual employment information for the current weeks. It also asked large employers to estimate the employment effect expected for the next week.

The model was developed and used to make longer range forecasts (weeks in advance) of manufacturing output and employment based on various possible assumptions concerning national trends in production, delivery, alternate sources and alternative levels of demand while the BLS survey only provided the best judgment of the individual respondents, for one week in advance.

Question 15

On page 23 of the GAO report, the GAO states DOE "did not" monitor the costs passed through to customers. Please explain why, since the information was available to DOE.

Answer

The GAO report states that FERC did not monitor the costs passed through to customers. While price information was available to FERC on a timely basis the cost basis for the prices was not available.

Of primary importance to both consumers and regulatory agencies during emergency periods is the continuation of adequate electrical service. Regulatory monitoring of costs associated with emergency transactions as they occur is a secondary consideration in view of the ability of FERC and other regulatory agencies to review such transactions and their costs after the emergency has ended. FERC may use either its audit procedures or its investigative powers to identify any operating irregularities or billing errors associated with emergency transactions.

As a result of preliminary staff audit of a limited number of utilities that engaged in transactions during the coal strike, the Commission, on May 10, 1978, instituted an investigation to determine (1) whether extraordinary operating and billing practices that occurred during the strike were proper; (2) whether the selling, buying and transmitting utilities used appropriate rate schedules in rendering such services; and (3) whether the companies properly used fuel adjustment clauses to bill costs related to the transactions.

Question 16

The GAO discussed each of nine proposed measures in the Planning Guide (pp. 12-17). Please comment on each of the GAO comments.

Answer

1. Establish the Energy Emergency Center

The chronology on the establishment of the EEC is accurately reported in the GAO report. The Center was established as soon as the WEEP Task Force effort was completed and a director selected.

The EEC has continued to upgrade its operational capability so that it can continue to be responsive to the needs of State and local governments. It has been established as on on-going, year-round facility capable of being placed in extended operation at any time.

Lessons learned from last winter contributed to the EEC staff's active participation in the EEMIS Task Force which produced the EEMIS Program Plan. Being cognizant of the need for timely, accurate data and of the specific types of data previously requested by States, the EEC took the responsibility for developing the State data requirements for EEMIS and integrating these requirements with those of the Federal users of the system. State input into the data requirements analyses was obtained through on-site visits to 11 States and a State workshop with representatives from six States with data collection capability.

Since ERA will be a prime user of EEMIS when it is developed, the EEC will continue to be a joint participant in the development of EEMIS. To meet this objective, the EEC has established an energy emergency information function which will work closely with the EEMIS Project Office. This function will also develop in conjunction with the EEMIS Project Office and States the "non-traditional" information/communications system referred to in the EEMIS Program Plan.

With this added capability, the EEC will be able to carry out its informational "clearinghouse" function more effectively in the future.

2. Prepare and distribute Energy Emergency Handbook

The establishment of DOE in October 1977 not only delayed contract action on the Handbook but the ensuing organizational realignments, redelegations of authorities, and relocation of personnel in the following months made it difficult to assure accurate information would be presented in the Handbook by the time it was published.

DOE intends to go forward with an update of the Handbook. However, completion of this project has been pending final enactment of the NEA and completion of DOE's operations manual.

This manual, which is now in process, will define the roles and responsibilities of the various DOE elements within emergency preparedness responsibilities. Although this manual is primarily being developed as an internal management tool, DOE intends to reformat much of the information into a Handbook for use by State and local energy officials.

The first phase of the Handbook update, targeted for completion December 31, 1978, would be to provide States with information on the emergency provisions of the NEA and a directory of Federal and State officials responsible for energy emergency operations. By summer 1979, we will have completed a comprehensive document of proposed Federal and State measures that can be realistically implemented.

3. Regional Workshops on Demand-Restraint Measures

During the WEEP Task Force's analytical evaluation of measures, it was determined that the conservation contingency measures developed by DOE in response to EPCA were not neces-

sarily applicable to short-term energy emergencies but that responsibility for determining appropriate demand restraint measures in these situations was within the purview of the States. The National Governors' Association Emergency Preparedness Subcommittee agreed with this conclusion when evaluating the WEEP Planning Guide. Therefore, DOE developed the workshop materials to provide States with a methodology for quantifying the savings which could accrue from utilizing a given measure, thereby enabling the Governor to have a sound basis for determining the validity of which measures to invoke.

DOE must agree with the GAO report that the States were generally more concerned with tangible emergency related issues than the demand restraint measures. In fact, at one point the WEEP Task Force seriously considered canceling the workshops due to the lack of interest on the part of the States and sending them the document instead.

4. Implement energy information systems for monitoring energy demand

The development of the Electric Power Sufficiency Monitoring System was not proposed in the Planning Guide, but rather its description and status were reported. Since the publication of the Guide, the general requirements for energy demand monitoring have been reviewed in the context of the EEMIS, and a needed capability for monthly supply/demand monitoring and forecasting by fuel type has been specified, as described in the EEMIS Program Plan. A manual system is now being used. The Division of Power Supply and Reliability at ERA provides an overall survey for each peakload season. Utilities report information to ERA by telephone.

5. Coordinate Federal and State contingency plans

The State contingency plans submitted to the Energy Emergency Center last winter were reviewed as to the types of contingencies planned for at the State level. The plans which contained sections on coal and/or electricity were used to develop a matrix of actions to be taken and inserted in a coal resource notebook for ready reference during the winter. (See Attachment E.)

DOE considers the analysis of State contingency plans of high priority. This project will continue as an ongoing cooperative effort in conjunction with the energy staff of the National Governors' Association. Present plan calls for the NGA to update our current information of State contingency plans and preliminary analyses of plans available to the EEC are currently underway. (Sample format submitted for the record, Attachment F.)

6. Provide assistance to electric utilities in developing contingency plans

Although the Economic Regulatory Administration (ERA), Office of Utility Systems, has, or plans to initiate several programs responsive to the recommendations set forth in both the IG and GAO reports, ERA remains sensitive to the responsibility of the States to initiate, review, and approve utility emergency plans. Presently such plans are developed in accordance with Order 445 of the Federal Power Commission (Section 2.10 of CFR Title 18). These plans are filed with the Office of Utility Systems, Division of Power Supply and Reliability (DPSR).

The OUS/DPSR receives reports on all significant power system outages, incidents and hazards. Occurrences which are reported and which are potentially relevant to other utility system or network operations may be examined in detail by the appropriate Reliability Council, at the request of OUS. A

separate report is prepared by the Council describing the particular problem and recommending procedures to assist other utilities in avoiding or coping with the problem. These reports are widely circulated by OUS.

Notwithstanding the above activities, the OUS has just initiated an Emergency Demand Curtailment Study which has as its main objective the inventory and assessment of existing State and Federal plans and authorities regarding electric demand curtailment during extended periods of interstate supply inadequacy, and the development of policy recommendations regarding the most suitable Federal role. The study is being conducted by Brookhaven National Laboratory with assistance from a working group chaired by Larry J. Wallace, Chairman of the Indiana Public Utility Commission, and comprised of representatives from industry, labor and public interests. The study will be monitored by OUS, which has formed an interagency committee comprised of those agencies most likely to be impacted by study results. Representation includes: FERC, TVA, BPA, NRC, EIA, ERA/Emergency Planning, DOE/GC and PE. The period of performance for this effort is expected to be between 9 and 12 months. It is anticipated that study results and recommendations will advance (1) uniformity in State and Federal emergency planning; (2) data and informational transfers; and (3) streamlining of direct and indirect regulation.

In addition, the National Regulatory Research Institute, with Federal assistance, is conducting a complementary study effort focusing on specific issues of interest to DOE. The Institute will be collecting and analyzing State information regarding emergency planning and will provide recommendations for future Federal initiatives.

While the previously mentioned studies are likely to produce additional program actions, several projects for FY 1979 have already been identified. These include: (1) a System Reliability Study; (2) a Case-Specific Outage Analysis; (3) an Analysis of Bulk Power System Outages; (4) Emergency Electric Power Administration Support Contracts; and (5) Electricity Emergency Planning.

7. Secure legal authority for mandatory Federal and State Measures

The GAO specifically noted that the allocation of Federal Royalty Gas could raise legal problems that could require a court decision to resolve. While this was true prior to the passage of the Natural Gas Policy Act of 1978, that Act explicitly provides the authority to the President in a natural gas supply emergency to allocate certain boiler fuel gas, pipeline supply gas and user owned gas. See sections 301-303. Thus, the problem identified by GAO with regard to Federal royalty gas no longer exists.

The Planning Guide contained proposals for the emergency use of propane supplies which required changes or additions to existing regulations. FEA had initiated action to revise the regulations in August 1977 and this effort was continued by DOE's Economic Regulatory Administration.

The ERA draft regulations for propane allocation, including ethane-propane mixtures, have been available for public study and comment since the FERC published them in August 1978. A public hearing at the FERC was held on September 22, 1978, and several persons testified on various aspects of the draft. A number of written comments were also received in connection with the hearing. It is hoped that the FERC will complete their consideration within a few weeks, thus clearing the way for publication of the final rule.

State energy offices should be little affected by the rule, since no change was proposed in the State set-aside program, and changes proposed to give a higher priority for

residential use and plant protection use of propane would be carried out directly by propane suppliers. Since proposals have been public since August 1977, both State energy officials and suppliers had more than a year to anticipate the actions which would have to be taken to respond to the changes in the regulations.

Propane stock levels are quite high for this time of year, and imports are readily available on the world market. The two major propane pipelines serving the East Coast and the Midwest from the Gulf Coast have both expanded their capacity to handle peak winter demand for propane.

Thus, we believe that the delay in publishing a final propane allocation rule should not have an adverse effect on propane supply availability this winter or on the ability of suppliers and State energy officials to respond to various conditions which may arise.

The Planning Guide proposed that Executive Order 10480 be revised so that the Federal Preparedness Agency (FPA) could permit the Department of Transportation to exercise priority and allocation authority over transportation in a defense-related emergency. A draft revision to EO 10480 was submitted by GSA to OMB on April 1, 1978. The revision provides the recommended authority to the Department of Transportation.

The GAO report further notes that Congressional delays in approving the National Energy Act left proposed measures such as banning natural gas for boiler fuel use and allocating natural gas supplies with no legal status. However, ERA did plan for contingencies in the winter of 1977-78. For example, even though there was no existing statutory authority at the time, ERA drafted implementing regulations to be used in the event Congress passed an act similar to the Emergency Natural Gas Act of 1977. Also, ERA published criteria for certifying electric utilities who had shortfalls in their coal supplies due to the coal strike and who had the capacity to burn natural gas as an alternate fuel. The FERC published a companion rule allowing utilities certified by ERA to make emergency purchases of natural gas.

A proposal was included in the Planning Guide to obtain expanded Interstate Commerce Commission temporary authority to direct the use of rail cars owned by private corporations. In discussions with representatives from the ICC we have been advised that requesting such authority would be self-defeating and not in the national interest.

Under the provisions of the Interstate Commerce Commission Act (ICC Act) the ICC has the authority, in the event of a rail car shortage, to redirect or allocate cars in order to reduce the impact on any one shipper or receiver. Prior to 1976, when the ICC allocated cars during shortages, privately owned cars (not owned by a railroad) were included with cars owned by the railroads and subject to redirection.

The ICC Act was revised in 1976 by the passage of the Railroad Revitalization and Regulatory Reform Act which supplemented Section I, paragraph 12, which disregards privately owned cars when issuing allocation orders. The purpose of this language was to increase the total national supply of railroad cars by encouraging shippers and receivers to obtain their own cars, knowing that cars could not be redirected in the event of shortage.

8. Facilitate increased imports of natural gas

DOE has the capability of expediting approval of petitions for the importation of additional flowing natural gas from Canada if the facilities in place can handle the needed amounts and if the Canadian National Enerby Board has determined that this gas is surplus to Canada's internal needs. In addition, if agreement could be reached with Mexican authorities additional amounts of natural gas could be imported through existing facilities.

Presently the United States can receive bulk LNG at Everett, Massachusetts, Cove Point, Maryland, and Elba Island, Georgia. The export origin for all of these receiving terminals is Algeria. (Small amounts of LNG are trucked in from Canada but these are too insignificant in volume to be further considered here.) Due to the long lead time and the magnitude of investment required for LNG import projects, LNG is not suited for short-term solutions to emergency situations.

LNG Export: Indonesia currently ships LNG to Japan and while some surplus exportable volumes may be available, it is not sure that suitable shipping is available for moving it to the U.S. at the present time. Alaskan LNG is also shipped to Japan and there may be some small surplus available but again availability of suitable shipping has to be determined and probably a Jones Act exemption will be required since all American flag LNG carriers are being utilized under long-term charter.

LNG Shipping: Some small surplus of LNG shipping appears available for moving Algerian LNG to the U.S., but the operational problems mentioned under LNG Export above at the Algerian terminal make the usefulness of these ships doubtful. In any case, the hardware on these ships is suitable only for use at the Algerian loading terminal and it is not known whether it can be used for hook-up at either the Alaskan or Indonesian terminals. There is no known surplus tonnage suitable for moving Indonesian production to the U.S. East Coast. With respect to vessels that may be available to move Alaskan production, they would be foreign flag and would require Jones Act exemption.

U.S. Receiving Facilities: Only Cove Point, Maryland, Elba Island, Georgia, and Everett, Massachussets, can now receive LNG in bulk. Cove Point has surplus receiving capacity of about 400 MMcf/day. (This is receiving storage awaiting the availability of Iranian LNG.) Congestion in the Boston Harbor limits its usefulness in increasing imports of LNG. Elba Island, while in the initial phases of startup, will soon be used at design capacity when contract shipments of LNG from Algerian commence in full. It would appear that Cove Point should preferentially be used if any surplus bulk LNG can be obtained.

In summary, additional LNG supplies do not appear to be able to contribute much to increasing the U.S. availability of imported energy over the short-term for emergency situations.

9. Establish a State set-aside program for fuel oil

Mandatory controls on middle distillates were adopted on January 5, 1974, which established a State set-aside of 4 percent of the estimated volume sold into each State for consumption in the State. The set-aside program was administered by the States to meet hardship and emergency requirements of all wholesale purchaser-consumers and end-users.

With the decontrol of middle distillates on July 1, 1976, special set-aside provisions were made (Special Rules No. 2 and No. 3) for the State offices to provide for assignments to marketers which could demonstrate an inability to obtain adequate supplies of middle distillates and to meet emergency and hardship requirements of end-users. A modified form of the 1976-77 set-aside procedure (Special Rule No. 5) was in effect during the 1977-78 winter. This special set-aside was designed to meet the emergency and hardship needs of ultimate consumers only.

A special Set-Aside Proposal for Middle Distillates (Special Rule No. 6) has been developed as a notice of proposed rulemaking to reinstate set-aside procedures for middle distillates (essentially the same as those provided by Special Rule No. 5) for the winter of 1978-79.

A notice of proposed rulemaking was signed by the Deputy Administrator of ERA on November 14, 1978.

Mr. DINGELL. Mr. O'Leary, the Chair commends you for your very helpful testimony. The Chair will observe that Mr. Hammond is not here with prepared testimony so we will not anticipate that he will give prepared testimony. We will, however, hear him at an appropriate time for comments if he desires and, of course, in response to questions.

The Chair observes that Mr. Gramley is here. Mr. Gramley, we would be happy to recognize you for such statement as you might give as to why you choose to withhold information from this committee and from GAO when it acts in response to our request.

STATEMENT OF LYLE E. GRAMLEY

Mr. GRAMLEY. Thank you, Mr. Chairman. I am Lyle Gramley. I have with me Peter Gould, Executive Assistant to the Chairman of the Council of Economic Advisers. Next to Mr. Alm is Larry Hammond from the Department of Justice, and Mr. Marcuse from the Department of Justice.

Mr. DINGELL. Gentlemen, we welcome you all.

Mr. GRAMLEY. My prepared statement this morning, Mr. Chairman, is a little long and in the interest of brevity, I would like to excise certain portions.

Mr. DINGELL. We will insert the whole of your statement in the record and recognize you for such summary as you deem appropriate.

Mr. GRAMLEY. I am pleased to be here today to discuss with you situation faced by the administration, the Congress, and the Nation early this year because of the coal strike, and the actions taken by the administration in response to it.

OVERVIEW OF THE COAL STRIKE SITUATION

In early December 1977, 125,000 members of the United Mine Workers went on strike. Nationwide, coal ouput dropped by about 60 percent within 2 weeks. The greatest loss of output was concentrated in the mideastern portion of the United States—the east central area reliability region (ECAR). That region is comprised of the States of Ohio, Indiana, West Virginia, Michigan, much of Kentucky, western Pennsylvania.

The region is heavily dependent on coal-generated power. Electric utilities in the region normally produce 80 percent of their power output from coal-fired plants. While the ECAR region would be the first and most heavily affected by a protracted coal strike, a substantial danger existed that the effects would spill over into other sections of the country if the strike were protracted.

In the early weeks of the strike, there was optimism both within the administration and elsewhere that a timely settlement was possible, and that the stockpiles built up during late 1977 in anticipation of a strike would tide us over. By early February, however, settlement of the strike seemed no closer and stockpiles were declining steadily. The first cutbacks in power production were ordered in the ECAR region in late January.

The CEA and other governmental agencies began around mid-February to assess for the President the risk that would be in-

volved in continuation of the coal strike. The task was a difficult one, for there were many uncertainties.

The length of the strike was unprecedented in recent American history. Data from previous coal strikes on stockpiles, power cutbacks, production losses, and effects on employment and unemployment offered little guide to what might happen.

Data pertaining to the economic effects of long strikes in other major industries were judged to be of little value. The potential ramifications of a strike whose critical impact was mainly on electric power generation in the Nation's industrial heartland were much more complex than a strike of, say, a major producer of autos or steel.

Prospects for coal supplies in the impacted region over the winter months and beyond were highly uncertain. Nonunion mines in the ECAR region were beginning to increase production, as were mines outside the region. Arrangements had been made to wheel in electric power, and opportunities existed for shipments of coal into the region if circumstances remained favorable. However, the risk was ever present that supplies could be cut off if violence erupted as it had in coal strikes during 1946 and in 1949–50.

Violence was an ever-present threat late in 1977 and in early 1978. A quick survey of the New York Times uncovered 13 separate reports of violence, including one death, between December 1977 and March 1978.

A considerable amount of advance planning at both the Federal and State levels had been done to prepare for an emergency of this kind. But, as the GAO report indicates, these plans had not been fully tested and their adequacy was in doubt.

There was one case study to draw upon, the 1972 coal strike in Great Britain. We reviewed the evidence carefully, and it suggested a potential problem of very substantial magnitude.

In that country the Government declared a state of emergency 4 weeks into a strike by 280,000 miners. With 70 percent of the country's electric power generation dependent on coal—about the same proportion as in the ECAR region—the Government ordered a drastic power curtailment. The reduced voltage led to rotating power blackouts lasting up to 4 hours. The power shortage required 3-day workweeks in much of manufacturing. Transportation and communications were seriously disrupted. Traffic signals did not function and trains were canceled, causing massive traffic jams and confusion.

In light of Britain's experience and the situation last winter in our own economy, we foresaw five particular areas for concern if the strike were protracted.

First, power curtailments would cause losses of jobs and production in the ECAR region, as well as hardship for individuals, and such power cutbacks would escalate sharply as coal stocks dwindled.

Second, production slowdowns in the ECAR region would spread to other sectors of the economy as shortages of materials and parts produced in the region created production bottlenecks elsewhere. The automotive industry was particularly vulnerable.

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Third, we were informed by experts that the ECAR power grid might operate inefficiently, or perhaps not at all, once generation of power slipped below 40 percent of normal.

A malfunction of the sytem under those circumstances might have led to rolling blackouts in major cities of the Midwest, with accompanying risks of looting and violence such as occurred in the New York City blackout of July 1977.

Fourth, as in Britain, the loss of electric power could cause traffic lights and other vital electronic devices to stop functioning—snarling our transportation system and spreading economic problems nationwide.

This would threaten provision of food and medical supplies to cities in the Midwest, and thereby create risks to national health and safety.

The potential consequences seemed to us then—and they still do—very serious. We therefore set out in uncharted waters to do the best job we could to assess the economic consequences of a protracted strike.

ANALYSIS OF THE PROBLEM

Since there were no data from previous protracted coal strikes to draw on, we tried to analyze the problem by asking ourselves some simple, but I think sensible questions and providing the best answer we could:

As coal stocks dwindled, how much would electric power generation be cut back, and how would the cutback be proportioned among commercial, industrial, and residential users?

To what extent would industrial users be able to conserve on electric power by turning off unnecessary lights and in other ways, and to what degree would they be forced to curtail production schedules?

As manufacturing output was reduced, would man-hours worked be reduced relatively more or less? Would factories shorten the workweek or shut down altogether? How many workers would be off work for a whole week and would therefore be classified as unemployed?

Would the amount of wages and salaries lost be large enough to induce a drop in consumption spending?

And how would the relationships change over time among the variables affected?

We wrote down relationships of this kind in the form of simple arithmetic equations. And since we knew the equations would have to be solved repeatedly if the strike continued, a computer program was written to reduce the calculating burden. This was what has come to be termed our "computer model."

Let me make it clear that this was not a large-scale econometric model of the sort that most people associate with a computer. It was a simple model that could have been solved on a hand calculator.

The model was developed jointly by several staff members from CEA, the Department of Energy, and the Department of Labor. The cost of the project, aside from the diversion of staff members' time from other duties, was negligible.

We utilized this model to project economic impacts under optimistic and pessimistic assumptions. Generally speaking, the key difference between the two cases was that the pessimistic case assumed lower coal deliveries into the ECAR region, specifically, 300,000 tons a week.

As things turned out, the projections for the optimistic case were close to the actual course of events. For example, in the early runs of the model around mid-February, we estimated—using optimistic assumptions—that unemployment would stay relatively low—no more than 10,000—through most of February and then would begin to rise more sharply, reaching 50,000 or so by mid-March.

As additional data on coal stocks and deliveries became available, we revised our unemployment estimates downward, and we found that our forecast for the week immediately ahead was tracking closely with the results of the special survey conducted by the Bureau of Labor Statistics on coal-strike-related unemployment in the ECAR region.

We did not change our assumptions about future coal deliveries in the pessimistic case. Although deliveries into the region increased substantially after mid-February, we did not know whether that improvement was temporary or permanent. And with the threat of violence ever present, we believed it was critical to assess the potential economic consequences of deliveries returning to the levels of early February.

Let me emphasize, Mr. Chairman, that, had the strike persisted through March and early April, the economic effects would have become far worse. Just how much worse would have depended critically on the access of utilities in the ECAR region to coal produced in nonunion mines and imported into the region. In the tense environment of a protracted and perhaps bitter strike, it is impossible to say now what the outcome would have been.

The administration has been criticized for being too pessimistic in its forecast of the effects of the strike. I would note that our concerns were shared by some highly respected private forecasters whose estimates of the effects of the strike were as pessismistic, or more so, than those of the administration

For example, Data Resources, Inc., indicated in late February that a strike lasting until mid-March could reduce employment by as much as 2 million. Chase Econometric Associates made similar predictions.

PRUDENT PLANNING FOR EMERGENCIES

The coal strike presented the kind of situation in which the Government must respond by trying to evaluate all plausible outcomes. The contingencies were uncertain, but the potential problems were extremely serious. The use by the administration of optimistic and pessimistic cases reflected the need we felt to engage in "prudent planning."

Such a procedure is essential to assess the magnitude of the risks we faced and to prepare to deal with possible outcomes that would be extremely damaging to the Nation.

The coal strike is not an isolated case of this kind. Government often must seek to insure against low-probability, but high-cost, events. Extremely high safety factors are required in the construc-

tion of nuclear plants to guard against the low probability of a major disaster. Dams are built strong enough to insure against the one storm in 50 years that could produce a flash flood and wipe out a community. Our national defense system is designed to prepare for low-probability threats that could be disastrous if they occurred.

Similarly, the establishment of a strategic petroleum reserve is an example of prudent planning against a low likelihood, but potentially very harmful, event. Government has a obligation to be prepared for the worst possible outcome, as well as for the most likely one, and that is what we did during the coal strike.

GAO COMMENTS ON ECONOMIC IMPACT ESTIMATES

In his report of October 10, the Comptroller General criticized the administration for using "questionable" methodology in developing its estimates and for being unsufficiently circumspect in its public presentation of those estimates. Let me address each criticism.

First, the Comptroller General's report notes correctly that the economic impact of a strike depends in part on factors that cannot be readily quantified—such as weather conditions or changes in product mix at factories in the area.

The report also notes that the administration was aware of these shortcomings in developing its methods for estimating the economic impact of the coal strike.

The Comptroller General's report criticizes our decisions to proceed with the methodology we used but contains no suggestions for improvement. We are well aware of the deficiencies of our approach, but it is the best we could do at the time.

If the GAO has constructive suggestions to offer in future situations we would welcome them.

As I noted earlier, we faced in February an unprecedented situation that contained potentially great risks for the Nation's health and welfare. There are no sure-fire statistical or economic methods of analyzing unprecedented situations. The President's responsibility to insure the health and welfare of our Nation, however, cannot be set aside because data or methodology are inadequate. We must make do with what we have.

GAO's second criticism is that the administration's use of the economic effects of the coal strike was insufficiently circumspect.

GAO did not criticize the administration for pursuing a prudent planning approach to this problem. But it did suggest that we should have attached probabilities to the various outcomes we assumed.

I would agree that a statement of probabilities is useful, if the probabilities can be roughly estimated. But we were dealing with novel events and highly uncertain outcomes.

Just as this situation forced us to use a methodology GAO characterizes as questionable, our lack of knowledge made it impossible to attach numercial probabilities to the estimates we developed.

However, we tried to be careful in the statements and documents to state clearly the assumptions on which our estimates were based.

GAO's REQUEST FOR INFORMATION

Let me turn now to the GAO's request for information from the CEA on the coal strike. The General Accounting Office first contacted the Council of Economic Advisers regarding this study in midsummerof this year.

At that time, members of the CEA staff held informal discussions with GAO's staff regarding the information they desired. At about the same time, GAO also sought information from the CEA relating to their study of the Regulatory Analysis Review Group.

Their GAO request presented us with an unprecedented situation. To the best of our knowledge—and we searched diligently, GAO had never before requested documents from the Council of Economic Advisers.

The concurrence of these two unprecedented requests caused us to seek legal advice regarding the manner in which we should assist GAO in its inquires.

In late August the Department of Justice advised us in this situation, and this committee had, I believe, the memorandums containing the Justice Department's view on the issue.

It was our view at the CEA that we should cooperate with the GAO to try to provide them with the data they needed.

After further dicussions with GAO, the CEA assembled a document summarizing in considerable detail the techniques used to derive our estimates, the reasoning behind our estimation procedures, and the output of the computer program. We provided this document to GAO on September 25.

Subsequent to September 25, we received no communications on this matter until November 7, when your subcommittee invited us to testify and requested access to further documents in the Council's possession.

Just yesterday the Council provide the subcommittee staff with copies of the computer model and with other materials that, I believe, will provide this subcommittee with a full understanding of the administration's estimates of the economic impact of the coal strike.

If questions remain after you have reviewed these materials, the Council will be pleased to discuss with you ways in which we can be of further assistance.

That completes my prepared testimony, Mr. Chairman.

Mr. DINGELL. The committee thanks you for the somewhat delayed delivery of the information requested by the committee sometime back, and also on behalf of the committee, by the GAO acting pursuant to the response, pursuant to a request by the Chair.

Gentlemen, the Chair would like to direct a series of questions at this time. The Chair will direct them first to Mr. Hammond.

Mr. Hammond, can you tell us what is the function of the Office of Legal Counsel? Is it normally the function of the Office of Legal Counsel to advise the White House?

Mr. HAMMOND. Yes; it is, Mr. Chairman.

Mr. DINGELL. It is?

Mr. HAMMOND. Certainly.

Mr. DINGELL. Will you describe that more precisely? My understanding was it was the function of the Office of Legal Counsel to advise the Attorney General.

Mr. HAMMOND. That is one of our other functions. We provide legal advice to a number of offices in the White House directly and have done so for as long as there has been an Office of Legal Counsel, some 27, 28 years.

Mr. DINGELL. Now, do you assert the—rather, did you prepare or sign the Justice Department memorandum of August 31, 1978 concerning the GAO request for data?

Mr. HAMMOND. The August 31 opinion was signed by John M. Harmon, Assistant Attorney General. I worked on it, as did Mr. Herman Marcuse, who is to my right.

Mr. DINGELL. You worked on it but did not sign it?

Mr. HAMMOND. That is correct.

Mr. DINGELL. The memorandum raises the question of the jurisdiction of this subcommittee concerning this data. Are you aware of any consultation by anyone at the Justice Department with the Chair or any member of the staff regarding the subcommittee's jurisdiction?

Mr. HAMMOND. No; I am not.

Mr. DINGELL. Are you aware of any consultation with any person at the GAO regarding the jurisdiction of this committee?

Mr. HAMMOND. Yes, I am.

Mr. DINGELL. You are?

Mr. HAMMOND. Yes.

Mr. DINGELL. GAO advises it was not consulted. Who did the consulting with whom and when, please.

Mr. HAMMOND. At my request, when we received the opinion request from the White House Counsel's Office, we asked the White House Counsel's Office to ask GAO upon what authority they based their request.

As Mr. Gramley told you, this is the first time to anyone's knowledge that GAO has made a request to CEA. That was the part the White House Counsel's Office asked us to address.

We did that. We received a written response dated August 11, 1978, from someone I believe in the General Counsel's Office at GAO.

Mr. DINGELL. You did not, however, in that communication refer to the jurisdication of this subcommittee, did you?

Mr. HAMMOND. Which communication?

Mr. DINGELL. In any of the communications to which you have just alluded.

Mr. HAMMOND. In the communication between Margaret McKenna, Deputy Counsel at the White House, and the people with whom she spoke at GAO—I am not sure with whom she spoke—she asked them to outline the authority upon which they based their inquiry.

Mr. DINGELL. But not the jurisdiction of this subcommittee.

Mr. HAMMOND. That is an inescapable element as our opinion, I hope, clearly identifies.

Mr. DINGELL. Maybe you could just inform me. Can you advise me since when the Department of Justice has assumed unto itself responsibility of determining the bounds of congressional investi-

gations or the jurisdiction of committees to conduct their affairs, make inquiries of the executive branch.

Mr. HAMMOND. I can't tell you when it started, but as far as I know it had been—it had been the practice, again inescapably, for as long as there had been a Department of Justice, long before the Office of Counsel——

Mr. DINGELL. You mean to inquire into jurisdiction of committees of Congress to conduct their proper investigations.

Mr. HAMMOND. In some cases that is unavoidable.

Mr. DINGELL. In some cases it is? Will you cite then your statutory or constitutional authority to inquire into the jurisdiction of committees of the Congress?

Mr. HAMMOND. Certainly. It is the provision of article II that requires that the President faithfully execute the laws. If he is faithfuly to——

Mr. DINGELL. The laws as they relate to rules of the House or the jurisdiction of committees? Can you cite us a case which gives you the power in that instance to denominate the powers of the committees or to inquire into the powers of committees of Congress?

Mr. HAMMOND. Mr. Chairman——

Mr. DINGELL. Citation either of statute, by specific language, or a court case by a specific quote, together with appropriate citations, are you able to do that today?

Mr. HAMMOND. I am not sure I understand your line of inquiry.

Mr. DINGELL. I am trying to inquire as to what your authority is to make or raise questions as to the jurisdiction of the Congress.

Mr. HAMMOND. If your question is the general one——

Mr. DINGELL. It is not a general one, it is very precise one, and I wish to receive from you a very clear statement of your authority under this article, interpreting the article both by statute and/or by court case, affording your agency or the executive or the President the power to raise question of the jurisdiction of a committee of this Congress.

Mr. HAMMOND. Certainly stated that way, I would cite off the top of my head four cases.

The first one is *United States* v. *Nixon,* decided by the Supreme Court in 1974.

The second one is *Nixon* v. *GSA,* decided, I believe, in 1976.

The third and fourth cases are both cases of the District of Columbia Circuit Court of Appeals. One of them is *Senate Select Committee* v. *Nixon.* The other is a case involving another subcommittee of this committee of the House, *United States* v. *A.T. & T.*

Mr. DINGELL. What is the specific language in these which affords you this sweeping authority over the internal functions of the Congress?

Mr. HAMMOND. Would you like me to cite specific language or would you like me to summarize?

Mr. DINGELL. I want you to cite specific language. I can cite cases until I am blue in the face as I am sure most of the lawyers in the room have done, also. And the simple citation of the case doesn't carry with it much persuasion. I want to know the language to which you ascribe——

Mr. HAMMOND. I only have two of those opinions with me.

Mr. DINGELL. I await with considerable expectation and anxiety your citation of that language.

Mr. HAMMOND. Let's begin with the *A.T. & T.* case because that, as I say, involves another subcommittee of this committee, and is probably closest in point.

The case involved a subpena issued via a subcommittee of this committee for documents held by A.T. & T. The Department of Justice resisted that subpena on the ground that the material covered, FBI wiretap information, was privileged.

Mr. DINGELL. Was there a subpena issued in the case to which we allude?

Mr. HAMMOND. I believe there was.

Mr. DINGELL. The case to which we now address ourselves?

Mr. HAMMOND. No; there was not.

Mr. DINGELL. The jurisdiction of this committee?

Mr. HAMMOND. No; there was not.

Mr. DINGELL. There was not?

Mr. HAMMOND. But I don't believe that is material.

Mr. DINGELL. You do not?

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

Mr. DINGELL. You may quote the language.

Mr. HAMMOND. The court explains at some length that whenever there is a clash or a controversy between the executive branch and the legislative branch over documents that fall within what the Supreme Court has identified as the presumptive priviliege of confidentiality, there must be an effort to accommodate the reasonable and legitimate interests of both branches of government.

In the course of so stating, the court pointed out that while the executive branch's privilege is not absolute, neither is the privilege of the legislative branch to search for documents and information.

Mr. DINGELL. Is that the language on which you base your position?

Mr. HAMMOND. That is one of the opinions, yes, sir.

Mr. DINGELL. Well, did you ever make inquiry of the committee as to its jurisdiction at the time at the Department of Justice?

Mr. HAMMOND. Again, Mr. Chairman, we made inquiry through the White House Counsel's office of GAO which is the office that sent us the request.

Mr. DINGELL. I said, did you ever communicate with the committee?

Mr. HAMMOND. I did not. I don't believe anyone else in the Office of Legal Counsel did.

Mr. DINGELL. Did anyone else?

Mr. HAMMOND. I believe not.

Mr. DINGELL. Is there any correspondence in the files indicating that you communicated with the Chair or any staff member on this point?

Mr. HAMMOND. I am not prepared——

Mr. DINGELL. If so, I am woefully unaware of such.

Mr. HAMMOND. I believe there is none.

Mr. DINGELL. There was none.

Did you ever inquire as to why it was that the subcommittee wished this information—of the subcommittee?

Mr. HAMMOND. Mr. Chairman, if you read our opinion you will see that is precisely what we suggested be done in this case.

Mr. DINGELL. But it was not done?

Mr. HAMMOND. I am not sure.

Mr. DINGELL. Was it done by Justice?

Mr. HAMMOND. It was not done by Justice. We were not asked to do so by the White House Counsel's office.

Mr. DINGELL. Mr. Gramely, was there communication or communication by you to the CEA regarding why we wished this?

Mr. GRAMELY. No; there was not. When we delivered the documents to GAO on September 25, we thought we were being responsive to their request for information. We heard nothing from them.

Mr. DINGELL. Did they indicate they——

Mr. GRAMELY. We heard nothing from them. I think that was their testimony this morning. We had no indication at all that their full needs were not fulfilled untill we received your letter of November. We proceeded immediately thereafter to try to provide the committee with the information it sought.

Mr. DINGELL. We again return in some distress to the question of the jurisdiction of this committee and communications from your agency to the House.

Is the function of your agency, I repeat, under this language which you have quoted to me, to inquire into the rules of the House? I direct that question to Mr. Hammond.

Mr. HAMMOND. Again, Mr. Chairman, in some cases that kind of inquiry is inescapable. The statute——

Mr. DINGELL. I did not ask you if it is inescapable. I asked you as to your power to conduct that activity. The two are quite different.

Mr. HAMMOND. In my mind they are not. We do believe we have the power to inquire as to the jurisdiction of GAO when GAO makes a request for documents within the executive branch.

Mr. DINGELL. Are you unaware of the ancient cases which hold that the power of the Congress to inquire is as broad as its power to legislate?

Mr. HAMMOND. Yes; I am.

Mr. DINGELL. Are you unaware of the fact that the jurisdiction of this committee relates to the continuity of supplies of natural gas, of coal, of electrical energy, and matters of such sort, and it may be you are unaware of the fact that we wrote the President's energy bill—or parts of it——

Mr. HAMMOND. If you read——

Mr. DINGELL. [continuing]. Without challenge from the Executive as to our powers?

Mr. HAMMOND. If you read our opinion, you will see that is precisely what we concluded.

Mr. DINGELL. I am unaware of that particular language, but I would rejoice to find it in there.

Mr. HAMMOND. I think I can assist you. As I explained before, Mr. Chairman, we asked what jurisdiction GAO relied upon. They provided us a letter stating the basis for their jurisdiction. We analyzed that statute, section 313 of the Budget Act, and concluded for the reasons stated in the opinion that that was probably not a sufficient basis.

We then went on to say that although GAO had not pointed it out to us, we thought they probably did have a legitimate basis to make this inquiry.

We cited and discussed on pages 6 and 7 our legal opinion, section 204(a). In the course of that discussion I think you will see that we point out that it may very well be that GAO's inquiry was based upon a request from this committee pursuant to the kinds of considerations that you just mentioned.

Mr. DINGELL. Well, I observe in the second paragraph of page 7 that your discussions dealt with the business of the possible application of Taft-Hartley.

Mr. HAMMOND. That is true.

Mr. DINGELL. This committee pleads no jurisdiction over that matter.

Mr. HAMMOND. Yes, sir.

Mr. DINGELL. We do, however, address ourselves vigorously to the question of a continuing supply of energy to this country. And I am unaware of any duty by this committee to arrive at accommodations with any branch of the executive regarding information, under any authority save authority by statute, for the President to withhold or a pleading of executive privilege.

Now, am I incorrect in assuming these are the only grounds upon which information may be withheld from this committee?

Mr. HAMMOND. Yes.

Mr. DINGELL. That is a correct assumption?

Mr. HAMMOND. I believe that is right.

Mr. DINGELL. All right.

Am I correct in assuming that Executive privilege has not been claimed on this matter?

Mr. HAMMOND. Yes.

Mr. DINGELL. Is there any basis on which Executive privilege could be claimed?

Mr. HAMMOND. Yes, sir.

Mr. DINGELL. Would you cite it, please

Mr. HAMMOND. It is spelled out at great length again in our legal opinion, but the basis is the Constitution, and further amplification, the opinions that I talked about before.

Mr. DINGELL. Well, as I understand it, Executive privilege applies only as regards communications by and between the President and members of his immediate staff. Am I correct?

Mr. HAMMOND. No, sir, not entirely.

Mr. DINGELL. No? How much broader is it then?

Mr. HAMMOND. It is the Department's view and has been for quite some time that additional documentation, documents necessary for the formulation of that kind of confidential advice may, for the same reason that you have the privilege in the first place, also be privileged.

Mr. DINGELL. Do you mean to say the documents within the executive branch are foreclosed to committees of Congress simply because the President might later arrive at a decision on the basis of those documents?

Mr. HAMMOND. No, sir, I didn't say that. I say they may be, in particular cases. As I hope the chairman knows, this administra-

tion has never found it necessary to assert Executive privilege in any case.

So the answer in practical terms has been in every case we have found a way to accomodate whatever legitimate interest the committees of Congress have had. But in terms of theoretical applicability in addition to direct communications, absolutely, we believe it exists.

Mr. DINGELL. I want you to know that I find, and I am sure most of my colleagues do, that it is offensive that the executive would presume to construe the powers of subcommittees or committees of this Congress to function within the proper exercise of their jurisdiction.

You also questioned GAO's authority to obtain data. Is it normal for you to do this and to advise the White House without consulting GAO so as to ascertain the facts?

Mr. HAMMOND. Again, Mr. Chairman, whenever we receive an opinion request from anyone within the executive branch—Cabinet official, Attorney General, anyone at the White House—we act as their counsel. They are in a sense the client. We do whatever they ask us to do.

There are times in which Executive privilege matters we have in fact picked up the ball and have acted as the mediators in trying to arrive at an accommodation. In other cases we have not been asked to do that, but we are asked to recite the law.

In this case we were asked to recite the law and that is what we did.

Mr. FINNEGAN. Are you really serving your clients properly in this particular case, because in both instances, in connection with a challenge of the statutory authority of the GAO or the discussion of it and also a question of the subcommittee's jurisdiction, you raise issues about it, but you don't resolve them which indicates that you really made no effort on your part to find out by directly contacting our subcommittee or asking additional questions of the General Accounting Office as to: (1) Their legal authority; or (2) the subcommittee's jurisdiction.

Is that a proper way to serve a client in this kind of a situation?

Mr. HAMMOND. I think in this case it was. From what I have heard about what happened after our legal opinion went out, I am fully satisfied with it.

Mr. FINNEGAN. That the committee got disturbed over the fact that the data was not released?

Mr. HAMMOND. On the basis of our advice, the people at CEA devoted what I understand to be a considerable amount of time and effort in developing a summary of all of the pertinent documentation. They provided that summary to GAO and to their knowledge and certainly to mine there was no further request or no further inquiry for information until several days ago.

Mr. FINNEGAN. But based on that advice, the Deputy Counsel for the White House wrote a letter to the chairman and to the GAO saying, based on that advice, they did not have to provide the data to the GAO and they would voluntarily provide some of it to the GAO.

Now they are assuming from that, a basic, implied assumption from your memorandum, that they do not have to supply the data.

I gather what you are telling us is that is not totally true because you were not fully cognizant of all of the information regarding our jurisdiction and regarding the GAO's authority?

Mr. HAMMOND. I think the import of Miss McKenna's letter was that on the basis of the authority cited by GAO, there was no need to provide the information.

I still maintain that to be the case. There are, in fact, I believe other bases, and those bases were outlined in our opinion.

Mr. FINNEGAN. But that sounds like the ivory tower approach to something, just because you have a piece of paper that didn't go the entire way and didn't spell out in lengthy briefing form the authority, you concluded that that is it.

Didn't you do any independent research of your opinion?

Mr. HAMMOND. Mr. Finnegan, we did considerable independent research, I dare say a good deal more than GAO did. Again, all of it is spelled out in our legal opinion.

Mr. FINNEGAN. Of the cases. But you did——

Mr. HAMMOND. Not only the cases but the jurisdiction of GAO to make this request.

Mr. FINNEGAN. But you made no inquiries of the subcommittee?

Mr. HAMMOND. No; we did not.

Mr. DINGELL. Your communication of November 15 to the Chair states as follows:

> I wish to reaffirm that this administration and the Office of Legal Counsel firmly adheres to the principle first announced by President Kennedy and restated by Presidents Johnson and Nixon that the constitutional privilege can be claimed only by or at the direction of the President, and that no official in the executive branch, however high his position, may assert the privilege on his own behalf.

Am I to assume that this is the policy of the administration?

Mr. HAMMOND. Yes, sir.

Mr. DINGELL. Other than executive privilege, is there any other authority under which CEA may withhold material in question from this subcommittee?

Mr. HAMMOND. I think if indeed we had a situation in which you did inquire into a matter that was beyond your jurisdiction, that would be another example.

Mr. DINGELL. I want you to cite by chapter and verse, using specific language of statute or the specific language of an opinion, that which affords you good folks down at the Department of Justice the power to interpret or to dictate the rules of the House or Senate and to withhold from us information requested on the basis of your interpretation of our rules and our procedures.

Mr. HAMMOND. I believe, Mr. Chairman, if you will look at section 204(a) of the statute that we felt probably did give GAO the power to make this inquiry, you will find that it is abundantly clear that GAO's authority to inquire for information only extends so far as the appropriate legislative functions of the committee on whose behalf it is acting.

Mr. DINGELL. I find that enormously unpersuasive. I would like you to cite the language in 204(a) which affords you the authority to interpret the rules of the House or the Senate and thereupon to withhold information from the subcommittee on the basis of its jurisdiction.

Now, I await with great interest and anxiety your interpretation of this because if you are interpreting it that way and correctly so, I give you firm guarantee on opening day of next January there will be legislation introduced to correct this problem. And I assure you my best efforts to see it is brought about. I give you further assurance my colleagues will look with enthusiasm upon my posture.

Mr. HAMMOND. Mr. Chairman, let me say that in some earlier questioning this morning you were advised that a bill was proposed last term to give GAO the authority to seek subpena and to go to court.

Mr. DINGELL. Dear friend, we are not discussing legislation to give subpena power to GAO. We are discussing your power to interpret the rules of the House, and on the basis of your interpretation to withhold information from the committees of the Congress based upon their jurisdication, and although I feel kindness to you, I am not capable of allowing you to retreat behind such a smokescreen.

Mr. HAMMOND. I wish to thank you for your expression of kindness. The simple fact of the matter is that in the absence of a means whereby GAO can go to court, somebody else has to resolve the dispute. You resolve it for yourself; we have to resolve it for ourselves.

Mr. DINGELL. I asked you statutory authority and court decision authority.

Mr. HAMMOND. I have already——

Mr. DINGELL. I asked you to cite the specific language. I say, with great sadness, you have not been able to do so.

Now I trust I am being clear, because it is my wish that we should have a rational dialog based upon full understanding of the questions and the answers given.

Now to help us both, I will repeat the question: Please cite to me specific constitutional authority, specific judicial authority, as found in a precise quote from court cases or specific statutory language that affords you good folks in the Department of Justice prerogatives to decide whether or not the jurisdiction of a congressional committee warrants you making available information to that committee on the basis of its activities.

Now, am I unclear?

Mr. HAMMOND. No; you are very clear.

Mr. DINGELL. Very good. Now I wait with anxiety your response.

Mr. HAMMOND. I think I will have to rely on article II of the Constitution as I have before.

Mr. DINGELL. Quote that language to me, please.

Mr. HAMMOND. In article II of the Constitution there is a phrase that says it is one of the functions of the President faithfully to execute the laws.

Mr. DINGELL. Now, does that "faithfully execute the laws" afford him the broad power of intruding into the interpretation of the rules of the House as regards the jurisdiction of committees?

Mr. HAMMOND. It surely does not.

Mr. DINGELL. It does not?

Mr. HAMMOND. No; it doesn't.

Mr. DINGELL. Then may we safely discard this as being inappropriate to our discussion?

Mr. HAMMOND. No; we may not.

Mr. DINGELL. We may not?

Mr. HAMMOND. No.

Mr. DINGELL. Why not?

Mr. HAMMOND. Because while we take into consideration, and necessarily so, your views of your jurisdiction and would give them the greatest weight, ultimately unless there is a judicial determination the President is required by the Constitution to determine for himself what the faithful execution of the law requires. He has to decide.

Mr. DINGELL. Faithful execution of the laws is actions by himself and actions by the Executive. You have not cited anything which relates to the interpretation of the rules of the House or jurisdiction of committees or validity of an inquiry by a committee of Congress, and I have suggested to you that I awaited with great anxiety your citation of the rule which might be of merit in my consideration of this question. You have not done so.

Mr. HAMMOND. I am sorry not to have satisfied the chairman.

Mr. DINGELL. The Chair yields to Mr. Finnegan.

Mr. FINNEGAN. You have also cited as authority for the GAO another statutory provision, incidentally, which is the section entitled "Section 313, Budget and Accounting Act of 1921," which provides that all departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, and activities, organizations, financial transactions, and methods of business of their respective offices as he may from time to time require of them.

Now, your memorandum dismisses that authority fairly out of hand by saying that the word "activities," even in its broadest sense, would not encompass the CEA activities in this case.

I am going to ask the GAO to also comment on this. But I would like to understand what does the word "activities" encompass, then, from your standpoint?

Mr. HAMMOND. As we said in the memorandum, Mr. Finnegan, again, the word "activities" has to be read in conjunction with the other words in that list. We think that the word "activities" must mean activities of a fiscal or organizational nature.

Mr. FINNEGAN. But the other words in the list, "powers," "duties," "activities," "organizations," "financial transactions," and "methods of business." Now there is a lot of words.

Let me ask GAO, do you agree with that interpretation? I think you would be concerned about that type of——

Mr. WRAY. No; we certainly don't agree with that interpretation. There is nothing in the language of the statute to suggest that in any way, and their argument about the legislative history is contradicted by Congress continual action in expanding our authorities.

If it was true that our access was limited to fiscal-organizational matters, we would be out of business.

Mr. FINNEGAN. There is no legislative history to support his argument, too?

Mr. WRAY. No. As I understand their argument, it is—I don't know what their basis is in the language—but their legislative history argument is that in 1921 when this legislation was inacted, at that time GAO basically looked at fiscal matters which is more or less true, but since then Congress has repeatedly broadened our audit authority and saw no need to expand our access authority.

In fact, it is somewhat incredible to us that the "fiscal matters" position could realistically be taken at this point in time. Just about every agency routinely gives us information going far beyond fiscal matters, including the Justice Department I might add. We are conducting a rather extensive review of their enforcement of the antitrust laws.

Mr. FINNEGAN. Generally, don't the agencies interpret their statutes in light of the times, too, things that have taken place in the past, not just of the date of enactment?

Mr. WRAY. I think we interpret——

Mr. FINNEGAN. The Department of Energy is an example of that; it is imaginative in that respect.

Mr. WRAY. I don't think it takes very much imagination to reject that argument in this case.

Mr. FYGI. Mr. Finnegan, since you mentioned the Department of Energy in the manner in which to construe statutes, I feel constrained to comment.

Mr. FINNEGAN. That was not intended to be derogatory.

Mr. FYGI. I understand, but I believe it is an inaccurate statement in terms of legal principle. Proper construction of statutes has to occur in the context of the times and events and information available to the Congress at which time it enacted the law in question.

Mr. FINNEGAN. That is true, but there have been other statutes that are looked on at the same time. This is the General Accounting Office, I believe, saying there is an amalgamation of statutes under which they operate.

Mr. FYGI. In construing the subsequent statutes, not even the doctrine of in pari materia permits reexamining and broadening the interpretation of ancient statutes.

Mr. WRAY. I might say the first thing we are dealing with here is the plain language of the statute which doen't even suggest any limitation to fiscal matters. That is read into the language of the statute by looking back to 1921.

Mr. PEACH. I referred to earlier the circular argument that we get into. We are in one of these kinds of circular arguments. The way to resolve it, of course, is to be able to go to court and let the court resolve the question of what GAO access right is in this particular instance. That is a right we don't have, as I said. It places the Justice Department in the position of being the final arbiter or decision point in terms of what can happen or not happen, and essentially I think it is also basically true they are somewhat arguing against us having this authority to be able to go to court on our own behalf.

Mr. HAMMOND. I think you will find that is not true.

Mr. WRAY. That is true.

Mr. HAMMOND. If you will read our testimony, you will find in our testimony we concluded it would be constitutional and appro-

priate, assuming GAO were acting pursuant to a proper legislative mandate.

Mr. WRAY. I do recall your testimony, and it was also to the effect that enactment of this type of legislation would tend to create needless antagonism between the executive and legislative branch; this would set up a method for exacerbating controversies which would be more readily resolved through some sort of informal process. However, we will be happy to accept your endorsement of the legislation.

Mr. PEACH. I think that is true. If we misunderstood, we apologize for incorrectly interpreting your testimony. We are glad to have your support for us to have that type of authority.

Mr. DINGELL. Let me repeat one question earlier asked and this, again, of Mr. Hammond.

Other than Executive privilege, is there any authority under which the CEA may withhold the material in question from this subcommittee in this particular case?

Mr. HAMMOND. Yes. As I said before, if the President concludes that the inquiry is beyond the scope of your legislative powers——

Mr. DINGELL. If the President makes this conclusion?

Mr. HAMMOND. Yes, sir.

Mr. DINGELL. Will you again cite to me the statutory or court case basis upon which that statement is made?

Mr. HAMMOND. Golly, Mr. Chairman, I just don't think I can help you any more. I have gone about as far as I can go.

Mr. DINGELL. Perhaps maybe when you get back down to the Department of Justice and have a little bit of time to get into the law library, or one of your younger attorneys on that, have him submit to us for the record a precise statement quoting statutory authority or quoting a court case, giving clear language of the decision on which you bottom that particular statement. I would like that in the record.

Now, as I understand it, is that a decision that can be made by anybody that is of a mind to make it down there or is that a power only reserved to the President?

Mr. HAMMOND. Ultimately, it is the President's decision. The President, of course, has to seek his counsel from somewhere.

Mr. DINGELL. Let me repeat: Is that a determination to be made, broadcast, by anybody inside the executive branch, or is that a decision that is made by the President?

Mr. HAMMOND. I dont't think it is to be made or broadcast by anybody in the executive other than the President.

Mr. DINGELL. Who is it that makes that determination, the President or somebody else acting on his behalf?

Mr. HAMMOND. The President can, as he often does, delegate responsibility to make that king of judgment. It would not surprise me at all if he would ask the Attorney General to make that kind of decision.

Mr. DINGELL. I want to be sure I understand it: The President may delegate the making of that judgment to somebody else inside the executive branch. You are saying, then, that the power of this decision is one which can be delegated by the President?

Mr. HAMMOND. No; I didn't say it had been delegated. You asked me——

Mr. DINGELL. You said it had been delegated. I want to be clear. Are you saying this is a power which may be delegated by the President?

Mr. HAMMOND. I think that the President may ask his Attorney General to advise him on whether a committee is acting within the scope of its authority. He may then rely on that advice.

Mr. DINGELL. That is a splendid answer and it may even be correct, but——

Mr. HAMMOND. It wouldn't surprise me if it is.

Mr. DINGELL. But it is not responsive to the question. The question is: Does the President have the power to delegate this or is this decision which is made by the President?

Mr. HAMMOND. It has just never come up. I just don't know.

Mr. DINGELL. Sir?

Mr. HAMMOND. It has never come up. I suspect if we did have a case like that, we would go to the President with it. It is a very serious matter—I think we have made too light of it here—it is a damned serious matter. The President would never say that a committee is acting beyond its jurisdiction unless it was a very important case.

Mr. DINGELL. Let me first say that I want—first of all, are you aware of any instance in which the President has arrived at a judgment that a congressional committee was acting beyond its jurisdiction?

Mr. HAMMOND. I don't believe so.

Mr. DINGELL. Sir?

Mr. HAMMOND. I don't believe so.

Mr. DINGELL. Has he done so in this instance?

Mr. HAMMOND. Has he done so in this case? Absolutely not.

Mr. DINGELL. You assert—and I want to be very clear, there is nothing personal in this matter—you assert this is a damned important issue and I am sure you concur that I agree with you on that particular point, it is a damned serious issue and it is one on which the Congress cannot flinch.

We have to have the ability to procure from the Executive the information that is necessary to conduct our affairs, and the minute a challenge is raised to the powers of Congress to achieve the information we need to go into questions, we must go forward to procure that information regardless of whether we feel there is a desperate need for that.

Mr. HAMMOND. You obviously have to. That is the point. If you give me 30 seconds, I can, I think, make us both happy.

If the President ever did conclude that your committee, or any other, were acting beyond its legislative authority, you would do what I would do in your shoes, you would file a subpena and we would resist this subpena. Then we go over to the courthouse here and the court would decide, not you, not the President, but the court, which has appropriate jurisdiction.

Mr. DINGELL. I don't quarrel with that. But I am asking you now at this time, since the gage has been laid down, to define instances where the President has made this judgment and then instances where the President has been sustained by the courts in this matter or whether his language would confer on him authority to make this judgment.

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Mr. HAMMOND. As I say, thankfully, I am sure it hasn't happened in this administration. I suspect it hasn't happened in quite some time. I can't say it has never happened.

Mr. DINGELL. I am unaware of it. It is some time since I actively practiced law. But this is one area in which I interest myself as you might imagine.

Mr. HAMMOND. It is apparent.

Mr. DINGELL. Would you agree, then, Mr. Hammond, based on the policy you have stated in your letter, that for the CEA to withhold any of those documents from the subcommittee the President would have to claim executive privilege?

Mr. HAMMOND. Yes.

Mr. DINGELL. Thank you.

Now, for Mr. Gramley I have the following questions:

Mr. Gramley, can you tell me why the CEA declined to release data to the GAO which had been conducting an investigation for our subcommittee?

Mr. GRAMLEY. I don't interpret our response as a decline to submit information to them. What we did was to look at two requests for data which we regarded as unprecedented, went to the Office of the White House Counsel for advice as to what to do. We followed their advice.

We prepared for them a document which we felt was responsive to their request. It described our planning for meeting the coal strike. It described our model, showed what it was all about, the various assumptions underlying it. We submitted that to them. We thought at that time, September 25, our responsibilities were fully discharged. We didn't know until we received your letter on November 7 that the information in the letter was considered to be inadequate.

As soon as we found out, we took steps.

Mr. DINGELL. Can you inform me whether any of this information or any of the documents and memorandums constituted a communication with the President?

Mr. GRAMLEY. To the best of my knowledge there were three memorandums in our coal strike files from the Chairman of the Council of Economic Advisers to the President.

Mr. DINGELL. Were any of those requested?

Mr. GRAMLEY. Yes; they were.

Mr. DINGELL. They were. Can you advise me how, in preparing the models and so forth, how was CEA acting? Was it acting as a ministerial functionary of the Government or was it acting as an adviser to the President?

Mr. GRAMLEY. We were acting as an adviser to the President.

Mr. DINGELL. In preparing a model?

Mr. GRAMLEY. In preparing the documentation needed to advise the President. The model was an effort to try to assess the effects of what a protracted coal strike would be. There was no way we could advise the President without going through an analysis of that kind. That happens in almost every area of economic policy advice.

We do a good bit of staff work which leads up to a memorandum to the President.

Mr. DINGELL. Are you telling me, then, that any economic model that is used to advise the President then falls within the doctrine of executive privilege?

Mr. GRAMLEY. I am not claiming Executive privilege, the CEA is not.

Mr. DINGELL. I know.

Mr. GRAMLEY. I have no knowledge of the legal aspects of this case. I would turn that issue over to Mr. Hammond.

Mr. DINGELL. Now, did CEA only rely on the August 31 Justice memorandum as the basis for withholding data from GAO?

Mr. GRAMLEY. We relied both on Department of Justice memo and advice from the Office of the Counsel of the White House.

Again, Mr. Chairman, we were not trying to withhold information. We were trying to supply as much information as we could. That is our position today.

Mr. DINGELL. There seems to be some difference on that particular point. Can you tell us what is CEA's policy today about providing data to the GAO?

Mr. GRAMLEY. These two requests for data are the only two that have come up. We would certainly want to be as accommodative as we could in every request of that kind. But we would have to consider each one individually.

Mr. DINGELL. You do not regard your routine functions as being exempt from requests either by GAO or by the Congress for information?

Mr. GRAMLEY. We do not.

Mr. DINGELL. Do you agree with Justice that unless the President claims executive privilege, you cannot withhold data from a congressional committee?

Mr. GRAMLEY. That would be a legal issue on which I would not pass judgment.

Mr. DINGELL. Now, yesterday Mr. Gould of the CEA——

Mr. GRAMLEY. Mr. Gould is here with me this morning.

Mr. DINGELL. Sir?

Mr. GRAMLEY. Mr. Gould is here with me this morning on my right.

Mr. DINGELL. Let me raise this: You have a policy responsibility inside of the Council of Economic Advisers, do you not?

Mr. GRAMLEY. We do.

Mr. DINGELL. What would be your position as a policy matter with regard to the question just asked, and I will repeat, do you agree with Justice that unless the President claims executive privilege, you cannot withhold data from a congressional committee?

Mr. GRAMLEY. As a general matter, we try to be as responsive as we can be to congressional inquiries. We send documents regularly up to Congress. We testify before the Congress. We talk with congressional staff, with Members of the Congress. We try to be as accomodative and as open as we can be. We would not withhold information unless we were told to do so on advice of counsel.

Mr. DINGELL. You would——

Mr. GRAMLEY. We would not withhold any information unless we were advised by counsel to do so.

Mr. DINGELL. By counsel or by the President?

Mr. GRAMLEY. Well, the counsel would communicate advice to us.

Mr. DINGELL. What I am trying to figure out is what is your posture; is it the counsel who executes the executive privilege or is it the President?

Mr. GRAMLEY. That is not our function.

Mr. DINGELL. Sir?

Mr. GRAMLEY. That is not our function.

Mr. DINGELL. You don't have a policy down there on this matter?

Mr. GRAMLEY. We do indeed. We don't invoke executive privilege.

Mr. DINGELL. You do not?

Mr. GRAMLEY. We do not. We have not in this case.

Mr. DINGELL. You have not. Do you know who it is that sets for Executive privilege?

Mr. GRAMLEY. It is my understanding that only the President can do that.

Mr. DINGELL. Very good. I am curious why was this information request laid before the Council if you were desirous of being cooperative?

Mr. GRAMLEY. As a general matter, the communications of policy advice from the chairman of the Council of Economic Advisers to the President might on some occasions at least, be considered material over which the President would wish to claim executive privilege. We wanted first to see what the rules of the game were. We have no legal counsel in the CEA. So we asked the Office of the White House Counsel what we should do.

Mr. DINGELL. The Chair yields.

Mr. FINNEGAN. In this case, the materials that the GAO were asking for, as I understand it, were models, the analysis, and a great deal of memoranda. As I read the documents from the GAO, there was no reference to any memoranda to the President, himself, but the supporting documents for the model.

Is there any reason why you would have to seek advice on providing that information to the GAO?

Mr. GRAMLEY. We simply wanted to get the signals straight in an unprecedented case of this kind.

Mr. DINGELL. Gentlemen, this is a question of Mr. Gramley and I understand Mr. Gould is here.

Yesterday, Mr. Gould of the CEA provided to our staff a number of documents relative to this matter. In his covering letter he cited these materials, "represent in substance the complete record of CEA's activities during the coal strike."

Could you tell us, Mr. Gramley or Mr. Gould, what is meant by the words "in substance"?

Mr. GOULD. I believe, Mr. Chairman, that what we gave you yesterday, as I indicated in the letter, were to the best of our knowledge—we did search every file that I am aware of—all memoranda except those to the President. We did not give you notes or drafts largely because they were either superseded by the final documents or were unintelligible, undated, and otherwise not useful. We are not withholding those from you. They were not useful.

I believe the words "in substance" were meant to convey to you that as far as I know, that is on paper the complete activities of the Council.

Mr. DINGELL. The words, then, "in substance" are not qualified?

Mr. GOULD. No, sir, I don't believe they are.

Mr. DINGELL. Are there any other documents in the CEA files that are not provided to us?

Mr. GOULD. Not pursuant to your request so far as I know.

Mr. DINGELL. Not pursuant to the request of the committee.

Now the GAO believes there are memoranda between CEA and DOE. I do not believe such documents were included in the enclosure. Were there such documents, memoranda, between CEA and DOE?

Mr. GOULD. Mr. Chairman, we have gone through, as I said, all files I am aware of, and we found one memorandum which is in the pile that we submitted to you from David Munro, member of the staff to the coal group, which included DOE, as we understand it.

To the best of our knowledge, as of our review over the past few days, we found no others. I am prepared to go back and take another look, but I am not aware of any other memos.

Mr. DINGELL. Now, I assume, then, you will be making available to the GAO the same information that you made available to the committee?

Mr. GOULD. We are fully prepared to do so.

Mr. DINGELL. Gentlemen, either Mr. Gramley or Mr. Gould, can you inform us why the CEA undertook a model which would predict the worst case scenarios since the Bureau of Labor Statistics were providing data weekly on unemployment? And I used the word w-e-e-k-l-y.

Mr. GRAMLEY. Mr. Chairman, in running our model we used both optimistic assumptions and pessimistic assumptions. And we spelled out, as the files will indicate, there are computer runs, for strikes of different length, for both optimistic and pessimistic assumptions.

The principal difference in the assumptions underlying those two cases was the quantity of coal deliveries. The pessimistic assumption was that coal deliveries would drop back to 300,000 or thereabouts as they had been early in February.

As Mr. O'Leary testified this morning, it was a concern in our mind, a fear, that deliveries might in fact drop back to that level if violence erupted on a larger scale.

Mr. DINGELL. Gentlemen, can you advise me with regard to the scenarios, what was the probability of the worst case scenario?

Mr. GRAMLEY. We did not know how to assign a number, a numerical probability, of one-fourth or a third or a tenth. We regarded it as a low probability outcome.

But as I indicated in my testimony, I think it is important for the Government to prepare for low probability events that have a very serious potential consequence.

Mr. DINGELL. I apologize——

Mr. O'LEARY. Mr. Chairman, can I help you with that?

Mr. DINGELL. Sure.

Mr. O'LEARY. You may recall that I have had a fairly long history of experience with the coal industry and with its labor unions.

Mr. DINGELL. We have had a good bit of experience with worse cases, too.

Mr. O'LEARY. Yes, Mr. Chairman, now that you mention it—much of it here.

Mr. Chairman, I think that one or two serious incidents would have taken the heart out of the people that were transporting the coal from out of the ECAR region, into the ECAR region. I think it was altogether possible that that imported coal could have dried up literally overnight had there been just a few examples of violence on that movement.

Consequently, I don't think that the worst case analysis was by any means far fetched. Indeed, one of the concerns that I had when I appeared before your committee in the middle of that strike and shared with you was that a discussion of the coal movement might indeed trigger such events and kill the very solution to the power supply situation that we were trying to develop at that time.

So I think that we were quit prudent in using a worst case scenario because it was always just around the corner should violence have erupted.

Mr. DINGELL. Mr. O'Leary, in your answer to question 11, you state CSC's efforts on the EEMIS was not deemed adequate. Nevertheless, they were paid $121,000 or two-thirds of the contract price despite this inadequacy and despite the fact that only one-half of the contract period had expired.

Several questions now:

What was the inadequate work and when was its inadequacy determined?

Mr. O'LEARY. Mr. Chairman, Hazel Rollins is prepared to go into that area and she is with us.

Mr. DINGELL. We will be delighted to hear from her.

Miss Rollins?

Ms. ROLLINS. Actually, the contract really belongs in EIA and Mr. Fischer will be the lucky gentleman to respond.

Mr. DINGELL. Mr. Fischer?

Mr. O'LEARY. Mr. Fischer will be even more delighted, Mr. Chairman.

Mr. DINGELL. I might observe I have not seen such an adroit shift of questions from participant to participant since the days when the Secretary of the Treasury and General Counsel for the Treasury were at Ways and Means. My dad was a member of that body some 40 years ago and the question finally resolved itself into Madam Perkins' lap.

Mr. FISCHER. My name is C. William Fischer, Deputy Administrator of the Energy Information Administration (EIA).

In May of this year the Deputy Secretary assigned responsibility for the development of the Energy Emergency Management Information System to the Energy Information Administration and ordered that adequate resources be provided to the EIA to develop a program plan.

In June of this year, in order to carry out that responsibility, we entered into a contract with the Computer Services Corp. in the negotiated amount of $187,000.

The purpose of this contract basically was to provide a draft outline for the program plan, to prepare a preliminary requirements survey, and to draft alternatives for a systems development

concept which would include probably cost requirements for those alternatives, a scheduling of tasks, and so on.

As the contract got under way, there were a number of deliverables that were required. The first deliverable was an outline of the work to be accomplished under the statement of work. This was delivered and the amount of money allocated to that was about $15,000. The outline was delivered on the 18th of June and it was reviewed by our contract monitoring officer and found to be adequate and satisfactory for the work to continue.

After that we were in constant surveillance of the work in progress under the contract and had a series of meetings with the contractor as it continued, on about two week intervals.

I think many of the contacts were more frequent than 2 weeks. There were individual draft chapters of the report that were to be provided through the months of July and August.

In July we had a joint review of this contract by our own technical project officers and also technical project officers from the Controller's office in the Department.

In July it appeared that the draft chapters of the work were not coming in in a satisfactory manner and we notified the Controller that steps were needed to correct the conduct of the work under this contract.

One of the steps we believed was needed was to have a restructuring of the contractor's activity and it is my understanding, such a restructuring was ordered. But it became clear that in the course of the continuation of the work on the rest of the chapters of the contractor's report, that adequate progress was not being made. So we moved to terminate the contract.

As I said, the contract was initially negotiated in the amount of $187,000 and we terminated the contract during the month of September. We actually moved in August to terminate but the process of contract termination took us into September. The amount of money actually expended on this contract was $121,000. There was value received from this contract for the $121,000 spent.

Some of the preliminary system design concepts were used, some of the trade-off analysis work that was provided by the contractor was used, some of the documentation, and some of the technical analysis of detailed systems issues which we received from the contractor.

So the $121,000 taxpayer's money was not traded, for nothing, but in fact there was substantial value received for this. We saved $66,000 against the initially negotiated level or about 35 percent of what would otherwise have been spent. The work was completed by using in-house personnel—our own DOE personnel. The program plan for the Energy Emergency Management Information System was published and, yesterday, public hearings on this plan were completed.

We held hearings in two major cities, including Washington. Those hearings are just now over and we are evaluating the comments of State, local, public, and private groups on that plan. That is the story of the CSC contract.

I should say, Mr. Chairman, that as in many contractual efforts, the fault is not ncessarily exclusively with the competence of the contractor, but from time to time when we move to use contractual

assistance and stay on top of it there are occasional instances where we find that the product is not comming up to the standard that we had specified and it is necessary to terminate the particular effort. That was the case here.

Mr. DINGELL. Now, in response to the question No. 9 of the subcommittee, Mr. O'Leary referred to several other contracts totaling about $20,000 concerning the revision of the Energy Emergency Planning Guide.

You then state the results of this effort were judged inadequate and DOE made the decision not to distribute the document in its present form.

Could you tell us, Mr. O'Leary, why they were inadequate and were the contractors paid?

Mr. O'LEARY. You know full well that I cannot. However, Ms. Rollins can since I think we have the right assignment now.

Ms. ROLLINS. Mr. Chairman, I am Hazel Rollings, the Deputy Administrator of the Economic Regulatory Adminstration.

You are correct that after the work was accomplished the determination was made that the guide in its format was not useful.

Much of what we learned about the guide in last winter's emergency taught us that a format that tended to rely on what the Federal Government could do was just not adequate.

Indeed as GAO had found, we too believed that if the handbook had been finished on time last year and if the contracting cycle had been swifter, we would have had a better product.

So, as we approached this winter and reviewed the format, we determined that particularly because there was new legislation about to be passed, the document should not go forward in its current format.

That is not to say that the work which was done on analyzing some of the measures at the State level, work done by the Argonne Laboratory, will not be used when we finally publish a handbook in late December.

Mr. DINGELL. I am curious. Did you contract for a document or for work which could be done to produce something that would not be publishable. Did You contract for research?

Ms. ROLLINS. We contracted for research to go into the guide, for graphic work to support the guide, and finally, work to edit it.

You may recall if you have seen the guide, it is a very hefty document. It needs a good format to make it usable.

On the issue of the information—as I pointed out in the Argonne contract, the analytical work will be used. Some of the graphic work—and I recall that was a $10,000 contract—will also be used when we put out a more complete guide late next summer.

In terms of what was actually not usable, it was the editing and the formatting work that was done on the guide that should have been published this winter.

Mr. DINGELL. Were the contractors paid in full?

Ms. ROLLINS. Yes, sir, they were paid in full.

Mr. DINGELL. Paid in full?

Ms. ROLLINS. That is correct.

Mr. DINGELL. Would you explain to me why they were paid in full?

Ms. ROLLINS. Because the work as ordered called for the format which was presented to us by the contractor. What happened, of course, was that in the contracting cycle, early on before we had an opportuity to look at how the guide was used during last winter, a format had already been requested.

Now, if somebody had been a bit brighter, or known very early on how the States were going to react to the guide, we would have requested another format. However, to be frank, events overtook us, and our plans were made very early in advance, well before we realized the guide in its format had great difficulties.

Mr. DINGELL. Now, was this a sole source contract?

Ms. ROLLINS. One was a sole source contract, one was for work performed by a national lab, and one was competitively awarded.

Mr. DINGELL. Can you explain to me why these were sole source contracts?

Ms. ROLLINS. I would be happy to provide it for the record.

Mr. DINGELL. Could you advise me what were the justifications here then?

Ms. ROLLINS. I would also have to provide that for the record.

Mr. DINGELL. Would you gather that together?

Ms. ROLLINS. I certainly will.

[The following information was received for the record:]

JUSTIFICATION FOR

NON--COMPETITIVE PROCUREMENT

I recommend that we negotiate solely with Systems Consultants, Inc. (SCI), Washington, D.C., for the professional services described herein.

Description of Services to be Procured:

The attached Statement of Work will provide the Short Term Emergency Planning Division of the Office of Regulations and Emergency Planning (STEP/REP), Economic Regulatory Administration with:

A Near Term Overview Plan

A Multi-Year Program Plan

FY 78-79 Plans Implementation

Procurement history, estimated future requirements, and long range procurement objectives:

The Short Term Emergency Planning Division was formed subsequent to the activation of the DOE from personnel previously detailed to the staff of an Interagency Task Force on Winter Energy Emergency Planning and elements of offices transferred to DOE from the Department of Interior. Thus, there is no STEP procurement history for similar services. Due to staffing levels imposed, STEP is unable to recruit the requisite personnel to perform the necessary analyses and develop the plans, systems and documents proposed for this procurement. Efforts will be made to cross train assigned personnel in these specialized disciplines. However, for the interim, procuring these products by contract is the only feasible method.

It is anticipated that a competitive procurement will be sought for a reduced level of effort commencing January 1, 1979, through September 30, 1980. For the long range (FY81 and beyond) it is planned to phase out use of contractors for these activities. One of the products to be obtained from

this procurement is recommendations for staffing and training for the FY 79-82 period.

Estimated Costs:

This work will entail eighteen person months of effort over a eight month period, commencing June 1, 1978, and concluding December 31, 1978. It is estimated that $99,500 of FY 78 fund will be required.

Schedule Requirements

As indicated earlier the STEP Division was formed subsequent to the DOE activation from members of a task force and elements from the Department of Interior. No plan was ever developed for STEP. In December 1977, the Nation began the longest work stoppage in history in the coal industry and all STEP personnel were fully committed to coordinating the Federal response to the coal emergency.

The coal strike did not end until late March 1978. STEP is now faced with revising the Energy Emergency Planning Guide, developing Emergency Natural Gas and Electricity Operating Plans, improving and relocating the Energy Emergency Center, defining and initiating development of the Emergency Management Information System, and numerous additional tasks with a staff of ten professionals and three support.

The STEP staff must revise the Energy Emergency Planning Guide for FY79, so that states and local jurisdictions will have time to develop the resource requirements prior to the 1978-79 winter. This action must be completed by September 30, 1978, because interagency exercises testing the plan will begin October 1, 1978. The Federal Preparedness Agency (FPA) and other preparedness agencies require this lead time deadline.

Staff resources are not available for both long range STEP planning and current activities. Normally, it takes 4-5 months to process a competitive contract and this does not allow sufficient time to meet imposed deadlines.

Exclusive capability:

Although there are other companies that have the necessary expertise, SCI is the only known firm qualified to perform the listed tasks within the required time frame. This is supported by the following:

- SCI has demonstrated their ability to develop sound management planning concepts and program plans on several prior and current DOE contracts. These include:
  - The development of a multi-year program plan for the Division of Solid Fuels Mining and Preparation (Contract #ET-78-C01-6075)
  - The development of Environmental Assessment program plans for the Office of Technology Impacts, ASEV (Contract #EE-77-C01-6075)
  - The development of Solar Heating and Cooling Demonstration program plans for Argonne National Laboratories (Contract #31-109-38-4192)
- SCI's prior experience in implementing certain aspects of DOE's Policy and Program Planning System (PPPS) for the Office of Program Management Support (OPMS) has afforded SCI with a unique understanding of the implementation procedures of DOE's planning process. If the contract were awarded to any other known firm it would require 2-3 months for it to obtain the necessary experience. This would cause ERA/STEP to fail to meet its legislatively mandated short term planning responsibilities.

Other

The Division of Short Term Emergency Planning is responsible for a critical element of the Nations' energy program, short term emergency planning. The importance of this planning is evidenced by the past winter's natural gas shortage and this winter's coal strike. The planning support being addressed by this procurement is vital to a quick, effective start-up of the program. It is not possible to advertise competitively and be responsive in the time frame required

of STEP, to its planning requirements. Thus, this sole source action is needed.

The award of this sole source procurement to Systems Consultants, Inc. is considered critical to an early and sound build-up of STEP's programs and the development of a firm base for the implementation of these near and mid-term activities.

Emergency energy planning and program implementation is vital to our national well being. Thus, we believe this activity warrants quick and special attention and should not be required to proceed through a formal, competitive contract process.

In summary, STEP needs to move quickly and effectively to consolidate and build its program/project position to serve the Nation's emergency energy planning and preparation requirements through: plans implementation and project management actions.

SCI, due to direct involvement and knowledge and experience in these matters, and availability of appropriate professional staff is uniquely able to provide the products required in a cost effective manner.

In summary, STEP needs to put immediate attention on the matters of program plans, near and multi-year, and FY80 budget documentation. SCI, through experience, knowledge, performance and availability of the appropriate professional staff is uniquely able to provide the products needed by STEP in the time required.

Recommend Approval:

Barry Yaffe 5/2/79

Barry Yaffe, Director
Short Term Emergency Planning
Division
Office of Regulations and
Emergency Planning
Economic Regulatory Administration

-7-

CONCUR: Tom Keefe signed original

Thomas S. Keefe
Procurement Advisor
Office of Program Support
Directorate of Procurement
and Contracts Management

APPROVED: Douglas G. Robinson

Douglas G. Robinson
Assistant Administrator
Office of Regulations
and Emergency Planning
Economic Regulatory Administration

Mr. DINGELL. I have a recollection that about a year ago Mr. Alm put forth a memorandum suggesting no more sole source contracts. Was this action within the purview of that memorandum?

Mr. O'LEARY. Mr. Chairman, I just can't conceive that that is the case. The Department has a very, very high number of sole source contracts that are well justified. We have a board that assists us in these matters.

There are legal reviews of each of these contracts. It would simply cripple the work of the Department if we were for one reason or another not to be able to avail ourselves of sole source.

I would like Mr. Fygi to expand on that for you. He has a long acquaintance with this problem.

Mr. FYGI. That is what happens when you try to whisper something in his ear.

The grounds for sole source awards, at least during the period when I actively participated on the FEA's Award Review Board, were fairly thoroughly scrutinized and included the judgment that as a factual matter a particular contractor was the only source for a particular product that met the requirements that the agency had to deal with.

Now, there is a lot of additional folklore that in the main is designed to assure that the legitimacy of such a finding in terms of a body of decisional law, in the decisions of the Comptroller General, that further constrains agencies' latitude in making that finding.

I would add, however, that given the volume of contracting work in the Department of Energy, it is not necessarily the case that each individual contract is reviewed by lawyers in my office.

But the procurement operations people have available to them counsel on request to advise them as to the appropriateness of any justification that they may be faced with.

Mr. O'LEARY. Mr. Chairman, having said that, I want to point out that it is the policy to minimize the use of sole source contracts to get its work done. But we must have some minimal level of reliance upon such contracts.

Mr. DINGELL. I find that comforting. However, I observe in your schedule one submitted to this committee—rather that the GAO submitted to this committee—that there are 13 contracts relating to DOE contingency planning.

I observe that the first, American Management Systems, is an add-on to an existing contract. The next two are sole source. The next one is purchase order, which for all intents and purposes is sole source.

I come down and I find one to National Oceanographic and Atmospheric Administration—that is an interagency agreement—which for all intents and purposes is sole source. Then I observe the next four are sole source, followed by one in which there is a minicompetition.

I am aware of minisecurities, but I am not aware of minicompetitions. The next three are sole source.

I observe no competition or no competitive bidding.

Mr. O'LEARY. I would hazard, Mr. Chairman, this is because of the extreme pressure that we were putting on the system to produce the results of these contracts. Ms. Rollins ought to expand upon that.

Ms. ROLLINS. I can once again only speak for the ERA. In reviewing the contracting cycle for fiscal year 1977, you are quite correct.

As a matter of fact, I am not very proud of the ERA's effort, but I think as Mr. O'Leary indicates we were under tremendous pressure then to respond to emergencies. Out of nine contracts we let, seven were sole source.

In reviewing the data for fiscal year 1978, we have improved greatly and, in fact, only about 50 percent of the contracts let in the emergency preparedness area were sole source.

I might add that with regard to that interagency agreement with NOAA, funds in fact never moved from DOE into NOAA. In point of fact, we did not go forward with that effort.

Mr. DINGELL. I do observe that of these contracts, I find contract dates are listed for five, and the first of which is add-on to existing contract, one is purchase order, and one is interagency agreement, all of which are August 1977, November 1977, November 1977, November 14, 1977, and October 1977, which indicates to me that that is fiscal 1978, with the possible exception of the first.

I assume that since the last ones down here are current contracts, that they are for either fiscal 1978 or possibly for 1979.

Ms. ROLLINS. No; we have not, sir, let any contracts yet in the ERA for fiscal year 1979. Basically, the reason is that we believe a great deal needs to be done to improve our procedures.

I, too, am very much concerned. First, about the great numbers of contracts which in the past were managed by so few people. Second, about what appears to be a duplication of effort, sometimes across program lines.

We have set up a very stringent procedure for approving and also managing contracts this fiscal year. Therefore, none has yet moved to be processed.

Mr. O'LEARY. Ms. Rollins, I think it is also appropriate to point out when the money that went into those contracts the chairman just recited for us was received by what was then FEA. I think they came about as a result of a supplemental that was available to us in April or May.

Ms. ROLLINS. That is correct. With regard to the flurry of contract movement at the end of the fiscal year, that resulted in effect

because we received our supplemental so late in the year and it took us that much time to move the contracts through the process.

Mr. DINGELL. Now, I observe in the list of contracts that last winter DOE signed a contract with Jack Faucett Associates to prepare a handbook to be used by State or industrial officials. That, I observe, was also a sole source contract.

Due to contracting delays, the handbook was not ready for use in the winter. Is there an explanation for this event?

Ms. ROLLINS. Yes; there is. But I think you have got the fiscal years confused there, as I often do.

The Faucett effort in fiscal year 1977 was contracted for in an amount that I recall was less than $40,000.

Mr. DINGELL. $25,000.

Ms. ROLLINS. $25,000. That is the document that was certainly up to snuff both in terms of its quality and its focus in trying to let the public understand who within the ERA had responsibility for each of its major emergency programs.

As has been indicated before, because we went into the Department of Energy and fell upon a new contracting or procurement procedure, we could not move that contract through final culmination. That was the reason for the delay in the product.

With regard to the Faucett contract, which you see now before you for fiscal year 1978, it is correct that the amount is in excess of $100,000. However, it contemplates additional tasks to be performed and indeed will be ready by the end of December as I earlier indicated.

Mr. DINGELL. Could you, Mr. O'Leary, submit to us the guidelines of the Department of Energy for sole source contracting, and in each one of the instances of the contracts give us justification for it?

Mr. O'LEARY. I would be pleased to, Mr. Chairman.

[Testimony resumes on p. 263.]

[The following group of justifications referred to was received for the record:]

SOUL SOURCE CONTRACTING

The Department of Energy uses the attached guidelines and procurement regulations for sole source contracting.

The attached sole source justifications are for those contracts requiring that a justification be prepared. They do not include justifications for work performed by the National labs or task orders.

MEMORANDUM TO THOSE ON THE ATTACHED LIST

FROM: ROBERT LAW Robert W. Law
PROCUREMENT ADVISOR
PROGRAM SUPPORT OFFICE

SUBJECT: NONCOMPETITIVE AND UNSOLICITED PROPOSAL JUSTIFICATIONS

Federal Procurement Regulations (FPR) stipulate that negotiated procurements shall be on a competitive basis to the maximum practical extent. There may be circumstances, however, in which only one source can satisfy a particular programmatic requirement. In such a circumstance, a written justification setting forth appropriate rationale to support a recommendation for acquisition on a noncompetitive basis shall accompany the request for procurement.

Enclosed for your guidance in preparing justifications, i.e., noncompetitive and unsolicited, are general instructions and recommended formats. Also enclosed is a DOE Draft Order 4210 which prescribes DOE policies and procedures for unsolicited proposals. Your attention is especially directed to Page 1 of Attachment 2 of the Draft Order regarding evaluation factors and determinations in preparing a justification for acceptance of an unsolicited proposal.

You should note the apparent conflict in regulation citations. It is suggested that you use ERDA citations until such time that DOE regulations are promulgated. Also, the ERDA regulations which implement the FPR are more explicit and should be more helpful in your preparation of the required justifications.

Your cooperation in assuring compliance with the justification requirements would be appreciated.

Enclosures:
1. Justification and Noncompetitive
   Procurement Instructions and Formats
2. DOE Draft Order 4210

43-130 O-79-13

1 JUSTIFICATION FOR NONCOMPETITIVE PROCUREMENT

Contractual Procurements

This section provides information for justifying noncompetitive procurement as opposed to the usual competitive method of procurement. It designates the contractor recommended for the negotiation process; indicates services to be provided and the unique or proprietary feature involved in the procurement; and provides the reasons why other firms could not provide the required services. Although "negotiated procurement shall be on a competitive basis to the maximum practical extent" and "reasonable competition, shall be obtained in making small purchases in excess of $500," there are circumstances in which one source is exclusively capable of performing the work within the time required and at reasonable prices. This situation might be owing to experience, specialized facilities, time constraints, technical competence, or availability of funds. In such circumstances, the requesting program unit may conclude that only a specific source can perform the work and, therefore, recommend that a contract be negotiated with only that source. The recommendation shall be in writing and shall be contained in a separate document entitled "Justification for Noncompetitive Procurement," which shall state the reasons for the noncompetitive procurement. The rationale for this recommendation must be in accordance with ERDA PR 9-3.805-51. Figure E-1 presents a recommended format with suggested data for use in this justification.

Grants

See ERDA Federal Assistance Manual (FAM), Section 211, when grants are to be awarded without competition.

Sample Justification for Noncompetitive Procurement

partment of Energy
ashington, D.C. 20545

CONTRACTOR:

VALUE:

SUPPLIES/SERVICES:

I recommend that negotiations be conducted only with (source) for the supplies and services described herein in accordance with ERDA Procurement Regulation Section 9-3.805-51.

1. Description of supplies or services to be procured

A brief, general, nontechnical description and statement of the general application and particular significance or specialized character of the procurement.

A description of all associated supplies or services, e.g., technical data, reports, engineering services, and so forth to be procured.

2. Procurement history, estimated future requirements, and long range procurement objectives

Brief statement of the technical and contractual evolution of the supplies or services being procured from initiation to present status.

Brief statement as to whether the work is a continuation of previous effort performed by the proposed contractor.

Reference should be made to any advance planning information previously prepared or furnished, together with information with respect to any changes proposed in the present justification which represents a departure or modification of prior procurement plans, including a statement of the effect of the changes, if any, on scheduled milestones.

Brief statement as to what actions have been taken to develop competition and eliminate a noncompetitive situation in future procurements of the proposed supplies or services.

Sample Justification for Noncompetitive Procurement (Cont'd)

Estimated cost

The estimated cost of the procurement and a brief description of assumptions made and data used by the initiating program office to develop the estimate.

The estimated cost listed by fiscal years.

Whether the proposed contractor or the Government has a substantial investment of some kind that would have to be duplicated at Government expense by another source.

4. Schedule requirements

The basis for establishing schedule requirements.

An explanation of the urgency, if any, of the requirement. Describe why the schedules are critical and why only the proposed contractor can meet them.

Describe what significant cost savings or other benefits could result if schedules could be relaxed and whether competition could thus be obtained.

5. Exclusive capability

Does the proposed contractor have personnel who are considered unquestionably predominant experts in their particular field?

What prior experience of a highly specialized nature does the source exclusively have that is vital to the proposed effort?

What facilities and test equipment does the source exclusively have that are complex or specialized and vital to the effort?

Is competition precluded because of the existence of patent rights, copyrights, secret processes, trade secrets, technical data, or other proprietary data?

What other capability and capacity does the proposed contractor have that is necessary for the specific effort and makes it clearly the only source that can perform the work on the required time schedule without incurring clearly unreasonable costs?

Sample Justification for Noncompetitive Procurement (Cont'd)

Other

If lack of drawings or specifications is a constraining factor, why is the proposed contractor clearly best able to perform under these circumstances? Why are the drawings and specifications lacking? What is the lead time required to get drawings and specifications suitable for competitions?

Are parts or components being procured as replacement parts in support of equipment specially designed by a manufacturer, where data available are not adequate to assure that the parts or components obtained from another source would perform the same function?

In light of these facts, I consider the proposed contractor the only practical source for the required scope of work and recommend authorization of negotiations without further competition.

(Project Manager)
(Title)
(Division and Branch)
(Date)

Concur: Date

Division of Procurement_____ _____

Office of General Counsel_____ _____

Conditions:

Approved for noncompetitive procurement in accordance with ERDA PR 9-3.805-51:

_____ _____
_____,Director Date
Division of_____

ERDA Procurement Regulations 9-3.805-5

§9-3.805-51 Noncompetitive procurement.

(a) While negotiated procurement shall be on a competitive basis to the maximum practical extent (FPR 1-3.101(d)) and reasonable competition shall be obtained in making small purchases in excess of $500 (FPR 1-3.603-(1)), there are circumstances where one source (or groups of sources) has exclusive capability to perform the work within the time required and at reasonable prices, e.g., by reason of experience, specialized facilities, or technical competence. In such a circumstance, the initiating program office may conclude that only one source (or groups of sources) is qualified to perform the work and, therefore, recommend that a contract be negotiated only with that source or group (in the case of a "group sole source" situation, a justification is required for limiting competition to that group and for the allocation of work among members of the group). The recommendation shall be in writing and will be contained in a separate document entitled, "Justification for Noncompetitive Procurement" and shall examine the reasons for the procurement being noncompetitive in accordance with paragraph (c) below.

For a noncompetitive procurement, an approved justification shall be attached to the procurement request when the request is sent to a contracting officer for action.

A justification for noncompetitive procurement is also required where "new" procurements (i.e., outside the contractual scope of work) are initiated through modifications to existing contracts.

If a noncompetitive procurement has been justified and approved, in accordance with this section, as a part of an annual procurement plan and such plan has been reviewed and approved, it will not be necessary to resubmit the justification for approval at the time each individual procurement action is processed. Such justifications shall be made a part of the permanent contract file (see ERDA-PR 9-1.313).

(b) The provisions of this regulation do not apply to:

(1) procurements of $500 or less;

(2) acquisitions from or through other Government agencies;

(3) procurements of utility services where the services are available from only one source.

(4) subscriptions to periodicals;

(5) procurements resulting from program opportunity notices, ERDA-PR 9-4.57, or program research and development announcements, ERDA-PR 9-4.58 (which are forms of competitive solicitations and subject to requirements stated in the respective regulations);

(6) procurements subject to the procedures set forth in ERDA-PR 9-4.51;

(7) procurements subject to the procedures set forth in ERDA-PR 9-4.9;

(8) contracts for management and operation of the major laboratories and production facilities;

(9) onsite service contracts of a continuing nature; or

(10) contracts which are subject to separate justification for recompetition or extension.

(c) Justification for noncompetitive procurement.

(1) The document entitled "Justification for Noncompetitive Procurement" shall examine the reasons for the procurement being

noncompetitive and shall contain, in the first sentence of the document, an appropriate recommendation (e.g., "I recommend that negotiations be conducted only with (name of entity) for the supplies and services described herein.")

(2) Each justification shall set forth enough facts and circumstances to clearly and convincingly establish that competition would not have been feasible or practicable. The following format includes considerations to be made in preparing the justification.

(i) Description of supplies or services to be procured:

A. A brief, general, nontechnical description and statement of the general application and particular significance or specialized character of the procurement.

B. A description of all associated supplies or services, e.g., technical data, reports, engineering services, and so forth to be procured.

(ii) Procurement history, estimated future requirements, and long range procurement objectives:

A. Brief statement of the technical and contractual evolution of the supplies or services being procured from initiation to present status.

B. Brief statement as to whether the work is a continuation of previous effort performed by the proposed contractor.

C. Reference should be made to any advance planning information previously prepared or furnished, together with information with respect to any changes proposed in the present justification which represents a departure or modification of prior procurement plans, including a statement of the effect of the changes, if any, on scheduled milestones.

D. Brief statement as to what actions have been taken to develop competition and eliminate a noncompetitive situation in future procurements of the proposed supplies or services.

(iii) Estimated cost:

A. The estimated cost of the procurement and a brief description of assumptions made and data used by the initiating program office to develop the estimate.

B. The estimated cost listed by fiscal years.

C. Whether the proposed contractor or the Government have a substantial investment of some kind that would have to be duplicated at Government expense by another source.

(iv) Schedule requirements:

A. The basis for establishing schedule requirements.

B. An explanation of the urgency, if any, of the requirement. Describe why the schedules are critical and why only the proposed contractor can meet them.

C. Describe what significant cost savings or other benefits could result if schedules could be relaxed and whether competition could thus be obtained.

(v) Exclusive capability.

A. Does the proposed contractor have personnel considered unquestionably predominant experts in the particular field?

B. What prior experience of a highly specialized nature does the source exclusively have that is vital to the proposed effort?

C. What facilities and test equipment does the source exclusively have that are complex or specialized and vital to the effort?

D. Is competition precluded because of the existence of patent rights, copyrights, secret processes, trade secrets, technical data, or other proprietary data?

E. What other capability and capacity does the proposed contractor have that is necessary for the specific effort and makes it clearly the only source that can perform the work on the required time schedule without incurring clearly unreasonable costs?

(vi) Other.

A. If lack of drawings or specifications are a constraining factor, why is the proposed contractor clearly best able to perform under these circumstances? Why are the drawings and specifications lacking? What is the lead time required to get drawings and specifications suitable for competitions?

B. Are parts or components being procured as replacement parts in support of equipment specially designed by a manufacturer, where data available is not adequate to assure that the parts

or components obtained from another source would perform the same function?

(d) Review and approval. The justification shall, as a minimum requirement, be reviewed and approved as follows: (In the case of cost sharing contracts, the contractor's shared amount will be included in the dollar amounts specified.)

(1) Noncompetitive procurements initiated by headquarters.

(i) Approval. The senior program official shall approve a justification for noncompetitive procurement in excess of $5 million unless otherwise designated by the head of the agency. The senior program official or designee may approve a justification for noncompetitive procurement in excess of $500 but less than $5 million.

(ii) Concurrence on justifications prior to approval shall be obtained from the designee of the senior program official and the senior procurement official in excess of $5 million, counsel in excess of $ million, or such lower amount as counsel may determine, and the designee of the senior procurement official, Headquarters, in excess of $500 but less than $5 million.

(2) Noncompetitive procurements initiated by field offices. Heads of procuring activities may approve justifications for noncompetitive procurement initiated by a field office up to the dollar limit of their delegated contracting authority. Approval and concurrence requirements below the HPA level shall be as the HPA deems appropriate; counsel shall determine the appropriate level for counsel's required approval and concurrence. Justification for noncompetitive procurement which exceed the dollar limit of the HPA's contracting authority, shall be submitted with HPA recommendation to the cognizant headquarters program office for approval in accordance with 9-3.805.51(d)(1).

§9-3.807-1 General.

The Head of a procuring activity, for contracts estimated to be within the limits of delegated authority, may, without power of redelegation, approve the findings required by FPR 1-3.807-1(b)(1)(ii)(C).

§9-3.807-3 Cost or pricing data.

(a) The certification requirements of FPR 1-3.807-3 need not be applied to cost-reimbursement type operating contracts and onsite service contracts of a continuing nature.

§9-3.808 Profit or fee.

P-06-77-6691
American Management

Justification for Non-Competitive Procurement

The development of options for preparation of a revised gasoline and diesel fuel rationing plan, due largely to the state of this Nation's energy situation, has been given the highest priority by the Administration. The White House has directed the FEA to analyze the issues involved in the new development effort and to present the available options no later than August 5, 1977. This represents an extremely compressed and abbreviated schedule for development. Because of these stringent time frame requirements, and the complexity of technical requirements of this development effort, it is deemed both necessary and appropriate to proceed with this request for contractual assistance on a sole source basis. A single contractor has been identified to perform the tasks associated with this request and this contractor is available to start work immediately.

American Management Systems, Inc. has completed a large amount of energy related work on contracts to FEA over the

past three years and is uniquely qualified to address the issues associated with the development of a new rationing plan. For example, AMS designed the operating procedures and helped implement the Old Crude Entitlements Program for the Office of Regulatory Programs at FEA. Working under an extremely tight deadline (regulations were not finalized until December 15 and the program had to be operational by December 28), AMS translated the program as specified by regulation into operational subsystems, set up all proper flow and entitlements calculation procedures, trained FEA personnel in how to operate the program, and provided staff support during the first cycle of entitlements calculations. As a result of this contractor's efforts, the Old Crude Entitlements Program was implemented on time, and entitlements were published in the Federal Register on January 10 (as specified by the Regulation.)

In the area of gasoline rationing, AMS has been involved in several projects which have given them unique experience in the analysis of rationing program alternatives. Initially, AMS conducted a gasoline market survey for the Cost of Living Council aimed at identifying the mechanisms active in the retail petroleum markets. Next, working for the Department

of Interior, AMS designed a comprehensive program for gasoline allocation which included a set of controls located at the refiner, distributor, and retailer levels. Part of this program was a proposal for a rationing scheme as one possible method for controlling gasoline consumption. Subsequently, AMS helped staff the 80-man interagency task force which wrote the petroleum allocation regulations. As part of this task force, AMS prepared a gasoline rationing plan detailing alternative uses of coupons as an allocation mechanism. Finally, with regard to rationing, AMS was deepoy involved in the development of the rationing plan prepared as part of the EPCA requirement. Their responsibilities in this area included analysis of the operating alternatives available for the development; management support to the task force which developed the plan; various cost analyses relating to the plan's design; examination of the consumer impact of rationing.

All of these efforts have provided AMS with a great wealth of institutional knowledge appropriate to the current rationing development objectives. In addition to their critical specific experience in the area of gas rationing, the total energy project experience of this contractor demonstrates exceptional capabilities in performing highly time-sensitive projects for FEA, in working directly with FEA staff in a task force environment, and in providing an appropriate balance of both operational analysis and policy planning skills to energy projects.

P-06-77-5838
American Management

Need For a Revised Method For Determining Individual Allotments

Because of an intensive review of the driver license mechanism as specified in the rationing plan developed during 1976, the current Administration determined that the fraud potential and subsequent implications for program operation of using the driver license were too severe to be used. Subsequently, it was concluded by Dr. Schlesinger that an alternative mechanism for determining and dispensing individual gasoline and diesel fuel ration allotments had to be developed. The alternative mechanism chosen by Dr. Schlesinger is the vehicle registration system used by States. The purpose of this procurement request is to develop the system and the operational plan for using vehicle registrations to determine individual gasoline and diesel fuel ration allotments and to dispense same at coupon issuance points.

The development of a gasoline and diesel fuel rationing plan, of which the vehicle registration mechanism for determining individual ration allotments is a major feature, has been given the highest priority by the Administration. Dr. Schlesinger has directed the FEA to develop such a mechanism and produce a gasoline and diesel fuel rationing plan by October 30, 1977. This represents an extremely compressed and abbreviated schedule for development. Because of these stringent time frame requirements, and the complexity of technical requirements of this development effort, it is deemed both necessary and

appropriate to proceed with this request for contractual assistance on a sole source basis. A single contractor has been identified to perform the tasks associated with this request and this contractor is available to start work immediately.

American Management Sytems, Inc. has completed a large amount of energy-related work on contracts to FEA over the past 3 years and is uniquely qualified to address the issues associated with the development of a mechanism for using vehicle registrations to determine individual gasoline and diesel fuel ration allotments. For example, AMS designed the operating procedures and helped implement the Old Crude Entitlements Program for the Office of Regulatory Programs at FEA. Working under an extremely tight deadline (regulations were not finalized until December 15 and the program had to be operational by December 28), AMS translated the program as specified by regulation into operational subsystems, set up all proper flow and entitlements calculation procedures, trained FEA personnel in how to operate the program, and provided staff support during the first cycle of entitlements calculations. As a result of this contractor's efforts, The Old Crude Entitlements Program was implemented on time and entitlements were published in the Federal Register on January 10 (as specified by the Regulation).

In the area of gasoline rationing, AMS has been involved in several projects which have given them unique experience in the analysis of rationing mechanisms and issues. Initially, AMS conducted a gasoline market survey for the Cost of Living Council aimed at identifying the mechanisms active in the retail petroleum markets. Next, working for the Department of the Interior, AMS designed a comprehensive program for gasoline allocation which included a set of controls located at the refiner, distributor, and retailer levels. Part of this program was a proposal for a rationing scheme as one possible method for controlling gasoline consumption. Subsequently, AMS helped staff the 80-man interagency task force which wrote the petroleum allocation regulations. As part of this task force, AMS prepared a gasoline rationing plan detailing alternative uses of coupons as an allocation mechanism. Finally, with regard to rationing, AMS was deeply involved in the development of the rationing plan prepared as part of the EPCA requirement. Their responsibilities in this area included analyses of priorities for individuals and firms (businesses, nonprofit organizations, and Government organizations); analysis of other operating alternatives; various cost analyses relating to the plan design; examination of the consumer impact of rationing; and management support to the task force which developed the plan.

EM-77-C-01-8759
SRI International

Justification for the Selection
Of Stanford Research Institute

A. Background

In calendar year 1976, a Gasoline and Diesel Fuel Rationing Contingency Plan was developed under the provisions of Public Law 94-163, the Energy Policy and Conservation Act. On August 1, 1977, the Secretary for Energy directed the AA for ORP to review the Rationing Plan and to perform a critical analysis of all of its operational concepts and systems. Specific guidelines relative to effectiveness, timeliness, and ease of implementation were established by the Secretary. On October 31, 1977, the AA for ORP must present to Secretary Schlesinger the findings, conclusions, and recommendations of this review.

Because of the very short development time allowed for this effort, and its magnitude and scope, it is necessary to obtain assistance from contractors who have previous experience in the petroleum industry area -- especially gasoline rationing and the disciplines associated with the development and the implementation of a rationing plan.

B. Justification

The Stanford Research Institute (SRI) is especially qualified to accomplish the major tasks for which it will be responsible - "To Reduce the Implementation Lead Time for the Rationing Plan." This responsibility requires specific understanding of all of the systems and the operational concepts of the rationing plan, as well as the manner in which they impact other programs.

The personnel who would be assigned by SRI have relevant experience in all phases of activity necessary to complete this project and are able to respond quickly and effectively under emergency conditions. In addition to having undertaken a series of similar quick result studies for the Federal Energy Administration, the particular staff of this SRI project team has experience which includes policy analysis related to contingency and civil defense planning; comprehensive planning to minimize the effect of price increases on local economies; the design, test and evaluation of larger scale management information systems at federal, state and local levels, the application of operations analysis techniques; the performance of probability studies and statistical analysis; the modelling of crude oil supply; the performance of demand forecasts of retail sales of motor gasoline; the modelling of sales volumes of service stations; the performance of energy R&D studies relating to alternate fuel potential; and the development of methods suitable for analysis and planning of emergency operations.

43-130 0-79-14

EM-77-6-01-8760
Arthur Young & Co

1. Justification for the Selection

A. Background

In calendar year 1976, a Gasoline and Diesel Fuel Rationing Contingency Plan was developed under the provisions of Public Law 94-163, the Energy Policy and Conservation Act (EPCA). On August 1, 1977, the Secretary for Energy directed the AA for ORP to review the Rationing Plan and to perform a critical analysis of all of its operational concepts and systems. Specific guidelines relative to effectiveness, timeliness, and ease of implementation were established by the Secretary. On October 31, 1977, the AA for ORP must present to Secretary Schlesinger the findings, conclusions, and recommendations of this review.

Because of the very short development time allowed for this effort, and its magnitude and scope, it is necessary to obtain assistance from contractors who have previous experience in the petroleum industry area -- especially gasoline rationing and the disciplines associated with the development and the implementation of a rationing plan.

B. Justification

Arthur Young and Company is especially well qualified to develop by September 30, 1977, an interim conceptual system and operational plan that can be implemented within a maximum of 30 days and to perform as the integrating contractor for the more sophisticated and detailed plan which will be completed by November 1, 1977. Beginning with 1974, Arthur Young has accomplished major tasks in the development of the several iterations of the gasoline rationing plan. As a result, the company has substantial knowledge of the major issues relating to the rationing plan and the operational concepts upon which the current plan is based. Because of this knowledge, Arthur Young will be able to function both immediately and effectively in the contractor-integration role. Specific examples of the experiences of Arthur Young and Company in the development of previous rationing plans are as follows:

Arthur Young was a major contractor during the development of FEO's initial gasoline rationing plan during the Arab Oil Embargo. It performed much of the original planning in the entitlement, coupon distribution, and enforcement areas. Subsequently, the company was retained to assist FEA's Emergency Standby Capability Working Group with its 1975 refinement of the gasoline rationing plan. The scope of work was later expanded to include the conceptualization of two EDP systems related to coupon distribution. As a result of these major planning efforts, Arthur Young became very familiar with the ration plan subsystems and related studies being developed by other contractors, due to the inter-relationships between coupon production and distribution and the other elements of the plan.

Another key consideration which favors the selection of Arthur Young & Company as FEA's integration contractor is the diversity of its Washington Office staff. The management consulting practice of the firm is conducted by over 100 professional personnel who have a great variety of functional skills and programmatic experiences. The ongoing review of the gasoline rationing plan will be performed by outside contractors applying a number of technical specialities -- procedural design and analysis, EDP systems design and analysis, modelling, cost estimation, program implementation planning, etc. FEA's integration contractor must have personnel who can review and critically evaluate work being performed in these areas. The significant array of skills that are resident in the Washington Office of the company allows it to construct a project team which has the necessary tecynical expertise in the above functional disciplines, as well as in the gasoline rationing and related energy regulation programs.

EM-77-C-01-8761
Price Waterhouse

Justification for Sole Source Contract

The development of a revised gasoline and diesel fuel rationing plan, due largely to the state of this Nation's energy situation, has been given the highest priority by the Administration. The White House has directed the FEA to present a revised rationing plan no later than October 31, 1977. This represents an extremely compressed and abbreviated schedule for development. Because of these stringent time frame requirements, and the complexity of technical requirements of this development effort, it is deemed both necessary and appropriate to proceed with this request for contractual assistance on a sole source basis. A single contractor has been identified to perform the tasks associated with this request and this contractor is available to start work immediately.

The services of Price Waterhouse are being sought to revise two major components to the gasoline rationing system: (1) the use of the United States Postal Service (USPS) in distributing individual coupon allotments, and (2) reevaluating and revising entitlements and ration allotments to firms including the elements of the ration banking system pertaining to firms. All major issues needing resolution must be identified by August 31 and a completed plan developed by October 24. An interim draft must be completed by October 12 for Dr. Schlesinger's review. In view of the tight deadlines and high level interest in the project, Price Waterhouse is uniquely qualified to perform these tasks, both because of their knowledge and previous experience with these areas, and because of their in-depth familiarity with the existing gasoline rationing plan in its entirety. Starting with the original gasoline rationing effort in early 1974, Price Waterhouse was responsible for both developing and revising the concepts and procedures relating to the ration coupon redemption and banking systems. These concepts and procedures provided the method of rationing gasoline to all firms and specified how coupons were to be redeemed by refiners and gasoline suppliers.

Specifically, Price Waterhouse (PW) has performed the following tasks for the gasoline rationing plan:

1. Gasoline Rationing Coupon Redemption and Banking System

In early 1974, it designed a Gasoline Rationing Coupon Redemption and Banking System for the Federal Energy Office for use in the event that gasoline rationing was required. This significant engagement included the development of the conceptual system design and the preparation of detailed procedural guides for all system participants. As a final task, PW prepared an implementation plan for the system.

2. Update of the Gasoline Rationing Coupon Redemption and Banking System

As part of a working group within the Office of Operations, Compliance, and Regulations, PW updated the portion of the rationing program dealing with coupon redemption and banking. The revision involved reassessing basic assumptions, reevaluating procedures employed by the various participants on the program, and regenerating the procedural guides to reflect current thinking on the system. This effort included the preparation of a specification of requirements for procurement by the Government of ration banking central processing centers.

3. Design of a Coupon Resale Marketing System

PW was engaged to design a ration coupon resale market ("White Market") structure, an integral part of the gasoline rationing contingency plan.

4. Development of a Diesel Fuel Rationing Contingency Plan

PW recently developed this contingency plan for the Office of Regulatory Programs as required by the Energy Policy and Conservation Act of 1975. This involved development of the conceptual design, an analysis of major issues impacting the systems design, and the preparation of procedures and an implementation plan for the system.

5. Design of a Mandatory Allocation System Interfacing With the Coupon Rationing Program

PW developed an allocation system that would interface with the Coupon Rationing System. Included in this project was an analysis of the issue concerning the level of the petroleum distribution chain (i.e., wholesaler or prime supplier) at which the Allocation/Rationing Interface would take place. The report resulting from this project is part of the general documentation on the current Coupon Rationing System.

Because of their previous experience, PW will be able to immediately identify critical issues. PW will be able to meet the tight deadlines, while at the same time providing in-depth and substantive analysis of the problems. There will be no time lost because of a need to become familiar with the plan and the development work done to date.

PW's experience detailed above and PW's previously demonstrated ability to respond rapidly to FEA needs in a timely and substantive manner, particularly qualifies this firm to revise the ration entitlement and allotment plan for firms including the Ration Banking System, and to develop a plan for the use of the USPS in the distribution of coupons.

JUSTIFICATION FOR NONCOMPETITIVE PROCUREMENT

Procurement Request Number: JO1-78-Q074 ET-78-C-01-6459

Analytic Sciences Corp.

Contractor: The Analytic Sciences Corporation (TASC)

Value: $88,000

Supplies/Services: Program Support, Reports and Briefings

I recommend that negotiations be conducted only with The Analytic Sciences Corporation for the supplies and services described here in accordance with DOE Procurement Regulations Section 9-3.805.

Supplies and services to be procured: The contractor will provide program support services by assisting in: (1) the development of a framework for producing a comprehensive plan to be used in responding to petroleum related contingencies; and (2) the early stage development of a contingency response system to be used in the event of such contingencies. The total term of this contract will be eight months.

In connection with the first of the above tasks, the contractor will provide, within three months of approval of this procurement, a written report which identifies the roles and responsibilities of key actors, and recommends needed improvements in both the plan development and the plan implementation processes.

In connection with the second of the above tasks, the contractor will provide on-going professional assistance in the development of the contingency planning response system and in the review of the adequacy of DOE's system for monitoring and forecasting both the impacts of petroleum supply interruptions and the effects of invoking various response measures. As part of this task, the contractor will provide oral and written progress/deficiency reports as required throughout the five month duration of this task. In addition, the contractor will provide a preliminary design for a systems test of DOE's preparedness for petroleum related contingencies. Finally, within eight months of the approval of this procurement, the contractor will provide a written report summarizing their findings and recommendations in connection with the second task.

Background:

This procurement arises from statutory responsibilities of the Department of Energy as described in Section 102 of the Department of Energy Organization Act (P.L. 95-91):

> "(3) to provide for a mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid-, and long term energy problems of the Nation; and to develop plans and programs for dealing with domestic energy product and import shortages;...
>
> (8) to facilitate establishment of an effective strategy for distributing and allocating fuels in periods of short supply and to provide for the administration of a national energy reserve."

The immediate need for this procurement arises from expressed Presidential interest in preparedness activities for petroleum-related contingencies. To best achieve this objective, it has been concluded that DOE requires the assistance of a highly experienced, qualified firm with unquestionable credibility in national emergency planning which can provide an overall appraisal of U.S. government and DOE activities.

Cost Estimate:

The cost to the government of this procurement is estimated to be about $88,000. This estimate was established on the basis of judgments by Policy and Evaluation concerning the scope of work, the level of effort, the level of expertise required and the responsibilities involved in meeting the requirements of this procurement.

Schedule Requirement:

The schedule requires that the project be completed within eight months of commencement of the contract. Of prime importance is the deadline for the completion of the first task--assistance in the development of a framework for producing a comprehensive response plan; the schedule requires that this task be completed within three months of the commencement of the contract.

It is important that this contract be awarded in the near future. At the present time, key petroleum related contingency response measures are under development; these include programs such as the Strategic Petroleum Reserve and the standby crude and product allocation regulations. Without an improved comprehensive planning process, for which TASC assistance is considered essential, the development of DOE capability to effectively respond to petroleum contingencies will be hindered. Further, it is possible that the development of this plan could affect the development of the component response measures, since it would put these measures into perspective. Finally, the President has an expressed interest in this area; an appraisal of current efforts is due in a report to him in June, 1978.

Exclusive Capability:

Successful performance of the work required by this procurement depends upon the ability of the contractor to proceed rapidly into the substantive areas of the study with a minimum of learning time and with experienced manpower on hand and ready to go. The contractor's experience must include (1) experience in contingency planning in a large government

structure; (2) an understanding of the sensitivities and differing responsibilities in planning on an inter-agency basis; (3) the ability to develop a conceptual process for planning involving the evaluation of alternate responses; and (4) experience in systems management through the development cycle and the implementation phase. Further, it is critical that the contractor have such credibility and reputation that senior government officials would feel comfortable in relying on judgments made by its employees in areas concerning the security of the nation.

TASC is considered to be highly qualified in the field of analytical sciences and is a leader in evaluating the design and performance of systems and in designing system process improvements. It specializes in solving complex study problems, particularly those involving (1) the interaction and coordination of systems which have a number of significant actors and sub-systems; and (2) the development of assessment and analysis strategies. TASC has over twelve years experience performing for all levels of government over a wide range of studies including fuel conservation management, methodologies for energy exploration, environmental impacts of energy of development, and organizational and policy conflicts in natural resource management.

Additionally, TASC's capabilities include the knowledge and skills and reputation of the key individual who is expected to be the study director under this Procurement, Mr. Leslie Bray. Mr. Bray has

extensive expertise in the area of contingency planning as the former director of the Federal Preparedness Administration (Office of Emergency Preparedness) where he had government-wide responsibilities for preparing plans and policies for national emergencies ranging from economic crises to nuclear attacks. The major programs under his direction ranged from national stockpiles of strategic materials, industrial mobilization, civil devense, and national resource data, to research/development for forecasting of national shortages, priorities and allocations for materials, and NATO civil emergency planning.

TASC was selected after consultation with the Deputy Secretary, the major U.S. government policy officers responsible for contingency planning, as well as the Office of Management and Budget staff, who recommended Mr. Bray and his organization as singularly appropriate for this job.

In light of these facts, I consider the proposed contractor the only acceptable source for the required scope of work and recommend authorization of negotiations without further competition.

David Bloom DB

Concur: Joseph R. Pisto Date: 6/5/78

Division of Procurement

EJ-78-Y-01-4251
Analytical Science Corp.

JUSTIFICATION FOR NONCOMPETITIVE PROCUREMENT

Procurement Request Number: JO1-78-0073

Contractor: The Analytic Sciences Corporation (TASC)

Value: $10,000

Supplies/Services: Report and Briefings

I recommend that negotiations be conducted only with The Analytic Sciences Corporation for the supplies and services described herein accordance with DOE Procurement Regulation Section 9-3.805.

Supplies and services to be procured:

The contractor will provide, within six weeks of approval of this procurement, a written report that provides an overall appraisal of U.S. Government planning and preparedness activities for petroleum-related contingencies, with a particular focus on the activities within the statutory responsibilities of the Department of Energy. In addition, the contractor will also present oral briefings in support of this report to DOE policy officers and other government officials.

Background:

This procurement arises from statutory responsibilities of the Department of Energy as described in Section 102 of the Department of Energy Organization Act (P.L. 95-91):

"(3) to provide for a mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid-, and long-term energy

problems of the Nation; and to develop plans and programs for dealing with domestic energy product and import shortages;...

(8) to facilitate establishment of an effective strategy for distribution and allocating fuels in periods of short supply and to provide for the administration of a national energy reserve."

The immediate need for this procurement arises from a Presidential directive for interagency review of planning and preparednesss activities for petroleum-related contingencies and for a report to him from the Department of Energy by June 30, 1978. To best achieve this objective, it has been concluded that DOE requires the assistance of a highly experienced, qualified firm with unquestionable credibility in national emergency planning which can provide an overall appraisal of U.S. government and DOE activities.

Cost Estimate:

The cost to the government of this Purchase Order is estimated to be about $10,000. This estimate was established on the basis of judgments by Policy and Evaluation concerning the scope of the effort and responsibility involved in meeting the requirements of the purchase order.

Schedule Requirement:

The schedule requires completion of the report and briefings within six weeks. The procurement schedule is urgent in view of the requirement for a rapid appraisal of current efforts and development of a report to the President by June 30, 1978.

Exclusive Capability

TASC is considered to be highly qualified in the field of analytic sciences including the design and management of information services. It specializes in solving complex study problems.

Additionally, TASC's key individual who is expected to head up the work under this Purchase Order is Mr. Leslie Bray, who has extensive expertise in the area of contingency planning as the former director of the Federal Preparedness Administration (Office of Emergency Preparedness) where he had government-wide responsibilities for preparing plans and policies for national emergencies ranging from economic crises to nuclear attacks. The major programs under his direction ranged from national stockpiles of strategic materials, industrial mobilization, civil defense, and national resource data, to research/development for forecasting of national shortages, priorities and allocations for materials, and NATO civil emergency planning.

In light of these facts, I consider the proposed contractor the only acceptable source for the required scope of work and recommend authorization of negotiations without further competition.

David Bloom

David Bloom

Date: _____

Concur: J. D. Patton 4/17/78

Division of Procurement

EL-78-Y-01-5221
Egon Balas

JUSTIFICATION FOR NON-COMPETITIVE PURCHASE ORDER

CONTRACTOR: Mr. Egon Balas

VALUE: $9550

SUPPLIES/SERVICES: SPR Deterrent and Drawdown Policy Study

I recommend that negotiations be conducted only with Mr. Egon Balas for the supplies and services described below in accordance with Procurement Regulation FPR 1-3.101-(d).

1. Supplies and Services to be Procured:

This purchase order is to develop a mathematical planning model to analyze the deterrent value of the SPR and to determine its optimal drawdown policy under varying conditions.

2. Background

The Department of Energy in conjunction with OMB and CEA is undertaking another analysis of SPR costs and benefits.

One of the most frequently ignored or unqualified aspects of the SPR is its deterrent value--its ability to lessen or deter potential future embargoes.

In addition, the optimal SPR drawdown strategy is required to accurately compute SPR benefits under varying embargo conditions.

These additional SPR benefits can only be properly analyzed by the use of sophisticated game theory and models.

Professor Balas is a world-renown operations research expert who developed a conceptual approach while working for the FEA which he is to perfect under this contract.

3. Cost Estimate:

The contract is estimated to cost $9550 in FY 1978, based on the usage of the DOE/OSI computer.

4. Schedule Requirements

This study must be completed by mid-October 1978 to allow this office to fully participate in the DOE/OMB/CEA SPR benefit/cost review.

5. Exclusive Capability

Professor Balas has completed a very simplified version of the mathematical planning model that is required while on temporary duty with the FEA in the fall of 1976. He has an excellent understanding of SPRO needs and concerns and the mathematical and analytic tools required for this study. He is the only person to have developed a conceptual model that meets SPRO's needs.

He is the only one able to complete the work on schedule and would require less money than anyone else.

No patents, copyments, trade secrets, proprietary data or secret processes are involved. No special facilities other than the DOE OSI/EOA computer is required.

In light of the above facts, I consider the proposed contractor to be the only practical source for the required scope of work and recommend authorization of negotiations without further competition.

Marc Sheinberg
OR Analyst
Strategic Assessment Division
Date: June 28, 1978

Concur: Division of Procurement

Conditions:

Approved for non-competitive procurement in accordance with FPR 1-3.101-(d)

Acting Director
Strategic Petroleum Reserve Office

(Date)

EL-78-X-01-5295
International Plng. Mgmt. Corp.

JUSTIFICATION FOR NON-COMPETITIVE PURCHASE ORDER

CONTRACTOR: INTERNATIONAL PLANNING MANAGEMENT CORPORATION

VALUE: $9,100

SUPPLIES/SERVICE: SPR BENEFIT/COST MODEL

I recommend that negotiations be conducted only with International Planning Management Corporation for the supplies and services described below in accordance with Procurement Regulation FPR 1-3.101-(d).

1. Supplies and Service to be Procured:

This purchase order is to develop a parametric Benefit/Cost decision tree model for the SPR.

2. Background:

The Department of Energy in conjunction with OMB and CEA is performing a continuing analysis of SPR cost and benefits. A method has been proposed by OMB, combining probability, distribution of the depth and duration of expected embargoes, and benefits and costs of the SPR. In order to assess the potential merits and problems associated with this approach, the decision tree approach is appropriate to place bounds in the possible outcome of the analysis. The International Planning Management Corporation is expert in decisions, probability, and benefit/cost analyses. Its principals include Dr. George Sponsler, and Theodore Horner, both experts in the area of analysis which is planned. Both have been very active in dicision analysis, statistics and benefit/cost analysis. Accordingly, a coherent, usable model can be developed by IPM faster and at less cost to the government than by anyone else.

3. Cost Estimate

The contract is estimated to cost $9,100 in FY 1978. A progress payment of $6,000 has been requested upon delivery of the draft final report, with the balance upon completion of the contract.

4. Schedule Requirements

This study must be complete by mid-September to allow planning of subsequent benefit/cost analysis.

5. Exclusive Capability

Dr. Sponsler, the president of IPM, has had unique and extensive experience in probability and related expected value, and cost/benefit analysis. His work at Massachusetts Institute of Technology concerned the probability of radar systems' detection, using Markov process. His highly original cost-effective probability analysis of enlistment incentives was largely responsible for the nomination of a Research Analysis Corporation study for the 1973 Lanchester prize. Most recently, he has undertaken cost/effective analyses of Naval Material Bureau manpower, subcontracted by Mathematica. His energy related work includes cost-benefit analyses for the National Science Foundation, the Federal Energy Administration, and the Department of Energy, in a variety of studies concerning synthetic fuels and solar energy.

IPM is the only group able to complete the work on schedule and is judged to require less government funding than any other means of solving this problem.

No patents, rights, trade secrets proprietary data or secret processes are involved. No special facilities other than the DOE OSI/EOA computer are required.

In light of the above facts, I consider the proposed contractor to be the only practical source for the required scope of work and recommend authorization of negotiations without further competition.

Charles Tiplitz 7/10/78
Charles Tiplitz
OR Analysis
Strategic Assesment Division
Date: _____

Concur: Division of Procurement Vincent Hannan Jr

Conditions:

Approved for non-competitive procurement is in accordance with FPR 1-3.101-(d).

_____ _____
(date)

Acting Director,
Strategic Petroleum Reserve Office

EB-78-C-01-6179
American Mgmt Sys, Inc

JUSTIFICATION FOR PROCUREMENT

On July 8, 1977, Secretary Schlesinger established a Federal interagency task force to develop contingency plans for any energy emergencies which might occur during the coming winter. The task force considers an effective demand restraint program to be a crucial component of any energy contingency plan. The National Governors' Association, in a parallel effort, has created a Subcommittee on Energy Preparedness to work with the Federal task force. Both groups are vitally interested in ensuring that consistent demand restraint programs are implemented in an emergency. Since the Federal Government presently has no congressionally-approved standby demand restraint program, and since the states have had widely varying degrees of experience and success in implementing demand restraint measures, the Department of Energy will hold demand restraint workshops in those regions having the greatest potential for experiencing energy shortages this winter. Participants in these workshops will explore various approaches to demand restraint, with particular emphasis on such issues as economic impact and enforcement and examine how effective demand restraint measures can be incorporated into an overall shortfall management strategy.

In order to accomplish this task prior to the onset of the winter heating season, it is essential that American Management Systems (AMS) be selected to perform the necessary research and handle the administrative arrangements for the Winter Energy Emergency Plans Task Force. AMS will be able to draw upon its expertise and previous work experience in this area, including development of some portions of the Winter Energy Emergency Planning Guide. This will prevent an undue loss of time initially in information gathering.

These regional workshops will be essential for effective implementation of the Winter Energy Emergency Plan this winter.

43-130 0-79-15

LEB-78-C-01-6183
Jack Faucett Assoc

Justification

In early July 1977 at the Governors' White House Energy Conference, energy emergency preparedness was stressed as a matter of immediate concern to both the states and the Federal Government. To promote the coordination of state and Federal efforts to prepare for an energy emergency, it has been determined that one of the necessary end products of the WEEP Task Force is a handbook on Federal assistance during energy emergencies such as those experienced during the winter of 1976-77. The handbook is intended to provide relevant information about Federal programs and Federal actions that can be applied to resolve specific problems.

The handbook is designed to trigger the initial actions by a state or industry official in seeking assistance. In terms of what it can do, its timeliness, and expected results, and information necessary for states to start the implementation process such as who to call, documentation, eligibility, etc., the attached proposal by Jack Faucett Associates Inc addresses all these issues.

The preparation of the handbook requires specific understanding of state problems and Federal responses. Jack Faucett Associates have a demonstrated record of providing quality products in a timely manner and should be selected as the contractor for this project.

Because of time constraints, it would not be practical to consider other contractors at this time. The initial research and education process would be both costly and extensive.

Jack Faucett Associates' Inc. prior experience with state problems should serve to reduce the research and time required, and as a result provide a less costly product.

Statement of Work

This contract is for the development of a handbook on Federal assistance during energy emergencies. The contents will include:

(1) Program descriptions sufficient for a state or industry official to discriminate among programs, select those most relevent to his problem, and know precisely where to make the initial contact for the first implementation step.

EB-78-X-01-2992
(GS-035-46484)
RCN-0504 American Mgmt Sys

JUSTIFICATION FOR NONCOMPETITIVE PROCUREMENT

I recommend that negotiations be conducted only with American Management Systems, Inc. (AMS) for the services described herein.

I. Description of Services to be Procured:

A. AMS will develop an economic impact analysis report and an inflationary impact statement for the standby gasoline rationing plan as required by the Energy Policy and Conservation Act (EPCA) P.L. 94-163.

B. AMS will provide the following reports:

1. Analysis work plan (10 copies).

2. Draft outline of report and a methodology for the study (10 copies).

3. Base case document (20 copies).

4. Draft impact analysis report (20 copies).

5. Draft issue alternatives report (20 copies).

6. Final drafts - all reports (20 copies).

II. Procurement history, estimated future requirements, and long-range procurement objectives:

A. In August 1977 Secretary Schlesinger directed that a rationing working group be formed to improve the existing gasoline rationing plan. The existing plan had been developed by the Federal Energy Administration in 1976. AMS had been the principal integrating contractor on the 1976 plan.

In late August 1977, AMS was retained to assist the rationing working group in its efforts to improve the rationing plan by using vehicle registrations as the basis of entitlements for gasoline for firms and individuals. This task involved development of the entitlement processes by which ration rights for gasoline could be

exchanged by firms and individuals on a white market. It also involved surveying state department of motor vehicles (DMV) files, procedures and update requirements.

In September 1977 the AMS contract was modified to develop a system for distributing ration credit cards and to develop detailed guidelines for operations of state and local rationing boards.

In December 1977, the AMS contract was modified further to integrate the management plan summary document that will be submitted to Congress with the economic impact analysis report.

B. From the procurement history, it is evident that AMS has a unique working knowledge and experience with the rationing plan and its development. This is especially evident by the firm's unique knowledge of the entitlements processes through which allotments of gasoline could be exchanged by individuals and firms on a white market. The economic impacts of this income redistribution are well understood by AMS.

C. No previous advance planning information has been furnished to the Office of Procurement. Prior procurement plans for the economic impact assessment involved a determination by the Office of Procurement that the contract should be earmarked as a small business set-aside. Request for Proposals were sent to 17 firms, but only 2 firms responded. Both proposals were objectively and carefully evaluated by a Technical Evaluation Committee. It was recommended that the small business set-aside action be cancelled because of the severity of the deficiencies in the proposals and the specific lack of economic impact analysis capabilities demonstrated by the firms. Because the economic impact analysis of the rationing plan must still be performed within the scheduled milestone of March 10, 1978, it was felt that the best course of action was to obtain the services of a firm that was familiar with the plan and capable of doing the economic analysis.

D. The office attempted in the past as stated above to develop competition and will continue to do so in the future.

E. This effort may be added as a contract modification to AMS's existing contract #GS-035-46484 which totals $332,450.00 or it may be procured through a new contract.

III. Estimated Cost:

A. Assumptions:

1. Average cost per consultant (including overhead, general and administrative costs) is approximately $360.00 per day.

2. The major tasks and subtasks in the work statement were time-costed out in terms of approximately 238 days.

3. 238 days X $360.00 = $85,680.00 estimate.

4. Secretarial support, travel, per diem, reproduction, and other costs are estimated at approximately $7,000.00.

5. Total estimated cost is $92,680.00.

B. The estimated cost by fiscal year:
FY 1978 - $92,680.00.

IV. Schedule Requirements:

A. The basis for the schedule requirements has been the decision by the Secretary of Energy to have a standby gasoline rationing plan available for submission to Congress in the Spring of 1978. The President is also aware of the schedule. In addition, Executive Order 11821 requires that a draft economic impact statement be completed prior to submission to the Federal Register.

B. The Office of Regulations and Emergency Planning tried to obtain capable contractors in November 1977. Delays were experienced because so few firms responded to the small business set-aside action. It is now mid January 1978; the first draft is due March 10, 1978 and no contractor has been selected. If a competitive procurement was reinstituted, it would be impossible to meet the mandated March 1978 schedule. Also, based on the previous competitive action and a survey

of the market, it appears highly unlikely that another capable firm could be obtained.

The Secretary has made the decision to have the standby gasoline rationing plan ready by March 10, 1978. Recent worldwide developments have increased somewhat the likelihood of a severe oil supply interruption. The current rationing plan developed under EPCA requires a 90-day implementation period. A 90-day implementation period is too long a time to ensure the security of the Nation in the light of the above. New policy is required in order to ensure that such a supply interruption is avoided or mitigated. In order to perform the work within the required time frame, a company has to have experience with rationing contingency plans. American Management Systems, Inc. has the experience and the expertise developed during past gasoline rationing efforts to prepare an economic analyses of the plan. It is also familiar with the key issues of the plan and has the ability to work within tight time constraints to produce quality products.

V. Exclusive Capability:

A. The contractor has qualified personnel with appropriate skills available to perform the work within the time frame required by this project.

B. AMS knowledge and experience with the rationing plan's development in 1976 and 1977 is vital to the proposed economic impact analyses. No time will be spent in learning about the theory and operation of the plan. In addition, its knowledge of the entitlements process, the white market, and the unique state and regional impacts of the plan will permit it to complete the economic impact analysis within the critical time available. Further, the firm's past experience in preparing economic analyses on national and local levels makes it uniquely qualified. At the present time, AMS is the only known firm with the experience and present capabilities required to complete the effort by March 1978, the date mandated by the Secretary in order that DOE not be further delayed in meeting the requirements of the Energy Policy and Conservation Act (EPCA) and Executive Order 11821.

Based on the above, it is recommended that a sole source contract modification to AMS is justified.

APPROVED: Douglas G. Robinson

CONCUR: Thomas L. Hillier
Procurement Advisor

EB-78-X-01-3265
The Urban Institute

JUSTIFICATION FOR NONCOMPETITIVE PROCUREMENT

I recommend that negotiations be conducted only with the Urban Institute for the services described herein.

I. Description of Services to be Procurred

A. The Urban Institute will develop a quick quantitative assessment of the effects of the DOE Rationing Plan on the used car market.

B. The Urban Institute will provide 10 copies of a report covering the results obtained from its assessment, including the data utilized, the analyses performed and the impact assessments derived therefrom.

II. Procurement History

A. The design of the rationing plan incorporating the distribution of ration allotments based on vehicle registrations, required certain basic decisions on the treatment to be given used cars.

In order to protect the integrity of the ration allotment system it has been deemed necessary to freeze the lists of eligible vehicles as of the day rationing starts. Subsequently, new cars would receive a ration allotment when they were registered to a buyer, but used car allotments would not be transferable with the sale of the car. There is not an apparent alternative that would prevent massive registrations of non-operational automobiles as well as windfall profits for used car and auto junk dealers.

An assessment of the impact of this proposed concept is essential to the completion of the standby plans in accordance with the timetable set by the Secretary. In order not to impede the development of the plan the company selected to perform the assessment must have the experience, the expertise and available qualified personnel to do the study without delay.

B. The performance of this task represents a new effort by the contractor who has not previously worked on the standby rationing plan.

C. Delays in the performance of the study required by this procurement can result in substantial setbacks in meeting the scheduled plan milestones.

D. This office plans to engage in competitive procurements of future supplies and services that may be required in the development of the rationing plan.

III. Estimated Cost:

A. Assumptions:

1. The average cost per day for consultant and support staff, including overhead, general administrative costs, and a fee of 10 percent is $369.20.

2. The time to perform the tasks required by this procurement is 10 days.

3. Total estimated cost is $3,692.00.

B. The estimated cost by fiscal year FY 1978 - $3,692.

IV. Schedule Requirements

A. The basis for the schedule requirements is the time table set by the Secretary of Energy for submission of a standby rationing plan to the Congress within the first 6 months of 1978.

B. Further development of the standby plan hinges on an evaluation of the impact of the proposed treatment of used cars. The study to be performed will provide the basis for a reasoned policy decision by DOE on retention or modification of the proposed used car treatment. The Urban Institute is the only known qualified source to perform this assessment within the required time frame. They have the experience, the expertise and the highly qualified personnel, all immediately available.

V. Exclusive Capability

The Urban Institute because of its experience in economic studies of transportation matters, the high quality of its products and the availability of highly qualified personnel, is the only company available to perform the work within the require timeframe. (Attached are the resumes of the two highly qualified staff members to whom the Urban Institute proposes to assign the task).

Based on the above, it is recommended that a non-competitive procurement of the required services from the Urban Institute is justified.

APPROVED: Douglas G. Robinson

Douglas G. Robinson
Assistant Administrator
Regulations and Emergency Planning
Economic Regulatory Administration

CONCUR: for Ronald Forsyth

Tom Keefe, Procurement Advisor,
Program Support
Office of Procurement Operations

EB-78-C-01-6489
Computer Performance Assoc

JUSTIFICATION FOR NON-COMPETITIVE PROCUREMENT

I recommend that negotiations be conducted with Computer Performance Associates (CPA) for the additional services required to support the Office of Fuels Regulation's Crude Oil Allocation (Entitlements) Program.

1) This procurement has been proposed in order to purchase additional services to implement the final ERA rulemaking to include liquid petroleum substitutes in the entitlements program. This regulation provides for the extension of the benefits of the program to those fuel replacements which are manufactured from domesticaly renewable sources and can be used as refinery feedstock, oiler fuel or otherwise as a petroleum substititute. This regulation is effective July 1, 1978, and is to include all liquid petroleum substitutes run as of that date.

Also, the rule making which requires the allocation of Entitlements benefits for California low tier oil based on its gravity and the spreading of the penalty on a national basis will have a retroactive effective date of June 1, 1978. The systems analysis and programming work which is necessary to support ERA's Entitlements Program must be in place by August 5, 1978. ERA's Administrator plans to approve additional rule makings for implementation in July and August 1978.

The additional systems analysis and programming tasks fall within the general scope of work of the existing contract with CPA. The purchase order for the services was issued under EIA, the modification is to their contract with the funds coming from ERA.

2) The estimated cost of this procurement is $150,000. At present, there are no known requirements in addition to those requested in the Statement of Work (SOW).

3) These additional services are required by several unanticipated changes in the Department of Energy's (DOE) Entitlements regulations. The system analysis and programming services required of CPA result directly from changes in the regulations.

4) The work presently being performed by CPA constitutes the most recent and complete understanding of the automated system which supports the Entitlements program. This expertise is essential to the performance of the additional tasks. The timely completion of this system is necessary as system outputs are a major input to domestic crude oil pricing policy decisions.

DOE/EIA does not currently have available the required personnel with the background and knowledge required to

develop these plans within the required timeframe. Any other contractor would have to go through an extensive learning curve before they would be able to perform the systems analysis and programming tasks. The performance of these tasks by another contractor would result in increased costs to the government. In view of the staff expertise and "hands-on" knowledge of CPA, support from any other contractor would not be in the best interest of the government. An award to another contractor would add 3 months to the effort making it impossible to meet the legislated deadline.

5) ERA therefore recommends that negotiations for efforts within this scope of work be considered with CPA as the only source that can perform this service economically and within the mandated time constraints.

Barton R. House
Assistant Administrator
Fuels Regulation
Economic Regulatory Administration

Contract Operations

Albert H. Linden, Jr.
Assistant Administrator
Energy Data
Energy Information Administration

E7-78-C-01-B003
Systems Consultants, Inc.

JUSTIFICATION FOR

NON-COMPETITIVE PROCUREMENT

I recommend that we negotiate solely with Systems Consultants, Inc. (SCI), Washington, D.C., for the professional services described herein.

Description of Services to be Procured:

The attached Statement of Work will provide the Short Term Emergency Planning Division of the Office of Regulations and Emergency Planning (STEP/REP), Economic Regulatory Administration with:

A Near Term Overview Plan

A Multi-Year Program Plan

FY 78-79 Plans Implementation

Procurement history, estimated future requirements, and long range procurement objectives:

The Short Term Emergency Planning Division was formed subsequent to the activation of the DOE from personnel previously detailed to the staff of an Interagency Task Force on Winter Energy Emergency Planning and elements of offices transferred to DOE from the Department of Interior. Thus, there is no STEP procurement history for similar services. Due to staffing levels imposed, STEP is unable to recruit the

requisite personnel to perform the necessary analyses and develop the plans, systems and documents proposed for this procurement. Efforts will be made to cross train assigned personnel in these specialized disciplines. However, for the interim, procuring these products by contract is the only feasible method.

It is anticipated that a competitive procurement will be sought for a reduced level of effort commencing January 1, 1979, through September 30, 1980. For the long range (FY81 and beyond) it is planned to phase out use of contractors for these activities. One of the products to be obtained from this procurement is recommendations for staffing and training for the FY 79-82 period.

Estimated Costs:

This work will entail eighteen person months of effort over a eight month period, commencing June 1, 1978, and concluding December 31, 1978. It is estimated that $99,500 of FY 78 fund will be required.

Schedule Requirements

As indicated earlier the STEP Division was formed subsequent to the DOE activation from members of a task force and

elements from the Department of Interior. No plan was ever developed for STEP. In December 1977, the Nation began the longest work stoppage in history in the coal industry and all STEP personnel were fully committed to coordinating the Federal response to the coal emergency.

The coal strike did not end until late March 1978. STEP is now faced with revising the Energy Emergency Planning Guide, developing Emergency Natural Gas and Electricity Operating Plans, improving and relocating the Energy Emergency Center, defining and initiating development of the Emergency Management Information System, and numerous additional tasks with a staff of ten professionals and three support.

The STEP staff must revise the Energy Emergency Planning Guide for FY79, so that states and local jurisdictions will have time to develop the resource requirements prior to the 1978-79 winter. This action must be completed by September 30, 1978, because interagency exercises testing the plan will begin October 1, 1978. The Federal Preparedness Agency (FPA) and other preparedness agencies require this lead time deadline.

Staff resources are not available for both long range STEP planning and current activities. Normally, it takes 4-5 months to process a competitive contract and this does not allow sufficient time to meet imposed deadlines.

Exclusive capability:

Although there are other companies that have the necessary expertise, SCI is the only known firm qualified to perform the listed tasks within the required time frame. This is supported by the following:

- SCI has demonstrated their ability to develop sound management planning concepts and program plans on several prior and current DOE contracts. These include:
  - The development of a multi-year program plan for the Division of Solid Fuels Mining and Preparation (Contract #ET-78-C01-6075)
  - The development of Environmental Assessment program plans for the Office of Technology Impacts, ASEV (Contract #EE-77-C01-6075)
  - The development of Solar Heating and Cooling Demonstration program plans for Argonne National Laboratories (Contract #31-109-38-4192)
- SCI's prior experience in implementing certain aspects of DOE's Policy and Program Planning System (PPPS) for the Office of Program Management Support (OPMS) has afforded SCI with a unique understanding of the implementation procedures of DOE's planning process. If the contract were awarded to any other known firm it would require 2-3 months for it to obtain the necessary experience. This would cause ERA/STEP to fail to meet its legislatively mandated short term planning responsibilities.

Other

The Division of Short Term Emergency Planning is responsible for a critical element of the Nations' energy program, short term emergency planning. The importance of this planning is evidenced by the past winter's natural gas shortage and this winter's coal strike. The planning support being addressed by this procurement is vital to a quick, effective start-up of the program. It is not possible to advertise competitively and be responsive in the time frame required of STEP, to its planning requirements. Thus, this sole source action is needed.

The award of this sole source procurement to Systems Consultants, Inc. is considered critical to an early and sound build-up of STEP's programs and the development of a firm base for the implementation of these near and mid-term activities.

Emergency energy planning and program implementation is vital to our national well being. Thus, we believe this activity warrants quick and special attention and should not be required to proceed through a formal, competitive contract process.

In summary, STEP needs to move quickly and effectively to consolidate and build its program/project position to serve the Nation's emergency energy planning and preparation requirements through: plans implementation and project management actions.

SCI, due to direct involvement and knowledge and experience in these matters, and availability of appropriate professional staff is uniquely able to provide the products required in a cost effective manner.

In summary, STEP needs to put immediate attention on the matters of program plans, near and multi-year, and FY80 budget documentation. SCI, through experience, knowledge, performance and availability of the appropriate professional staff is uniquely able to provide the products needed by STEP in the time required.

Recommend Approval:

Barry Yaffe 5/2/79
Barry Yaffe, Director
Short Term Emergency Planning
Division
Office of Regulations and
Emergency Planning
Economic Regulatory Administration

CONCUR: Tom Keefe signed original
Thomas S. Keefe
Procurement Advisor
Office of Program Support
Directorate of Procurement
and Contracts Management

APPROVED: Douglas G. Robinson
Douglas G. Robinson
Assistant Administrator
Office of Regulations
and Emergency Planning
Economic Regulatory Administration

EC-77-C-01-8590, M100
R. Shriver Assoc.

Attachment II

JUSTIFICATION FOR NONCOMPETITIVE PROCUREMENT

We recommend that negotiations be conducted only with R. Shriver Associates for the services described herein.

A. Description

The Department of Energy Organization Act, Energy Policy and Conservation Act (EPCA) (Section 57), and the Energy Conservation and Production Act (ECPA) require the Department of Energy (DOE) to monitor the supply of and demand for natural gas and alternative fuels. This proposed project is part of an effort to improve DOE's capability to monitor the natural gas situation throughout the country more accurately and on a timely basis.

The study will focus on two major aspects of the existing natural gas monitoring system: First, examination and redesign of the existing Energy Information Administration (EIA) 21 and EIA 10 Forms. The following specific activities will be performed:

- Redefine the function of each form.
- Examine the usefulness of the data presently collected and the format of each form.
- Define data requirements for each form (additions and deletions).
- Develop new forms.
- Develop procedures to administer each form and to interface with the EIA 50 data base.
- Determine and document the impact of form changes on the processing of the EIA 50 system.
- Assist in the administration of forms and the implementation of the interface with EIA 50 system.

Second, a natural gas supply and demand monitoring interface will be developed. Specific activities include:

- Analyze historic data to determine the relationship of actual weather conditions to actual natural gas curtailment, deliveries, consumption and alternate fuel requirements.

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- Design a natural gas supply and demand monitoring system to interface with the EIA 50 data base. The system will provide an up-to-date assessment of the developing supply and demand situation for natural gas.
- Develop systems and program specifications required to implement the system.
- Develop and test the programs in the system.
- Supervise the implementation of the monitoring system.
- Develop a systems users manual.
- Conduct a system user education program and assist in the initial operation of the program.

This study will make use of R. Shriver Associates' general expertise in design, development and implementation of computerized information systems and its specific expertise in the area of natural gas information systems. R. Shriver Associates' previous work for the DOE entailed preparation of a report on existing natural gas data systems, analysis of the systems and proposing changes to these existing systems.* The same staff will be used on this study as was used in the previous project.

The deliverables of this project shall be as follows:

Task 1: Examine and Redesign the EIA 21 and EIA 10 Forms

A. Statement defining the function of EIA 10 and EIA 21 forms.

B. Report: Conclusions of the Analysis of EIA 10 and EIA 21 forms.

C. Package of management exception report formats.

D. Report: Definition of data requirements on EIA 10 and EIA 21 forms.

E. Report: Definition of data required on EIA 50 form.

F. Proposed new EIA 10 and EIA 21 forms.

G. Report: Definition of procedures for administration of EIA 21 and EIA 10 interface with EIA 50 system.

*Contract #EC-77-C-01-8593

H. Documentation of "Report Packages" available to management.

I. Statement defining impact of new EIA 10 and EIA 21 forms on EIA 50 system.

Task 2. Natural Gas Supply and Demand Monitoring Interface

A. Develop procedures (from the detailed analysis of projected versus actual data) which will provide the ability to indicate those projections which are suspect and require company follow-up and validation.

B. Design management exception reports which can be generated from the current EIA 50 data base.

C. Report: Description of the conceptual design of Report Writer Facility.

D. Report: Conclusions of analysis of weather on actual natural gas deliveries/curtailments.

E. Modified EIA 50 system programs.

F. Report: Description of the conceptual design of the Natural Gas Supply and Demand monitoring system.

G. Documentation for programs required for management Exception Reporting and Report Writer Systems.

H. Documentation: Report Writer Users Manual.

I. Completion of user education program for the Report Writer System.

J. Documentation: Natural Gas Supply and Demand Monitoring System Users Manual.

K. Completion of user education program for Natural Gas Supply and Demand Monitoring System.

B. History

Presently, the DOE relies heavily on the existing EIA-50 Natural Gas Data System, generally as a basis for monitoring the natural gas supply/demand situation nation-wide, year-around, and specifically, to help manage a natural gas supply emergency during the heating season. There is widespread agreement within the Federal government and the natural gas industry that the EIA 50 system as it now stands is entirely inadequate in terms of providing accurate and timely natural gas information to the DOE for use during the heating season. Two fundamental flaws in the EIA 50 system are: 1) the EIA 50 Form, EIA 21 Form and the EIA 10 Forms are disjointed, awkward and lack consistency, and, therefore, are incapable of providing a data base that can be used to meet DOE monitoring requirements; and 2) there does not exist a simplified mechanism by which the EIA 50 data base can be adjusted during the heating season to account for abnormal weather conditions and the resultant changes in the natural gas supply/demand balance.

Perpetuation of the distinct, inaccurate and in some cases, irrelevant data bases may very well bring about a repetition of all the problems encountered in the Federal government's attempt to meet the needs of the natural gas shortage of the 1976-1977 winter.

During the course of work by R. Shriver Associates on the natural gas data bases, R. Shriver staff conducted an in-depth analysis of the EIA 50 data base with particular emphasis on the functions of the EIA 21 and EIA 10 Forms and on the problem of adjusting the gas projections based on the EIA 50 data base to account for abnormal weather conditions. R. Shriver Associates' staff concluded that: the EIA 10 and EIA 21 Forms must be redesigned in order to provide a meaningful interface with the EIA 50 data base; and, that a simple "Natural Gas Supply Demand Monitoring Interface", keyed to actual weather conditions, should be developed to "update" supply and curtailment projections to reflect gas consumption as affected by actual weather.

To improve the usefulness of the EIA 50 Natural Gas Data System as a tool to help monitor the natural gas supply and demand balance, and to help manage an emergency situation, it is necessary to address the problems as defined by R. Shriver Associates. It is imperative that steps be taken immediately to improve the system in time for the 1978-1979 winter season.

C. Cost

The estimated cost for the six-month period of performance is approximately $60,000. The projections are based on cost support data supplied with the proposed program.

D. Schedule Requirements

In order for the Department of Energy to properly fulfill its natural gas monitoring requirements, it is essential that this project be undertaken immediately. Timely and accurate supply, demand and curtailment data are essential to any monitoring effort or crisis management. The DOE must have in place, before the 1978-1979 winter begins, a reliable data gathering mechanism. For the past three winters, necessary data were not available, and what little data were gathered often proved to be inaccurate to an extreme. Inadequacy of data was particularly frustrating and embarrassing during the 1976-1977 winter when natural gas delivery systems were extended to their capacity, but few data were available for monitoring the cold-weather-induced emergency. Secretary Schlesinger has made it clear that the Department of Energy is to be prepared to meet whatever emergencies may arise this winter.

R. Shriver Associates is the only firm with the necessary detailed knowledge of the existing natural gas data bases from the technical, systems and substantive standpoints. R. Shriver Associates' previous experience with the natural gas data systems has provided them with a firm basis from which to conduct this project. The fact that R. Shriver Associates' staff has already analyzed the various data systems and has made sound proposals for improvements makes them the logical choice for this project. Their experience allows R. Shriver Associates to be in the unique position of being able to meet a November 1, 1978 deadline which is the latest date the data can be delivered and still be used as part of the winter emergency systems.
*In short, a November 1, 1978 deadline necessitates hiring R. Shriver Associates to undertake this project. Their continued work in the area will result in significant savings to the Federal government. R. Shriver Associates' technical staff is organized and prepared to continue this work immediately.

E. Exclusive Capability

The personnel of R. Shriver Associates has the most extensive experience in system and technical aspects of the DOE's natural gas data base of any group in the United States. The staff is recognized throughout the DOE as expert in the field. The results of their work are documented in a number of technical reports submitted to the DOE. It would be exceedingly difficult

* The system will be available for testing in October. This deadline is required in order that the system be available for implementation on Nov. 1.

to find a technical staff with better specific qualifications to carry out the proposed program.

The following specific areas of expertise are necessary for completion of this project and are unique to R. Shriver Associates: (1) knowledge of the technical data requirements of the EIA-50, EIA-21 and EIA-10 data bases, (2) working knowledge of the system of the EIA-50 data base, (3) capability to interface the new EIA-21 and EIA-10 data bases with the existing EIA-50 data base, (4) knowledge of the emergency information requirements of the EEMIS staff, (5) capability to develop natural gas monitoring system that interfaces with the EIA-50, EIA-21 and EIA-10 data bases, and (6) has developed the only comprehensive package of emergency management update reports that interface with the EIA-50 system.

It is without a doubt that R. Shriver Associates is the best qualified firm to undertake the proposed natural gas program. Their previous experience and deep involvement in the area of natural gas data, analysis and systems development is a unique advantage to the government.

Concurrence:

~~Director of~~ Procurement and Contract Management

B Yaffe 7/7/78

Approved: Douglas D. Robinson

Douglas G. Robinson
Assistant Administrator for Resources and Emergency
Economic Regulatory Administration

EC-78-C-01-6598
Jack Faucett Assoc., Inc.

Justification for Noncompetitive Procurement

The shortages of natural gas and to a lesser extent fuel oil during the winter of 1976-77 and the coal shortage during the 1977-78 winter season dramatically illustrated the impact of short-term energy emergencies on the economies of regions of the country and on the living conditions in these areas. In 1976-77, residents of some states were asked to reduce their thermostat settings for space heating and carry out other energy demand reduction measures; and in at least one state, plans were developed to evacuate residents from areas in which natural gas was about to be cut-off. The coal shortage of the winter of 1977-78 is an other example which demonstrated the need for states and the Federal Government to develop and implement energy emergency contingency plans.

The Federal Government has acted on several fronts to reduce the economic and social impacts of such emergencies. Some actions taken include:

- A detailed study of the planning activities and remedial energy emergency measures which were utilized during the 1976-77 winter in order to assist the states and the Federal Government in improving these actions.

- The Inter-agency Task Force for Winter Energy Emergency Planning was formed within the Federal Energy Administration. The product of this task force was the Energy Emergency Planning Guide: Winter 1977-78. This document identifies and evaluates actions available to deal with winter energy problems, provides an advance indication to the public of those actions considered most likely to be taken by the Federal Government, and provides industry, and state and local governments with recommended actions they can take to deal with energy emergencies.

- The Energy Emergency Center (EEC) was an outgrowth of the task force activities noted above. The EEC was designed to facilitate coordination of energy emergency related activities within DOE and between DOE and other Federal agencies, state governments, and local governments.

The proposed work shall continue the process of assisting ERA to develop an effective organization in response to short-term energy emergencies. It will help consolidate delegations of authority and Mission and Function statements so as to clearly define the roles and responsibilities of each DOE Division and support personnel. Their lines of communications shall be made explicit as well as their physical location and operation sphere during each type of energy emergency.

Since the states are the front line of attack during short-term emergencies, the actions of the states and regions shall be incorporated into the operational procedures which shall be developed.

The operations manual shall not only identify the roles and responsibilities of all key individuals in the respective ERA divisions, but provide a mechanism to track all activities of the ERA operations center and maintain a measure of quality control of the activities to insure efficient and timely responses.

In the same vane, this contract work shall provide for the design of all forms, and other information flow instruments needed for the operation of the EEC. Sample directives, communiques, and memoranda of understanding will be developed.

For the ERA to be successful in fulfilling its mandate, it must contribute substanially to achieving the goal of reducing the social and economic impacts of short-term energy emergencies. Therefore, it is essential that this work be initiated soon as possible.

It will take approximately four months to develop a short-term energy emergency operations manual. This work must therefore begin immediately in order that the operations manual is on line for the height of the 1978-79 winter season.

It is recommended that negotiations be conducted only with Jack Faucett Associates for the services described herein.

Jack Faucett Associates is the only contractor qualified to produce this required manual within the time contraints necessary for ERA to be prepared for this coming winter. This contractor has conducted six different projects over the past year which have dealt directly with short-term energy emergency management planning, at both the Federal and state levels. One of these projects involved the development of a "Handbook of Energy Emergency Programs," which documented Federal programs that could be initiated by the states to assist them during short-term energy emergencies. The documentation of these programs required the contractor to contact each individual who was responsible for administering these programs on a day-to-day basis. Having a firm understanding of the programs available to the Government and the individuals responsible for them reduces the time required to complete this work by at least one month. In addition, Jack Faucett Associates' overall grasp of short-term energy emergency management planning will reduce the time required to complete the project by an additional two months, over the time required to have this work accomplished by any other contractor. This experience includes an evaluation of the planning activities of the Federal Government and the states during previous short-term energy emergencies, conducting workshops for the states on emergency planning, and developing energy emergency management plans which were funded and implemented by the states of Illinois and Wisconsin. Therefore, by using Jack Faucett Associates to perform this work, the calendar time required to complete this project will be reduced by a total of three month, and an additional eighty thousand dollars, for which budget is not available. Jack Faucett Associates is able to complete this work over a four month period.

In order to complete this work successfully, the following broad criteria are considered to be critical.

- Capabilities and experience is short-term energy emergency management planning.
- Availability to begin work immediately.

1. Capabilities and Experience

Jack Faucett Associates has performed the following projects, over the past year, dealing directly with short-term energy emergency management planning:

- Federal and State Emergency Energy Management Planning

  This study examined Federal and state planning and operations during the 1976-77 winter's energy emergency. The objective was to show how state laws, data, policies, plans, decisions, and actions can be improved and how the Federal Government can help in such emergencies. In the development of this study, Minnesota, Tennessee, New Jersey, and Pennsylvania were visited and used as case studies. In addition, Federal agencies were visited to determine their roles during the 1976-77 winter energy emergency and what they viewed their future roles to be. These Federal organizations included the Department of Energy, Executive Office of the President, Federal Preparedness Agency, Interstate Commerce Commission, Department of Transportation, and Federal Power Commission. Jack Faucett Associates has developed a close working relationship with the key individuals in these and other Federal agencies who are responsible for responding to energy emergency situations.

- Handbook of Energy Emergency Programs

  This project documented in detail, all Federal programs which are available for short-term energy emergency management. This included not only identifying the provisions and implementation procedures for each program, but also identifying each individual responsible for administering each program.

- Energy Emergency Contingency Plan for the State of Illinois

  This plan, which was funded by the State of Illinois, is comprised of: (1) detailed energy emergency management organization in which the responsibility of each state agency, during an energy emergency, is explicitly identified, and (2) a complete menu of strategies for attacking a wide variety of energy emergencies at the state level, including a petroleum embargo, severe or prolonged cold spell, labor disputes disrupting either the source of supply or the transport of energy products, and technical failures, e.g., electricity

blackouts. One approach for setting up the energy emergency management organization in Illinois included extensive personal interviews with the highest level officials of some twenty-three different state agencies in Illinois.

- Wisconsin Energy Emergency Contingency Plan

This project was funded by the State of Wisconsin. The type of information developed for this plan was similar to that for Illinois, though the details of the strategies and energy emergency management organization were designed specifically for the conditions and needs of the State of Wisconsin. In addition, a detailed analysis of the existing energy data system in Wisconsin was conducted as well as a detailed analysis of the technical aspects of natural gas load management.

- Development of Workshops to Assist the States in Future Winter Energy Emergencies

This project involved conducting workshops in several regions of the nation to provide the states in each region with the technical information related to demand reduction measures and emergency management planning during short-term energy emergencies.

- Impacts of Short-Run Energy Shortages

This project, which was funded by the Electric Power Research Institute, provides a methodology for estimating the economic impacts of short-run shortages in energy. The natural gas shortages during the 1976-77 winter season is used as sample observations on the relationships between the amount of energy shortage and the economic impacts from the shortage. Impacts in selected states and sub-regions of states are estimated, and estimates are related to economic factors and the level of energy shortage.

2. Availability

The most qualified staff for this study at Jack Faucett Associates are available immediately to begin this work. These are the same individuals who conducted the studies noted above, therefore from day one of the contract period, the work shall be in full swing, with no learning period required.

Since this project shall require extensive communications with officials of Federal agencies, the contractor's location in Washington, D.C. is an essential consideration. Jack Faucett Associates is located in Chevy Chase, Maryland, which is less than half an hour from most Federal agencies.

It is without a doubt that Jack Faucett Associates is the only qualified firm to undertake the development of the short-term energy emergency operations manual for ERA in time for it to be utilized this winter in order to be compliant with ERA's legislated mission to provide technical and, when necessary, regulatory assistance to states in energy emergencies.

Concurrence:

Thomas S. Keefe 8/2/78

Thomas S. Keefe, Procurement Advisor
Procurement and Contract Management
Directorate

Approved:

Douglas G. Robinson

Douglas G. Robinson
Assistant Administrator
for Resources and
Emergency Planning
Economic Regulatory
Administration

JUSTIFICATION FOR NONCOMPETITIVE PROCUREMENT

I recommend that negotiations be conducted only with American Management Systems, Inc. (AMS) for the services described herein.

I. Description of Services to be Procured

A. The general description of the services to be procured is as follows:

- Analysis of the many new detailed allotment issues which have arisen from the rationing plan public comment period, including development of options for government vehicles, taxis, and vehicles used for both business and private purposes such as by doctors, technicians, and salespeople.

- Development of detailed rationing plan pre-implementation options, including alternative task schedules and cost ranges to achieve 45-day readiness.

B. AMS will provide the following reports:

1. Analyses of allotment issues identified in the task list:

   a. first drafts
   b. second drafts

2. Detailed preimplementation options, including:

   a. detailed task lists
   b. task cost ranges
   c. task schedules in PERT, CPM, or similar graphical format.

   The pre-implementation options will show alternative tasks, costs, and schedules to achieve 45-day plan readiness.

3. Issue papers as required.

4. Status Reports - bi-weekly.

5. Final Report -- all task areas.

II. Procurement History, Estimated Future Requirements, and Long-Range Procurement Objectives

A. In August 1977, Secretary Schlesinger directed that a rationing working group be formed to improve the existing gasoline rationing plan. The existing plan had been developed by the Federal Energy Administration in 1976. AMS had been the principal integrating contractor on the 1976 plan.

In late August 1977, AMS was retained to assist the rationing working group in its efforts to improve the rationing plan by using vehicle registrations as the basis of entitlements for gasoline for firms and individuals. This task involved development of the entitlement processes by which ration rights for gasoline could be exchanged by firms and individuals on a white market. Another task involved surveying state department of motor vehicles (DMV) files to determine update requirements needed to make them usable for vehicle based entitlements.

In December 1977, the AMS contract was modified further to integrate the plan document that was published in the Federal Register on June 28.

In January, 1978, there was a procurement action to award AMS the contract for preparation of an economic impact analysis and an inflationary impact statement for the standby gasoline rationing plan as required by the Energy Policy and Conservation Act (EPCA), P.L. 94-163.

In early May 1978, AMS was awarded a contract to:

- Identify and assess recordkeeping and reporting requirements of the rationing plan,

- Revise the plan narrative to make certain changes requested by DOE senior staff prior to publication in the Federal Register, and

- Develop and test a system for classifying public comments on the plan received in response to the Federal Register publication of the plan narrative and regulations.

B. The work to be performed includes the next steps required in the development of the plan prior to its submission to Congress. As a result of the previous work, AMS is the only known contractor with the current knowledge required to perform the analyses required in the allotment area and to develop the necessary preimplementation strategy and schedule.

It has become necessary to modify this contract again even though it was our stated intention at the last amendment to make no more amendments and to go competitive for all remaining work. This action is deemed necessary because of two conditions. First, the public hearings on the plan which have been held during August have surfaced several allotment issues which require research, analysis and resolution prior to submission of the final plan to Congress in January, 1979. Secondly, in order to provide Congress with the critical preimplementation cost and lead time information, it is essential to identify precise tasks, costs, and lead times.

To follow the normal procurement channels to accomplish these two tasks would add a minimum of two to three months delay in getting the plan to Congress and possibly another one to two months if another contractor were selected and had to acquire the knowledge which AMS already has. This is unacceptable because of the increased potential for a supply interruption to occur and the obvious lack of a gasoline rationing contingency plan to cover that possibility.

C. There has been no previous advance planning information furnished to the Office of Procurement in regard to this proposed contract modification. This justification does not represent a departure from prior procurement plans. It seeks to modify the existing arrangement with the contractor only to the extent that it adds additional tasks necessary for the development of an effective standby rationing plan ready for submission to the Congress.

D. The gasoline rationing plan, as currently being developed, will require preimplementation work in order for the plan to be implementable within 45 days (or 90 days, depending on DOE policy). Most of this new effort will follow Congressional approval of the

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plan although preimplementation strategy development is necessary at this time, in advance of Congressional approval. It is our intention to make full use of competitive procedures in procurement of additional services required after the Congressional review process.

III. Estimated Costs

A. The estimated cost for this work was based upon the following:

1. Labor	Hours	Rate	Amount
Project Manager	460	$53.50	$ 24,610
Systems Analysts	1,220	$42.75	$ 52,155
Technical Information Specialists	1,790	$35.00	$ 62,650
Secretary	460	$12.50	$ 5,750
TOTAL LABOR			$145,165
2. Other Costs			
Out of town travel for Systems Analysts' visits to Washington			$ 1,200
Other direct costs (Xerox, etc.)			$ 3,400
TOTAL OTHER DIRECT COSTS			$ 4,600
3. Total Costs*			$149,765

B. The above estimated cost is for FY 1978 only.

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* The amount is for the proposed new work. AMS' existing contract is for $119,200; the revised total contract including the new work would be $268,965.

IV. Schedule Requirements

The schedule which calls for submitting the plan to Congress by the first of January 1979, dictates the urgency for contract award and timely accomplishment of tasks. As stated above, to go through the normal procurement channels would add a minimum of two to three months delay in getting the plan to Congress and possibly another one to two months of additional learning time if another contractor were chosen.

V. Exclusive Capability

A. Because of work done in the previous effort on determining the basis for allotments and as general plan integrator, AMS is the only qualified firm to perform the required new allotments analyses, such as for governmental vehicles, taxis, etc. AMS has already done prior analytical work on vehicle eligibility classes, and has the background necessary for the new tasks.

B. Acting in the capacities as plan integrator and cost developer, AMS is in the best position to identify and analyze all of the preimplementation tasks necessary to bring the plan to 45-day readiness, and to develop preimplementation budgets and schedules. For any other organization to acquire the necessary knowledge would require the unacceptable delay already stated above.

For all the reasons aforementioned, a noncompetitive procurement awarding this contract to AMS is found to be justified.

APPROVED: Douglas G. Robinson

Douglas G. Robinson
Assistant Administrator
Regulations and Emergency Planning
Economic Regulatory Administration

CONCUR:

Bob Law
Procurement Advisor
Program Support
Office of Procurement Operations

MIT

EX-76-A-01-2295

RCN-0858

Massachusetts Institute of Technology

Justification for Noncompetitive Procurement

It is recommended that negotiations be conducted only with Massachusetts Institute of Technology, Center for Transportation Studies (MIT) for the services described herein.

I. Description of Services to be Procured

A. The services to be procured are an assessment of critical issues regarding restraining demand for motor gasoline in an emergency; identification and evaluation of options with respect to standby conservation plans for gasoline; and recommendations as to which of the options, if any, should be fully developed into comprehensive standby plan(s) suitable for submission to Congress.

B. MIT will provide interim and final reports with required supporting materials and recommendations and will submit issue papers as required.

II. Procurement History, Estimated Future Requirements and Long-Range Procurement Objectives

A. The Energy Policy and Conservation Act of 1975 requires that one or more energy conservation contingency plans be developed which impose reasonable restrictions on the public use of energy to reduce consumption in an emergency. Earlier efforts to develop plans for motor gasoline resulted in standby measures which, if implemented, would reduce demand by only 300 thousand barrels per day. This procurement effort will identify measures where more significant savings can be realized.

B. This work is not a continuation of a previous effort performed by MIT.

C. There has been no previous advance planning information furnished to the Office of Procurement in regard to this proposed contract. This justification does not represent a departure from prior procurement plans.

D. This is the final effort to develop standby conservation measures for motor gasoline.

III. Estimated Costs

The estimated cost for this procurement is $250,000 (all in FY 1978).

IV. Schedule Requirements

The schedule has been established in order to comply as soon as possible with the Energy Policy and Conservation Act (EPCA) of 1975 which directed that one or more contingency plans be submitted to Congress by June 19, 1976. Additionally, the U.S. is obligated, pursuant to the International Energy Plan to have such plans available as quickly as possible for use in the event of an emergency. To do anything other than this proposed non-competitive procurement would seriously delay this effort unacceptably since the Administration is already in violation of EPCA and must promptly satisfy its international obligations. There would be no significant cost saving or other benefit if the schedule were to be relaxed.

V. Exclusive Capability

MIT's Center for Transportation Studies was established to facilitate the interdisciplinary and multimodal study of transportation problems. The academic setting of the Center is especially relevant to this project since extensive, innovative, and imaginative research is necessary to identify in comprehensive form the options which may be available for reducing the demand for gasoline in a crisis. The MIT Center for Transportation Studies is uniquely equipped, in terms of facilities, personnel, and experience to meet this challenge. Furthermore, in utilizing the Center for this project DOE has the added benefits of being able to draw upon the experience and specialized expertise of eight other MIT centers, departments and laboratories, which provide the necessary multi-disciplinary approach required for the successful completion of this project.

As noted previously, MIT has had extensive prior experience which closely parallels the requirements of this effort. For example, the Center recently studied "Transportation System Management: Its Origins, Local Response and Problems as a New Form of Planning." This study sought to identify low-capital projects that would utilize existing transportation facilities in an efficient manner. This report addressed a short-term transportation problem which is essentially what must be addressed in developing standby motor gasoline demand restraint measures for an emergency.

The Center's staff is exceptionally capable with broad experience in local and national transportation problems. Many staff members are widely recognized experts in their respective fields. This expertise has been successfully utilized on prior projects for DOE's predecessor agencies.

Finally, MIT has a quick start-up capability. Due to its previous work for DOE in the transportation conservation area, it is familiar with DOE procedures and requirements.

For all of the reasons cited above, a noncompetitive procurement awarding this contract to MIT is found to be justified.

Approved: _____
Douglas G. Robinson
Assistant Administrator
Economic Regulatory Administration

Concur: _____
Tom Keefe
Procurement Advisor
Program Support
Office of Procurement Operations

5/30
EB-78-C-01-8604 - MOD 1
Logistics Management Inc.

Procurement Request Number 0903

Justification for Non-Competitive Procurement

I recommend that negotiations be conducted with Logistics Management Inc., for the services described herein.

I. This procurement action, to be accomplished by modifications to an existing contract with Logistics Management Inc., is for the purpose of providing.

1. Specified detailed information and communications systems requirements for Energy Emergency Management Information Service, (EEMIS).

2. Additional deliverables on this current contract tasks.

3. Related follow-on analysis to the current contract studies (then items are described in an attached procurement summary).

II. The contract with LMI was competitively placed. Under this contract LMI has performed very well and, as a result, is in the unique position to complete these interrelated tasks as qualified in Item IV and V. These tasks and deliverables can be completed within three months.

III. The estimated cost of the work to be covered by this contract modification is $135,000.

IV. The EMIS effort includes deadlines imposed by the Economic Regulatory Adminstration with certain deliverables due as early as next month. This effort involves a requirements analysis that is very closely related to the current contract work. Thus LMI is the only source that can possibly provide the EMIS results as required. Similarly, the additional deliverables and follow-on tasks to be covered by this contract modification represent interrelated efforts which only LMI can economically and efficiently perform.

V. LMI has unique assets to perform this work that are not available from another contractor in this field. These assets are:

1. Unique experience and qualifications in its staff. This asset has been verified and was a major cause for awarding the initial contract to LMI. These staff assets span all areas of work to be performed in this modification, and consist of experts from all levels and dimensions of the broad range of industrial and academic communities pertinent to the subject issues.

2. The work performed by LMI under the original contract to date has constituted a base of new materials essential to work required in this modification. The work now required is almost totally dependent upon and interrelated to the previously performed work. Any new contractor would have to repeat a substantial portion of this previous background work prior to beginning vital and time-sensitive items to be performed under this modification.

Douglas G. Robinson
Douglas G. Robinson
Assistant Administrator
for Regulations &
Emergency Planning
Economic Regulatory
Administration

Concurrence

Directorate of Procurement
and Contract Management

JUSTIFICATION

At the Governors' White House Energy Confernce in early July 1977, energy emergency preparedness was stressed as a matter of immediate concern to both the States and the Federal government. To promote the coordination of state and federal efforts to prepare for an energy emergency situation, the National Governors' Association established the Subcommittee on Energy Emergency Preparedness to work closely with the Winter Energy Emergency Plan (WEEP) Task Force, the Federal Energy Administration group designated to prepare a federal energy preparedness plan by October 1, 1977.

In order to further this goal, it has been determined that one of the necessary end products of the WEEP Task Force effort is a Report on State Energy Emergency Management Systems which can be utilized by the Energy Emergency Center described in the Winter Energy Emergency Planning Guide as well as by State and local units of government. This report would include (1) a framework of principal provisions for State energy emergency contingency plans, (2) state-by-state profiles of existing state energy emergency systems and (3) selected analysis of state energy emergency legislation.

Due to the direct contact with Governors, their staffs, and state energy offices, the Energy Program staff is in a unique position to conduct further research and background studies on state activities in these areas of energy emergency preparedness. Therefore, we recommend that the National Governors' Association conduct the necessary studies and prepare this report for the Federal Energy Administration within a prescribed timeframe so as to be of use this winter.

Statement of Work

This purchase order is for the development of a comprehensive report on state energy emergency management systems, the contents of which will include:

(1) State-by-state profiles which specify legislative mandates, emergency powers, state emergency actions taken and other pertinent state information which readily identifies states' capabilities and authorities to deal with energy emergencies.

(2) State energy emergency management systems. States differ greatly in their energy emergency management systems. Responsibilities during an energy emergency situation are spread among the Office of the Governor, the State Energy Department, Regulatory Agencies, suppliers and consumers in varying degrees.

focus on state data requiremtns and system design with respect to EEMIS.

4. Prepare report on workshop proceedings for submission to the Economic Regulatory Administration.

Non-Competitive Justification

Due to the direct contact with Governors, staff and state energy offices, the Energy Program staff of the National Governors Association is in a unique position to solicit the participation and assistance of key state officials to accomplish the program objective described above.

The National Governors Association established a Subcommittee on Emergency Preparedness in 1977 to work with DOE on emergency planning programs, such as EEMIS. The NGA is the only organization which has resources available to it which could determine the appropriate state selections and request their participation on short notice.

Therefore, it is recommended that the National Governors Association conduct this data requirements workshop with states and prepare a report on the workshop proceedings.

Thomas L. Fole
PROCUREMENT ADVISOR

Douglas D. Robinson

Richard L. Kemp

Mr. DINGELL. The GAO notes also in their comments that insufficient DOE personnel were available to distribute the handbook when it was ready. Can you tell us how this happened.

Mr. O'LEARY. I am sorry, Mr. Chairman.

Mr. DINGELL. Let me repeat the question. The GAO notes also that insufficient DOE personnel were available to distribute the handbook when it was ready. Can you advise how this happened, please?

Mr. O'LEARY. Mr. Chairman, I am going to turn this again over to Ms. Rollins, who appears to be as perplexed as I am.

Ms. ROLLINS. Yes; I am, sir. I have reviewed the GAO report several times and did not find that language there. I can't imagine in what context it was raised—simply because when the report was made ready, there is a very standard procedure whereby we simply pull out our mailing list, and those mailings are accomplished quite as a matter of course by the office which is responsible for disseminating publications.

Mr. DINGELL. The Chair has counsel reviewing this to try to get the precise question on this from the report.

Now, your fiscal year 1979 authorization request included $10 million for emergency preparedness contracts in ERA. There are 28 people in that office responsible for these programs. Thus, each person, even the secretaries, would be managing some $400,000 in contracts.

Some individuals listed in your cables are responsible for managing a dozen contracts worth over $1 million. With this contract-to-employee ratio, can you tell us how you insure proper monitoring?

Ms. ROLLINS. Again, I will have at it. In fact, our request, though it was for $10 million in emergency preparedness, finally resulted in an appropriation of a little over $7 million.

A major portion of that funding in fact moves over to the EIA, where in point of fact they have now inherited from us $5,990,000 of the $7 million. The remaining funds, which amount to $1.6 million, will in fact be managed by emergency preparedness people in the ERA.

It is my belief you will see a great deal of improvement with respect to management, simply because there are fewer funds, though indeed the staff in that unit is certainly not overly large.

Mr. DINGELL. I am troubled. How much of this work could be done in-house, and why is it not being done in-house?

Mr. O'LEARY. Mr. Chairman, one of the trends of government generally in those organizations that make up the Department of Energy specifically over the last 10 to 15 years has been an increasing amount of contract management as the role of the Government employee as opposed to doing the work.

I say that advisedly. My tradition in the Department of Interior was one of very, very little in the way of contracts and much in-house work.

That resulted in certain phenomena. For example, I can recall one time that we had to make work for an entire lab because the raison d'etre of that lab simply disappeared. This is the one dealing with anthracite.

The industry has more or less disappeared, and we had to create work for them. So, I think that probably there is a certain amount of wisdom in moving government to the point where a relatively smaller group of managers, contract managers, represent the Government with a great deal of flexibility with regard to the various projects that they manage.

At any rate, I will remind you of the data with regard to the Department of Energy. We have something under 20,000 employees directly, and we have associated with us in the national lab system, and in our standing contractors, an additional 107,000 people.

So, this is, as I say, a very long and well-established tradition, that the DOE people per se tend really to be planners, policy and analysis people, and managers of contractual efforts conducted by others.

Mr. DINGELL. Some of these undertakings appear to be regulatory in character, or to lead toward regulatory judgments by your agency. That means that two events flow from it, the first of which is a potential for conflict of interest.

The second is that given the event toward which the study is directed, one might well anticipate that certain insider advantages would accrue to the individual who had prepared the study or done the contract work for DOE.

Mr. O'LEARY. Well, Mr. Chairman, we take great pains with regard to the latter. We have procedures that provide us with as much of a shield as one can have against insider knowledge and conflict of interest on the part of our contractors.

Let me say a word with regard to the regulatory aspects of this.

Mr. DINGELL. You can't just erase the content of the man's brain, though. It remains there.

Mr. O'LEARY. This is true, whether he be in government or out, Mr. Chairman.

Mr. DINGELL. I am keenly aware of that. At least if he is in the Government he isn't going to be our representing somebody else without going to jail.

Mr. O'LEARY. Very few people go to jail on that basis, Mr. Chairman. Let me remind you of a discussion we had on this point in the past with regard to its applications in a regulatory setting.

You will recall when we set up the Office of Special Counsel we had in large measure a 2-year job to be done. We faced a dilemma whether to try to break through the personnel ceilings and hire people for a 2-year assignment or go to contract.

After a good deal of soul searching on that, we have made extensive resort to contract helpers, not in a policy or decisional frame work, but in a fact-gathering framework.

I am told by the special counsel that that is working admirably. We are having good success with it. We are not in a position of inflating the number of people in Government and then having to find some thing else for them to do after the 2-year period in which we can employ them when this particular line of work is ended.

Mr. DINGELL. Let me give you an example.

Today I am going to sign a letter to you—actually, Jim Schelesinger, down at DOE, complaining about Stone and Webster doing certain work with regard to the utility rate reform provisions of the Public Utility Regulatory Policies Act.

Now, I am advised that Stone and Webster is purportedly being considered, and I am bringing to the attention of your agency the fact that they have a long history of having done broad regulatory studies for the utility industry.

I can't assume that this one contract which you will give them, if you do so, will remove them from doing work for the utility industry.

Now, there you have an opportunity, if it goes to that particular contractor, a rich opportunity (a) for conflict of interest, (b) for insider information, and (c) for flowthrough of the experience and expertise gained into others among their clients.

Mr. O'LEARY. Mr. Chairman, I think that that, as I pointed out, is something we must guard against at all times. I can't speak with regard to this particular contract. I can, however, speak with regard to your last point.

I would suspect that what we are seeking here is a flowthrough of information gained in the dealing with clients back to us in this particular instance.

Mr. DINGELL. Well, it is going to be information coming from clients to the Government—I am not sure that is proper. It is going to be information that belongs to the Government, that is procured by a governmental study and as relates to advice on governmental policy, flowing back to clients, and conferring a singular economic advantage on the person who——

Mr. O'LEARY. Mr. Chairman, I think it is fair to say that we do indeed expand their knowledge base. But I am not sure that that confers significant economic advantage on their clients.

Let me just give you one example of a personal nature where I used this sort of arrangement.

When I was worrying about natural gas policy in the State of New Mexico, I went to a firm that had done extensive work for both public and private utilities in this country.

Why did I go to them? Because they were expert in this particular arena and because they had an extremely high reputation for integrity.

I found that the service that I received from them was indeed expert and was conducted with, so far as I can determine, absolute integrity. The State of New Mexico was far ahead from having employed that well of experience than had we gone to someone who was a neophyte, a well-intended neophyte, who was simply an analyst trying to break into this area.

So, I think you cannot really draw a black and white picture here and optimize the contribution that Government seeks from contractors of this sort.

Mr. DINGELL. Well, you won't deny that there is reason for honest concern here.

Mr. O'LEARY. I think so, Mr. Chairman. That is why we are scrupulous with regard to conflict of interest, to try to wall ourselves away from situations that present a potential conflict of interest.

Mr. DINGELL. Well, let's take a company that does nothing but make analysis and serve clients in the electric utility field. They are going to go out and advise on costs you are going to carry forward as regards the utility rate reform section of the National Energy Act.

How do we guarantee ourselves against conflict of interest, against special interests of the person doing the contract work on behalf of his clients?

Mr. O'LEARY. Mr. Chairman, I think we can usefully discuss this matter with our procurement people who have to worry about this every day.

The fact of the matter is in many of these situations we do go to firms that have developed over a period of time competence and expertise in these areas because they are serving in the arena that we are trying to understand and indeed affect.

So, it is a problem that is with us constantly.

I think if we were deprived of access to firms of this nature simply because they had served the other side of the fence, for example, the utility industry, I think we would wall ourselves out from an enormous well of competence. I think it would utimately run to the disservice of the Government.

Mr. DINGELL. I am not prepared to tell you that you are totally in error, but I am prepared to tell you that I am very much concerned about this process.

I hope that neither of us will have occasion to have regretted this reposing of trust or the potential lack of safeguards here to assure protection against the kind of apprehensions that I have expressed earlier.

Mr. O'Leary. Let me shift and deal with other questions now.

The Director of Administration has been chosen as emergency coordinator. His selection has been criticized by Mr. Mansfield, who

is your Inspector General, for sharing responsibilities with Secretary Alm.

It was the recommendation of the GAO and your Inspector General this should be vested in one individual, with secretarial rank, inside the agency.

Can you explain whether you were aware of this recommendation and, if so, why you have not chosen to follow it?

Mr. O'LEARY. Mr. Chairman, I am aware of this recommendation. I think that the recommendation really does not run to a criticism of the location. It does run to a recommendation that there be some different focus within the Department.

I am prepared to consider that. As a matter of fact, I think that there is a certain symmetry to vesting all of these responsibilities in Assistant Secretary Alm's office.

I have discussed this with him recently. I believe he would be willing to take those responsibilities. So, we are, I think, not out of harmony on this particular point.

Mr. DINGELL. Well, now, could you explain the role of the Director of Administration in the emergency preparedness task force?

Mr. O'LEARY. Mr. Chairman, the role of the AD people in this area is one largely of being the coordinators or bookkeepers. They have no policy role.

We have in the normal course of events a large number of actions under the general heading of emergency planning, and we require an activity within the Department to keep these actions straightened out and to be sure that the various players meet their deadlines and do things on time.

Mr. DINGELL. You are saying these folks will have no policy powers whatsoever?

Mr. O'LEARY. No; the administrative people have no policy role. Their role has been purely one of coordinating disparate activities across the agency.

As I say, as we think about this now, with last winter's experience behind us, and another winter coming, it is beginning to make sense to me to being all of the activities together under Assistant Secretary Alm.

We are in the course of discussions that probably will accomplish that within the next few weeks.

Mr. DINGELL. I look with greater comfort on that arrangement.

Can you explan why the Director of Administration was selected as cochairman of this particular body?

Mr. O'LEARY. He was selected as cochairman because he has had responsibilities of a bookkeeping or coordinating nature I believe ever since the origin of the Department. At any rate, they go back some months.

So, it seemed to me sensible for him to be very much a party to the activities going forward in the Department in this context.

Mr. DINGELL. Can you tell me why he was chosen emergency coordinator?

Mr. O'LEARY. Yes, Mr. Chairman, since the job required the coordination of a broad set of activities across the Department on a more or less bookkeeping basis, it seemed to us at the time appropriate for the AD to carry it out for us.

Mr. DINGELL. Isn't this a task that could have been better performed by somebody in your office?

Mr. O'LEARY. No, Mr. Chairman, I don't think so. I generally feel that for my office to assimilate an increasing series of responsibilities—and you may know that I get requests about once a week for this function or that function to be directly handled by my office—would soon make my office absolutely beyond my capacity at least to administer.

So, I think what we should do is place it in an appropriate Presidential appointee—in this case I believe Mr. Alm is that person—and——

Mr. DINGELL. You are referring to the energy coordinator?

Mr. O'LEARY. Indeed—bring all these functions together under a single individual, Presidential appointee, and let him have the staff and bring it together.

I want to say a word——

Mr. DINGELL. I want to applaud that judgment, Mr. O'Leary. I would also applaud placing it in the hands of a Presidentially appointed and senatorially confirmed individual.

Mr. O'LEARY. It so happens, Mr. Chairman, that Mr. Alm is not only Presidentially appointed, but would you believe he is senatorially approved.

Mr. DINGELL. I am aware of that, in which I rejoice. Some of the other folks getting responsibilities down there are not, and that distresses me.

Mr. O'LEARY. Yes, sir.

Mr. Fygi, for example, has never gone through that particular——

Mr. DINGELL. Well, Mr. Fygi and I have no bones to pick today.

What are Mr. Heffelfinger's other responsibilities?

Mr. O'LEARY. Mr. Chairman, he is the Director of Administration and is responsible for many of the activities of the Department relating to contract administration, for one, to personnel administration, to seeing to it that our financial house, at least his side of it, is in order.

He has a broad sector of housekeeping responsibilities for the Department.

Mr. DINGELL. It would occur to me this should keep him well occupied.

Mr. O'LEARY. Mr. Chairman, it does. He is a very hard working, fully employed individual.

Mr. DINGELL. I am curious how he will undertake these other labors and provide full answer to the needs.

Mr. O'LEARY. Mr. Chairman, he has been able, I believe, to do well. I think we may be able to do better with Mr. Alm, who also is very heavily employed.

Mr. DINGELL. I am aware of that. I have great respect for Mr. Alm.

Can you tell me one last question? If you do not make the change we are discussing today, can you indicate how the responsibilities of Mr. Alm and Mr. Heffelfinger will be dispersed among them?

Mr. O'LEARY. In the event of the negative?

Mr. DINGELL. Yes.

Mr. O'LEARY. In the event of the negative, I will let you know within 30 days the answer to your question.

I think I will not have to come back to you within 30 days.

Mr. DINGELL. We are advised Mr. Alm would be undertaking substantive judgments and Mr. Heffelfinger procedural questions.

Mr. O'LEARY. That is correct.

Mr. DINGELL. Which agreement tends to be somewhat at variance with the earlier discussions of Mr. Heffelfinger's responsibilities as cochairman of the Energy Emergency Preparedness Task Force and Energy Emergency Coordinator.

Mr. O'LEARY. I want to assure you Mr. Heffelfinger's role in these matters is in fact procedural. He has not been a policy officer. Indeed, the policy has been shared by a number of officers in the Department, Mr. Bardin, the Administrator of ERA, Ms. Rollins, as well as Mr. Alm. The bookkeeping functions have been conducted for us in this context by Mr. Heffelfinger and that is all.

Mr. DINGELL. Gentlemen, we have kept you very long and the Chair is going to yield briefly to counsel for a couple of questions and the Chair will then adjourn.

Mr. FINNEGAN. Ms. Rollins, in connection with one of the contracts concerning emergency preparedness, there was a so-called Analytic Sciences Corp. which performed a contract planning preparedness. The term was May 11 to June 23 of this year, a contract of about $9,900 and I understand that is completed and one of the reports that the Inspector General refers to concerning emergency planning.

Was that a sole source contract, do you recall?

Ms. ROLLINS. It was a sole source contract.

Mr. FINNEGAN. The reason I raise the question is because on June 15, which was about 8 days before it completed the contract, a new contract for $87,000 was entered into with the same firm which is for the development of a comprehensive plan to use the control-related contingencies. Was that a sole source contract?

Ms. ROLLINS. It is my recollection that too was a sole source contract.

Mr. FINNEGAN. Is it possible the justification was they had performed a previous contract and——

Ms. ROLLINS. No. As Mr. Fygi indicated, the justification for a particular contract generally turns out to be a unique capability to perform a particular service, and in point of fact I could make a clear distinction between the work of planning for the management of an emergency contingency office, and doing analytical work on a small petroleum supply product.

Mr. FINNEGAN. I would like to see the justifications.

Ms. ROLLINS. We will provide them for the record.

[Testimony resumes on p. 278.]

[The following justification referred to by Ms. Rollins was received for the record:]

43-130 0-79-18

E5-78-Y-01-4251
Analytical Science Corp.

JUSTIFICATION FOR NONCOMPETITIVE PROCUREMENT

Procurement Request Number: JO1-78-0073

Contractor: The Analytic Sciences Corporation (TASC)

Value: $10,000

Supplies/Services: Report and Briefings

I recommend that negotiations be conducted only with The Analytic Sciences Corporation for the supplies and services described herein accordance with DOE Procurement Regulation Section 9-3.805.

Supplies and services to be procured:

The contractor will provide, within six weeks of approval of this procurement, a written report that provides an overall appraisal of U.S. Government planning and preparedness activities for petroleum-related contingencies, with a particular focus on the activities within the statutory responsibilities of the Department of Energy. In addition, the contractor will also present oral briefings in support of this report to DOE policy officers and other government officials.

Background:

This procurement arises from statutory responsibilities of the Department of Energy as described in Section 102 of the Department of Energy Organization Act (P.L. 95-91):

"(3) to provide for a mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid-, and long-term energy

problems of the Nation; and to develop plans and programs for dealing with domestic energy product and import shortages;...

(8) to facilitate establishment of an effective strategy for distribution and allocating fuels in periods of short supply and to provide for the administration of a national energy reserve."

The immediate need for this procurement arises from a Presidential directive for interagency review of planning and preparednesss activities for petroleum-related contingencies and for a report to him from the Department of Energy by June 30, 1978. To best achieve this objective, it has been concluded that DOE requires the assistance of a highly experienced, qualified firm with unquestionable credibility in national emergency planning which can provide an overall appraisal of U.S. government and DOE activities.

Cost Estimate:

The cost to the government of this Purchase Order is estimated to be about $10,000. This estimate was established on the basis of judgments by Policy and Evaluation concerning the scope of the effort and responsibility involved in meeting the requirements of the purchase order.

Schedule Requirement:

The schedule requires completion of the report and briefings within six weeks. The procurement schedule is urgent in view of the requirement for a rapid appraisal of current efforts and development of a report to the President by June 30, 1978.

Exclusive Capability

TASC is considered to be highly qualified in the field of analytic sciences including the design and management of information services. It specializes in solving complex study problems.

Additionally, TASC's key individual who is expected to head up the work under this Purchase Order is Mr. Leslie Bray, who has extensive expertise in the area of contingency planning as the former director of the Federal Preparedness Administration (Office of Emergency Preparedness) where he had government-wide responsibilities for preparing plans and policies for national emergencies ranging from economic crises to nuclear attacks. The major programs under his direction ranged from national stockpiles of strategic materials, industrial mobilization, civil defense, and national resource data, to research/development for forecasting of national shortages, priorities and allocations for materials, and NATO civil emergency planning.

In light of these facts, I consider the proposed contractor the only acceptable source for the required scope of work and recommend authorization of negotiations without further competition.

David Bloom

David Bloom

Date: _____

Concur: J.D. Patton 4/17/78

Division of Procurement

JUSTIFICATION FOR NONCOMPETITIVE PROCUREMENT

Procurement Request Number: JO1-78-Q074

ET-78-C-01-6439
Analytic Sciences Corp.

Contractor: The Analytic Sciences Corporation (TASC)

Value: $88,000

Supplies/Services: Program Support, Reports and Briefings

I recommend that negotiations be conducted only with The Analytic Sciences Corporation for the supplies and services described here in accordance with DOE Procurement Regulations Section 9-3.805.

Supplies and services to be procured: The contractor will provide program support services by assisting in: (1) the development of a framework for producing a comprehensive plan to be used in responding to petroleum related contingencies; and (2) the early stage development of a contingency response system to be used in the event of such contingencies. The total term of this contract will be eight months.

In connection with the first of the above tasks, the contractor will provide, within three months of approval of this procurement, a written report which identifies the roles and responsibilities of key actors, and recommends needed improvements in both the plan development and the plan implementation processes.

In connection with the second of the above tasks, the contractor will provide on-going professional assistance in the development of the contingency planning response system and in the review of the adequacy of DOE's system for monitoring and forecasting both the impacts of petroleum supply interruptions and the effects of invoking various response measures. As part of this task, the contractor will provide oral and written progress/deficiency reports as required throughout the five month duration of this task. In addition, the contractor will provide a preliminary design for a systems test of DOE's preparedness for petroleum related contingencies. Finally, within eight months of the approval of this procurement, the contractor will provide a written report summarizing their findings and recommendations in connection with the second task.

Background:

This procurement arises from statutory responsibilities of the Department of Energy as described in Section 102 of the Department of Energy Organization Act (P.L. 95-91):

> "(3) to provide for a mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid-, and long term energy problems of the Nation; and to develop plans and programs for dealing with domestic energy product and import shortages;...
>
> (8) to facilitate establishment of an effective strategy for distributing and allocating fuels in periods of short supply and to provide for the administration of a national energy reserve."

The immediate need for this procurement arises from expressed Presidential interest in preparedness activities for petroleum-related contingencies. To best achieve this objective, it has been concluded that DOE requires the assistance of a highly experienced, qualified firm with unquestionable credibility in national emergency planning which can provide an overall appraisal of U.S. government and DOE activities.

Cost Estimate:

The cost to the government of this procurement is estimated to be about $88,000. This estimate was established on the basis of judgments by Policy and Evaluation concerning the scope of work, the level of effort, the level of expertise required and the responsibilities involved in meeting the requirements of this procurement.

Schedule Requirement:

The schedule requires that the project be completed within eight months of commencement of the contract. Of prime importance is the deadline for the completion of the first task--assistance in the development of a framework for producing a comprehensive response plan; the schedule requires that this task be completed within three months of the commencement of the contract.

It is important that this contract be awarded in the near future. At the present time, key petroleum related contingency response measures are under development; these include programs such as the Strategic Petroleum Reserve and the standby crude and product allocation regulations. Without an improved comprehensive planning process, for which TASC assistance is considered essential, the development of DOE capability to effectively respond to petroleum contingencies will be hindered. Further, it is possible that the development of this plan could affect the development of the component response measures, since it would put these measures into perspective. Finally, the President has an expressed interest in this area; an appraisal of current efforts is due in a report to him in June, 1978.

Exclusive Capability:

Successful performance of the work required by this procurement depends upon the ability of the contractor to proceed rapidly into the substantive areas of the study with a minimum of learning time and with experienced manpower on hand and ready to go. The contractor's experience must include (1) experience in contingency planning in a large government

structure; (2) an understanding of the sensitivities and differing responsibilities in planning on an inter-agency basis; (3) the ability to develop a conceptual process for planning involving the evaluation of alternate responses; and (4) experience in systems management through the development cycle and the implementation phase. Further, it is critical that the contractor have such credibility and reputation that senior government officials would feel comfortable in relying on judgments made by its employees in areas concerning the security of the nation.

TASC is considered to be highly qualified in the field of analytical sciences and is a leader in evaluating the design and performance of systems and in designing system process improvements. It specializes in solving complex study problems, particularly those involving (1) the interaction and coordination of systems which have a number of significant actors and sub-systems; and (2) the development of assessment and analysis strategies. TASC has over twelve years experience performing for all levels of government over a wide range of studies including fuel conservation management, methodologies for energy exploration, environmental impacts of energy of development, and organizational and policy conflicts in natural resource management.

Additionally, TASC's capabilities include the knowledge and skills and reputation of the key individual who is expected to be the study director under this Procurement, Mr. Leslie Bray. Mr. Bray has

extensive expertise in the area of contingency planning as the former director of the Federal Preparedness Administration (Office of Emergency Preparedness) where he had government-wide responsibilities for preparing plans and policies for national emergencies ranging from economic crises to nuclear attacks. The major programs under his direction ranged from national stockpiles of strategic materials, industrial mobilization, civil devense, and national resource data, to research/development for forecasting of national shortages, priorities and allocations for materials, and NATO civil emergency planning.

TASC was selected after consultation with the Deputy Secretary, the major U.S. government policy officers responsible for contingency planning, as well as the Office of Management and Budget staff, who recommended Mr. Bray and his organization as singularly appropriate for this job.

In light of these facts, I consider the proposed contractor the only acceptable source for the required scope of work and recommend authorization of negotiations without further competition.

David Bloom DB

Concur: Joseph R. Poluto

Date: 6/5/78

Division of Procurement

Mr. FINNEGAN. I would just comment in connection with your point that the information agency is going to take over the $7 million, we would point out they only have five filled positions, two of which are according to your figures permanent employees and three are detailees. So they are going to manage a lot of money.

Ms. ROLLINS. Perhaps Mr. Fischer would like to comment on that. That doesn't seem to be the nature of my problem at this moment.

Mr. FISCHER. We currently have allocated to us about 16 positions and we are in the transition between the summer developmental work on the plan that is up for comment and the follow-on implementation of that plan once we receive comments.

In fact, we have two full-time staff and three full-time detailees working on EEM's in the EIA. During the summer we had eight full-time detailees and two part-time detailees from different parts of the Department working on this project.

But, as you can see from the chart we have provided, we have a number of vacancies that we hope to be able to fill.

Mr. FINNEGAN. According to your figures, you have 14 vacancies and if I understand Mr. O'Leary's directive of October 25, it would seem you only really have seven of those that you could fill, on the two-to-one basis, is that correct?

Mr. FISCHER. That is not exactly as I understand it. The directive may be worse than that. I would like somebody else to explain it.

Mr. Finnegan. Maybe Mr. O'Leary would.

Mr. O'LEARY. Generally speaking, the directive runs to this sort of proposition. If you have vacancies, that is the end of that, as of that day, October 25.

Mr. FINNEGAN. You mean you can't fill them?

Mr. O'LEARY. You cannot fill those. This is not my directive; it is the President's directive.

Mr. FINNEGAN. This is 14 vacancies.

Mr. O'LEARY. Within the general overall limitations of the Department of filling one for every two new vacancies, we will be able to accommodate high priority matters and it may be that Mr. Fischer will be able to convince those people who are in authority in the department that he has in fact a very high priority to deal with.

Mr. Finnegan. In that regard I want to make the point the Chairman has written concerning this issue regarding the NEA and the ERA on enforcement. How is that working out?

Mr. O'LEARY. What we are in the process of doing is putting requests to OMB for relief from the President's general injunction on the basis of new work. We are doing that and FERC, on a separate track, is making a parallel effort in order to capture the resources that they regard as necessary to meet their responsibilities. We will find out, I would imagine, in short order, what ONB's response is to that series of requests.

Mr. DINGELL. Mr. O'Leary, I want to make it very clear that I am very much troubled that the folks down there are not going to be able to do a responsible job as regards the National Energy Action view of the limitation on hiring which you have. You have addressed yourself to the question of filling vacancies. You have not addressed yourself to the new positions which will be required to administer that legislation.

I am sure you recall that at a time earlier this subcommittee was much troubled, the ad hoc committee on energy was troubled, the full committee, our colleagues in the Senate and their committees with proper jurisdiction were all troubled as to the number of additional people you were going to need to carry out your responsibilities.

I am satisfied you recall that we received, as we went forward in each instance, the assurances of the administration that we would be able to have the necessary number of people to administer this enormous, complex and difficult statute.

I detect with some distress that there may be some reconsideration of those assurances to the Congress and I do not detect you advising me that you can anticipate the absolutely necessary number of people to carry out the responsibilities under that very, very complex, very large statute.

Mr. O'LEARY. Mr. Chairman, just to go back to the beginning, you recall in late October the President, as part of the overall efforts of this administration, placed limitations on Government hiring. Now they were, just to summarize, no filling of existing vacancies and one-for-two filling of vacancies for the future.

The next point in the hiring freeze was that positions that are necessary for public health and safety, or for health and safety in general, security positions, those that are directly related to medical health, monitoring security of our installations may be replaced on a one-to-one basis.

Beyond that, Mr. Chairman, all agencies have been invited to make appeals to OMB for relief from the stringency of this rule. In the context of NEA implementation, we are in the process of such an appeal. We have an appeal pending before OMB. If that appeal is successful, that will take care of your point. If not, Mr. Chairman, it will require us to be very, very prudent in the use of those resources that we have available to us.

Mr. DINGELL. I think you should anticipate some stern inquiries by this committee as to how you are carrying out your functions in light of personnel limitations.

Mr. O'LEARY. We do, Mr. Chairman.

May I say we had a meeting of our so-called Acts system this morning, as we do every Friday, to see how we are doing on NEA implementation.

My recollection is that we are dealing with 104 separate distinct action items that require a lot of people, legal advice, administrative support and other resources.

I am pleased to say, with the exception of perhaps four or five items, everything appears as of this morning to be on schedule. We are tracking the NEA implementation very well. We are doing it at a cost, Mr. Chairman.

Mr. DINGELL. I am satisfied. I know you are working very hard.

Let me just inquire as to this: Mr. O'Leary, do you have a policy of replacing in-house employees that would do this work with contract employees or employees of contractors?

Mr. O'LEARY. There is always, as I described earlier, resort to contracts in order to get the department's work done and a good bit of the work for NEA implementation will be actually performed by our contractors.

Mr. DINGELL. Say that again, please.

Mr. O'LEARY. We will have a great deal of the work involved in implementation of the National Energy Act done by our contractors. They are not included by the two-to-one cut.

Mr. DINGELL. You give me small comfort in that. I find it distressing. A lot of that is regulatory policy.

Mr. O'LEARY. When it comes to policy development, Mr. Chairman, we do not have that sort of thing done by contract. Analysis, on the other hand, quite often is done by contract.

Mr. DINGELL. You will not again say we have in the past expressed distress to you over regulatory functions being contracted out, nor will you again say that there is a strong possibility that the analysis could color the ultimate regulatory process by the input that it makes into the regulatory process.

Mr. O'LEARY. Mr. Chairman, while you have cautioned us with regard to contracting out regulatory activities you have also applauded in certain instances, particularly the instance of special counsel the use of contract auditors and our utilization of outside help in that instance.

Mr. DINGELL. I tend to be a flexible fellow on occasion, but I also tend to be one who worries regularly.

Mr. O'LEARY. Mr. Chairman, it is well known consistency is the hobnob of patriots.

Mr. DINGELL. You will recall we had a hearing on that.

Mr. O'LEARY. Yes.

Mr. DINGELL. Gentlemen, we have kept you a long time. I thank you all and express appreciation of the committee to you and an apology of the Chair for being so long detained.

The Chair is pleased that the President did not raise executive privilege, nor that it has not been a challenge to the authority of the subcommittee to inquire into the matters before us. The Chair is pleased that the President adhered to the theory that only he may invoke executive privilege, and the Chair is most hopeful in the future we will not be placed into this kind of position.

As was pointed out by members of the panel, the administration tends to be quite chary over its responsibilities and privileges and duties, but I am sure, gentlemen, that you are keenly aware that the Chair, as just one representative of this particular body, must most diligently uphold the posture and position of the Congress against impingements on its prerogatives by the executive through unwise and unnecessary use of the doctrine of executive privilege.

With that, gentlemen, we express our thanks to all and apologize if any offense was given.

The subcommittee will stand adjourned.

[Whereupon, at 2:10 p.m., the subcommittee was adjourned.]

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